

# A Lawyers Guide to Judicial Case Conferences

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Brad Hunter K.C.

Family Mediator - Family Arbitrator

[SettleNow.Online](http://SettleNow.Online)

[brad@Settlenow.online](mailto:brad@Settlenow.online)

306-539-0254

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# The Judicial Case Conference

## Introduction

Effective November 1, 2022, “**FAMILY PRACTICE DIRECTIVE #7 MANDATORY PARTICIPATION IN A JUDICIAL CASE CONFERENCE BEFORE A CHAMBERS HEARING IS SCHEDULED**”, comes into effect. Essentially, all contested family law motions are subject to the Judicial Case Conference (JCC) Process in Regina and Saskatoon -it will affect your day-to-day practice and advice in a significant way

## Main Points

This summary is based on the Practice Directive, the Law Society CLE program (especially the PowerPoint) and a review of the forms.

Although called a practice directive this is a major and fundamental procedural change – treat FAM PD 7 as if it is a set of rules.

This is the most dramatic change to family law practice since the introduction of pretrial conferences in the 1980s. It is more fundamental than they were. It’s called a “pilot project.”

According to the Court:

“A Judicial Case Conference (JCC) is a form of Case Management Conference contemplated by Rule 4-4”

This is an evidence-less process.

Only your client can sign the Request for the JCC – not you.

The Court will direct how you bring your motion.

Judicial Case Conferences (JCCs) apply to cases under ***The Divorce Act***, ***The Family Property Act***, ***The Family Maintenance Act*** and the parenting provisions of ***The Children’s Law Act*** (parts 2 and 5, except Section 21 which deals with child protection cases) and all procedural matters as well. Essentially, if it’s DIV or FLD – JCC’s apply to your case

Subject to minor exceptions, **you cannot serve or file an Application nor an Appearance Day Notice nor file any affidavit material** until the JCC Judge allows you to proceed.

Three new roles are added to the Family Law System:

- a. The JCC DLR – a specially trained Deputy Local Registrar
- b. The FSO - Family Law Screening Officer (a lawyer)
- c. The Triage Judge

JCCs are screened at three levels:

- First by the JCC DLR or the JSO;
- Then the triage judge – if you fail here, you do not get to a JCC;
- Then by the JCC judge – who determines if, how and when your application can go ahead.

This applies in Regina and Saskatoon to FLD and DIV cases which are over 70% of family law cases in Saskatchewan.

There are 5 new forms, and you will need to file at least 3 additional forms in every application.

From beginning to end you will need to prepare a minimum of 14 documents to obtain an order.( not including proofs of service and other documents to be filed).

**IT MAY BE BETTER FOR YOU AND YOUR CLIENT TO USE  
MED/ARB OR ARBITRATION**

## exemptions

As a general rule – even if you are exempt, you will be required to file form PD7-1.

You still will likely end up at a JCC even if you can file without one.

### What are the exemptions?

1. If you are not going to chambers. You simply issue your petition.
2. If you are seeking variation of a final order (form 15-26)<sup>1</sup> – you will need to file form Fam PD 7-1 as part of your application and the Court will likely use some form of JCC management process or apply the same principles.
3. Outside of Regina and Saskatoon Judicial Centres – the Court will expect one of the parties to be connected to that other judicial centre
4. Adoptions, MEO matters, dependants' relief, family services and other relief under different legislation are exempt – a detailed list is at the end.
5. Applications Without Notice on substantive issues (form 15-34), – e.g. an emergency application concerning parenting, exclusive possession of the family home – there needs to be a threat of immediate harm. **BUT** – the Court is likely to place you in the JCC system from that point forward. File form Fam PD 7-1
6. Applications without Notice on procedural issues such as substitutional service, waiver of filing of property or financial statements. File Form Fam PD 7-1
7. Uncontested matters – i.e. if you have a consent order. File form Fam PD 7-1

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<sup>1</sup> Also the rarely used Corollary Relief Application

The 5 new forms:

(links will follow)

FORM FAM PD #7-1 CERTIFICATE OF COMPLIANCE WITH PRACTICE DIRECTIVE #7	You will need to file this for any matter heading to chambers, even if no JCC is required.
FORM FAM PD #7-2 REQUEST FOR A JUDICIAL CASE CONFERENCE	The main document you will prepare.  If this is not done correctly or you have missed something, you will not go to a JCC but receive directions.
FORM FAM PD #7-3 JOINT REQUEST FOR A JUDICIAL CASE CONFERENCE	If both parties can agree to go a JCC – the triage judge will still review.
FORM FAM PD #7-4 NOTICE OF JUDICIAL CASE CONFERENCE	The Court prepares this and you arrange service.
FORM FAM PD #7-5 JUDICIAL CASE CONFERENCE APPEARANCE MEMO	Filed two days before each JCC hearing.

