MINISTRY OF JUSTICE
Tāhū o te Ture

0 9 MAY 2019

Zane Collins
fyi-request-9602-0430fade@requests.fyi.org.nz

Dear Mr Collins

Official Information Act 1982 request

I refer to your Official Information Act 1982 (OIA) request, dated 3 April 2019, regarding the Family Court. Your request was for the following information:

> *I request the following manuals at the earliest, can you please provide a time-frame. Also, I request a copy of the Family Court Registrar's Powers Manual.*
>
> | | |
> |---|---|
> | 47 | *On notice application to vary or discharge a parenting or guardianship order* |
> | 48 | *On notice parenting order application* |
> | 73 | *On notice application for a protection order* |
> | 106 | *Service* |
> | 107 | *Directing the manner of service* |
> | 108 | *Directing a particular address as an address for service* |
> | 109 | *Causing additional documents to be served* |
> | 110 | *Issue documents for service* |
> | 111 | *Interlocutory application for directions for service* |
> | 112 | *Interlocutory application for substituted service* |
> | 113 | *Guidelines for determining the best method for service of documents* |

The table below lists the documents released under the OIA 1982. Please note that these are internally distributed documents that outline the current processes.

Reference	Document
47	On notice application to vary or discharge a parenting or guardianship order
48	On notice parenting order application
73	On notice application for a protection order
110	Issue documents for service
111	Interlocutory application for directions for service
112	Interlocutory application for substituted service
113	Guidelines for determining the best method for service of documents

Please note that in accordance with section 9(2)(a) of the OIA we have withheld certain information to protect the privacy of Ministry employees.

The Family Court Registrar's Powers Manual, item 106, 107, 108 and 109 are judicial information as defined by Schedule 1 of the District Court Act 2016. As such it is not official information subject to the Official Information Act 1982 – see section 236(2) of the District Court Act 2016.

Your request for a copy of the manual must be refused accordingly, as allowed by section 18(g)(i) of the OIA as there are no grounds for believing that the information is held by another department, Minister of the Crown, organisation, or local authority.

If you require any clarification of the information contained in this response please contact Julia Goode, Team Leader, Media and Official Correspondence, by calling (04) 918 8836; or emailing media@justice.govt.nz

If you are not satisfied with this response, you have the right to complain to the Ombudsman under section 28(3) of the OIA. You can contact the Office of the Ombudsman by writing to PO Box 10152, Wellington 6143; calling 0800 802 602; or emailing info@ombudsman.parliament.nz

I trust that this information assists.

Yours sincerely

Jacquelyn Shannon
Group Manager, Courts and Tribunals, Regional Service Delivery

Ref: 74685

On notice application to vary or discharge a parenting or guardianship order

PROCEDURE INITIATE FAMILY PARENTING CARE OF CHILDREN

Last updated: 24/9/2018 | Content owner: Regional Service Delivery Operations Support

Receive, accept and process an on notice application to vary or discharge a parenting or guardianship order

Overview Information

Overview

Who does this

Court registry personnel using registrars' powers.

When to do this

Follow this procedure when an on notice application to vary or discharge a parenting or guardianship order has been received.

Before you begin

Ensure you are aware of the decision-making principles.
Decision-making checklist (PDF, 266KB) [PDF, 265 KB]

Section 5A of the Care of Children Act 2004 (CoCA) states that in certain CoCA proceedings, the judge must be notified if any final protection orders have at any time been in force against one or more of the parties. This information must be prepared for the judge when processing the application (Care of Children Act 2004, s 5A).

Step 1

Receive the application and any supporting documents:

- If received in person, date-stamp all original documents in the bottom right-hand corner only.
- If received by mail, the application will have been date-stamped when received.

Step 2

Check that:

- the application is filed in the proper court – if not, forward the application to the correct court for acceptance and processing

- each page of the document is international size A4 (Family Court Rules 2002, r 64)
- the pages of the document are securely fastened together in the top left-hand corner (FCR, r 69)
- the contents of the application are legible (FCR, r 70)
- a fee or fee waiver application form is attached
- a copy for service for each respondent has been provided, and
- the application is completed on the correct form, and all sections are completed.

Vary or discharge a parenting or guardianship order	What to check on the document
Front page	Full names of the applicants.
	Full names of the respondents.
	List of the orders applied for and the filing method.
	Details of the child or children.
	Lawyer's details (if required).
Pre-requisites (only required for a variation to a parenting order, as explained in step 3)	Completed parenting through separation (PTS):
	• Check boxes are ticked and the *supporting information section* is completed.
	• Evidence is provided. See step 3 for validation of evidence in RMS and transition guidelines.
	• Request to be exempted from a parenting programme:
	o Use registrar's powers to make a decision.
	o Enter the application for exemption in CMS (step 7).
Part 1 Eligibility	Leave to commence proceedings with 2 years:
	• Section 139A leave requested.
	• Check boxes are ticked and the *supporting information* is completed.
	Note: enter the application for leave in CMS (step 4 and step 9).
Party relationships	The relationship status is specified, or details of the relationship are provided.

Part 2
Children

Check boxes are ticked.

Details of the current arrangements and any relevant orders are provided.

Part 3
Application details

The application sections correspond to the application list on the front page.

Check boxes are ticked and the *supporting information* section is completed.

