

Litigants-in-person in the Family Court

Legal aid can be difficult to obtain in private family law proceedings. Many parties now therefore choose to represent themselves.

Advocates with litigants-in-person for opponents will almost certainly need to think more carefully than usual about how they practically conduct the hearing (and the bits around the edges).

Here are four practical ways of helping to ensure your hearing is as fair and productive as possible.

1. Be friendly

Whether or not it is justified, lawyers can have a reputation amongst the general public for being rude and dishonest. People often believe that we have sharp elbows.

Remember also that litigants-in-person may be wary of you simply because you are a lawyer and they are not. They are likely to be feeling vulnerable, exposed and ill-equipped.

Confront these problems head on by going out of your way to create the opposite impression. Nothing is more disarming than a smile and the offer of a handshake from somebody you expect to be hostile towards you. This may well lay the groundwork for productive negotiations.

2. Use simple, straightforward language

Lawyers have a habit of speaking in code. We use acronyms and jargon when communicating with other legal professionals because it is more efficient.

However, a litigant-in-person may never have set foot in a courtroom before. They are probably experiencing a significant level of apprehension before a word is spoken in the hearing, simply because of the emotive subject matter and the unfamiliar environment they are being forced to deal with. That apprehension will only be compounded if they cannot then understand what is said.

Put yourself in their shoes. If you were in court for the first time, would you know what 'file and serve' meant?

3. Offer to help (where you can)

Many litigants-in-person will not have even thought about what the law is, let alone about where to find it. Indeed, they may well not have access to the legal resources that you do.

During pre-hearing discussions, let any litigants-in-person know that they can ask you or the court questions about the law and the procedure. Obviously, you cannot give them legal advice, but you can explain to them, for example, which legal principles the court will apply in order to make its decision.

If you have a hard copy of the Family Court Practice, take it to court with you. You can then offer to lend it to your opponent if, for example, they have never heard of the welfare checklist.

4. Keep everybody included

Litigants-in-person are just as entitled to be involved in the court process as lawyers acting on behalf of their clients.

This is particularly important when it comes to court orders. If you are the only lawyer acting at a particular hearing, the court will probably ask you to draft the order. That request in itself can cause a litigant-in-person to become concerned. How (they might think) can it be fair for my ex-partner's lawyer to draft the order?

Make sure you have the email address for each litigant-in-person and let them know after the hearing that you will be sending them a draft order for them to review and comment upon.

You may also wish to explain what each part of the order relates to. Remember that an apparently innocuous standard warning about Child Arrangements Orders could be seen as a threat by a litigant-in-person.

Be careful, however, not to reveal the direct email address of a Judge to a litigant-in-person without the Judge's permission. If you intend to file a draft order with the Judge directly, you can copy the Judge in 'blind' to an email sent to the main court inbox. Remind the litigant-in-person that they can send a message to that inbox directly themselves if they wish (but ask to be copied in yourself).

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