You will complete the forms in the following order:

1. Fam PD 7-2 (or Fam PD 7-3 if there is a joint request)
2. Fam PD 7-5 – the Appearance Memo
3. Fam PD 7-1 Certificate of Compliance

## The Process

### Step 1 Form Fam PD 7-2 REQUEST FOR A JUDICIAL CASE CONFERENCE and a DETAILED ORDER

To bring an application:

Serve the other party with:

1. Form Fam PD 7-2 Request for a Judicial Case Conference **and** a Detailed Order
2. File no earlier than 3 days after service.
3. If you or your client is served with form Fam PD 7-2 and wish to seek your own relief, you need to:
  - Serve Form Fam PD 7-2 and a detailed order - there is no specified time frame to reply.

### Step 2 –The Court reviews the Fam PD 7-2

1. The Fam PD 7-2 JCC application is reviewed:
  - by the JCC DLR or the FSO
2. They “screen, review and seek directions from the assigned triage Judge” with respect to the form Fam PD 7-2.
3. At least once a week the triage judge reviews the Fam PD 7-2 and

**Either:**

- If the matter is not ready to proceed to a JCC, the triage Judge will provide additional directions to the requesting party/parties by way of endorsement to the file. It comes back to you with directions (unclear if the other party gets the directions).

**Or**

- If the matter is ready to proceed, the Court will issue a Notice of Judicial Case Conference – FORM FAM-PD7-4.

### Step 3 Serve The Fam PD 7-4 Notice of Judicial Case Conference

1. This is prepared by the Court and signed by the screening officer.
2. You are required to serve this form on the other party.
3. Unless otherwise ordered, it must be served on the other party Notice of Judicial Case Conference at least 7 days before the JCC.
4. File proof of service with the Court.

### Step 4 File FORM Fam PD 7-5 JUDICIAL CASE CONFERENCE APPEARANCE MEMO

at least two days before the JCC

Step 5 Attend the JCC

1. This is before a KB Judge.
2. The Court sets the date – Thursday afternoons or Fridays.
3. You must attend in person, although there is the ability to request to appear by phone.
4. Purpose/Agenda:
  - Have the rules been complied with? (This will also be dealt with at step 2.)
  - Should you use an ADR process instead – even if there has been mediation?
  - Can the issues be simplified?
  - Set dates for completion of steps.
  - Case management
  - Resolve practice, procedural or other issues.
  - How can the case be resolved?

It's a combination of managing the motion and trying to resolve it. Remember, this is all without evidence

What the judge can do:

1. Make a procedural order.
2. Make a substantive order with consent.
3. Schedule another JCC.
4. Set a Chambers date together with management directions including setting issues, deadlines, materials to be filed, and time limits for oral arguments.
5. Set summary judgment date.
6. Order pretrial.

Step 6 – File FORM FAM PD7-1 CERTIFICATE OF COMPLIANCE WITH PRACTICE DIRECTIVE PD7-1

- Not clear if this must be served.
- File With your application and affidavits.

## Getting Past the Triage Judge

The first challenge is to get through the first step: review by FCO, and the Triage Judge.

I suspect a checklist will be used. Hopefully the Court will share that with the Bar so lawyers can prepare properly.

The Court wants to ensure that all rules and requirements are met. Essentially, if something is incomplete, it is highly unlikely you will get to a JCC and the matter will be returned to you for further steps and perhaps refiling.

The most obvious points of failure are as follows:

**Failure to attend Parent Education.** This is mandatory. If you are bringing relief with respect to children, the Court is prohibited from dealing with matter except in unusual cases. The Court in the past has been lenient in enforcement. I expect this will end. Also, it is easy for your clients to comply.

**Mediation.** Again, this is mandatory. You should file the Certificate of Participation. Often at the outset, mediation has not happened and you do not have one. Explain in form PD72 all the extensive efforts you have undertaken to have the other party participate in mediation. It may be appropriate to apply for waiver of mediation under **The Queens's Bench Act** s44-01(6)(d) (where "the party provides proof of attempts to engage the other party in family dispute resolution.) You better have adequate grounds to show the other party is evading or is not responding to mediation. One simple letter will not do it.

**Financial Statement.** This needs to be completed properly and specifically. I expect the review process will include an expectation that you have:

1. three complete tax returns (not summaries);
2. notices of assessment;
3. three recent paystubs.

**An attempt to settle.** Even if your client has completed the mediation process, there is an expectation that you have attempted to negotiate a settlement of the matters at issue in the application.



## Completing form Fam PD 7-2

The draft form contains 19 paragraphs to complete and is five pages long in blank.

Justice Goebel in the CLE presentation indicated that this should be completed with great care. Please note filing evidence or affidavits is strictly prohibited.

The following paragraphs are the ones to prepare with most care:

### **Paragraph 3 Relief**

In this paragraph you are to indicate both the type of relief you are requesting and the particular relief you are requesting. Is it procedural or substantive? Interim or final? Variation of an interim or final order? In addition, you are required to file a "detailed" proposed order.

You may wish to include an order with respect to mediation if that has not taken place at this point. It is referred to later in the form as well. I would put it in twice.

### **Paragraph 4 Timing**

Is this time sensitive? If so explain.