Part 4
Why these orders

Check boxes are ticked and the *supporting information* section is completed.

Part 5
Urgency and safety

Check boxes are ticked and the *supporting information* section is completed.

Part 6
Swearing and affirming

The application is sworn or affirmed correctly.

Note: if the application is not sworn or affirmed:

- Swear or affirm an affidavit

Check that all relevant sections of the information sheet have been completed.

Part 7
Party information
(information sheet)

The information provided corresponds with the front page:

- Number and full names of the applicants.
- Number and full names of the respondents.

Note: if a confidential address is requested, an additional information sheet is provided.

Exhibits are attached and their assigned letters recorded in the exhibits box at the bottom left-hand corner of each page as required.

Further check:

The applicants, deponents and witness have initialled each page in the bottom right-hand corner (FCR, r 158).

Any alterations or erasures have been initialled in the margin by the applicants, deponents and witness (FCR, r 161).

The witness has authority to take affidavit – registrar/justice of the peace/solicitor (District Court Act 2016, s 104).

Step 3

If the application is for a variation to a parenting order, the applicant must have:

- completed a parenting information programme in the previous 2 years (the application must include a statement that they have attended a programme in the preceding 2 years), and
- provided *evidence in support* of the statement in the affidavit.
    - *Evidence in support* for example, a PTS certificate dated not more than 2 years or other proof of attendance.

Otherwise the applicant must have:

- applied to be exempted from attending a parenting information programme because they cannot participate effectively in a programme, and
- provided *evidence in support* of the statement in the affidavit -- check that a statement has been included in the affidavit.

If the application is for a variation of guardianship order or other orders or discharge of any orders:

- there are no specific requirements for filing.

If the applicant claims they have completed PTS or FDR but is unable to provide evidence:

- check their attendance in RMS.
  Search for a FDR record in RMS

If the applicant claims they have completed PTS but is unable to provide the evidence (due to there not being a reliable source to validate those that have attended or not attended PTS):

- see the *out of court to in court* guidelines. The rules provide guidance with regard to handling new cases and the mandatory PTS certification requirement.
  Out of court to in court (PDF, 292KB) [PDF, 292 KB]

Note: if any of the above checks have not been completed or supporting documentation has not been provided, discuss this with the applicant. Further information or evidence in support of their application will need to be provided.

Step 4

If the applicant is applying to make an application under section 139A of the Care of Children Act 2004 (within 2 years of a current order), check for details of an existing guardianship order with the same parties to validate the section 139A leave application (CoCA, s 139A).
Search for and open a case

If a final direction or order is made within 2 years of the application filing date:

- the application will need to be referred to a judge.

If a final direction or order was made over 2 years ago:

- the leave application is not required.

Step 5

Process a fee payment or fee waiver application.

If a fee payment is required:

- Process a fee payment

If a fee waiver has been applied for:

- Process a fee waiver application

Step 6

If an exemption decision is required:

- go to step 7.

If no exemption decision is required:

- go to step 8.

Step 7

Review the application to be exempted from a parenting information programme and determine whether to grant it.

Use your discretion and:

- consider whether the application should be granted or refused
  Deciding a section 46E exemption from family dispute resolution (PDF, 84KB) [PDF, 83 KB]
- make a decision, and
- endorse the application with your decision.

If the application is granted:

- search for any existing open or closed cases in CMS with the same parties and open the correct case.
  Search for and open a case
- enter the application *s 47B exemption from parenting information programme*
  Enter an application

Note: enter the applicant, respondent and child or children

- enter the application as filing method *without notice*
- enter a *dealt with on the papers* event and complete
  Schedule an event

- generate a minute advising reasons for the decision
  Generate a document

- update the decision to g*ranted*
  Record application outcome

- generate the documents *exemption minute issued by registrar*
  Generate a document

- print sufficient copies to notify the applicant and all relevant parties to the proceedings, and

- go to step 8.

If the application is refused:

- search for any existing open or closed cases in CMS with the same parties
  Search for and open a case

- enter the application *s 47B exemption from parenting information programme*
  Enter an application

Note: enter the applicant, respondent and child or children

- enter the application as filing method *without notice*

- enter a *dealt with on the papers* event and complete
  Schedule an event

- generate a minute advising reasons for the decision
  Generate a document

- update the decision to *dismissed*
  Record the application outcome

- generate a document *exemption minute issued by registrar*
  Generate a document

- print sufficient copies to notify the applicant

- add a copy of the exemption minute, a photocopy of the application and supporting documentation to the case file, and

- return the originals to the applicant along with a copy of the exemption minute.

Step 8

Search for any existing open or closed cases in CMS with the same parties:
Search for and open a case

- Enter the application and supporting affidavits in CMS.
  Enter an application

- Create or modify a party profile.
  Register an incoming document

- Add the documentation to the current file.

- Prepare any domestic violence history information for judge
  Provide section 5A information

Step 9

Enter any other applications made within the application.

If an application for leave to apply within 2 years was requested:

- enter a *s 139A leave to commence proceedings within 2 years* application
  Enter an application
- refer the application to a judge to be heard in chambers, and
- the application for leave will be considered at the same time as the application for parenting order.
  Schedule an event

What happens next

If the application needs to be dealt with by a judge in chambers.

