# Litigation checklist (parenting disputes)

## Using this checklist:

* Type in file name and number, print and attach to all new litigation files.
* Complete manually as the file progresses
* Unlike the other tools, the prompts (purple text) are not hidden text and will appear when printed.

## Purpose of checklist:

Completing this checklist fully and accurately will help:

* demonstrate that you have met the duties of competence and standard of care expected of a lawyer
* demonstrate that you have met VLA’s expectations of practitioners undertaking legally aided work, articulated in the VLA [Handbook](http://handbook.vla.vic.gov.au/handbook/4-commonwealth-family-law-and-child-support-guidelines/threshold-tests/substantial-issue-in-dispute-test), the Notes to the guidelines and the [Practice Standards and Practice Standards Measures](http://www.legalaid.vic.gov.au/information-for-lawyers/doing-legal-aid-work/panels/panels-conditions)
* your colleagues in the event they need to quickly identify the progress you have made with this matter
* your supervisor at file review.

## Note:

* This tool is designed as a prompt only. It is not proscriptive or exhaustive.
* This document may be considered a client document and provided to the client upon request (rule 14 Australian Solicitors’ Conduct Rules).

# Part A: Open file and start proceedings

## Stage 1 – Open file

| **Task** | **Details/Date Done** |
| --- | --- |
| **Grant of aid in place** |  |
| 1. Conflict check by admin staff |  |
| 1. Print blank invoice |  |
| 1. Complete Contact sheet & print off If matter involves allegations of family violence, ensure contact details not visible on front cover |  |
| **Initial letter to client** (FLITLCL0020) |  |
| **Initial letter to other party (op)/lawyer** |  |
| **Read documents and start case strategy** Print case strategy and retain on file |  |
| **Prepare chronology** Or copy and paste from case strategy |  |

## Stage 2 - Start court proceedings

\*Notes re affidavits:

* In interim matters in the FCC, affidavits to be no longer than 10 pages in length & to contain no more than 5 annexures
* In the FCA, no annexures to be attached to affidavits of witnesses. This includes expert witnesses as defined in rule 15.41(1) but does not apply to affidavits of single experts and adversarial experts appointed pursuant to Divisions 15.5.2 or 15.5.3 (e.g. family report writers and valuers).

| **Task** | **Details/Date Done** |
| --- | --- |
| **Separate folders for letters, court docs & brief** |  |
| **s 60i certificate obtained?** If not, reason why in affidavit |  |
| **Prepare court docs** |  |
| 1. Initiating App/Response to Initiating App |  |
| 1. Affidavit of client\* |  |
| 1. Notice of risk FCC: mandatory in all matters. FCA: mandatory where allegations raised |  |
| 1. Financial statement (in combined parenting/property matters) |  |
| 1. Witness affidavits\* |  |
| 1. Notice of Address for service |  |
| 1. Letter to process server drafted & sent |  |
| 1. Acknowledgment of service |  |
| 1. Exemption from filing fees form |  |
| 1. Consider need for early subpoenas |  |
| 1. Other documents e.g. affidavit re non-filing of section 60I certificate |  |
| **Court docs signed & dated** (arrange an appointment with the client to sign documents, including annexures) |  |
| File docs Ensure deadlines for filing docs are met |  |
| **Diarise court date & date to resubmit file** |  |
| **Letter to client re hearing date & enc court docs** |  |
| **Serve documents** |  |
| 1. Letter to OP/lawyer |  |
| 1. Letter to process server |  |
| 1. Follow up (if no response) |  |
| 1. Prepare & file affidavit of service | Filing date |
| 1. Prepare & file acknowledgement of service | Filing date |
| 1. Other |  |
| **If served, file service docs** |  |
| 1. Letter to court with service docs (or use court portal) |  |
| 1. Letter to client advising of service with copy of sealed docs |  |
| 1. Other |  |
| **If not served, dispensation/ substituted service** |  |
| 1. Conduct searches |  |
| 1. Further attempt service by hand |  |
| 1. Prepare application for substituted service |  |
| 1. File application |  |
| 1. Attend court & record outcome |  |
| 1. Arrange substituted service |  |
| **Other tasks** |  |
|  |  |

# Part B - Interim hearings

## Stage 3 – Interim hearing

\*Notes re affidavits:

* In interim matters in the FCC, affidavits to be no longer than 10 pages in length & to contain no more than 5 annexures

In the FCA, no annexures to be attached to affidavits of witnesses. This includes expert witnesses as defined in rule 15.41(1) but does not apply to affidavits of single experts and adversarial experts appointed pursuant to Divisions 15.5.2 or 15.5.3 (eg family report writers & valuers).

