

## **Family Lawyers Association - Covid 19 Response Steering Group**

### **High Court - Suggestions for Functioning of the Family Law List between 20<sup>th</sup> April and end of Trinity term 2020.**

#### **Return of proceedings to be to the High Court.**

We suggest that all proceedings issued pursuant to Order 70 or Order 70A of the Rules of the Superior Courts between 20<sup>th</sup> April and 31<sup>st</sup> July should in this period no longer be returned before the Master of the High Court, but instead be returned before the High Court where they will be first listed in the Directions List.

Paragraph 3 of the Practice Direction HC51 will be construed accordingly.

#### **Directions returns.**

To be completed by both sides and lodged with the Court by email in accordance with Practice Direction HC51, save that -

The Court would ordinarily permit the consent adjournment of a Special Summons in the directions list for two consecutive periods of up to 8 weeks in total.

On the expiry of the second consecutive adjournment, the Special Summons will not be adjourned except by application in the list.

#### **Motions.**

Books of Pleadings for Motions listed for hearing in the Monday Family Law list should be lodged with the Registrar by email by 1pm on the preceding Thursday.

Indexes to books of pleadings and all other books to be relied upon at the hearing of Motions must be agreed in advance.

So as to avoid delays in progressing matters between date of issue and date of return, we suggest that on issuing all motions, a *pro forma* direction of the Court (to accompany the issued motion) would be served on the Respondent to the Motion stipulating that any replying affidavit must be furnished to the Applicant's side and filed with the Court no later than 7 days prior to the return date.

#### **Motion Lists.**

To reduce the numbers attending Court, we propose that the Monday Motion list be split in two 11.00am to 1pm and 2pm to 4pm, with the possibility that the afternoon slot could be used for video conferencing.

There would be no more than 20 matters in total listed before the Court on any Monday.

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Nothing from the morning list would carry over into the afternoon list. Matters not reached or dealt with will be listed the following week or during the same week if the list permits.

No motion will be permitted to proceed unless papers have been lodged with the Registrar by 1pm on the preceding Thursday.

No motion will be allotted more than 30 minutes for hearing. Matters not concluded within 30 minutes would be listed for 15 minutes for conclusion the following week or during the same week if list permits.

### **Motions for the sitting of the Court.**

We suggest that it shall not be necessary for a party who has a Solicitor on record for them to attend court on the first return date of any motion, including one for their attachment and committal.

Matters considered to be objectively urgent by the Court may, on the first return date be adjourned to later in the week for hearing if the Court so directs, in which case the personal attendance of the party shall ordinarily be required.

### **List to Fix dates.**

We suggest that this should take place on Monday 27<sup>th</sup> April and on Monday the 25<sup>th</sup> May.

We also suggest that where possible one Counsel nominated by both sides should attend for the purpose of fixing a date.

The Court would insist that the availability of all parties, witnesses and legal representatives be ascertained in advance of attendance at the List To Fix Dates.

### **Cases which have already been assigned dates for hearing.**

Cases which have already been assigned dates for hearing after 23<sup>rd</sup> April should retain their listing unless they are listed for more than two days.

Cases which have been assigned dates for hearing after 23<sup>rd</sup> April but which are listed for more than two days will ordinarily be adjourned to the next List To Fix Dates for listing with priority when the Courts return to full functioning.

In such cases the parties will be allowed an opportunity to revise the estimated duration of hearing subject to submission of an agreed issue paper and an agreed narrowing of to be tried issues. Cases in which this is attended to and agreed, will ordinarily retain two of the previously assigned dates.

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Between April 23 and the end of the Trinity term, no case/ long motion will be listed for more than two days.

Any case which is likely to last longer than two days will be adjourned to the next following List To Fix Dates for listing with priority when the Courts return to full functioning.

There will be no Monday call over of cases listed for hearing– cases are presumed to be proceeding unless an application is made for adjournment subject to an entitlement, on notice, to mention the matter if there is an issue arising which needs to be addressed prior to the commencement of the hearing but which does not amount to adjournment application.

#### **Consent adjournments.**

Consent Adjournments of Motions/Directions listings/for mentions could be applied for remotely by email to the Registrar from both parties. Confirmation of the date to which the matter is adjourned would be provided by return email.

Consent Adjournments of Motions Motions/Directions listings/for mentions to be for a minimum of four weeks.

Consent adjournment of cases listed for hearing will be automatically to the next List To Fix Dates unless case management is sought by either party.

#### **Pension Adjustment Orders.**

We suggest that the parties will jointly lodge by email a booklet containing all of the necessary proofs<sup>1</sup> with the Registrar 7 days in advance of the date on which the Orders are required to take effect.

The Order could be made by a Judge sitting in Chambers, without the requirement for parties or their representatives to attend.

The Order would then be sent to the parties by return email.

It would be the responsibility of the parties to serve the Order on the relevant Trustees.

#### **Commissioning of Section 47/32 reports where there is prior consent.**

Either party could file a Notice of Motion seeking the appointment of an assessor by consent.

The Notice of Motion would be accompanied by an email to the Registrar confirming the name of the assessor and the basis upon which the assessment is to proceed i.e. both parties to share the costs / one party to pay. A confirmatory email shall also be sent by the other party.

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<sup>1</sup> Appendix 1

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The Order could be made by a Judge sitting in Chambers, without the requirement for parties or their representatives to attend.

The Order would be sent to the parties by return email.