- Prepare a file for a judge-led event - chambers

If the application needs to be dealt with by a registrar:

- Standard track case management - registry assessment

On notice parenting order application

Last updated: 24/9/2018 | Content owner: Regional Service Delivery Operations Support

Receive, accept and process an on notice parenting order application

Overview Information

Information

Background

An application for a parenting order concerns the day-to-day care and contact arrangements for children.

Who can apply?

Eligible persons who can apply for a variation or discharge of an order include:

- a parent
- a guardian
- a partner of a parent
- any other person who is a member of the child's family, whānau, or other culturally recognised family group and who is granted leave to apply by the court, and
- any other person granted leave to apply by the court.

In addition, if a parent of a child has died or has been refused contact with the child by a court, or is making no attempt to have contact with the child, then for the purposes of an application determining who may have contact with the child, an eligible person also includes:

- the parents of that child's parents
- a sibling of that parent of the child, and
- a sibling of the child
  (Care of Children Act 2004, s 47).

If the applicant is not an eligible person, they can apply under section 47 of the Care of Children Act 2004 to be granted leave to make the application.

Parenting orders in respect of children of or over 16 years

A parenting order determining the person or persons who have the role of providing day-to-day care for a child of or over the age of 16 years must not be made unless there are special circumstances (CoCA, s 50(1)).

Care of children approved forms

Approved forms are to be used for all care of children applications made under part 5A of the Family Court Rules 2002, other than Hague Convention applications made under part 2, subpart 4 of the Care of Children Act 2004 (Family Court Rules 2002, pt 3 r 62A).

Applications made under part 5A of the Family Court Rules 2002 (except Hague applications)

Rule 416F of the Family Court Rules 2002 – commencing proceedings
To commence proceedings under the Care of Children Act 2004, a person must file an application on an approved form in court.

There are 2 kinds of applications:

- Applications on notice, which include applications for consent orders.
- Applications without notice.

Under section 7A of the Care of Children Act 2004, the extent to which a lawyer can act for a party is affected by whether an application is made with or without notice. See *Legal representation in care of children cases* below (CoCA, s 7A).

Every application must be accompanied by:

- an affidavit in support, on an approved form, that sets out all the evidence that the applicant will rely on (FCR, r 416Q)
- an information sheet on an approved form. If multiple applications are being filed by the applicant, only one information sheet is required, and
- any other document required by the Care of Children Act 2004, these rules, or the application form to accompany the application.

Application Requirements
An application for a parenting order made under section 48 of the Care of Children Act 2004, must contain a statement by the applicant that they:

- have undertaken a parenting information programme (parenting through separation) within the previous 2 years, or they are not required to if the application;
- is in response to another party to the proceedings has made for an order under section 48 or 56
- is filed without notice or
- is for a consent order or
- relates to a child who is subject of proceedings already begun under Part 2 of the Oranga Tamariki Act 1989 or
- is brought by a person, who is not the parent of the guardian and is made in response to the Ministry of Children exercising power or doing something in relation to a child under Part 2 or 4 of the Oranga Tamariki Act 1989
- is accompanied by an affidavit providing evidence that

- o the applicant is unable to participate effectively in a parenting information programme or
- o at least 1 of the parties to the proceedings or a child of one of the parties, has been subject to domestic violence by one of the other parties to the application. (CoCA, s 47B).

An application for a parenting order made under section 48 of the Care of Children Act 2004, must be accompanied by a family dispute resolution (FDR) form that has been signed by a FDR provider within the previous 12 months.

A FDR form is not required to accompany an application that:

- is in response to another party to the proceedings has made for an order under section 46L or section 48 of the Care of Children Act 2004
- is filed without notice
- is for a consent order
- relates to a child who is subject to proceedings already begun under part 2 of the Oranga Tamariki Act 1989, or
- is accompanied by an affidavit that provides evidence of either of the following:
  - o At least one of the parties is unable to participate effectively in FDR.
  - o At least one of the parties or a child of one of the parties, has been subject to domestic violence by one of the other parties to the dispute (CoCA, s 46E).

An application for a parenting order must contain a statement by the applicant about whether and how the order can provide for any other person to have the role of providing day-to-day care for, or contact with the child (CoCA, s 47A).

Registrar exemption from completion of a parenting information programme or family dispute resolution

Parenting information programme

When an application includes a statement and evidence in support that the applicant is unable to participate effectively in a parenting information programme, a registrar may refuse to accept an application if they consider that the evidence provided does not adequately support the statement.

Family dispute resolution

When an application is accompanied by an affidavit that provides evidence of either of the following matters:

- That at least one of the parties is unable to participate effectively in FDR.
- That at least one of the parties or a child of one of the parties, has been subject to domestic violence by one of the other parties to the dispute (CoCA, s 46E(4)(f)).

A registrar may refuse to accept for filing an application that is accompanied by an affidavit for exemption, if the affidavit does not provide sufficient evidence of either of the matters.

If the registrar is unsure whether to refuse to accept an application for filing, they may refer that application and accompanying affidavit to a judge, and the judge must determine whether the affidavit provides sufficient evidence of either of the matters.

Section 139A of the Care of Children Act 2004 – leave required in certain cases to commence substantially similar proceedings

A proceeding may not be commenced under sections 46R, 48 or 56 of the Care of Children Act 2004 without the leave of the court, if that new proceeding:

- is substantially similar to a proceeding previously filed in a Family Court by any person, and
- is to be commenced less than 2 years after the final direction or order was given in the previous proceeding.