| **Task** | **Details/Date Done** |
| --- | --- |
| **Grant of aid in place** |  |
| **Find counsel** Consider ringing counsel to discuss the matter and to assess suitability for your client before briefing them. If the matter is on circuit, check how many briefs counsel has on the list |  |
| **Book counsel** Consider appearing yourself if not too complex |  |
| **Call court to book interpreter** |  |
| **Book safe room at court** (where required in matters involving allegations of family violence) |  |
| **Brief counsel** |  |
| 1. Complete Memo to counsel template Attach completed case strategy |  |
| 1. Create separate brief folder for counsel |  |
| 1. Send brief to counsel |  |
| 1. Letter to client re counsel |  |
| **Contact client to update instructions & advise of court arrangements** |  |
| **Consider whether to seek costs** Make a verbal application or include the request in minutes tendered |  |
| **Outcome of hearing** |  |
| 1. Record outcome |  |
| 1. Prepare engrossed orders   If parenting orders made by consent:   * + certify whether any allegations of child abuse or family violence by one of the parties   + explain how the orders deal with any such allegations   + file a notice as required by ss 67Z and 67ZBA of the FLA.   If property orders made by consent involve super, proof of the value of the interest must also be filed. |  |
| 1. Email engrossed orders to court |  |
| 1. Report letter to client |  |
| 1. Letter to OP/lawyer |  |
| 1. Follow up sealed orders |  |
| **Interim bill & apply for extension of aid** (if required) |  |
| **Draft further affidavits\*** (if required) |  |
| **Provide court docs to ICL** (if appointed) |  |
| **Consider appointment of court expert** |  |
| **Consider calling expert for interim hearing** |  |
| **Consider issuing subpoenas** Before issuing subpoenas, consider whether a subpoena is necessary. |  |
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| Issue subpoenas |  |
| Seek leave to file subpoenas FCA only. Cover letter via Registrar |  |
| Letter to process server (if required) |  |
| Draft & file affidavit of service | Filing date |
| Letter to OP enclosing subpoena |  |
| Letter to subpoenaed party |  |
| Diarise dates when subpoena info available |  |
| File notice to/intention to inspect | Filing date |
| Note date to appear for objection/release of subpoena FCA only. |  |
| Provide OP with filed notice of intention to inspect |  |
| Inspect subpoenas |  |

Checklist continues on next page.

# Part C: Trial

## Stage 4 – Litigation intervention FDRS

| **Task** | **Details/Date Done** |
| --- | --- |
| **Review eligibility– merit & means** Check financial means hasn’t changed (updated Centrelink card/details etc.) |  |
| **Consider FDRS** (suggested 28 days prior to trial) |  |
| **Organise release of the family report to FDRS** |  |
| **Diarise date of FDRS conference** |  |
| **Pre-conference with client** (even via telephone) |  |
| **Prepare for FDRS conference** |  |
| **Prepare & file consent orders** (if settled) If parenting orders made by consent:   * certify whether any allegations of child abuse or family violence by one of the parties * explain how the orders deal with any such allegations * file a notice as required by ss 67Z and 67ZBA of the FLA.   If property orders made by consent involve super, proof of the value of the interest must also be filed. |  |
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## Stage 5 - Trial preparation

