

CAYMAN ISLANDS



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THE MEDIATION INFORMATION & ASSESSMENT RULES, 2016

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The attached Rules are made by the Rules Committee pursuant to Section 19 of the Grand Court Law (2015 Revision) and section 44 of the Summary Jurisdiction Law (2015 Revision).

Citation, Commencement and Interpretation

- (1) These Rules shall be referred to as the Mediation Information & Assessment Rules, 2016.
- (2) These Rules shall come into operation on the 14th day of June 2016 referred to as the "Commencement Date".
- (3) These Rules shall apply to every proceeding which is pending or commenced in the court before, on or after the Commencement Date.

Made by the Rules Committee on the 27th day of May 2016.

The Honourable Anthony Smellie QC, Chief Justice

The Honourable Sam Bulgin QC, Attorney General

Colin McKie QC, Legal Practitioner

Hector Robinson, Legal Practitioner

MEDIATION INFORMATION & ASSESSMENT RULES 2016

Interpretation

1 In these Rules –

‘applicant’ is the person who has made a relevant family application;

‘court’ means either the Grand Court or the Summary Court as appropriate;

‘department’ means the Department for Children and Family Services;

‘domestic violence’ as between the applicant and another party, has the same meaning as section 3 of the Protection from Domestic Violence Law, 2010 Revision;

‘family mediation information and assessment meeting’ means a meeting held for the purpose of enabling information to be provided about –

- (a) mediation of disputes of the kinds to which relevant family applications relate;
- (b) ways in which disputes of those kinds may be resolved otherwise than by the court; and
- (c) the suitability of mediation, or of any other way of resolving disputes, for trying to resolve any dispute to which the application relates.

‘family mediator’ means a mediator who is –

a Magistrate (including an Acting Magistrate), a Judge of the Grand Court (including an Acting Judge) who has been allocated to the Family Division, and any person or class of

	persons identified in any Practice Direction issued pursuant to these Rules;
‘harm’	has the meaning given to it in section 33(6) of the Children Law (2012 Revision);
‘health professional’	has the same meaning as section 2 of the Health Practice Law, 2002 (as amended and revised);
‘non-court dispute resolution’	means methods of resolving a dispute, including mediation, other than through the normal court process;
‘MIAM’	means a family mediation information and assessment meeting;
‘MIAM exemption’	has the meaning given to it in Rule 8(1);
‘MIAM presumption’	is the presumption in Rule 2 that an applicant attend a MIAM before proceeding with a relevant family application;
‘occupation order’	has the same meaning as section 2 of the Protection from Domestic Violence Law (2010 Revision);
‘private law proceedings’	means the following proceedings – <ul style="list-style-type: none"> (a) under the Children Law (2012 Revision) – <ul style="list-style-type: none"> (i) section 4A or 6; (ii) section 7; (iii) section 10; (iv) section 15; (v) section 16; (b) under the Affiliation Law (1995 Revision) – <ul style="list-style-type: none"> (i) section 3;

but, in each case, except –

- (c) an application for a consent order;
- (d) proceedings relating to a child in respect of whom there are ongoing proceedings under Part V of the Children Law (2012 Revision), or proceedings for care orders or supervision orders under Part IV of the Children Law (2012 Revision); or
- (e) proceedings relating to a child who is the subject of an emergency protection order under Part V, or a care order or a supervision order under Part IV, of the Children Law (2012 Revision).

‘proceedings for a financial remedy’ means the following proceedings seeking:

- (a) an order for periodic payments pending suit pursuant to section 20(c) of the Matrimonial Causes Law (2005 Revision);
- (b) an order for maintenance pending outcome of proceedings other than an order pursuant to section 20(c) of the Matrimonial Causes Law (2005 Revision);
- (c) an order for ancillary relief pursuant to section 21(b)-(e) of the Matrimonial Causes Law (2005 Revision);
- (d) an order for payment for the maintenance and education of a child pursuant to section 5 of the Affiliation Law (1995 Revision);

- (e) an order for payment for the maintenance and education of a child pursuant to section 3 of the Age of Majority Law (1999 Revision);
- (f) an order for financial provision for children pursuant to section 17 and Schedule 1 to the Children Law (2012 Revision);
- (g) a maintenance order pursuant to section 7 or 11 of the Maintenance Law (1996 Revision);

but, in each case, except proceedings –

- (h) for a consent order; or
- (i) unless the court determines otherwise, for enforcement of any order made in proceedings for a financial remedy or of any agreement made in or in contemplation of proceedings for a financial remedy.