Leave of the court may only be given if, since the final direction or order was given in the previous proceeding, there has been a material change in the circumstances of:

- any party to the previous proceeding, or
- any child who was the subject of the previous proceeding.

A new proceeding is defined as substantially similar if:

- the party commencing the new proceeding was a party to the previous proceeding
- a child who is the subject of the new proceeding was the subject of the previous proceeding, and
- the new proceeding:
  - is commenced under the same provision of the Care of Children Act 2004 as the previous proceeding
  - is for an order varying the order made in the previous proceeding, or
  - is for an order discharging the order made in the previous proceeding.

A section 139A of the Care of Children Act 2004 leave application is not required if every party to the new proceeding consents to its commencement (CoCA, s 139A).

Filing fee

A filing fee is required to be paid for applications made under section 48 of the Care of Children Act 2004.

Note: the filing fee is not payable if the child is under an existing custody or guardianship order made under the Oranga Tamariki Act 1989, and is living with the applicant (Family Courts Fees Regulations 2009, r 5A).

The registrar may waive, postpone or refund the filing fee in certain circumstances.

Section 7A of the Care of Children Act 2004 - legal representation in care of children cases

Lawyers may act for parties:

- in without notice applications where there is a risk to a person's safety

- in other cases where a judge directs the application is heard in conjunction with an application filed under another Act

- where a judge directs the application proceed to a hearing

- where a judge directs parties may be represented at a settlement conference

- in international child abduction applications

- where the party is the Crown, or

- where the lawyer has been appointed as lawyer for child when the child is party to proceedings.

In all other cases on the standard track, parties will represent themselves up to and including at settlement conferences.

Parties will represent themselves in simple track proceedings, such as undefended applications or consent orders.

Lawyers will be able to give legal advice to a party and prepare court documents at any stage.

Rule 83 of the Family Court Rules 2002 – lawyer filing documents on behalf of party
In proceedings where part 5A of the Family Court Rules 2002 applies, a lawyer may file a document on behalf of a party only if permitted by section 7A of the Care of Children Act 2004 to act for the party (CoCA, s 7A).

- Lawyers may act for parties in without notice applications. Therefore, lawyers may file documents on behalf of the parties.

- Lawyers may not act for parties in on notice applications (unless a judge has directed parties may be represented at a settlement conference or the application proceed to a hearing). Therefore, lawyers cannot file documents on behalf of parties (unless a judge has made directions for representation or hearing).

Rule 87 of the Family Court Rules 2002 – change of representation
If a lawyer starts to act for a party, or ceases to act for a party, solely because of the operation of section 7A of the Care of Children Act 2004, the lawyer must notify the registrar of the change by notice in writing (CoCA, s 7A).

On notice application for a protection order

PROCEDURE

Receive, accept and process an on notice application for a protection order

Overview Background

Overview

Who does this

Court registry personnel using registrar's powers.

When to do this

Follow this procedure when an on notice application for a protection order is received.

Before you begin

Ensure you are aware of the decision-making principle
Decision-making checklist (PDF, 266KB) [PDF, 265 KB]

Step 1

Check that:

- the application is signed by an eligible person
- the application is being filed in the proper court
- the application is in the proper form DV 3 *application for orders* (Family Court Rules 2002, sch 5 DV 3)
- the front page is a form DV 1 *front page for documents* (FCR, sch 5 DV 1)
- the application contains a DV 4A *information sheet* with the full names and addresses of the parties and date of birth of the respondent if known (FCR, sch 5 DV 4A)
  Note: applications cannot be rejected if this is not included.
- a form DV 4 *affidavit in support of the application* is filed (FCR, sch 5 DV 4)
- a form DV 6 *information for police* is filed, and (FCR, sch 5 DV 6)
- the applicant has supplied sufficient service copies.

Note:

- if a form DV 5 *request for confidentiality* is filed, check to ensure that the confidential address has not been recorded on any other documents (FCR, sch 5 DV 5)

- any information that identifies the whereabouts of the protected parties in domestic violence cases must not be included in the file. Confidential addresses and telephone numbers must be kept separately from the file, for example, in the office strong room or on a special file

- ensure that form DV 6 *information for police* is not included in the service documents, and (FCR, sch 5 DV 6)

- the applicant may also file a request for attendance at a strengthening safety services or safety programme.

Step 2

Date-stamp each original document.

Step 3

Search for previous or current applications involving the same parties in CMS.
Search for and open a case

If there are previous or current applications made under the Domestic Violence Act 1995:

- go to step 5.

If there are previous or current applications made under another Act:

- locate the party profile numbers

- make a new file and create a case in CMS, and
  Create an on notice family case

- cross-reference the cases in CMS.
  Cross-referencing cases

If there are no previous or current applications:

- go to step 4.

Step 4

Make a new file and create a case in CMS.
Create an on notice family case

Go to step 6.

Step 5

If the previous or current applications have the same parties:

- enter the new application on the existing case in CMS
  Enter an application

- register the documents in CMS, and
  Register an incoming document

- add the documents to the file.

If the previous or current applications have one or more different parties:

- make a new file and create a case.
  Create an on notice family case

Step 6

Domestic violence (DV) programmes will contact all applicants to offer a strengthening safety services or safety programme whether they have filed a request or not.

