

Family Law Practice Standards



This document sets out practice standards for lawyers representing legally aided parties in family law matters in the Family Court, the Federal Circuit Court and Local Courts.

These standards apply to in-house Legal Aid NSW solicitors and private lawyers acting in legally aided family law matters.

These standards do not apply to care and protection proceedings or independent children's lawyer matters under the *Family Law Act 1975* (Cth)¹.

Lawyers who are appointed to the General Family Law Panel (the panel) are eligible to receive grants of aid and assigned work from the Grants Division.

Legal Aid NSW may audit panel lawyers for compliance with practice standards. Continued inclusion on a family law panel is conditional on compliance with these practice standards.

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¹ Practice Standards for Care and Protection matters and for Independent Children's Lawyers under the *Family Law Act* are available at the [Practice Standards in legally aided matters page](#) on the Legal Aid NSW web site

1. Statement of Principles

- 1.1 Lawyers are to recognise that family violence is a serious problem. The safety of children and parents is to be considered at all stages of a family law dispute.
- 1.2 Lawyers should take conciliatory rather than a litigious approach to family disputes as this has a positive impact on the parties and any children involved.
- 1.3 Lawyers should ensure that their behaviour, comments or attitude do not inflame the dispute between the parties and that their own personal emotions or opinions do not influence the advice given to a client.
- 1.4 Lawyers should avoid proceedings or including evidence not relevant to the children's welfare that will increase distrust or animosity between the parties without achieving any significant benefit for the client.
- 1.5 Lawyers should ensure that costs are not incurred unreasonably.
- 1.6 Lawyers should use their best endeavours to at all times seek ways to narrow the issues in dispute and resolve matters in a timely fashion.

2. Responsibilities to Clients

A lawyer representing a party in a legally aided family law dispute will:

- 2.1 Provide an efficient, ethical and high quality service in accordance with the Law Society of NSW Professional Conduct and Practice Rules.
- 2.2 Adhere to the Best Practice Guidelines for Lawyers Doing Family Law Work published by the Family Law Council and the Family Law Section of the Law Council of Australia. (www.lawcouncil.asn.au).
- 2.3 Advise the client of the availability of legal aid and, where appropriate, assist the client to complete an application for legal aid.
- 2.4 Obtain from the client adequate instructions as to the current status of the matter in order to apply for a grant or for an extension of legal aid.
- 2.5 Assist the client in obtaining a grant of legal aid by providing Legal Aid NSW with all information relevant to the application or extension
- 2.6 Observe the principles governing the lawyer/client relationship and the privacy of instructions provided by the client.
- 2.7 Use a qualified interpreter where necessary after obtaining approval from the Grants Division.
- 2.8 Meet with the client as early in the process as possible and communicate with the client in a way that the client understands using language appropriate to the age, maturity, education and cultural background of the client.
- 2.9 Promptly comply with reasonable requests by a client for information regarding their matter.

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- 2.10 Provide a meaningful reply to all correspondence, reply promptly to all urgent matters and advise clients that a detailed response for advice may require more time.
- 2.11 Respond to all telephone inquiries promptly
- 2.12 Keep their clients informed of the progress of their matter in a timely manner and ensure that the client is aware of the stages through which a matter progresses in the court system.
- 2.13 In all communications with clients, lawyers are to use language that is clearly understandable, free of jargon and calculated to assist the resolution of the matter, not to inflame emotions or antagonize.
- 2.14 Give advice and explain all available options to the client together with the consequences of any decision made by the client. Lawyers must ensure that their clients make the decisions, not the lawyer making the decision for the client.
- 2.15 Explain to the client a matter to the extent reasonably necessary to permit them to make informed decisions regarding the matter and to advise their clients of what they are expected to do to assist their case.
- 2.16 Obtain prior instructions from the client before presenting their case in court. If there is insufficient time, the lawyer should adjourn the matter for such time as is necessary for the client to give proper instructions.
- 2.17 Advise the client at the first reasonable opportunity, if a possible delay in the progress of the matter becomes apparent.
- 2.18 Attend all court events in a timely manner; allowing adequate time to prepare.
- 2.19 Ensure the client is represented at all court events and that any agents engaged are members of the panel.
- 2.20 Ensure that where the lawyer is unable to meet with the client on a particular occasion that every effort is made beforehand to inform the client and Counsel, if briefed; and that any agents engaged are members of the panel.
- 2.21 Advise their clients in matters involving children, of the principles set out at s 60B of the Family Law Act 1975 and to assist and encourage their clients to pursue options that are in the best interests of the children.
- 2.22 Advise their clients in matters involving child support, of the principles set out at s 4 of the *Child Support (Assessment) Act 1989* and to assist and encourage their clients to pursue options that ensure children receive a proper level of financial support from their parents.
- 2.23 Advise their clients as to the benefits of making arrangements for children in co-operation with the other party rather than through a court hearing.
- 2.24 Consider the appropriateness of family dispute resolution (FDR) for all matters and at each stage of proceedings. If a matter is referred to FDR the lawyer shall approach the matter in a manner consistent with the philosophy of FDR and shall be fully informed about the matter and participate fully in any FDR conference.