‘protection order’ has the same meaning as section 2 of the Protection from Domestic Violence Law (2010 Revision);

‘relevant family application’ means an application made in private law proceedings or in proceedings for a financial remedy; and

‘respondent’ is a person who is the respondent to the proceedings in the relevant family application.

MIAM Presumption

2 Once a relevant family application has been made, before any further step is taken in those proceedings, the court will ordinarily require the applicant to attend a MIAM.

The court's duty to consider non-court dispute resolution

- 3 (1) The court must consider, at every stage in proceedings, whether non-court dispute resolution is appropriate.
- (2) In considering whether non-court dispute resolution is appropriate in proceedings which were commenced by a relevant family application, the court must take into account –
 - (a) whether a MIAM took place;
 - (b) whether a valid MIAM exemption was claimed; and
 - (c) whether the parties attempted mediation or another form of non-court dispute resolution and the outcome of that process.

Adjournment of proceedings or of a hearing within proceedings

- 4 (1) If the court considers that non-court dispute resolution is appropriate, it may direct that the proceedings, or a hearing in the proceedings, be adjourned for such specified period as it considers appropriate –
 - (a) to enable the parties to obtain information and advice about, and consider using, non-court dispute resolution; and
 - (b) where the parties agree, to enable non-court dispute resolution to take place.
- (2) The court may give directions under this rule on an application or of its own initiative.
- (3) Where the court directs an adjournment under this rule, it will give directions about the timing and method by which the parties must tell the court if any of the issues in the proceedings have been resolved.

- (4) If the parties do not tell the court if any of the issues have been resolved as directed under paragraph (3) of this Rule, the court will give such directions as to the management of the case as it considers appropriate.
- (5) The court will record the making of an order under this rule and it will give such directions as may be appropriate for the service of a copy of the order on the parties.

5 [No rule]

Applications to which the MIAM presumption applies

6 The MIAM presumption applies to an application which initiates private law proceedings or proceedings for a financial remedy, or an application within either such proceedings, unless a MIAM exemption applies.

Making an application where an exemption is claimed

- 7 If the applicant claims a MIAM exemption then the application must be accompanied by a Form containing -
- (a) a confirmation from a family mediator that the applicant has attended a MIAM; or
 - (b) a claim that one of the MIAM exemptions applies.

MIAM exemptions

8 The MIAM presumption does not apply if –

- (1) an applicant claims in the relevant Form that any of the following circumstances (a ‘MIAM exemption’) applies –

Domestic violence

- (a) there is evidence of domestic violence, as specified in paragraph (3) of this Rule, or as appears to the court to be sufficient; or

Protection of children

- (b)
 - (i) a child would be the subject of the application; and
 - (ii) that child or another child of the family who is living with that child is currently the subject of enquiries by the department under section 50 of the Children Law (2012 Revision); or

Urgency

- (c) the application must be made urgently because –
 - (i) there is risk to the life, liberty or physical safety of the applicant or his or her family or his or her home; or
 - (ii) any delay caused by attending a MIAM would cause –
 - (a) a risk of significant harm to a child;
 - (b) a risk of unlawful removal of a child from the Islands, or a risk of unlawful retention of a child who is currently outside of the Islands;
 - (c) a significant risk of a miscarriage of justice;
 - (d) unreasonable hardship to the applicant; or
 - (e) irretrievable problems in dealing with the dispute (including the irretrievable loss of significant evidence); or

Previous MIAM attendance or previous MIAM exemption

- (d) (i) in the 4 months prior to making the application, the person attended a MIAM or participated in another form of non-court dispute resolution relating to the same or substantially the same dispute; or
- (ii) at the time of making the application, the person is participating in another form of non-court dispute resolution relating to the same or substantially the same dispute; or
- (e) (i) in the 4 months prior to making the application, the person filed a relevant family application confirming that a MIAM exemption applied; and
- (ii) that application related to the same or substantially the same dispute; or
- (f) (i) the application has been made in existing proceedings which are continuing; and
- (ii) the applicant attended a MIAM in those proceedings; or
- (g) (i) the application has been made in those proceedings which are continuing; and
- (ii) a MIAM exemption applied to the application for those proceedings; or