Enter a service provision in CMS.
Create a domestic violence service provision in the Family Court

Send DV programmes a copy of:

- the application for a protection order
- the affidavit in support
- the information sheet, and
- any notice of confidential address.

Step 7

Allocate a *registrars' list - attendance / registrar's list case review* date within 14 days in CMS.
Schedule an event

Note:

- some courts have an agreed local practice. If this is the case follow your local practice, and
- remember that unless an order is made reducing the time required before the hearing, service must be effected no later than the 11th day before the day of hearing.

Send the notice of the registrar's list date to applicant and the applicants counsel.
Generate a document

Step 8

Prepare service documents. One for each respondent and, if applicable, the associated respondent.

The service documents should consist of the following documents:

- A *notice to respondent* in CMS.
  Generate a document
- A notice of the next event date in CMS.
  Generate a document
- Aa *advice of case officer* letter in CMS.
  Generate a document

- The application
- An affidavit.
- A *responding to a protection order.*
- An information sheet.

Note: do not include DV 6 *information for police* in the service documents.

Step 9

Issue documents for service

Next steps

Action a Domestic Violence Act 1995 registrar's review

Issue documents for service

How to issue documents for service

Overview Information

Overview

Who does this

Court registry.

When to do this

Follow this procedure when issuing documents for service.

Step 1

Determine the last date for service. This is the last date that service can be carried out to allow for sufficient time for all court events to occur without delay.

In the case of community work orders made under the Child Support Act 1991, the last date for service should be determined in light of the requirement that there is a time limit for community work sentences to be wholly or partially completed (Sentencing Act 2002, s 58).

Step 2

Based on the last date for service arrived at in step 1, determine the class of service required:

- 24 hours
  The last date for service is within 24 hours.

- Priority
  The last date for service is 10 days or less from today's date.

- Standard
  The last date for service is greater than 10 days from today's date.

Step 3

Determine the best method for personal service.
Guidelines for determining the best method for service of documents (PDF, 370KB) [PDF, 369 KB]

Go to step 4 for external providers:

- Lawyer.
- Police.
- Oranga Tamariki.
- Applicant.

Go to step 5 for Ministry of Justice:

- Court registry.
- Collections.

Step 4

Lawyer

- Issue the documents for service if the lawyer will be using an agent for service. Generate proof of service if the lawyer is to serve themselves.
  Generate a document
    - Ensure the last date for service is correct as per your answer in step 1 (if applicable).
- Enter a *case management* event or *CMS task* to monitor for the completion of service and monitoring for filing of documentation in response (for example, *notice of defence* or *notice of intention to appear*).
  Schedule an event
- Scan and provide all documents to the lawyer for service.
    - Registry staff decide whether scanning or posting documents to the lawyer is more appropriate.
- This process ends.

Police

- Generate a *proof of service coversheet*.
  Generate a document
    - Ensure the last date for service is correct as per your answer to step 1 (if applicable).
- Enter a *case management* event or *CMS task* to monitor for the completion of service and monitoring for filing of documentation in response (for example, *notice of defence* or *notice of intention to appear*).
  Schedule an event
- Scan and provide all documents to police for service.
    - Registry staff decide whether scanning or posting documents to police is more appropriate.
- This process ends.

Oranga Tamariki

- Generate a *proof of service coversheet.*
  Generate a document

  - o Ensure the last date for service is correct as per your answer to step 1 (if applicable).

- Enter a *case management* event or *CMS task* to monitor for the completion of service and monitoring for filing of documentation in response (for example, *notice of defence* or *notice of intention to appear*).
  Schedule an event

  - o Registry staff decide whether scanning or posting documents to the Oranga Tamariki Ministry for Children is more appropriate.

- This process ends.

Applicant's agent

- Issue the documents for service.

- Ensure that the applicant's agent knows the timeframes for service as per your answer to step 2.

- Enter a *case management* event or *CMS task* to monitor for the completion of service and monitoring for filing of documentation in response (for example, *notice of defence* or *notice of intention to appear*).
  Schedule an event

- Scan and provide all documents to the applicant's agent for service.

  - o Registry staff decide whether scanning or posting documents to the applicant's agent is more appropriate.

- This process ends.

Step 5

24 hour service

- Generate a *proof of service coversheet.*
  Generate a document

  - o Ensure the service type is *24 hours*.

  - o Delete *last date for service*.

- Enter a *case management* event or *CMS task* to monitor for the completion of service and monitoring for filing of documentation in response (for example, *notice of defence* or *notice of intention to appear*).
  Schedule an event

- Scan and email the documents to the service documents email address, with the following in the heading:

  section 9(2)(a)

  - o 24 hours.

  - o the case number.

  - o The parties' names.

- Registry staff should consult with their manager when documents are large or complex:

    o The court manager will email the bailiff collection manager, requesting one of them to contact the manager to discuss a process for dealing with situation.

    o The manager should attach a scanned copy of the coversheet to the email.

    o Where it is determined on a Friday or the day before a public holiday that a Family Court document requires service within 24 hours, and a bailiff is deemed the appropriate method of service, the Family Court services manager must phone a bailiff collections manager to discuss bailiff availability and service options before emailing the document to the service document email address.

- This process ends.