Upon completion of the report, the assessor would be permitted to email the report to the Registrar.

The Registrar would bring the report to the attention of the Family Law Judge sitting in Chambers who will ordinarily release the report (without the need for an ex-parte application) to both solicitors “on the usual terms”<sup>2</sup>.

#### **Call Over Returns.**

A Call Over Return is to be completed by both sides and lodged with the Court in accordance with Practice Direction HC51.

We suggest that the Court might particularly insist on compliance with points 5 to 8 inclusive of the Call Over Return relating to the evidence of professional witnesses.

#### **Rulings of Settled Cases.**

Rulings of settled cases where a Decree of Divorce or Judicial Separation is to be granted could be made by a Judge sitting in Chambers without the requirement for parties or their representatives to attend provided a booklet of pleadings - with Affidavits of Means and Welfare not more than six months old - is lodged and further that each party swears and files an affidavit confirming compliance with the statutory proofs, confirming their agreement to and understanding of the settlement, and exhibiting their marriage certificate.

#### **Rulings of settlement of Motions and Co-habitation proceedings.**

Rulings of settlements of Motions and Co-habitation proceedings could be made by a Judge sitting in Chambers without the requirement for parties or their representatives to attend provided each party swears and files an affidavit confirming their agreement to, and understanding of, the settlement.

#### **Circuit Court Appeals.**

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<sup>2</sup> Appendix 2

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Appeals from the Circuit Court should go straight into the List To Fix Dates unless application is made by Motion on Notice for relief or directions pending the hearing and determination of the appeal.

#### **Trials/Long Motions.**

Books of Pleadings for Trials/Long Motions listed for hearing in any given week in the Family Law List should be lodged with the Registrar **by email** by 1pm on the preceding Thursday

Indexes to books of pleadings and all other books to be relied upon at the hearing of Motions must be agreed in advance.

#### **Use of video technology and remote hearings.**

We urge that consideration be given to facilitating proceedings (or part thereof) being heard and determined by video link.

The Family Lawyers Association are also open to exploring means by which work might continue, including perhaps a procedure whereby hearings could be dealt with remotely. While this has certain challenges, it is evident that this is already happening in other jurisdictions and in certain circumstances (e.g. young witnesses may be cross-examined by way of video link) in this jurisdiction.

#### **Case conferences.**

Having regard to the desirability of promoting the settlement of cases and/or motions and the reduction of physical attendance by the parties and their representatives at Court, the parties jointly (or the Court of its own motion) may identify any particular issue, either of fact or law, which although not suitable for trial as a preliminary matter, is in their opinion, nevertheless suitable for an informal debate or exchange between the Court and the parties by remote video conferencing.

For this purpose the Court:-

- (i) may assign and convene a particular case conference to deal with such issue;
- (ii) May issue directions for the manner in which the case conference will be conducted;
- (iii) may receive at that conference such submissions and information as may be appropriate and
- (iv) may express an opinion on the relevant issue(s), which opinion shall be non-binding and given by a judge other than the trial judge.

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#### **Practice Direction HC51.**

Practitioners should be informed that the Court will expect enhanced adherence to Practice Direction HC51 and these guidelines would be read in conjunction with same.

#### **Contact point for lodging papers with the Court.**

Books of pleadings/motion papers/ex-parte dockets/correspondence to be sent to Owen Duffy, High Court Registrar - [OwenDuffy@Courts.ie](mailto:OwenDuffy@Courts.ie) -by email only.

#### **Communication of Consent to the Courts Service Office (“the Office”).**

At all times where consent is required/forthcoming, it is suggested that the following Consent Protocol be followed:

- one Solicitor corresponds with the Office by email and copies the other Solicitor in on that email;
- the other Solicitor simply replies to that email (by way of “reply all”, to include a reply to the Office) to indicate his/her consent/client’s consent as appropriate;

It is suggested that practitioners do their utmost to achieve consent where possible and as soon as possible in any given matter.

#### **Broader considerations beyond the scope of this submission.**

We urge that consideration be given to how proceedings might be issued by electronic filing.

We urge that consideration be given to how Affidavits might be sworn/affirmed by e-signature.

#### **Swearing of Affidavits.**

We also suggest that consideration be given to developing a Protocol (“a Protocol”) for assuring the veracity of Affidavits in the absence of Affidavits being sworn in the usual manner.

#### **Discussion and engagement.**

The Family Lawyers Association are open to discussing all of the above. This document is intended to suggest practical ways in which practitioners will be enabled to service their clients’ needs and also ensure access to justice while also dealing with significant challenges facing all parties involved in the administration of justice in the family law sphere.

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#### Appendix 1

#### Documents required for Ruling of Pension Adjustment Order by a Judge sitting in chambers

1. A copy of the relevant Court Order/Terms of Settlement.
2. The Notice(s) to Trustees.
3. Affidavit(s) of service of the Notice(s) to Trustees.
4. The Pension Adjustment Order(s), which it is proposed will be made in this case.
5. Letter(s) of acknowledgement from the Pension Provider(s) indicating that they have received the draft Order(s) and confirming that they will be in a position to implement the Order(s) when served upon them.

#### Appendix 2

#### Sharing Section 47/32 reports with clients.

1. It shall be the responsibility of the solicitors for each party to ensure that conclusions and the recommendations of Section 47/32 reports are made known to their clients.
2. It is **not permissible** for a Solicitor to post, email or otherwise send or convey a Section 47/32 report or extracts from the report to their client.