Other

- (h) (i) there is evidence that the applicant is bankrupt, as specified in paragraph (4) of this Rule; and
- (ii) the proceedings would be for a financial remedy; or

- (i) the applicant does not have sufficient contact details for any of the respondents to enable a family mediator to contact any of the respondents for the purpose of scheduling the MIAM; or
- (j) the application would be made without notice; or
- (k)
 - (i) the applicant is, or all of the respondents are, subject to a disability or other inability that would prevent attendance at a MIAM unless appropriate facilities can be offered by a family mediator; and
 - (ii) the applicant has contacted at least three family mediators, and each of them has stated that they are unable to provide such facilities; and
 - (iii) the names, postal addresses and telephone numbers or e-mail addresses for such family mediators, and the dates on which they were contacted, can be provided to the court if requested; or
- (l) the applicant or all of the respondents cannot attend a MIAM because he or she is, or they are, as the case may be –
 - (i) in prison or any other institution in which he or she is or they are required to be detained;
 - (ii) subject to conditions of bail that prevent contact with the other person; or
 - (iii) subject to a prohibited steps order in relation to the other person; or
- (m) the applicant or all of the respondents are not ordinarily resident in the Islands; or
- (n) a child is one of the parties; or

- (o)
 - (i) the applicant has contacted at least three family mediators, and each of them has stated that they are not available to conduct a MIAM within fifteen business days of the date of contact; and
 - (ii) the names, postal addresses and telephone numbers or e-mail addresses for such family mediators, and the dates on which they were contacted, can be provided to the court if requested.
- (2) [No rule]
- (3) The forms of evidence of domestic violence referred to in paragraph (1)(a) of this Rule include –
 - (a) a relevant unspent conviction for a domestic violence offence;
 - (b) a relevant police caution for a domestic violence offence given within the twenty four month period immediately preceding the date of the application;
 - (c) evidence of relevant criminal proceedings for a domestic violence offence which have not concluded;
 - (d) a report from the RCIPS Family Support Unit that, within the twenty four month period immediately preceding the date of the application, a complaint was made to the RCIPS of relevant domestic violence;
 - (e) a relevant protection order or a relevant occupation order, or undertaking to the court equivalent to the same, which is in force or which was granted within the twenty four month period immediately preceding the date of the application;
 - (f) evidence that a party is on police bail for a domestic violence offence;

- (g) a copy of a finding of fact, made in proceedings in the Islands within the twenty four month period immediately preceding the date of the application, that there has been domestic violence giving rise to a risk of harm by one party to another party;
- (h) a letter or report from a health professional who has access to the medical records of a party confirming that that professional, or another health professional –
 - (i) has examined any party in person within the twenty four month period immediately preceding the date of the application; and
 - (ii) was satisfied following that examination that that party had injuries or a condition consistent with those of a victim of domestic violence;
- (i) a letter from the Director of the department confirming that, within the twenty four month period immediately preceding the date of the application, that –
 - (i) the applicant is, or was, a client of the department;
 - (ii) the department had identified domestic violence as a feature of the applicant's circumstances; and
 - (iii) the applicant appeared to be a victim of domestic violence.
- (j) a letter from the Director of the Department of Counselling Services confirming that, within the twenty four month period immediately preceding the date of the application, the applicant had sought or received counselling in respect of domestic violence;
- (k) a letter from the Director of the Family Resource Centre confirming that, within the twenty four month period immediately preceding the date of the

application, the applicant had sought or received counselling, assistance or advice in respect of domestic violence

- (l) a letter or report from the Cayman Islands Crisis Centre confirming –
 - (i) that within the twenty four month period immediately preceding the date of the application, any party had been accommodated in a refuge;
 - (ii) the dates on which that party was admitted to and, if applicable, left the refuge; and
 - (iii) that that party was admitted to the refuge because of allegations by that party of domestic violence;

- (m) a letter or report from the Cayman Islands Crisis Centre confirming –
 - (i) that a party was, within the twenty four month period immediately preceding the date of the application, refused admission to a refuge on account of there being insufficient accommodation available in the refuge; and
 - (ii) the date on which that party was refused admission to the refuge;

- (n) a letter or report from –
 - (i) the person to whom the referral described below was made;
 - (ii) the health professional who made the referral described below; or
 - (iii) a health professional who has access to the medical records of a party,

confirming that there was, within the twenty four month period immediately preceding the date of the application, a referral by a health

professional of a party to a person who provides specialist support or assistance for victims of, or those at risk of, domestic violence;

(o) evidence of a relevant court order binding over a party in connection with a domestic violence offence, which is in force or which was granted within the twenty four month period immediately preceding the date of the application.