Standard service

For standard service, generate a *proof of service coversheet*:
Generate a document

- Print the *proof of service* on white paper.

- Ensure the service type is standard.

- If there is an event, enter the last date for service as per your answer to step 1.

- Go to step 6.

Priority service

For priority service, generate a *proof of service coversheet*:
Generate a document

- Print *proof of service* on yellow paper.

- Ensure the service type is *priority*.

- Ensure the last date for service is correct.

- Go to step 6.

Step 6

Call the person to be personally served and ask if they can come into the court and pick up their service documents.
Call first script for the service of documents (PDF, 432KB) [PDF, 432 KB]

Note: allow a maximum of three days for pick-up if the documents are priority. Longer periods of time may be appropriate for standard documents.

If the person to be served can pick up their documents in your court:

- Complete the *pick-up check list* section on the *proof of service coversheet.*

- Place the documents at the Family Court counter for collection.

- Enter a *CMS task* to monitor if the person to be served has come into the court to collect the documents within the agreed timeframe.

- Enter a *case management* event or *CMS task* to monitor filing of documentation in response (for example, *notice of defence* or *notice of intention to appear*). Schedule an event

- This process ends.
  Note: if the person to be served does not pick up their documents within the agreed timeframe, go to step 7.

If the person to be served resides in another court's area, or that person wishes to pick up their documents from another court:

- Complete the *pick-up check list* section on the *proof of service coversheet.*

- Scan and send all documents to the appropriate Family Court for pick up at their counter:
  - o Registry staff are to make a decision around whether scanning or posting documents to another court is more appropriate.

- Enter a *CMS task* to monitor if the person to be served has come into the court to collect the documents within the agreed timeframe.

- Enter a *case management* event or *CMS task* to monitor the filing of the documentation in response (for example, *notice of defence* or *notice of intention to appear*). Schedule an event
  Note: if the person to be served does not pick up their documents within the agreed time, scan and email the document(s), with a heading showing the case number and parties, to the service documents email address.

  > section 9(2)(a)

- Registry staff should consult with their manager when documents are large or complex:
  - o The court manager will email the bailiff collection manager, requesting one of them contact the manager to discuss a process for dealing with situation.
  - o The manager should attach a scanned copy of the coversheet with the email.

- This process ends.

If the person to be served cannot pick up their documents:

- Confirm their preferred address for service, best contact number and preferred time of day for service.

- Go to step 7.

Step 7

If the person to be served cannot come into the court to pick up their documents:

- Complete the *priority/standard service check list* on the *proof of service coversheet.*

- Update the *case management* event or *CMS task* to monitor for the completion of service. Schedule an event

- Go to step 8.

Step 8

Scan and email the documents, with a heading showing the case number and parties, to the service documents email address.

Registry staff should consult with their manager when documents are large or complex:
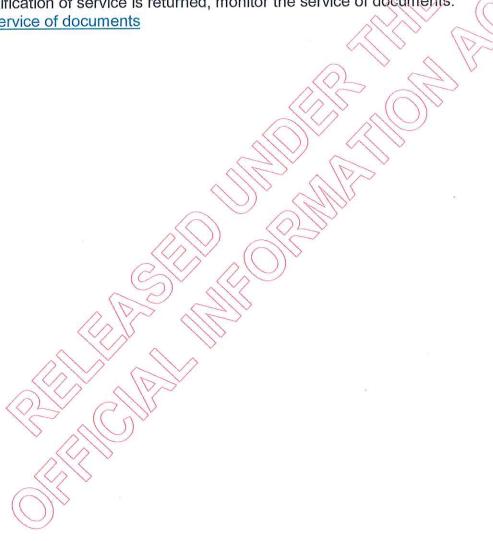
- The court manager will email the bailiff collection manager, requesting one of them contact the manager to discuss a process for dealing with situation.

- The manager should attach a scanned copy of the coversheet with the email.

What happens next

When notification of service is returned, monitor the service of documents.
Monitor service of documents

Interlocutory application for directions for service

Last updated: 25/9/2018 | Content owner: Regional Service Delivery Operations Support

Receive, accept and process an interlocutory application for directions for service

Overview Information

Overview

Who does this

Court registry personnel using registrar's powers.

When to do this

Follow this procedure when an interlocutory application for directions as to service has been received.

Before you begin

Ensure you are aware of the decision-making principles.
Decision-making checklist (PDF, 266KB) [PDF, 265 KB]

Step 1

Receive the application and any supporting documents:

- If received in person, date-stamp the original documents in the bottom right-hand corner only.
- If received by mail, the application will have been date-stamped when received.

Step 2

Check that:

- the application is filed in the proper court. If not, forward the application to the correct court for acceptance and processing
- the application is completed on form G 20 *interlocutory applicatio on notice* or form G 21 *interlocutory application without notice* (Family Court Rules 2002, r 223 FCR, sch 1 G 20 FCR, sch 1 G 21)
- there is an affidavit in support of the application (FCR, r 224)

- any supporting affidavits are sworn and or affirmed correctly. If not, swear or affirm the affidavit
  Swear or affirm an affidavit

- the application clearly states what is being applied for

- the application is legible (FCR, r 70)

- the applicant's names are provided

- the application is signed and dated, and

- if applying on notice, there are sufficient copies for service.

If any of the above has not been done or supporting documentation has not been provided, return the application to the applicants to complete before progressing.