### **Paragraph 5 The Facts**

There is to be a brief summary of the facts, I assume, around the application. There is no ability to file an affidavit. Obviously, you need to put enough facts in to indicate what the issue is, including if it is urgent. This needs to be brief but detailed – I appreciate the contradiction.

### **Paragraph 6 - Legal Basis**

What are your legal grounds for seeking the relief? You should quote the statute, rule and likely case authority that you are seeking for the court to apply.

### **Paragraph 8 Resolution Attempts**

What efforts have you made to resolve out-of-court? Obviously, you cannot include without prejudice discussions. However, you can indicate when you made proposals and whether responses were received.

### **Paragraph 14 Mediation**

If you're seeking an exemption for mediation this is where to explain.

### **Paragraph 18 Your Chosen Dates**

The date is set by the Court. This is your chance for input.

## Responding to an Application for a JCC

The first question is whether you should apply with your own motion.

If not, you simply need to file form Fam PD 7-5.

The danger in doing that is that form Fam PD 7-5 does not have the detail that form Fam PD 7-2 has and you will be disadvantaged at the hearing where the submissions made by the other party will be far more detailed than yours. Again, there is no evidence.

As well, you may want to file your own draft order and likely you may wish to engage the JCC process on behalf of your client to better protect them.

It's not in the Practice Directive but was in the PowerPoint of the Court that you should file your own Fam PD 7-2 within three days and let the Court know when you are available for the JCC.

## The JCC hearing

These will be held on Thursday afternoons and Fridays. You are expected to show up in person unless you receive leave to appear by phone.

At a practical level, my assumption is that you will attend of at least two JCCs. At the first one there will be questions about document production, affidavits to be filed, trying to sort out the issues and the Court may direct you to try again. It is possible you could come to a settlement.

Justice Goebel indicates the following as to what to expect:

“ Be prepared to answer questions and advocate for your client on the following:

- Are the parties in substantial compliance with the Rules?
- Are the parties in substantial compliance with statutory requirements?
- Be prepared to identify areas of consensus and issues in dispute
- Be prepared to identify the legal and statutory grounds for pursuing the relief sought
- Be prepared to discuss the appropriate process for resolving the issues in dispute
- Be prepared to speak to potential chambers dates, filing deadlines and limits with a view to ensuring that the contested application matter will be ready to proceed on the merits “

I look forward to hearing the experiences of lawyers once the JCC system starts.

## Checklist of Documents

Assume that you have a new client who wants parenting determined and support set in the interim. Property is also an issue. The couple has not been able to settle. The following documents will need to be prepared and filed on behalf of your client:

### Documents to prepare and file

1. Petition
2. Property Statement
3. Financial Statement with disclosure attached
4. Notice to Attend Parenting After Separation
5. Notice to File Financial Statement
6. FAM PD7-2 REQUEST FOR A JUDICIAL CASE CONFERENCE
7. Detailed order
8. FAM PD7-5 JUDICIAL CASE CONFERENCE APPEARANCE MEMO
9. FAM PD7-1 CERTIFICATE OF COMPLIANCE WITH PRACTICE DIRECTIVE 7
10. Application
11. Detailed Order
12. Affidavit
13. Family Chambers Appearance Notice
14. Order

This assumes that you only attend one JCC, one Chambers date and file one affidavit.

You may be required to file an additional two documents together with all financial disclosure.

15. Certificate of Attendance at Parent Education
16. Certificate of Participation in Mediation
17. In addition, proofs of service (4?)

## How long will it take?

From the date of service, you are prohibited from filing for 3 days.

The Court will review matters weekly. Given that there will be a two-step process with an initial review by a Court official and a secondary review by a judge, let's say it will take 7 seven days to guarantee the matters is reviewed.

The earliest date for a JCC to be set is 7 days, except in exceptional circumstances.

I assume that whatever the judge's decision it will take the clerk a couple of days to finalize the fiat. Add 2 more days.

Rather optimistically, it seems the minimum time frame, from service of the JCC to being able to serve your motion is 19 or 20 days and likely longer. This is not an abridgement of the time for service of the application, and you will have to add a minimum of 14 days.

## Cost

Obviously, this significantly increases the front-end cost for your clients. How much extra will this result in a charge to your clients to get through this stage?

After a while you will likely develop a system that will take a few hours to complete the application properly. The wildcard is how often you will be required to attend at a JCC and how long you will have to wait. If you attend 2 or 3 JCCs each taking an hour to from the time you leave your office until you get back another 3 to 6 hours of billable time will be charged each client.

The working assumption of the court is that this should reduce the amount of time you spend on the motion saving your client costs there.

## Alternatives

More than ever consider **Mediation-Arbitration** or **Arbitration**.

Schedule "A"

FAM-PD #7 does not apply to any other proceedings.

For instance, it does not apply to proceedings brought pursuant to the following Acts:

- The Inter-jurisdictional Support Orders Act
- The International Child Abduction Act, 1996
- The Child and Family Services Act
- The Enforcement of Maintenance Orders Act, 1997
- The Adoption Act, 1998
- The Homesteads Act, 1989
- The Victims of Interpersonal Violence Act
- The Dependents' Relief Act, 1996