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實務指示 – 15.13: 一般指引 排解子女糾紛試驗計劃

General Guide to Practice Direction 15.13 Children's Dispute Resolution Pilot Scheme



引言

本小冊子旨在簡介“實務指示15.13 – 排解子女糾紛試驗計劃”的內容。

本實務指示須與關於“解決財務糾紛試驗計劃”(“排解財務糾紛”)的實務指示15.11一併參閱。本實務指示適用於在家事法庭展開的所有關於子女而出現爭議的事宜，但任何源於領養的事宜除外。

本實務指示所述的程序將為家事法庭的強制性程序。法庭可主動，或應一方或雙方的其中一方或雙方的申請，作出本實務指示並不適用的指示。

本實務指示於2012年10月3日起生效。

受影響人士

本實務指示所載的程序適用於2012年10月3日或以後送交法院存檔的呈請書、表格4、共同申請書、傳票或原訴傳票所引起的所有關於子女的新爭議。

試驗計劃的目的

本實務指示的基本目標是支持母親及父親，以期他們在分居及離婚後，能夠有效地對其子女履行為人父母的責任；目的是確保在法庭繼續以子女最佳利益為大前提的同時，快捷地在對抗氣氛較緩和之下，取得持久的協議；因此重點是子女的最佳利益及其父母的職責和責任。

試驗計劃的主要特點

- 如各方就子女的事宜有爭議，必須把標準表格（“關於子女事宜的表格”）送交法院存檔。
- 各方必須出席“關於子女的約見”及“排解子女糾紛聆訊”。
- 在所有必需的文件送交法院存檔後，“排解子女糾紛聆訊”將於一個在“關於子女的約見”中編定的日期進行。該聆訊將由負責管理該案的法官主持。“排解子女糾紛聆訊”的目的是討論有關子女的實際安排，並讓法庭按照關乎該等安排的協議作出命令。
- 如在“排解子女糾紛聆訊”中無法達致和解，案件將安排在同一位法官席前進行審訊。
- 各方或其法律代表須於每次聆訊時呈交一份有關子女安排的訟費估計書，列明他們截至目前為止已招致的訟費。其目的是確保各方與法庭均知悉截至目前為止已招致的訟費。

“排解子女糾紛聆訊”的程序

關於子女的約見

此階段始於訴訟人(i)把送達認收書表格、表格4或共同申請書送交法院存檔，而明顯就關於子女的事宜有爭議；或(ii)把有關子女安排的傳票或原訴傳票送交法院存檔。

- 法庭可根據實務指示15.11，指示在進行首次約見時，同時進行“關於子女的約見”，或在緊急申請的情況下，為“關於子女的約見”先行分配一個較早的日期。
- 各方須在“關於子女的約見”前14天，或依照法庭的其他指示，向法院送交存檔及同時互相交換(i)“關於子女事宜的表格”，即表格J；(ii)扼要說明有關子女的爭議點的陳述書一份。
- 如“關於子女的約見”與首次約見並非同時進行聆訊，則各方須於“關於子女的約見”之前14天，或依照法庭的其他指示，交付法院及同時互相交換(i)簡要事序表一份；(ii)所索求的命令及指示列表一份。
- 於“關於子女的約見”前一個工作天下午四時或以前，各方須互相交換及交付法院一份有關子女安排的訟費估計書（採用表格H）；但若“關於子女的約見”與首次約見同時進行聆訊，並已就有關聆訊將訟費估計書存檔，則無須再存檔訟費估計書。

排解子女糾紛聆訊

- 法官將擔任調停人的角色。各方須出席“排解子女糾紛聆訊”
 - 任何其他人士包括社會福利主任出席該聆訊，必須由法官在“關於子女的約見”中特別指示。法官不僅可通過各方的代表律師，更可直接與各方交談。
- “排解子女糾紛聆訊”及“排解財務糾紛聆訊”將由同一位法官分開獨立進行。由於“排解子女糾紛聆訊”並不享有保密權，故若在此期間未能達致和解，審訊時可由同一位法官就有關子女的事宜進行聆訊。
- 出席“排解子女糾紛聆訊”的各方須盡其最大努力，就有關子女的所有相關事宜達成協議。
- “排解子女糾紛聆訊”可不時押後。聆訊結束時，法庭可按照議定的事項或其認為適合者作出相關的命令。
- 於“排解子女糾紛聆訊”前一個工作天下午四時或以前，各方須互相交換及交付法院一份有關子女安排的訟費估計書（採用表格H）。

審訊

如各方未能達致和解，法庭將編定日期在同一位法官席前進行審訊前覆核或最終聆訊。

- 法官將指示各方把進一步證據送交法院存檔，包括由父母及／或第三者作出及已更新的非宗教式誓詞／宗教式誓章，由社會福利主任撰寫的更新報告，以及由其他專家撰寫的更新報告／報告。
- 在審訊前14天，雙方須將一份關於子女日後安排的更新及詳細建議陳述書送交法院存檔及互相交換。
- 除非法庭另有命令，否則雙方均須親身出席所有聆訊。
- 於審訊前一個工作天下午四時或以前，各方須互相交換及交付法院一份有關子女安排的訟費估計書（採用表格H）。

如何取得排解子女糾紛試驗計劃的進一步資料？

你可向家事法庭登記處索取進一步資料，其地址為香港灣道12號灣仔政府大樓閣樓二。

司法機構
二零一三年三月

Introduction

This leaflet is designed to provide you with a brief outline of the Practice Direction 15.13 (“PD”) - Children’s Dispute Resolution Pilot Scheme (“CDR”).