Step 3

Search for and open the correct case in CMS.
Search for and open a case

Enter the interlocutory application for directions as to service:

- Rule 14 directions (FCR, r 14).

- Rule 253 directions as to service (FCR, r 253).

- Rule 284 directions as to service (FCR, r 284).

- Rule 380 directions as to service (FCR, r 380).

- Rule 412 directions as to service (FCR, r 412).

- Enter an application

- Register an incoming document

For applications without notice:

- go to step 4.

For applications on notice:

- go to step 5.

Step 4

Review the interlocutory application.

Use your discretion and consider whether:

- the application should be granted or refused
  Changing times by which things are done (PDF, 106KB)

- make a decision, and

- endorse the application with your decision.

If the application is granted:

- enter a *dealt with on the papers* event and complete
  Schedule an event

- generate a minute advising reasons for the decision
  Generate a document

- update the decision to *granted*
  Record the application outcome

- enter the order and date:
  Generate a document

    - if the application is to extend time, generate a form G 19 *order for directions as to service* (FCR, sch 1 G 19).

- sign and seal the order

- advise the applicant or their counsel of the decision

- generate a *notice to respondent*
  Generate a document

- enter the service details
  Create or modify a party profile

- generate a *notice of issues conference* letter (if the substantive application is a CoCA case)
  Generate a document

- generate an e*vent* letter (if the substantive application is a non-CoCA case)
  Generate a document

- print sufficient copies to notify all relevant parties to the proceedings, and

- go to step 7.

If the application is refused:

- enter a *dealt with on the papers* event and complete
  Schedule an event

- generate a minute advising reasons for the decision
  Generate a document

- update the decision to *refused*
  Record the application outcome

- advise the applicant or their counsel of the decision

- generate a *notice to respondent*
  Generate a document

- enter the service details
  Create or modify a party profile

- generate a *case management event* letter (if the substantive application is a CoCA case)
  Generate a document

- generate an *event* letter (if the substantive application is a non-CoCA case), and
  Generate a document

- go to step 7.

Note: if the registrar's decision is disputed, the party may request that a judge review the decision. If this occurs, refer the matter to a judge in chambers (FCR, r 236).

Step 5

An on notice interlocutory application needs to be served:

- If the substantive case is a CoCA case:
  - enter a *case management review* event and allow at least 3 days following service. Schedule an event
- If the substantive application is any other Family Court Act:
  - enter a *registrar list - case review / registrar list* event and allow for at least 3 days following service. Schedule an event
- Issue documents for service
- On return of either a *certificate of service* or *affidavit of service:*
  - Process proof of service

Step 6

If the on notice interlocutory application is opposed once it is served, and the substantive application is a CoCA case:

- refer the application to a judge to be heard in chambers for either:
  - a decision on the application, or
  - a direction to an issues conference or hearing.
- create an event for the judge dealing with the file in chambers: Schedule an event
  - Room is *judges chambers DC.*
  - Event type is *box work.*
- generate a *memorandum to judge* in CMS, and Generate a document
- refer the file to a judge. Prepare a file for a judge-led event - chambers

If the on notice interlocutory application is opposed once it is served, and the substantive application is any other Family Court Act case:

- refer the application to a judge to be heard in chambers for either:
  - a decision on the application, or
  - a direction to a judicial conference or hearing.
- create an event for the judge dealing with the file in chambers: Schedule an event
  - Room is *judges chambers DC.*
  - Event type is *box work.*
- generate a *memorandum to judge* in CMS, and Generate a document

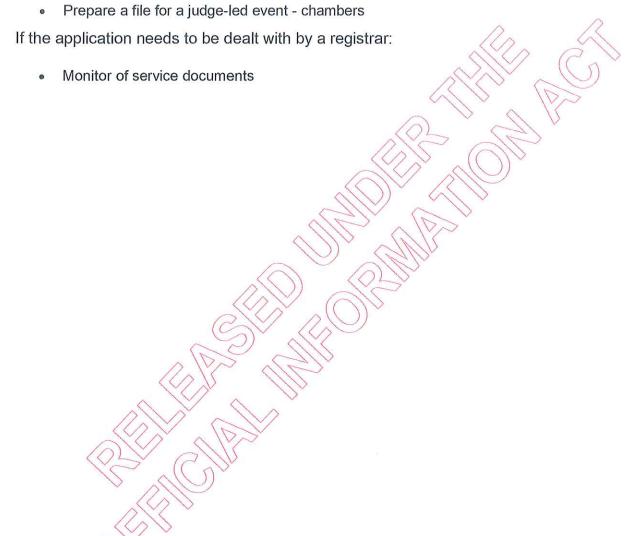- refer the file to a judge.
Prepare a file for a judge-led event - chambers

Step 7

Add the documentation to the current file.

What happens next

If the application needs to be dealt with by a judge in chambers:

- Prepare a file for a judge-led event - chambers

If the application needs to be dealt with by a registrar:

- Monitor of service documents

Interlocutory application for substituted service

Receive, accept and process an interlocutory application for substituted service

Overview Information

Overview

Who does this

Court registry personnel using registrars' powers.

When to do this

Follow this procedure when an interlocutory application for substituted service has been received.

Before you begin

Ensure you are aware of the decision-making principles.
Decision-making checklist (PDF, 266KB) [PDF, 265 KB]

Step 1

Receive the application and any supporting documents.

- If received in person, date-stamp the original documents in the bottom right-hand corner only.
- If received by mail, the application will have been date-stamped when received.

Step 2

Check that:

- the application is filed in the proper court. If not, forward the application to the correct court for acceptance and processing
- the application is completed on the correct form, G 21 *interlocutory application without notice* (Family Court Rules 2002, sch 1 form G 21 FCR, r 223)
- there is an affidavit in support of the application (FCR, r 224)
- any supporting affidavits are sworn or affirmed correctly
  Swear or affirm an affidavit

- the application clearly states what is being applied for
- the application is legible (FCR, r 70)
- the applicant's names are provided, and
- the application is signed and dated.

If any of the above have not been done or supporting documentation has not been provided, return the application to the applicants to complete before progressing.

Step 3

Search for and open the correct case in CMS.
Search for and open a case

Enter the interlocutory application *s 126 substituted/dispense with service* and supporting affidavits in CMS.
Enter an application
Register an incoming document

Step 4

Review the interlocutory application.

Use your discretion and:

- consider whether the application should be granted or refused
  Directing the manner of service (PDF, 83KB) [PDF, 83 KB]
- make a decision, and
- endorse the application with your decision.

If granted:

- enter a *dealt with on the papers* event and complete
  Schedule an event
- generate a minute advising the reasons for your decision
  Generate a document
- update the decision to *granted*
  Record the application outcome
- enter the order and date
  - generate a *s 126 substituted/dispense with service* order (form G 9 *order for substituted service*) (FCR, sch 1 G 9)
    Generate a document
- sign and seal the order, and
- advise the applicant or applicant's counsel of the decision.

If rejected:

- enter a *dealt with on the papers* event and complete
  Schedule an event

- generate a minute advising the reasons for your decision
  Generate a document

- update the decision to *refused*
  Record the application outcome

- advise the applicant or applicant's counsel of the decision.

Note: if the registrar's decision is disputed, the party may request that a judge review the decision. If this occurs, refer the matter to a judge in chambers ([FCR, r 236](#)).

Step 5

If substituted service is to be by advertisement:

- generate a *s 126 substituted service by advertisement* (form G 9 *order for substituted service*) (FCR, sch 1 G 9)
  Generate a document

- sign and seal the order

- advise the applicant or applicant's counsel of the decision, and

- on receipt of the form G 10 *notice by advertisement* (FCR, sch 1 form G 10):

  - check it is complete, and

  - approve it.

If the substantive application is a Care of Children Act 2004 case:

- enter a *case management* event to monitor the affidavit of advertising.
  Schedule an event

If the substantive application is a non Care of Children Act 2004 case:

- enter a *registrar list - case review / registrar list - event* to monitor affidavit of advertising.
  Schedule an event

If substituted service is to be by a nominated person:

- generate a *notice to respondent*, and
  Generate a document

- enter the service details.
  Create or modify a party profile

If the substantive application is a Care of Children Act 2004 case:

- enter a *case management* event to monitor completion of service.
  Schedule an event

If the substantive application is a non Care of Children Act 2004 case:

- enter a *registrar list - case review / registrar list* event to monitor completion of service.
  Schedule an event

Step 6

- Issue documents for service
- On return of a *certificate of service* or *affidavit of service*:
  - Process proof of service

Step 7

Add the documentation to the current file.

Guidelines for Determining the Best Method for Service of Documents

The *Partnership Charter* between Collections and District Courts for the personal service of court documents highlights the importance of both business units working collaboratively to personally serve documents in a customer focused and cost-effective manner. One particular requirement is that District Court staff will pursue the most appropriate method of service for each case.

This places an onus on the court registry to exercise smart decision making, and consider how their decisions for service may affect the service providers themselves. Key considerations to take into account include (but not limited to):

- Time constraints for service
- Availability of resources
- Health and safety issues

Listed below are the service providers and a few examples of why you may consider them to be the appropriate avenue for service (for more detailed examples, refer to *Scenario-based Training for the Service of Documents*):

1. Police
    - The person to be served has allegations of serious violence and/or CMS shows that the respondent has previous convictions for assault.
    - The person to be served has firearms at the premises.
    - The person to be served lives a substantial distance (i.e 90 minutes) away from the closest bailiff.
    - Service is required outside of bailiff hours.

2. CYFS
    - The case is under the Children, Young Persons and their Families Act 1989. Court staff should consider if service can be carried out by this method.

3. Lawyer
    - If application stipulates the lawyer as the person to be served, investigate if it is possible to send/scan the documents to their lawyer for personal service. Please see Family Court Rules 118-120.

4. Applicant's agent
    - If the application is on-notice, it may be appropriate to ask the applicant if they are willing to provide an agent to carry out the service. Note that this is not appropriate for without-notice applications.

5. Court registry
    - The person to be served is willing to come into court to pick up their document(s).

- o our understanding is that the person to be served will be in the court/cells before the last date for service.
- o Service is requested on the applicant/respondent's lawyer or CYFS, who regularly (i.e. daily) visit the court or there is an office close to the court.
- o The person to be served is in prison. The court registry should post/courier the documents to the prison manager for personal service to be carried out by the prison manager. Please see Family Court Rule 111.

6. Collections
   - o None of the above options are appropriate.