(4) The forms of evidence referred to in paragraph (1)(h) of this Rule are –

(a) a petition by the applicant for a bankruptcy order;

(b) a petition by a creditor of the applicant for a bankruptcy order; or

(c) a receiving order or a bankruptcy order (provisional or absolute) in respect of the applicant.

Conduct of MIAMs

9 (1) Only a family mediator may conduct a MIAM.

(2) At the MIAM, the family mediator must

(a) provide information about the principles, process and different models of mediation, and information about other methods of non-court dispute resolution;

(b) assess the suitability of mediation as a means of resolving the dispute;

(c) assess whether there has been, or is a risk of, domestic violence; and

(d) assess whether there has been, or is a risk of, harm by a prospective party to a child that would be a subject of the application.

- (3) Within 7 days of the date of the MIAM or, if the applicant and the respondent (or respondents) attend or are due to attend different MIAMs, of the date of the last MIAM, the family mediator shall file a report at the court concerning the outcome of the MIAM or MIAMs in the relevant Form.

MIAM exemption not validly claimed

- 10 (1) If a MIAM exemption has been claimed, the court will, if appropriate when making a decision on allocation, and in any event at the first hearing, inquire into whether the exemption was validly claimed.
- (2) If a court finds that the MIAM exemption was not validly claimed, the court will –
 - (a) direct the applicant, or direct the parties, to attend a MIAM; and
 - (b) if necessary, adjourn the proceedings to enable a MIAM to take place;unless the court considers that in all the circumstances of the case, the MIAM requirement should not apply to the application in question.
- (3) In making a decision under Rule 10(2), the court will have particular regard to –
 - (a) any applicable time limits;
 - (b) the reason or reasons why the MIAM exemption was not validly claimed;
 - (c) the applicability of any other MIAM exemptions; and
 - (d) the number and nature of issues that remain to be resolved in the proceedings.

FORM MIAM 1

**APPLICATION FOR EXEMPTION
FROM
MEDIATION INFORMATION AND ASSESSMENT MEETING (MIAM)**

Full name of Applicant(s)

Full name of Respondent(s)

If you are seeking an exemption from attending a mediation information and assessment meeting (MIAM) you must choose from the following boxes in respect of your application, then proceed to complete the relevant section(s):

- | | |
|---|--|
| 1. It is for a consent order; | <input type="checkbox"/> |
| 2. You have evidence of relevant domestic violence; | <input type="checkbox"/> <i>go to section 2.</i> |
| 3. There is a need to protect children; | <input type="checkbox"/> <i>go to section 3.</i> |
| 4. It is urgent; | <input type="checkbox"/> <i>go to section 4.</i> |
| 5. You have a MIAM exemption; <i>or</i> | <input type="checkbox"/> <i>go to section 5.</i> |
| 6. You have previously attended a MIAM or previously obtained a MIAM exemption; | <input type="checkbox"/> <i>go to section 6.</i> |
| 7. Other. | <input type="checkbox"/> <i>go to section 7.</i> |

Applicant's claim for Exemption

2. Domestic Violence

You confirm that at the first hearing you will be able to provide to the Court evidence that shows relevant domestic violence, in the form of any of the following -

- a relevant unspent conviction for a domestic violence offence;
- a relevant police caution for a domestic violence offence given within the twenty four month period immediately preceding the date of the application;
- evidence of relevant criminal proceedings for a domestic violence offence which have not concluded;
- a report from the RCIPS Family Support Unit that, within the twenty four month period immediately preceding the date of the application, a complaint was made to the RCIPS of relevant domestic violence;

