

Chapter 13

Family Law Duty Lawyer Service Guidelines

1. Duty Lawyer Service

A Family Law Duty Lawyer Service is provided by the Northern Territory Legal Aid Commission at the Family and Federal Magistrates Court in Darwin and Alice Springs as required.

Duty Lawyer services means assistance to self-represented litigants at the Family Court of Australia or the Federal Magistrates Court in relation to an **imminent court event**.

Assistance may include:

- (a) advice and information, including completion of simple documentation, limited to the discrete court event;
- (b) representation for adjournments and short procedural mentions;
- (c) representation for limited negotiations with a view to drafting consent orders;
- (d) preliminary assessment of eligibility for legal aid and, if appropriate, referral to an in-house or private practitioner to pursue an application for legal aid, and/or
- (e) coordinating Legal Aid Commission conference appointments as required.

Assistance, subject to the discretion and availability of the duty lawyer, may also extend to include:

- (i) representation for recovery orders, or
- (ii) urgent injunctions regarding children.

Assistance will not normally be provided for:

- A. completion of complex documentation and affidavits;

- B. representation for interim hearings, contravention applications and final hearings;
- C. appearance in the defaulter's list or to issue a trial notice, or;
- D. appearance or appointment as a child representative;
- E. assistance with marriage dissolutions.

Where it is considered that assistance should be provided in a complex matter or in a matter in which the duty lawyer has not prioritised assistance that assistance will normally be limited to the provision of information, and/or advice, and/or representation for an application for adjournment.

2. Prioritisation

Assistance is provided on the basis of the following priorities:

- (a) Whether the litigant is seeking assistance for a matter for which legal aid is available under the Legal Aid Commission's policy and guidelines;
- (b) Whether the litigant is able to afford the cost of representation and falls outside the Legal Aid Commission's means test;
- (c) Whether the litigant has already been refused a grant of legal aid
- (d) Whether the litigant has previously obtained assistance from a duty lawyer in relation to these or other family law proceedings
- (e) For a matter in the child support duty list, whether the litigant is a payee
- (f) Whether there are specific issues relating to family violence which impact upon the litigant's capacity to appear on their own behalf, (*T and S* considerations), and
- (g) Whether there are other special circumstances which impact upon the litigant's capacity to appear on their own behalf such as disability, literacy, language barriers, cultural issues or geographical location.

Assistance by duty lawyers will normally be provided on one occasion only during the course of proceedings.

The decision of the duty lawyer in relation to the application of the principles of prioritisation and the level of assistance to be provided will be final.

3. Conflict of Interest

The duty lawyer will take all reasonable steps to avoid situations in which a conflict of interest exists or could be perceived to exist.

Issues relating to potential conflict of interest will be dealt with on a case by case basis having regard to relevant professional and statutory obligations and any policy guidelines developed by the Legal Aid Commission on conflict of interest.

In the following situations:

- (a) complex matters, and
- (b) matters which the duty lawyer has not prioritised

the duty lawyer will normally restrict assistance to the provision of information and/or advice, and will limit any representation to an application for adjournment.

If the application for adjournment is refused and the matter is likely to run to a defended hearing on that day, the duty lawyer will notify the Court of the duty lawyer's intention to withdraw from the matter. In this situation, the duty lawyer will not be obliged to continue in the matter.

4. Obligations of Duty Lawyer

The Family Law Duty Lawyer will endeavour to:

- (a) understand the provisions of the Legal Aid Commission's enabling legislation and associated policies, including the Commonwealth and State Family Law guidelines and the means tests
- (b) be present at court from 9.00 am on agreed duty days
- (c) ensure that the litigant completes relevant parts of the Duty Lawyer form

- (d) consider applications or requests for duty assistance in accordance with the guidelines set out in this Protocol
- (e) take all reasonable steps to avoid a potential conflict of interest
- (f) prioritise assistance in accordance with the principles outlined above
- (g) use a qualified interpreter when available and necessary
- (h) take as detailed instructions as are possible within the time constraints
- (i) request the Court file if necessary
- (j) explain to the litigant the nature of assistance and the basis of representation
- (k) inform the litigant that assistance is normally limited to one occasion only and that the litigant may need to make an application for legal aid or arrange private representation for the next occasion if that is required
- (l) assist the litigant to complete an application for legal aid, as appropriate, and
- (m) refer the litigant to the Commission, a private practitioner or other agency, as appropriate.

Information contained in Duty Lawyer forms will be confidential and will not be made available to the Court.

5. Use of Interpreters

Where the Court has identified the need for interpreter assistance, the Court will endeavour to order an interpreter to appear on behalf of a party.

Where an interpreter is not available and the duty lawyer considers that the litigant will be disadvantaged by the absence of an interpreter, the duty lawyer may:

- (a) request the Court to authorise and book the services of an interpreter for the litigant, or
- (b) arrange for the use of an accredited interpreter service by telephone.

In these situations assistance by the duty lawyer will be limited to providing the litigant with general information and, if appropriate, indicating any limited instructions to the Court and seeking an adjournment of the matter.

6. Duty Lawyer Scheme Users Meetings

The duty lawyer will convene Duty Lawyer Scheme Users meetings, as appropriate, to discuss any issues arising at the particular Court registry in connection with the Scheme.

The meetings will include representatives from the Legal Aid Commission and the Court, including a judicial officer utilising the Scheme and a member of Client Services.

Family Law Duty Lawyer Scheme – Statistical Reporting per Matter

SOURCE

Referral From	√		√		√
No referral/unknown		FMC		Family Court	

LITIGANT PROFILE

Gender	√	Special Circumstance	√	Gross Income	√
Female		Family violence		Centrelink Benefit	
Male		Disability		< \$10,000	
		Literacy		\$10,000 - \$20,000	
		Interpreter		\$20,001 - \$30,000	
		Cultural/indigenous		\$30,001 - \$40,000	
		Geographical location		\$40,001 - \$50,000	
				\$50,001 - \$60,000	
				> \$60,000	
<i>Not recorded</i>		<i>Not recorded</i>		<i>Not recorded</i>	
Legal aid history			√	Conflict of Interest	√
Applied for Legal Aid – No				Conflict – No	
Applied for Legal Aid – Yes – Refused				Conflict – Yes	
Previous assistance from duty lawyer					
<i>Not recorded</i>				<i>Not recorded</i>	

MATTER DETAILS

Before which Court	√	Type of Matter	√	Level of Assistance	√
FMC		Parenting orders		Advice only	
Family Court – Judge		Child support/mainten		Adjournment/Mention	
Family Court – JR		Spousal maintenance		Negotiations/Draft terms	
Family Court – DR		Recovery/location		Urgent hearing	
Not in List		Enforcement/contrav			
		Property			
		Paternity			
		Other			
<i>Not recorded</i>		<i>Not recorded</i>		<i>Not recorded</i>	
Outcome	√	Referral to	√		
Finalised		Legal Aid Commission			
Interim agreement		Private practitioner			
		Other agency			
<i>Not recorded</i>		<i>Not recorded</i>			