

PRACTICE NOTE 41

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PRE-MOTION CONFERENCE IN FAMILY SECTION

(Effective September 1, 2019)

1. Practice Note 41.1 and Practice Note 41.2 are repealed and replaced by revised **Practice Note 41** (effective September 1, 2016).
2. Fillable-form Practice Note 41(A) (Notice of Pre-Motion Conference) is repealed and replaced with Form 70 AA (effective September 1, 2019).
3. Fillable-form Practice Note 41(B) (Pre-Motion Conference Memorandum) is repealed and replaced with Form 70 BB (effective September 1, 2019).

Purpose of Pre-motion Conference

4. The purpose of the pre-motion conference is to “triage” cases to identify the issues which need to be determined immediately, to ascertain the parties positions on these issues, to identify any issues which can be settled or dealt with on an interim or permanent basis, to identify cases which may be suitable for mediation, and to provide information on non-court services which may assist the parties in resolving the issues in dispute. The emphasis will be child centered, not on other disputes between the parents.

Booking Motion and Filing Documents

5. All contested motions in Family Section matters shall be preceded by a pre-motion conference, unless otherwise ordered.
6. When the moving party contacts the Family Section to book a time for the motion, he/she will be given a date and time for the pre-motion conference.
7. When serving the notice of motion, with the time and date to be determined, the notice of pre-motion conference with the time and date fixed (Form 70 AA) and the memorandum on the pre-motion conference (Form 70 BB) shall also be served. (Note: Affidavits are not to be filed *prior* to the pre-motion conference.)
8. Form 70 BB need not be signed by a party if it is signed by their counsel.
9. Service and filing of the moving party’s pre-motion conference notice and memorandum shall be at least ten (10) days before the pre-motion conference date, except where notice is served outside of Prince Edward Island in which case it shall be served at least twenty (20) days before the pre-motion conference date.

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10. Service and filing of the responding party's pre-motion conference memorandum shall be at least four (4) days before the pre-motion conference date.

Failure to respond to Notice of Pre-motion Conference

11. Failure to file, or late filing of the pre-motion conference memorandum and the required documents or failure to appear at the pre-motion conference, may result in an Order being made against the responding party for the relief sought in the motion, costs, or such other relief as the judge deems just in the circumstances.

Affidavits

12. To reduce costs and to not further inflame the dispute, affidavits on motions in family matters should not be filed and served until after the pre-motion conference has been held.

Scheduling Pre-motion Conference

13. Pre-motion conferences will be held in Charlottetown and Summerside on a specific schedule as determined by the court. They will be scheduled for 90 minutes each.

Notice to Director of Child Protection

14. Rule 70.16 requires that notice be given to the Director of Child Protection when custody or access is claimed in a petition or counter petition for divorce. The requirements of Rule 70.16 apply with the necessary modifications to proceedings under the *Custody Jurisdiction and Enforcement Act*, i.e., to an originating notice of application claiming custody and access under this statute (Rule 71.06). If notice to the Director has been given pursuant to Rule 70.16 or Rule 71.06, it is not necessary to give further notice of this motion, unless a judge otherwise orders.

Results of Pre-motion Conference

15. Motion dates will be given at the end of the pre-motion conference, where necessary. Parties shall receive a report from the court setting out any directions provided by the judge at the pre-motion conference.
16. Statements of the parties made at a pre-motion conference are confidential to the parties and their counsel and shall not be disclosed to the motions judge.

NOTE: Parties are referred to Rule 70.15(2) through 70.15(4) for Rules pertaining to pre-motion conferences.

(SGD)_____

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Tracey L. Clements
Chief Justice - Supreme Court of Prince Edward Island
May 13, 2019

(Amended June 15, 2020)