

Conflict Referral Scheme explained

There appears to be some confusion as to how the Commission's Conflict Referral Scheme operates.

Under the Conflict Referral Scheme where a client has made an appointment to see a Legal Aid solicitor for a free advice session and it is ascertained the Commission has a conflict, that client is referred to a private practitioner with a conflict referral letter. This letter certifies the Commission will pay the private practitioner the sum of \$40 for a 20-minute advice session to the client.

If the practitioner forms the view that the client may have a reasonable cause of action, the practitioner may take the client on as either a private fee-paying client or a legally aided one. If the client wants to be legally aided then an application form, plus a letter of merit from the solicitor, should be forwarded to the Commission. The application is then determined pursuant to the usual guidelines.

Where a client has arranged to see a private practitioner rather than a Legal Aid lawyer for initial or further advice, then that is their choice and they are not funded by the Commission simply because they may subsequently become eligible for legal aid.

Some private practitioners are under the misapprehension that when a prospective client's financial circumstances are limited the client must obtain from the Commission a conflict referral letter before they see the private practitioner. This is not so. They are only entitled to the conflict referral if the Commission is unable to provide initial advice because of a conflict.

If you have any queries about the Conflict Referral Scheme please do not hesitate to contact my secretary Debbie Porker on 41 1871.

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Letters to the Editor

MAINTENANCE APPLICATIONS

In an endeavour to ensure that maintenance applications to Courts are finalised as efficiently as possible I am enclosing some suggested Forms of Orders for your perusal and consideration. These Forms of Orders have been used in Queensland for a number of years and seem to work well. The benefit is that they reduce the number of applications for variation of maintenance, particularly in cases where the payer becomes unemployed after a maintenance order has been made.

The Director of the Child Support Agency does not have any discretion to reduce to payments of maintenance pending any period of unemployment by the respondent payer and Order No 2 has been drafted to overcome this problem.

Depending on the response from the private profession I envisage that these will be the types of orders that will be required by this Commission when it funds applications for maintenance and maintenance variation.

Paternity Testing

In applications seeking to establish paternity the Commission will now be requiring as a condition of grant of aid that the successful legally aided applicant ask the Court for the costs of the application (not for the costs of the paternity test).

As a matter of general policy it is considered that in most cases the applicant's request for paternity testing should be consented to by the respondent father. A paternity test is a simple procedure for the respondent father to undertake and in the majority of cases obviates the need for any litigation.

Forms of Order

"1. Order in relation to payment of maintenance"

That the husband/wife pay to the wife/husband by way of maintenance for the children of the marriage born the day of 19 and born the day of 19, the sum of \$ each per the first payment to be made on or before the day of 19.

2. Order to provide for reduction of maintenance where non-custodial parent subsequently becomes unemployed

The amount of maintenance payable be reduced to the sum of \$ per week for each of the said children if the husband/wife should be in receipt of full rate unemployment benefit or other full rate Commonwealth benefit. The husband/wife shall notify the wife/husband and the Child Support Agency immediately of the receipt of such benefit and also notify the wife/husband and the Child Support Agency immediately of his/her ceasing to receive such full rate unemployment benefit or other full rate Commonwealth benefit whereupon the payment of the full amount of maintenance shall commence or recommence forthwith.

3. Variation of maintenance order in accordance with the Consumer Price Index

The amount of the order is to be varied on and from the instalment of maintenance next due twelve (12) months after the date of this order and thereafter each year in accordance with the variation in the Consumer Price Index published by the Commonwealth Statistician for all groups for Australia by comparison of the Consumer Price Index as it stands on December 31 immediately preceding the date of variation as compared with the same Index at the same date twelve months prior thereto.

The husband/wife is to provide the wife/husband, as soon as possible after the Consumer Price Index for the December quarter is announced in each year, a calculation certified to be correct by the Child Support Agency as to the variation to be made consequent upon the change in the Consumer Price Index. If the wife/husband desires to contest the accuracy of the calculation within fourteen (14) days of receipt of the calculation from the husband/wife, the wife/husband is given liberty to have the matter listed for mention for the purposes of disputing the calculation before the Family Court or the Magistrates Court on fourteen days' notice.

4. The payment of maintenance by deduction from salary (where the Court is satisfied payer would make regular and timely payments)

The payment of maintenance by deduction from salary or wages is not to apply pursuant to Section 44(2) of the Child Support Act 1988."

The above is circulated for your general perusal and consideration. If you have any comments in relation to any of the matters contained in this letter I would be happy to receive them. I would like to introduce the above measures as soon as possible so your early response to this letter would be appreciated.

*Josephine Stone, OIC Assignments,
NT Legal Aid Commission*