- a relevant protection order or a relevant occupation order, or undertaking to the court equivalent to the same, which is in force or which was granted within the twenty four month period immediately preceding the date of the application;
- evidence that a party is on police bail for a domestic violence offence;
- a copy of a finding of fact, made in proceedings in the Islands within the period immediately preceding the date of the application, that there has been domestic violence giving rise to a risk of harm by one party to another party;
- a letter or report from a health professional who has access to the medical records of a party confirming that that professional, or another health professional –
 - * has examined any party in person within the twenty four month period immediately preceding the date of the application; *and*
 - * was satisfied following that examination that that party had injuries or a condition consistent with those of a victim of domestic violence;
- a letter from the Director of the Department for Children and Family Services confirming that, within the twenty four month period immediately preceding the date of the application, that –
 - * you are, or were, a client of the Department;
 - * the Department had identified domestic violence as a feature of your circumstances; *and*
 - * you appeared to be a victim of domestic violence.
- a letter from the Director of the Department of Counselling Services confirming that, within the twenty four month period immediately preceding the date of the application, you had sought or received counselling in respect of domestic violence;
- a letter from the Director of the Family Resource Centre confirming that, within the twenty four month period immediately preceding the date of the application, you had sought or received counselling, assistance or advice in respect of domestic violence;
- a letter or report from the Cayman Islands Crisis Centre confirming -
 - * that within the twenty four month period immediately preceding the date of the application, any party had been accommodated in a refuge;
 - * the dates on which that party was admitted to and, if applicable, left the refuge; *and*
 - * that the party was admitted to the refuge because of allegations by that party of domestic violence;

- a letter or report from the Cayman Islands Crisis Centre confirming –
 - * that a party was, within the twenty four month period immediately preceding the date of the application, refused admission to a refuge on account of there being insufficient accommodation available in the refuge; *and*
 - * the date on which that party was refused admission to the refuge;

- a letter or report from –
 - * the person to whom the referral described below was made;
 - * the health professional who made the referral described below; *or*
 - * a health professional who has access to the medical records of a party,

confirming that there was, within the twenty four month period immediately preceding the date of the application, a referral by a health professional of a party to a person who provides specialist support or assistance for victims of, or those at risk of, domestic violence;

- evidence of a relevant court order binding over a party in connection with a domestic violence offence, which is in force or which was granted within the twenty four month period immediately preceding the date of the application.

3. Protection of children

You confirm that in respect of a child who is the subject of your application that child, or another child of the family who is living with that child, is the subject of enquiries by the Department for Children and Family Services under section 50 of the Children Law (2012 Revision).

4. Urgency

You confirm that your application is urgent because

- there is risk to the life, liberty or physical safety of you or your family or your home; *or*

- any delay caused by attending a MIAM would cause –
 - * a risk of significant harm to a child;
 - * a risk of unlawful removal of a child from the Islands, *or*
a risk of unlawful retention of a child who is currently outside of the Islands;
 - * a significant risk of a miscarriage of justice;
 - * unreasonable hardship to you; *or*
 - * irretrievable problems in dealing with the dispute (including the irretrievable loss of significant evidence).

5. Previous MIAM attendance or MIAM exemption

You confirm that –

- in the 4 months prior to making the application, you attended a MIAM or participated in another form of non-court dispute resolution relating to the same or substantially the same dispute;

- at the time of making the application, you are participating in another form of non-court dispute resolution relating to the same or substantially the same dispute;

- in the 4 months prior to making the application, you filed a relevant family application confirming that a MIAM exemption applied and
 - * that application related to the same or substantially the same dispute; *or*
 - * the application would be made in existing proceedings which are continuing; or

- the applicant attended a MIAM in those proceedings;

- the application would be made in existing proceedings which are continuing; and a MIAM exemption applied to the application for those proceedings;

7. Other

You confirm that –

- ***(For proceedings for a financial remedy)*** At the first hearing you will be able to provide to the Court evidence that the applicant is bankrupt (see rule 8(4) for documents acceptable)

- You do not have sufficient contact details for any of the respondents to enable the family mediator to contact any of them for the purpose of scheduling a MIAM;

- You are applying without notice to the respondent(s);

- You or the respondent(s) are subject to a disability or another inability that would prevent attendance at a MIAM unless appropriate facilities can be offered by the family mediator; and you have contacted at least three family mediators and they have stated that they are unable to provide such facilities; and you are able to provide to the Court the names of those family mediators, their contacts details, and the dates on which you contacted them.

- You and/or the respondent(s) are in prison or are detained in another institution; or are subject to bail conditions which would prevent contact with the other person; or are subject to a licence which would prohibit contact with the other person;

- You or all of the respondents are not ordinarily resident in the Islands;
- One of the parties is a child;
- You have contacted at least three family mediators, and all of them have stated that they are not available to conduct a MIAM within 15 days of the date of contact, and you are able to provide to the Court the names of those family mediators, their contacts details, and the dates on which you contacted them.