| **Task** | **Details/Date Done** |
| --- | --- |
| **Review eligibility– merit & means** Check financial means hasn’t changed (updated Centrelink card/details etc.) |  |
| **Apply for extension of aid stage 3 & 4** |  |
| **Diarise court date** |  |
| **Diarise procedural dates** |  |
| **Consideration of family report** |  |
| 1. Review merit |  |
| 1. Meet with client (for instructions on report) |  |
| 1. Amend application? |  |
| 1. Attempt settlement negotiations? |  |
| **Obtain consent of client to LAT** (FCA only) |  |
| **File consent of client to LAT** (FCA only) | Filing date |
| **File case outline** (FCA only) | Filing date |
| **File financial statement** (if parenting/property)  Note: Parties have an ongoing duty of full and frank disclosure. File a new Financial Statement, or affidavit within 21 days if client’s financial circumstance change See r13.06, Family Law Rules or 24.06, Federal Circuit Court Rules. | Filing date |
| **Find counsel** If you haven’t previously briefed counsel in this matter, consider ringing potential counsel to discuss the matter and to assess suitability for your client before briefing them. If the matter is on circuit, check how many briefs counsel has in the list. |  |
| **Book counsel** (if you have funding for trial). Book counsel previously briefed in the matter unless there was an issue with them at interim stage. |  |
| **Book interpreter** (if required) |  |
| **Book safe room at court** (where required in matters involving allegations of family violence) |  |
| **Prepare additional trial affidavits\*** (if required)  \*Notes re affidavits:  In the FCA, no annexures to be attached to affidavits of witnesses. This includes expert witnesses as defined in rule 15.41(1) but does not apply to affidavits of single experts and adversarial experts appointed pursuant to Divisions 15.5.2 or 15.5.3 (e.g. family report writers & valuers). |  |
| **File additional trial affidavits** | Filing date |
| **Issue subpoenas & arrange service** (only issue subpoenas if required)  Note: Leave is required to subpoena DHHS files in the FCC |  |
| **Leave of court** (required in FCC if more than 5 subpoenas) |  |
| **Issue notice to inspect** |  |
| **Inspection of documents completed** (take good notes) |  |
| **Disclosure of relevant documents** |  |
| **Brief to counsel** |  |
| 1. Complete Memo to counsel. Attach completed case strategy |  |
| 1. Create separate brief folder for counsel |  |
| 1. Send brief to counsel |  |
| 1. Consider phone call to discuss matter |  |
| 1. Letter to client re counsel |  |
| **Conference with counsel** Arrange conference as early as possible. Consider providing completed case strategy as a ‘snapshot’, of the matter. |  |
| **Comply with trial directions** (page # reference) |  |
| **Mention or callover** |  |
| **Conciliation conference** |  |
| **Application to review orders made in concil conf** (FCA only. Must be filed within 7 days of orders being made) | Filing date |
| **Consider which witnesses to call** |  |
| **Prepare trial letters within 10 days of trial** |  |
| 1. Letter to client |  |
| 1. Letter to witnesses, including expert witnesses   Witnesses on notice re hearing dates (expert witnesses, including family report writer, to be provided with 14 days’ notice) |  |
| 1. Letter to OP/lawyer   OP on notice re intention to cross examine witnesses |  |
| 1. Notice to ICL to cross exam family counsellor |  |
| 1. Letter to court expert |  |
| **Prepare trial docs as directed** \*Notes re affidavits:  In the FCA, no annexures to be attached to affidavits of witnesses. This includes expert witnesses as defined in rule 15.41(1) but does not apply to affidavits of single experts and adversarial experts appointed pursuant to Divisions 15.5.2 or 15.5.3 (e g family report writers & valuers). |  |
| Client affidavit\* |  |
| Witness affidavits\* |  |
| Court expert affidavit\* |  |
| Outline of case document |  |
| Brief for counsel |  |
| File & serve (within time noted in Directions) | Filing date |
| **Notice to admit facts** |  |
| **Video link for witness organised** |  |
| **Letter/notice ceasing to act or Intention to withdraw** (filed at least 7 days before trial) | Filing date |
| **Notice of withdrawal** (filed 7 days after notice of intention to withdraw filed) | Filing date |
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## Stage 5 – Trial

| **Task** | **Details/Date Done** |
| --- | --- |
| **Outcome of trial** |  |
| 1. Consider seeking costs order Make a verbal application or include the request in minutes tendered |  |
| 1. Obtain back sheet from counsel re outcome |  |
| 1. Record outcome |  |
| 1. Prepare engrossed orders |  |
| 1. Email court engrossed orders |  |
| 1. Report letter to client |  |
| 1. Letter to OP/lawyer |  |
| 1. Follow up sealed orders |  |

## Stage 6 – File Finalise

|  |  |
| --- | --- |
| **Task** | **Details/Date Done** |
| **Cost recovery from OP where order made** |  |
| Letter of demand to OP Reply-paid letter for payment addressed to Client Contributions Officer in Assignments |  |
| Notification in ATLAS of debt   * Mark as ‘costs indemnified’ in claim screen when invoice submitted for an appearance, or * when the matter is finalised, indicate that costs order made when completing ‘file outcome’, and * upload copy of costs order and letter of demand to ATLAS using ‘submit correspondence’ |  |
| Final letter to client |  |
| Letter/Notice ceasing to act |  |
| Distribute any trust monies |  |
| DISB/Invoice/Billing within 28 days of final event |  |

## Supervision

The supervising lawyer reviewed the Litigation checklist on the following dates:

Supervisor’s name:       Date:

Supervisor’s Name:       Date:

Supervisor’s Name:       Date: