

NOTICE #7 TO THE BAR

Request for a Non-Binding Judicial Recommendation

A critical role for Judges in the settlement conference process is to express an opinion as to the likely outcome should a matter(s) in dispute go to trial. Those experienced in participation at settlement conferences know a judicial opinion can and does frequently spur parties to reach agreement and to resolve their differences. The settlement conference opinion often has a number of caveats including that it is based on what is known by the Judge to that point in time and the opinion does not benefit from a hearing and cross-examination, etc.

This memo describes a process that may assist in resolving points of disagreement on family matters.

It is a paper only process that both parties must request and agree to. It permits parties to ask for a non-binding judicial recommendation as to a temporary or lasting resolution to one or more family issues requiring resolution. A Judge may deem it appropriate to convene a brief telephone or video conference, however this should not be anticipated. A Judge making a recommendation would not hear the matter, should a hearing be necessary.

Existing and New Proceedings

To request a non-binding Judicial recommendation, all parties must be represented by a lawyer; must have an open Court file and must complete the accompanying Request for a Non-Binding Judicial Recommendation (appendix 1) and a file cover sheet (appendix 2).

Effective April 29 the Court will accept a role in addressing parenting disputes. That role will not include a 'traditional' adversarial hearing at this time. However, self-represented persons and lawyers may request a judicial recommendation concerning a parenting issue, a process explained in Notice #7. The consent of the Respondent is not required to trigger the involvement of the Court when there is an allegation of an arbitrary interruption of a Court ordered parenting schedule. A conference with a conciliator or a Judge will be scheduled in response to a request of this nature. (added April 29)

This process may be particularly attractive to parties who have already filed in advance of a conference which did not proceed; a settlement conference that did not proceed or a trial that did not proceed as a result of the COVID-19 health crisis.

Parties are reminded that Consent Variation Orders will be considered when accompanied by a cover letter from each party explaining the basis for the variation.

Similarly, Consent Orders for 'new' files will be considered when accompanied by the standard filing documents and a letter from each party explaining the basis of consent to the order.

Parties are also reminded that they may request (1) a Documents Only Proceeding as outlined in Notice #6 or a Settlement Conference as outlined in Notice #8.

APPENDIX 1

Request for a Judicial Recommendation – Rules 1, 27, 59.38 and 59A

I certify to the following:

(1) I, _____ am counsel for _____ Applicant/Respondent in the matter of _____ v. _____, Court File No. _____.

Counsel for the Applicant/Respondent is _____ who may be contacted at _____.

(2) I have been engaged in good faith settlement discussions with _____, counsel for the Respondent/Applicant in this matter. Our most recent communication consisted of a telephone conversation on _____ during which we discussed the respective positions of our clients and possible resolution. As a result of that conversation, I discussed with my client on _____ a possible resolution of outstanding issues. Important issue(s) remain unresolved.

All counsel have agreed to request a non-binding judicial recommendation.

[No matter will be scheduled before a Judge for a Non-Binding Judicial Recommendation if direct settlement discussions did not occur by telephone within the two-week period preceding the request.]

(3) I advised my client that this process will not result in a ruling by a Judge but may result in a recommendation from a Judge as to how outstanding issue(s) could be resolved in whole or in part.

(4) I advised my client the process is a document only process and the Judge would not be speaking to any of the lawyers or the parties unless necessary.

(5) I advised my client the judicial recommendation would be by a Judge who would not conduct the hearing should the issue(s) in dispute proceed to a hearing. I have further advised my client only significant matters should be placed before the Court through this process.

(6) I have advised my client the written submission in this matter is limited to no more than six (6) pages that does the following:

1. Identifies the issues from that party's perspective.
2. Outlines the position the party takes on each issue.
3. Explains why the party takes the position.
4. States whether settlement proposals have been exchanged.
5. States whether there are areas of factual agreement that permit the matter proceeding in whole or in part on the basis of an agreed statement of facts.
6. States whether there is a disagreement as to the applicable law.
7. Identifies the witnesses.
8. Provides on a separate single page an outline of what he/she believes the other person's financial obligation is to him/her; on this sheet all calculations and basic arithmetic is to be shown which calculations will show what the other person's

Cover Sheet

Background

- This matter was first filed on _____.
- This matter was _____ or was not _____ adjourned.

Provide details if a scheduled Court appearance did not proceed:

- Date? _____
- Nature of Adjourned Appearance? Conference _____ Settlement Conference _____ Trial _____ Other _____
- Were Filings Completed? Yes _____ No _____
Explain _____
- Have circumstances changed significantly since the matter was adjourned? Yes _____ No _____.
- Have the parties agreed on a statement of facts? Yes _____ No _____
- Have the parties agreed on a list of issues? Yes _____ No _____
- I have _____ or have not _____ presented a proposed statement of facts of not more than one (1) page to the other side.
- I have _____ or have not _____ proposed a list of issues to the other side.