Applicant's signature

Full Name (or name of Attorney)

Signature of Attorney

Dated

FAMILY MEDIATOR'S CERTIFICATE

This section only applies where an applicant has claimed that (s)he is exempt from attendance at a MIAM or confirms that (s)he has attended a MIAM.

A. MIAM exemption(s) apply(ies)

I am satisfied that the following MIAM exemption(s) apply:

- mediation is not suitable as a means of resolving the dispute because none of the respondents is willing to attend a MIAM; *or*
- mediation is not suitable as a means of resolving the dispute because all of the respondents failed without good reason to attend a MIAM appointment; *or*
- mediation is otherwise not suitable as a means of resolving the dispute.

B. Applicant has previously attended a MIAM

I confirm:

- the applicant only attended a MIAM;
- the applicant and the respondent(s) together attended the MIAM;
- the applicant and the respondent(s) have each attended separate MIAMs; *or*
- the respondent(s) has (have) made or is (are) making arrangements to attend a separate MIAM.

And I also confirm that mediation or other form of non-court dispute resolution is not proceeding because:

- ***the applicant has attended a MIAM alone and:***
 - * (s)he does not wish to start or continue mediation; or
 - * I have determined that mediation is unsuitable as a means of resolving the dispute.

• **both the applicant and the respondent(s) have attended a MIAM (separately or together) and:**

* the applicant does not wish to start or continue mediation; or

* the respondent(s) does (do) not wish to start or continue mediation; or

* I have determined that mediation is unsuitable as a means of resolving the dispute.

• **Mediation has started, but it has:**

* broken down; or

* concluded with some or all issues unresolved.

C. Following the information session, mediation is to be pursued.

Family Mediator's signature

Full name of Mediator

Address

Date



PRACTICE DIRECTION NO. 2 OF 2016

MEDIATION INFORMATION & ASSESSMENT RULES 2016

Introduction

Mediation of family disputes offers many advantages over resolution of disputes through the court. Consequently, the court actively monitors all family disputes to determine whether the couples concerned should attend a meeting with a family mediator to learn about the mediation process and the merits of mediation over litigation in court.

Although mediation is suitable for many family disputes, it is not suitable in all cases and the MIAM Rules provide for exemptions. It is also recognised that drug and/or alcohol abuse, and/or mental illness, are likely to prevent couples from participating effectively in mediation.

Summary

1. The purpose of this Practice Direction is to provide guidance in respect of the MIAM Rules and to set out good practice to be followed by respondents who are expected to also attend a MIAM.
2. Under the MIAM Rules it is now presumed that if a person makes certain kinds of applications (s)he will be ordered to attend a MIAM before continuing with the application. (A list of these applications is set out in Rule 6.) The respondent to the application is expected to attend the MIAM. The court has a general power to adjourn proceedings in order for non-court dispute resolution to be attempted, including attendance at a MIAM to consider family mediation and other options.
3. A MIAM is a short meeting that provides information about mediation as a way of resolving disputes. A MIAM is conducted by a trained mediator who will assess whether mediation is appropriate in the circumstances. A MIAM should be held within 15 business days of contacting the mediator.
4. There are exemptions to the MIAM presumption. They are set out in the MIAM Rules.

5. The effect of the MIAM presumption and the MIAM Rules is that a person who makes certain kinds of applications to the court must first attend a MIAM unless a ‘MIAM exemption’ applies. These exemptions are set out in Rule 8.

6. When making certain kinds of applications (see paragraphs 12 and 13 below), an applicant must therefore provide on the relevant form one of the following –

- (i) confirmation from a mediator that (s)he has attended a MIAM; or
- (ii) a claim that a MIAM exemption applies. An applicant who claims an exemption from the MIAM requirement is not required to attach any supporting evidence with his or her application, but should bring any supporting evidence to the first hearing.

7. If an applicant claims a MIAM exemption, at the first hearing the court will inquire into the exemption claimed. At the first hearing, the court may review any supporting evidence in order to ensure that the MIAM exemption was validly claimed. As set out in more detail below, if a MIAM exemption has not been validly claimed, the court may direct the applicant or the parties to attend a MIAM, and may adjourn proceedings for that purpose.

