ASHLEY MURRAY CHAMBERS

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Family Finance Flyer No 61

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1. As Family lawyers we are all familiar with the anxieties of clients over mounting costs in a divorce financial claim. The days when a client was expected to write a blank cheque for the privilege of their legal advisor to represent them have long gone - and frankly - good riddance.

2. The world of providing any professional service to the public is now far more subject to the rigour of critical analysis by the client and demand for justification of the expense incurred.

3. We also as a profession have to accept that where from time to time cases occur when the percentage of costs incurred have exceeded double figures in relation to the net value involved, there is professionally probably good reason to reflect whether the same is or can be justified.

4. The pressures, therefore, on solicitors are intense both to still provide the highest quality of service and advice to the client, whilst at the same time minimising the cost of the divorce process and costing every step taken.

5. The purpose of this short Flyer is, against the above background, to suggest there should be some caution exercised in the developing practice when instructing counsel upon a divorce financial remedy application for counsel to attend Court alone with the client where there is any potential that a final order may be made (ie not a First Appointment or Directions Appointment, but rather a FDR and/or a final hearing).

6. This practice appears to be growing and the trend is clearly understandable in view of the client's costs concerns and where the attendance by both counsel and solicitor is likely to be interpreted as a costs building exercise.

7. Of course, to the professional's eye such dual attendance is nothing of the kind. Counsel is no more than part of the legal team of representation for the client at such an important hearing – no matter how experienced counsel may be – he or she will not have had the same level of involvement with the client or their case as the solicitor instructed from day one.

8. No detail in a set of instructions will be able to express to counsel the myriad of issues likely to be in the client's mind, which the solicitor will be familiar with and counsel not.

9. Even if the client has had a meeting with counsel previously in conference, the detailed knowledge of the client's file will be beyond counsel's knowledge. This brevity of relationship between the client and counsel before the hearing can be stifling for the client and a real constraint in being fully confident in bringing to counsel's attention all issues which are concerning him or her – especially, if counsel is fully engaged in negotiations during the day and/or moving in and out of the Court room.

10. The anxiety of the hearing is not assisted for the client in such circumstances in having to spend half the time at Court in a room alone, whilst someone the client is not

familiar with, busies themselves outside with matters which will affect the client ultimately for his or her foreseeable future.

11. If deals are done and Heads signed – the hapless solicitor, if absent, is dependent upon Counsel's short report of what happened thereafter and in every case no doubt the nuances of the wording used to do the deal and the shortcomings, if any, of what was done. The solicitor and not counsel have to face any come back and second thoughts from the client.

12. The fact is the solicitor at such a hearing where a final order is a possibility is an essential individual who should always be present for the best interests of the client to be served.

13. The solicitor's presence and input, two minds being better than one, is often quite invaluable to counsel in attempts to reach a comprehensive settlement and to keep the client abreast with what is developing and on board with what is or is not in his or her best interests.

14. The solicitor is also able to record for the client throughout the day all that went on and the twists and turns of the negotiating process – a record which can be crucial, if later argument arises over the validity of any agreement reached or the meaning of any deal done or even the advice which led to the client's agreement in the first place.

15. In short, it is the solicitor and not counsel who the client should be aware is primarily required to be engaged at such hearings. The view that this is a doubling of the costs unnecessarily wholly misunderstands the roles being undertaken and the best interests of the client being served.

16. A solicitor's attendance costs at such hearings are the last thing a client should be seeking to avoid - such attendance almost invariably saves costs for the client overall.

Ashley Murray **20th July 2016**

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