



Free information sheet on Family Law

Please Note: This not legal advice this is helpful commentary only.
Legal advice can be obtained by appointment from

Binchy Soicitors
Quay House
Clonmel

Telephone: 052 21411

You can email for a consultation/appointment at law@binchylaw.ie

Family law Bulletin aired on 28th February 2003

Version 2.00



Some general points with respect to family law today in this part of the country !

1. Do I have to go to court?
2. Do unmarried Couples have any need to go to Court?
3. Going to Court
4. When people go to Court, what are they looking for?
5. What do people go to the Circuit Court For?
6. How much does it cost in the Circuit Court?
7. How much will the service in the District Court Cost me?

1. Do I have to go to Court?

Absolutely not, and I place great emphasis on it. Many people content themselves with negotiating, agreeing and signing up on a **Separation Agreement**, and it works very well for them. But I would have to say that experience over quite a number of years has shown us that if people can conclude a separation agreement they are well advised to go the extra mile and copper fasten it with a **Judicial Separation Order or a Divorce**. This is important for a variety of reasons including the ease with which one can proceed to a divorce, at a later date.

2. Do unmarried couples have any need to go to the Circuit Court or a higher court?

Yes, they might have to for certain remedies.

In general the Circuit Court has a much wider range of powers, and can make a much wider range of orders.

3. Going to Court

The first question to consider may be “Which court I might go to?” To make this part a little friendly we will regard the exercise as being a little like going to the shops.

Many of the people today who need a family Law Service are not in fact married at all. Consequently they can obtain many of their requirements from the local district court. They do not need a higher court like the circuit court. I don't have exact statistics but give or take perhaps 50% of district court family Law cases (maybe more in some areas of the country), relate to people who are not married.

4. When people go to Court, what are they looking for?

They go there to:

- a. get maintenance orders which require a husband or wife to pay for the support of their dependent spouse or dependent children.
- b. get disclosure of income and liabilities
- c. force a reluctant spouse to pay their maintenance
- d. get visiting or access rights with respect to their children
- e. get guardianship rights with respect to their children. *
- f. And sometimes they go to get barring orders or protection orders **

* Some people may not know that if a couple are unmarried and have children, then only the mother has guardianship rights under the law. The father has to go to a district court and seek to establish his rights. Generally a court will favour such applications, unless there are special reasons not to do so.

** Again some people will be aware of the recent developments in relation to interim barring orders, so it is no harm to discuss them for a moment. These barring orders were recently struck down by the Courts as being unconstitutional or unjust because they had no time limit and they were often made ex parte which means that one spouse applies without having to give notice to the other. So the Courts struck them down, but in the past few weeks new law has been introduced which effectively puts them on a similar basis to comparable provisions under the Children's Act's.

Barring Orders can now be obtained again but they are limited to eight days on the making of any one order, and when someone applies for the barring order now they have to supply a sworn information to the court, so that when the husband becomes aware of the application, he will be able to get a copy of the sworn information and he will have an opportunity to respond to it.

5. What do people go to the Circuit Court For?

They go there to get a divorce, if they are eligible for one. They have to be living apart for four years to be eligible.

If not they can go for the next best thing which is called a Judicial Separation Order, which means that they have got everything but the divorce, all their property affairs dealt with, all their arrangements with respect to the children, and all their business with each other, even the formal separation. But they are not free to remarry because the marriage has not been **determined** or finished by a divorce itself.

Why would you bother with that, you might ask?

There are many reasons. So we will keep it very simple. If a couple are in the throes of a separation, and only living apart for say 12 months, and they need to resolve all of their affairs, they cannot simply wait for the remaining three years. So they go and sort it out very often by judicial separation order, and then later if they want, they can look for a divorce, on a reasonably simple and inexpensive application to the court.

What else can they get from the Circuit Court?

They can get everything sorted out. They can get maintenance organised for both spouse and children by order of the court, perhaps for more maintenance than a district court. They can get orders made with respect to the family home, including provisions for its sale if necessary. They can get a whole range of orders and remedies that a married couple need in order to deal up with their affairs satisfactorily. There are provisions with respect to pensions, insurances, a whole range of property entitlements. The court can assist in finalising matters in a whole variety of ways, if there cannot be agreement between the parties.

6. How much does it cost in the Circuit Court?

It is very difficult to cost a service in the Circuit Court until one knows the full nature and extent of what the client needs or requires to do. People should be suspicious of quick or uninformed estimates quite simply because it takes some time and effort to get precise details together of what has to be done, and if that information is not available, it will only lead to confusion and disagreement later between the client and the solicitor, or worse still the job or parts of same not getting done.

But there are a number of general guidelines that would be of particular assistance to people here and I would like to go through them briefly:

1. People are entitled in law to written information with respect to legal costs. (section.68 of the Solicitors Act 1994)
2. Very often (but not always) people in family law matters are always expected to bear their own legal costs. In other words they cannot hope or expect their spouse to be obliged to pay. So it is very important that they understand what their liabilities might be.
3. There are number of factors which influence the cost, and I would like to mention a few for people's assistance:

Experience:

When going to the circuit court, people are often trying to get a "total solution" with their spouse. This is not easy work, not easy for the client, & not easy for the solicitor. The solicitor must take on a great deal of responsibility for you, dealing with all aspects of your family affairs. One should seek out an experienced solicitor, who has been there before, and can bring a variety of past experience, negotiation skills and other expertise including courtroom skills to bear on your behalf.

This means that the service will not be cheap, and in fact if you get a low price, or even a fixed quote you should be very careful. The real difficulty then is a commercial one. If that solicitor ties himself to a low fixed sum price, and he runs out of "rope" so to speak how will you get him to finish the case properly? Will he then devote the required time and resources to your job, or indeed engage the other people you may need such as a barrister?

Your Attitude:

Believe it or not your attitude to how the case is to be managed profoundly influences cost. If somebody is determined to have a "big fight" contesting almost every matter with their spouse, then of course it will be very expensive. And if some one has a spouse who wants to fight everything, then they are unfortunate because that may mean adding greatly to the cost of everyone concerned. But I would suggest that a very good philosophy or goal to try and achieve here is to try and get everything or almost everything done by negotiation. The more that can be done by negotiation the cheaper your cost will be. You then seek to complete any required agreements including a Separation Agreement. When you have finished negotiations and got your separation agreement and any other agreements, you can then get much speedier access to a Circuit Court, to go and get those agreements ruled in court, and get a Judicial Separation Order by Agreement.

People who bring negotiated settlements to the courts get much quicker access. They have also saved themselves a great deal of money. I would suggest that anybody thinking about going ahead with a family Law Matter would think about this from the very start, and set out their goals and how they are going to achieve them.

In conclusion here are some good rules of thumb to help you manage the service and the cost of same:

- look for "experience" (It may save you money in the long run)
- look for "informed" estimates (give the solicitor as much information as possible and some time in the early weeks of the service. After one assesses what is involved the solicitor should then write to you with an estimate, or terms for the service),
- Look for the service with the right "attitude" - meaning both yours and the solicitors. Set out realistic goals. Be prepared to be practical and concede in some areas. Try to resolve as much as possible by negotiation.
- Make payments for your Legal Services as you go along. If your solicitor is not asking you for down payments as you progress, and you are working together for some time, you would be well advised to ask him early where the costs are going, to avoid difficulties and disagreements.



BINCHY
SOLICITORS



Quay House Clonmel
Co Tipperary Ireland
T. 052 21411
F. 052 24829 / 052 25029
DX 22007 clonmel
Email law@binchylaw.ie
www.binchylaw.ie