

FAMILY COURT GUIDELINES

1. PARTY/PARTY COSTS DISPUTES

Party/party costs are regulated and claimable pursuant to Schedule 3 of the *Family Law Rules* 2004 ["**FLR**"]. Part 1 of Schedule 3 details fees for lawyers/solicitors and Part 2 of Schedule 3 provides for counsel's fees. The applicable rules are found in Chapter 19 of the *Family Law Rules*.

For a party/party costs order, the itemised costs account must be served on the person(s) liable to pay the costs **within 4 months after the end of the case**. A Costs Notice must also be served (r 19.21).

ASSESSMENT PROCEDURE

The person(s) liable to pay the costs is described as "the other party"; this applies to both lawyer/client and party/party costs.

An itemised costs account is rendered with a copy of the Costs Notice; then the procedure for recovery of costs is:

A. If the other party does not serve a Notice Disputing Costs (nor pay the account) then a lawyer may apply to the Court for a Costs Assessment Order. (r19.37); **OR**

B. If a party disputes the costs then the following steps apply:

- B.1 **Within 28 days** of receiving the itemised costs account the other party provides a Notice Disputing Itemised Costs Account (r 19.23). The Notice requires details of the grounds of dispute and the amount offered. This document can be downloaded from the Family Court of Australia website.
- B.2 The parties must then make a reasonable and genuine attempt to resolve the dispute. (r 19.24(2)). There are costs consequences if this is not done.
- B.3 If the dispute is not resolved then either party may file both the Notice Disputing Itemised Costs Account and the Itemised Costs Account. This must be done **not later than 42 days** after the date upon which the Notice Disputing Itemised Costs Account was served. (r 19.24(3))
- B.4 A party may amend an itemised costs account, by filing the amended document with amendments clearly marked, **up to 14 days** before the date fixed for an assessment hearing or after that with the other party's consent or the permission of the Court. (r 19.25). Amendment during the assessment hearing is not permitted. (r 19.32)
- B.5 The Court will then appoint a day and time for a settlement conference and either a preliminary assessment or assessment hearing. (r 19.26)
- B.6 Service of the court date on the other party must be at least 14 days before the court date. (r 19.27)
- B.7 A Settlement Conference provides an opportunity to define the issues in dispute and to negotiate a settlement and both parties must attend the Settlement Conference. If the dispute is not settled the Registrar will make procedural orders for the future conduct of the costs dispute. (r 19.28)
- B.8 At a Preliminary Assessment the Registrar, without the parties being present and generally in the absence of input from the parties, will calculate a likely amount for the costs assessment order. The parties will then be notified in writing of the preliminary assessment amount. (r 19.29)

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B.9 If there is no objection to the preliminary assessment amount, the Registrar will make a costs assessment order in this amount. (r 19.31)

C. If a party elects to file objections to the Preliminary Assessment:

C.1 Either party may object to the preliminary assessment amount **within 21 days** after receiving notice of the preliminary assessment. Objection is made by lodging a written notice of objection and paying the Court 5% of the total amount objected to. (r 19.30(1))

NB: The party objecting may be ordered to pay the other party's costs of the assessment if that party does not succeed in improving the assessment by at least 20% in their favour. (r 19.30(3))

C.2 The costs dispute will then be listed for an assessment hearing. Both parties must attend the assessment hearing with the Registrar who will:

- examine the itemised costs account;
- determine how much is properly payable;
- determine the amount payable for the costs of the assessment and who will pay;
- make a costs assessment order specifying the amount to be paid. (r 19.32)

The onus of proof is on the party claiming the costs and all documents in support of the items claimed should be taken to Court.

C.3 Depending on the outcome of the assessment hearing, the Registrar will also decide which party is to receive any money paid into Court - paragraph C1 above. (r 19.33(2))

D. Further Review

D.1 **Within 14 days** after the costs assessment order is made, a party may apply to the Court to review the decision of the Registrar by filing an Application in a Case - supported by an Affidavit stating the item number(s), the reason(s) for objection and the decision(s) sought from the Court. (r 19.54). This document may be downloaded from the Family Court of Australia website.

The *Family Law Act* 1975 lays down a general principle that each party to proceedings bear their own costs - s117(1).

2. LAWYER/CLIENT COSTS DISPUTES

A. Where instructions were given or the application was made **before 1 July 2008**, unless you have contracted outside the Schedule, the costs payable are restricted to Schedule 3 and the relevant provisions of Chapter 19 of the *Family Law Rules* as set out in Schedule 6 to the Family Law Rules - "Costs - Rules before 1 July 2008".

B. Where instructions were given or a fresh application was made **on or after 1 July 2008 and before 30 June 2015**, in NSW these costs disputes are dealt with pursuant to the *Legal Profession Act* 2004.

C. Where the client first instructed the Law Practice **on or after 1 July 2015** in NSW these costs disputes are dealt with pursuant to the *Legal Profession Uniform Law* (NSW) No 16a. See transitional provisions at Schedule 4 Clause 18.

For the Costs Assessment process under B or C, please refer to the **Guidelines - Costs Assessment (NSW)**, under the Guidelines tab of this website.