This Practice Direction is to be read in conjunction with Practice Direction 15.11 i.e. the Financial Dispute Resolution Pilot Scheme (“FDR”). It will apply to all children matters commenced in the Family Court, where there is a dispute except for any matters arising out of an adoption.

The process described in this Practice Direction will be mandatory in the Family Court. The court may of its own motion or on the application by one or either or both of the parties direct that it shall not apply.

This Practice Direction is to commence on 3 October 2012.

Who will be affected?

The procedure under the Practice Direction will apply to all new disputes relating to children arising out of a Petition, Form 4, Joint Application, summons or originating summons filed on or after 3 October 2012.

What are the objectives of the pilot scheme?

The underlying objective is to support mothers and fathers, so that they are able to effectively parent their children post separation or divorce. The intention is to ensure that whilst the best interests of children remains the court’s paramount concern, that lasting agreements concerning children are obtained quickly and in a less adversarial atmosphere. The focus is therefore on the children’s best interests together with the duties and responsibilities of their parents

What are the main features of the pilot scheme?

- All parties must file a standardized form (the ‘Children’s Form’) when there is a dispute over children.
- Mandatory attendance of the parties at the Children’s Appointment and the Children’s Dispute Resolution (CDR) hearings is required.
- The CDR hearing will take place after the filing of all necessary documents on a date fixed at the Children’s Appointment. This hearing is presided over by the judge who has been given management of the case. The purpose of the CDR hearing is to discuss the practical arrangements for children and for the court to make orders based on agreements pertaining to those arrangements.
- If a settlement is not obtained at the CDR hearing, the matter will be set down for trial before the same judge.

- A requirement for the parties or their legal representatives to submit at each hearing a cost estimate in relation to the children's arrangement incurred by them to date. The purpose of this is to ensure that both the parties and the court are kept aware of the costs incurred to date.

What are the CDR procedures?

Children's Appointment (CA)

This phase commences with the filing of (i) an Acknowledgment of Service form, a Form 4 or a Joint Application and where it is clear that there is a dispute over children; or (ii) a summons or an originating summons in relation to the arrangements for children.

- The court may either direct that a Children's Appointment ("CA") be heard at the same time as the First Appointment under PD 15.11 or in the case of an urgent application allocate an earlier date in the first instance.
- 14 days prior to the CA, or otherwise as directed, each party must file at court and simultaneously exchange (i) the Children's Form in Form J; (ii) a concise statement of issues relating to the children.
- If the CA is not heard at the same time as the First Appointment the parties must also 14 days prior to the CA or otherwise as directed, deliver to court and simultaneously exchange (i) a brief chronology; (ii) a list of orders and directions sought.

- No later than 4 p.m. on the last working day prior to the CA, each party must exchange with each other and deliver to the court a cost estimate in relation to the children's arrangements, in Form H, except where the CA is heard at the same time as the First Appointment and a cost estimate has already been filed for the hearing.

The Children's Dispute Resolution Hearing

- The Judge will act in the role of a conciliator. The parties must attend the CDR hearing. The attendance of any other persons, including the Social Welfare Officer, must be specifically directed by the Judge at the CA. The Judge may talk to the parties directly and not only through the parties' lawyers.
- The same Judge will conduct both the CDR hearing and the FDR hearing at separate hearings. As a CDR hearing is not privileged the same Judge may hear the child related matter at trial if settlement is not achieved in the meantime.
- Parties attending the CDR hearing must use their best endeavours to reach an agreement on all relevant matters pertaining to their children.
- The CDR hearing may be adjourned from time to time. At its conclusion the court may make such orders as have been agreed or as it deems appropriate.

- No later than 4 p.m. on the last working day prior to the CDR hearing, each party must exchange with each other and deliver to the court a cost estimate in relation to the children's arrangements, in Form H.

Trial

If settlement is not achieved, the court will fix a Pre-trial Review or final hearing date before the same Judge.

- The Judge will direct further evidence be filed, including updated affirmations/affidavits from the parents and/or third parties, updated reports from the Social Welfare Officers and updated reports/reports from other experts.
- 14 days prior to the trial both parties must file and exchange an updated and detailed Statement of Proposals relating to the future arrangements for the children.
- Both parties must personally attend all hearings unless the court otherwise directs.
- No later than 4 p.m. on the last working day prior to the trial, each party must exchange with each other and deliver to the court a cost estimate in relation to the children's arrangements, in Form H.

How can I obtain further information on CDR?

You may approach the Family Court Registry on M2 Floor, Wanchai Law Courts, Wanchai Tower, 12 Harbour Road, Hong Kong for further information.

Judiciary
March 2013