



THE FEDERAL CIRCUIT AND FAMILY COURT PROCESS

Family law proceedings include a number of court events, which different purposes. Here's a brief overview of the usual steps in a family law proceeding.

The first Court Mention

The proceeding starts when an Application is filed in the Federal Circuit and Family Court.

An Application can either seek Interim Orders and Final Orders or just Final Orders. There is a filing fee payable to the Court when filing an Application, or a Response. If Interim Orders are sought an Affidavit needs to be filed with the Application.

The other party needs to file their Response to the Application within 28 days, or before the first Court date.

The matter first comes to the Court before a Registrar. Registrars deal with procedural matters and are not able to hear applications or make decisions on contested matters. On the first day the matter comes to Court, a Registrar will assess the matter and hear from the parties as to what the dispute is about, and what they want the Court to do immediately. If there is an agreement on some orders, the Registrar can make those Orders on the day. The Registrar will usually then make directions as to what is to be done by the parties so that the matter can progress, and then adjourn the matter to a future date.

If the Application is for property settlement the Registrar will usually make directions for the parties to attend a Conciliation Conference or mediation.

If there is an application for interim orders, and the parties do not agree, then the Registrar may refer the matter to a Senior Judicial Registrar or a Judge who will conduct an interim hearing.

The Court might also make directions for material to be filed, or experts reports to be obtained before that hearing.

Further mentions

Matters can have several mentions before the Court whilst the process of preparing for Conciliation Conference or if there is an Interim Hearing to be held. Sometimes the Court will also want the interim orders that have been made to run for a time to see if the parties can address the issues that are underlying the dispute, or if expert reports are required to provide the Court with further evidence, the matter can be adjourned for those reports to be obtained before the next court date.

Conciliation Conference

A Conciliation Conference is a compulsory Court Ordered mediation that provides an opportunity for the parties to attempt to settle their property dispute. A Registrar of the Court conducts the conference and will assist the parties to give them a realistic assessment of their case as a means to promote settlement.

Attendance of the parties and their lawyers is usually compulsory. Conferences are conducted on a 'without prejudice' basis. This means that except in very limited circumstances neither party can later give evidence about what was discussed at the Conference.

Interim Hearing

Interim Hearings usually relate to urgent issues and are intended to be of a short-term nature, i.e until the Court has an opportunity to conduct a Final Hearing. Interim Hearings have a maximum time limit (in Court) of 2 hours, they are based on Affidavits and do not provide (usually) for oral evidence.

Examples of matters that are considered at an Interim Hearing include:

- Children's short-term living arrangements;
- Occupation of the matrimonial home;
- Interim spouse maintenance;
- Injunctions to protect property.

Pre-Hearing Conference / Directions Hearing

If a matter fails to resolve following an Interim Hearing (in relation to children's issues) or at a Conciliation Conference (in relation to property settlement matters) it will eventually be listed for a Directions hearing, where the Court will determine if the matter needs a final hearing (trial), and if so, give directions to the parties prepare the matter for a final hearing.

At any stage of the Court process the parties are able to reach agreement. If an agreement is reached the parties can then agree on final orders, and the Court can make those orders either at the Directions hearing or in chambers (without the parties present).

Once any orders for reports or any other steps required to ready the matter for a hearing have been completed, the Court will schedule a Compliance Mention, at which time a Registrar will assess the matter and if it is ready the Court will set a date for a final hearing.

Final Hearing

The Final Hearing is conducted before a Judge. At the Final Hearing the witnesses give evidence and are cross-examined. It is necessary for all parties and their witnesses to attend at the Court, unless permission is given for witnesses to appear via another method eg. telephone.

Final Hearings can last one day or more. Often complex matters can last a week or more especially if there are many witnesses and experts involved who need to give evidence. The Barristers cross examine the witnesses, and at the end of that process they will make submissions to the Court summarising their client's case in support of the Orders they want the Judge to make.

Sometimes the Judge will give a Judgement immediately, or the Court will reserve (postpone) the Judgment and the decision will be handed down at a later date.

Appeals

When a judgement is given, both parties have a period of 28 days to consider if they wish to appeal the decision of the Judge.

However, the grounds for appeal must be that the Judge has made an error in using or applying the law, not just because they don't like the outcome. Appeals are expensive and should be carefully considered, as failing on appeal can involve significant costs orders being made against the party appealing incorrectly.

More questions?

If you have any questions about the Court process, or any information contained in this Factsheet, please do not hesitate to contact us on (07) 3172 3474 or (07) 4659 9958 or reception@redhilllegal.com.au

