

PRESS RELEASE



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CHILDREN LAW – NEW COURT RULES AND FORMS

Comprehensive rules and forms for the protection of children come into effect today (Monday 29 April). This follows the coming into force in July 2012 of the Children Law, which, along with the newly issued Children Law Rules and Allocation Order, form a part of the Chief Justice's proposals to reform the family services offered by the courts.

The Children Law and the new Rules overhaul child care law, providing a strong legislative framework to protect all children in the Cayman Islands and to ensure consistency in all family proceedings before a court. They change the way in which issues relating to the care of children are dealt with when parents separate or can't agree on what is best for the child. They also introduce new arrangements when there is a need to consider caring for a child other than within the immediate family.

The comprehensive rules and forms which come into force Monday will help to ensure that the interests of all parties are properly taken into account and that decisions are made on the basis of the best interests of the child involved. They will enhance the court's well established ability to deal justly with all cases involving the family or children.

A Family Division of the Grand Court was identified in 2009 and the intention is to work towards setting up a Family Court when the new Court building is available. The Family Court will then have a wing of the building dedicated to the conduct of children and family cases under the administration of dedicated judicial and other support personnel.

At present the initiative is being led by Justice Richard Williams who has been asked by the Chief Justice to serve as judge for the case management of all family and children cases coming before the Grand Court. Chief Magistrate Nova Hall liaises with Justice Williams for the management of the cases which come before the summary courts. This will harmonise the work

of the Grand Court and the Summary courts and provide a specialised forum for family members to seek legal address in all family-related disputes. The Chief Justice, Justices Henderson and Quin, and Magistrates Foldats and Gunn will all continue to be involved with the hearing of children and family cases in the Grand and Summary courts, respectively, where they are not resolved at the case management stages by Justice Williams and Chief Magistrate Hall.

Later this year, Family Division Judges and Magistrates will be supported by a Family Unit within the Civil Registry which will process applications for family-related cases whether they relate to child care, maintenance or disposition of property. Ideally, the Family Court needs to be in a building designed to meet the unique needs of children and family members attending, though it is understood that this cannot happen immediately.

The public may access the Law, Rules and Forms on the “Court Rules” page on the judicial website www.judicial.ky. The website also has a guidance section which explains what applications can be made, how to make them, and what to do if served with an application. This information will also be available from the court.

Commenting on the importance of these new interventions, Justice Richard Williams said, “Regrettably, here in the Cayman Islands like everywhere else, there are a significant number of divorces as well as many children born to parents who are not married to each other,” adding: “The biggest single factor in a child’s adjustment to the parents’ divorce or separation is how well the parents restructure their relationship to continue to meet the needs of the child; overall the Law and the Rules focus on what children need and how parents can be helped to better meet these needs during and after relationship break down.” The new provisions are designed to help all parties find the most appropriate and suitable arrangements.

Another concern that the new provisions seek to address is the way a child is being cared for and when it may be necessary to consider the child’s care outside of the family. Provision is also made for cases in which it may be necessary for the family to be required to change the way they live in order to make sure that the child’s needs are properly met.

The Law, Rules and Forms aim to make sure that children’s and parents’ interests, as well as those of the wider family who are involved in the care of the child, are properly considered. In some such cases, the court can appoint an independent guardian to help it decide what is in the best interest of the child.

The Law and the Rules make major changes; important issues that they seek to address include:

- giving non-resident parent’s relationship with a child the importance that it has in practice in the lives of many children;
- the emphasis placed on the relationship between the child and relatives in the wider family;
- speeding up procedures to identify issues of child safety and making them more effective;
- making proceedings less adversarial and more about seeking settlement – an adversarial approach often inflames the acrimony that often exists between separating couples, making things worse rather than better;
- alleviating the feeling of some parents that contact with children was allowed by the court in a way that put their or their children’s safety or well-being at risk;

- treating resolution as an ongoing process at which parents needed to work over the long term rather than as a one-off event that ended with the court's decision;
- giving the court enhanced powers to enforce orders for contact, avoiding the need for cases to go back to court repeatedly and increasing the likelihood of cooperation.

The reforms are wide ranging and are designed to:

- introduce timetables to deal with cases involving children so that proceedings are not delayed more than absolutely necessary;
- provide better arrangements for the children of separating or divorcing parents;
- keep parents who are separating or divorcing properly informed of the alternatives open to them and, indeed, helping both parents to help their children;
- ensure that parents are treated equally in respect of the children and that both parents accept responsibility for their children;
- minimise animosity among parents;
- give grandparents rights (including situations where the child is "in care");
- overhaul the powers to protect children from abuse or neglect;
- provide a more modern, framework for ensuring financial support for a child.

Editor's Notes:

For the biography of all the judges and magistrates dealing with family proceedings see the Grand Court Family Division and Summary Court "Judicial Officers" page on www.judicial.ky.

Family Proceedings are dealt with in both the Grand Court and the Summary Court. Divorce and Wardship proceedings must be dealt with in the Grand Court. Most other Family Proceedings can be dealt with in either court – see Children Law (Allocation of Proceedings) Order 2013 on "Court Rules" page at www.judicial.ky.

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