



## FEDERAL CIRCUIT COURT OF AUSTRALIA

### ***Practice Direction No 1 of 2019***

### **Judicial mediations in family law matters**

#### **Preliminary**

1. This Practice Direction sets out arrangements for the conduct of Judicial Mediations in the family law jurisdiction of the Federal Circuit Court of Australia (“the Court”).
2. The Court is committed to the resolution of disputes in the most efficient manner possible and in particular with the assistance of private mediations, where appropriate.
3. Judicial Mediation is not intended to be a substitute for private mediation conducted by appropriately qualified mediators, but may be an option for appropriate matters. **It is expected that practitioners and parties will exhaust all mediation alternatives, prior to judicial mediation.**
4. The purpose of the practice direction is to set out guidelines for:
  - i. Criteria for suitability;
  - ii. Referral by Judge;
  - iii. Application by parties;
  - iv. Preparation;
  - v. Attendance;
  - vi. Conduct;
  - vii. Confidentiality.
5. This practice direction commences on **1 January 2019**.

## **Criteria for suitability for Judicial Mediation**

6. Matters suitable for Judicial Mediation include the following:
  - Both parties are legally represented;
  - Where one or both parties are self-represented and the docket Judge determines the matter is suitable for judicial mediation;
  - Property disputes;
  - Parenting disputes where there is no allegation of serious risk and/or family violence;
  - Appropriate child support matters;
  - Compliance with orders for a prior unsuccessful private mediation;
  - A risk that the costs and time of the trial will be disproportionate to the subject matter of the dispute;
  - Any other matters identified as suitable, by the docket Judge.

## **Application by parties for Judicial Mediation**

7. A party seeking a Judicial Mediation, subject to notification of all other parties to the proceeding, may make an oral application in Court for a mediation or apply in writing to the Docket Judge in Chambers.
8. Any application in writing must be supported by a brief summary, in bullet point format, addressing why the matter is suitable for Judicial Mediation.
9. Within 14 days of receipt of an application for Judicial Mediation by another party to the proceeding, a party must:
  - If consenting to Judicial Mediation, forward to the chambers of the Docket Judge a consent to the mediation.
  - If opposing Judicial Mediation, forward to the chambers of the Docket Judge, a brief summary in bullet point format, addressing why the matter is not suitable for Judicial Mediation.
10. If the parties consent, the application for Judicial Mediation will be determined on the papers, thereby avoiding the need for an oral hearing of the application.

## **Judicial Mediator**

11. The Judicial Mediator may not be the docket Judge.
  - 11.1 Where both Judges consent, the docket Judge may refer any suitable proceeding in her or his docket for Judicial Mediation by another Judge.

## **Preparation for Judicial Mediation**

12. The docket Judge will make relevant procedural orders for the Judicial Mediation.
13. In addition to any matter addressed in specific orders of the docket Judge, the following preparation will be required to be completed prior to Judicial Mediation.

### **13.1 Property disputes:**

- A list of all relevant applications, responses, affidavits and financial statements filed in the proceeding;
- A balance sheet of agreed and disputed assets and liabilities;
- A Case Summary addressing s.79/s.90SM contributions and s.75(2)/s.90SF(2) needs;
- An indexed and paginated Court Book of copies of all relevant discovered or subpoenaed documents;
- Copies of any valuations of any asset, financial resource or superannuation interest which are in dispute;
- Written confirmation that a superannuation trustee has been accorded procedural fairness, if a superannuation splitting order is sought;
- A draft minute of proposed orders.

### **13.2 Parenting disputes**

- A list of all relevant applications, responses, affidavits and financial statements filed in the proceeding;
- A Case Summary addressing relevant s.60CC factors;
- Copies of all family reports, s.11F Memorandum, psychiatric and risk assessments, if not previously filed with/available to the Court;
- An indexed and paginated Court Book of copies of all relevant discovered or subpoenaed documents;
- A draft minute of proposed orders;
- Copies of any intervention orders currently in place.

## **Attendance at Judicial Mediation**

14. All parties and their legal representatives must personally attend the Judicial Mediation. Participation via video link or telephone will only be permitted in exceptional circumstances.
15. The legal representatives must have full authority of the parties to settle the proceeding.

## **Conduct of Judicial Mediation**

16. Mediation styles and practices will differ between Judicial Mediators.
17. The Judicial Mediator shall not, without the express approval of all parties to the mediation:
  - Meet individually with a party and relevant legal representatives;
  - Disclose information provided to a party in a separate session to the other party.
18. Subject to the preceding paragraphs, the conduct of the Judicial Mediation shall be entirely at the discretion of the Judicial Mediator.

## **Confidentiality**

19. Parties and their legal representatives must protect the confidentiality of the mediation and are referred to s.131 of the *Evidence Act 1995* (Cth).
20. The Judge conducting the Judicial Mediation will return to the parties or destroy all material provided to the Judge or the Court, whilst preparing for or conducting the Judicial Mediation.

## **Listing for trial subsequent to Judicial Mediation**

21. No Judge of the Court will hear and determine any matter in which the Judge has acted as Mediator, or where the Judge has become aware of any confidential information pertaining to the dispute between the parties.
22. If a proceeding fails to resolve at a Judicial Mediation, the matter will be referred to the docket Judge for further directions, if required, and trial.

The Hon. Justice Edvard Donald William Alstergren  
Chief Judge  
Federal Circuit Court of Australia