Background: Consideration of mediation and other non-court dispute resolution

8. The adversarial court process is not always best suited to the resolution of family disputes. Such disputes are often best resolved through discussion and agreement, where that can be managed safely and appropriately.

9. Family mediation is one way of settling disagreements. A trained mediator can help the parties to reach an agreement. A mediator who conducts a MIAM is an independent facilitator who can also discuss other forms of dispute resolution if mediation is not appropriate.

10. Attendance at a MIAM provides an opportunity for the parties to a dispute to receive information about the process of mediation and to understand the benefits it can offer as a way to resolve disputes. At that meeting, a trained mediator will discuss with the parties the nature of their dispute and will explore with them whether mediation would be a suitable way to resolve the issues on which there is disagreement.

The applications to which the MIAM presumption applies

11. The MIAM presumption applies to private law proceedings relating to children and proceedings for a financial remedy as set out in Rule 1.

Making an application

12. An application to the court in any of the proceedings specified above must be accompanied by the relevant court form which must contain either: (a) a confirmation from a mediator that the applicant has attended a MIAM; or (b) a claim by the applicant that a MIAM exemption applies (the list of MIAM exemptions is set out in Rule 8(1)).

13. The relevant form can be completed either by the applicant or his or her attorney. Any reference in this Practice Direction or in the Rules to completion of the form by an applicant includes a reference to completion by an attorney.

MIAM exemptions

14. Rule 8(1) sets out the circumstances in which the MIAM presumption does not apply. These are called MIAM exemptions.

15. In order to claim that a MIAM exemption applies, an applicant will need to complete the relevant form.

16. Applicants should note that some of the MIAM exemptions require that certain evidence is available. This evidence does not need to be provided with the application but applicants should bring such evidence to the first hearing because the court will inquire into such evidence in order to determine whether the MIAM exemption has been validly claimed.

Finding a family mediator

17. As set out in Rule 9, only a family mediator may conduct a MIAM. Under that Rule, a family mediator is a Grand Court judge who is assigned to the Family Division, or a Magistrate, or one of the persons or class of persons identified in the Schedule to this Practice Direction.

18. Further information about mediation including a list of family mediators and their contact details can be found at www.judicial.ky.

19. The expectation is that an applicant should be able to find a family mediator. As stated in Rule 8(1)(o) a MIAM exemption is available if –

- (i) the applicant has contacted at least three family mediators, and all of them have stated that they are not available to conduct a MIAM within fifteen business days of the date of contact; and
- (ii) the names, postal addresses and telephone numbers or e-mail addresses for such family mediators, and the dates of contact, can be provided to the court if requested.

20. The applicant will need to be prepared to produce at the first hearing the names, contact information and details of the dates of contact with the family mediators.

Attending a MIAM

22. Respondents are expected to attend a MIAM, either with the applicant or separately. A respondent may choose to attend a MIAM separately but this should usually be with the same family mediator.

23. The applicant should provide contact details for the respondent to a family mediator for the purpose of the mediator contacting them to discuss his or her willingness to attend a MIAM and, if appropriate, to schedule his or her attendance at a MIAM.

24. If the mediator contacts the respondent and determines that he or she is unwilling to attend a MIAM, an applicant should ask the mediator to confirm this as a ground for MIAM exemption in the relevant section of the application form, which should then be returned signed to the applicant.

MIAM exemption: Inquiries by the court

25. Where a MIAM exemption requires that an applicant supply certain evidence to support his or her claim to the exemption, (s)he should bring that evidence to the first hearing. At that hearing the court will inquire into that evidence to determine whether (s)he has a valid claim to that MIAM exemption.

26. The court may, if appropriate, adjourn proceedings where the applicant is unable to supply that evidence or it may give directions about how and when the applicant is to file such evidence with the court.

27. If the court determines that the applicant has not validly claimed a MIAM exemption, it may direct the applicant, or the parties, to attend a MIAM and may adjourn proceedings pending attendance at that MIAM.

Definitions

30. For the purpose of this Practice Direction the definitions in the MIAM Rules apply. Pursuant to Rule 1 of the MIAM Rules the Schedule to this Practice Direction sets out a list of family mediators who are not magistrates (or acting magistrates) or judges (or acting judges) of the Grand Court.

Hon. Anthony Smellie

Chief Justice

27th May 2016

SCHEDULE TO PRACTICE DIRECTION No 2 OF 2016

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