- 2.25 Inform the client of the requirements and ensure compliance with the pre action procedures in court proceedings where applicable
- 2.26 Provide the client with copies of all applications, affidavits and reports filed in the proceedings. When the matter is concluded the client must be provided with a sealed copy of any order or agreement, a copy of any judgment and be advised about time limits for review or appeal.
- 2.27 Have regard to the Family Law Courts Family Violence Best Practice Principles. Lawyers shall advise any affected client of the guidelines and assist the client to avail themselves of the protection offered by these guidelines.
- 2.28 Assist clients with support, in appropriate circumstances, by providing referrals to medical professionals, counsellors and social workers.
- 2.29 In appropriate matters seek instructions from their client in relation to making an application to the court for the appointment of a representative for the children.
- 2.30 Explain the role of the independent children’s lawyer and any associated costs with the appointment of the independent children’s lawyer.
- 2.31 Ensure compliance with s 121 of the *Family Law Act* concerning non-publication of family law proceedings and advise their clients of the effect of s 121 and warn them of the sanctions that may be imposed for the publication of any material filed in proceedings commenced under the *Family Law Act*.
- 2.32 Where the matter proceeds to a final hearing, ensure that their client has knowledge of how evidence is given, how the trial is run, and basic conduct expected of litigants in the Family Court. If the other party is acting for themselves, lawyers should advise their client of how the Judge and lawyer will deal with the other party throughout the hearing.
- 2.33 Advise the client about the appeal process, appeal prospects and time limits for appeal.

3. Responsibilities to Legal Aid NSW

A lawyer acting in a family law matter subject to a grant of legal aid will:

- 3.1 Comply with these practice standards.
- 3.2 Comply with the provisions of the [Legal Aid Commission Act 1979 \(NSW\)](#) and the [policies and guidelines](#) of Legal Aid NSW (as amended).
- 3.3 Comply with the [Terms and Conditions of use of Grants Online](#) (as amended).
- 3.4 Comply with the terms and conditions of the grant of legal aid.
- 3.5 Be responsible for the matter and accountable to Legal Aid NSW for any breach of these practice standards including for any work undertaken in the matter by another lawyer or employee of the (your) firm.

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- 3.6 Ensure that any applications for legal aid, extensions of the grant of aid and requests for reconsideration and review are lodged promptly with all relevant information and supporting material to enable a decision to be made without delay.
- 3.7 Seek approval of the Grants Division for any disbursements prior to expenditure on the file by obtaining the appropriate grant or extension via Grants Online.
- 3.8 Review all files on completion of the matter to ensure all necessary steps have been taken before notifying the Grants Division that the matter is finalised. When submitting the final claim to the Grants Division the lawyer must complete the file outcome form setting out the steps involved in completion of the matter and the result in the matter.
- 3.9 Ensure prompt payment to experts, witnesses and other third parties who have undertaken work pursuant to a grant of aid for that work.
- 3.10 Reassign all pro forma invoices for Counsel's fees to the barrister who has been briefed so that the barrister can claim directly from Legal Aid NSW.
- 3.11 Provide the file in a matter to Legal Aid NSW where a written authority is received from a client to hand over the file.
- 3.12 Seek orders for costs where appropriate.
- 3.13 Notify Legal Aid NSW immediately of any circumstances that could give rise to a claim for professional negligence and provide a detailed statement in relation to the matter.

4. Responsibilities to Others

When dealing with other lawyers, Counsel, experts, witnesses and the staff of the Tribunals or Courts or other agencies or institutions, the lawyer will:

- 4.1 Conduct all communication in a courteous and professional manner.
- 4.2 Lawyers should avoid criticizing other lawyers involved in the case.
- 4.3 Comply with time limitations, procedural steps, the practice directions of the Court or Tribunal and any undertakings given to the Court or Tribunal.
- 4.4 Avoid unnecessary expense or waste of time by ensuring that:
 - (i) documents are served or filed on time;
 - (ii) documents served, filed or given to the client are legible;
 - (iii) the client is aware of medical appointments, conferences and hearing dates and understands the importance of attending promptly and on time;
 - (iv) witnesses are aware of conferences and hearing dates and understand the importance of attending promptly and on time;
 - (v) court commitments are accurately diarised.
- 4.5 In all dealings with self-represented parties, take great care to communicate clearly and try to avoid any technical language or jargon.
- 4.6 Inform the self-represented party that the Family Law Courts website has detailed information for people acting for themselves.

5. File Management

A lawyer acting in a family law matter subject to a grant of legal aid must ensure that:

- 5.1 Files must be maintained in an orderly manner so that Legal Aid NSW may effectively audit the file if required, and to ensure that another lawyer assuming conduct of the matter may quickly and easily understand its factual basis, the client's instructions, the stage the matter has reached and all further action required to run the matter in line with the practice standards.
- 5.2 All documents including:
- (i) correspondence from the Grants Division in relation to the grant of legal aid; and
 - (ii) correspondence received and sent in relation to the matter
- must be kept on the file in date order.
- 5.3 Court documents filed, served or issued in the proceedings must be kept in a separate bundle on the file in date order.
- 5.4 Clear and legible file notes are kept of all telephone conversations, conferences, interviews, meetings with clients or witnesses and experts include:
- (i) date;
 - (ii) name of person spoken to; and
 - (iii) relevant details of the conversation.
- 5.5 Clear and legible file notes are kept of information and advice given to a client that is not confirmed in writing.
- 5.6 All court attendances are noted on the file in date order with:
- (i) Coram;
 - (ii) date and venue of court appearance;
 - (iii) the name of the solicitor attending on behalf of the legally assisted person;
 - (iv) other parties' representative/s;
 - (v) summary of any negotiations and orders or directions made;
 - (vi) start and finish time/s of the court attendance; and
 - (vii) the date proceedings have been adjourned to or the outcome of the matter.
- 5.7 All dispute resolution events are noted on the file with:
- (i) date;
 - (ii) start and finish time/s;
 - (iii) location (including if shuttle);
 - (iv) summary of negotiations and outcome of mediation; and
 - (v) the name of all legal representatives attending.
- 5.8 Receipts or other verifying evidence for all disbursements claimed for payment from Legal Aid NSW are retained in a separate section of the file.