

First directions appointment 1

For most people, the first appearance at court in relation to their divorce will be the first directions appointment. This is referred to by lawyers as an FDA.

You will be nervous. Try not to be. No one can make you come to an overall agreement about your finances at that hearing if you don't want to.

If you have a lawyer, their job is to do the talking for you. Sometimes a judge will ask a party who has a lawyer a question directly, but usually you will not have to say anything in open court. If you do not have a lawyer, try to keep your worries under control. Most judges are very aware of the fact that people who represent themselves are nervous and will bend over backwards to put them at ease.

The first important aspect of a successful FDA is to be prepared. Being prepared could mean having a lawyer to represent you if you can afford it or even just taking a lawyer's advice so you have some idea of what you are trying to achieve. On the other hand if you are representing yourself you will need to focus more on preparing yourself.

The next point relates to the day of the hearing. My firm advice is to turn up early. The order from the court listing the case may have instructions telling you to get there an hour early. If it does not, get there early anyway. There is a tremendous advantage to arriving early, checking in with the usher and finding a decent place to wait. Take something to read. If you tell the usher where you are going to be, they can tell the other side where to find you.

The main reason you want to arrive early is you need to have a discussion with the other side before you go in front of the judge. If you don't do this there will be a number of consequences:

- The judge will be disappointed that the two sides have not had a chance to narrow the issues properly;
- You will lose the opportunity to see what the other side are saying and to consider what you will say about it;
- There is a risk that the court hearing won't be as effective as it could be.

If you are representing yourself and there is a lawyer on the other side that is bound to be a concern, but console yourself with the following:

- Believe it or not there are actually quite a few decent people who become lawyers. The vast majority of solicitors or barristers don't go to court to be rude to anyone.
- They know that if they were rude to someone representing themselves, the judge might well find out about it.
- They also usually want to have a sensible discussion with the person on the other side to see if there is any chance of the case being settled.

Talking to the lawyer on the other side will give you an advantage. It will help you understand what they are saying about the case. Of course you will take what they are saying with a pinch of salt, because they are putting their side's case forward as best as they can, but you will be better informed when you go in to the hearing.

Talking to the lawyer on the other side also provides your best chance of settling the case and preventing the case dragging on. When cases take longer to finish than they should you suffer unnecessary stress and cost. If you can try and get on with the lawyer on the other side it will help you. Never be deceived by appearances. Just because the other side are putting the case on behalf of your former spouse, it doesn't mean they believe in what they are saying. If your former spouse is being unreasonable, there is every chance that behind the scenes their lawyers are trying to persuade them to see reason. If you come across as reasonable they may make a real effort to achieve settlement.

So what happens before the first directions appointment?

Both sides are supposed to file a form E, that's a standard form document in relation to their finances, no less than 35 days before the first appointment. Court timetables are very important. If you miss important dates you put yourself at a disadvantage. You firstly give the other side something to complain about. Secondly you put back the timetable, because as we are going to see things happen in these cases in a particular order. Thirdly if things are not done in time it can create a risk of the court ordering you to pay some legal costs.

The form E documents are meant to be used by both sides as a basis for preparing some documents for the first directions appointment. These are important documents. Each side is supposed to prepare:

- A concise statement of issues;
- A chronology
- A questionnaire which is supposed to be constructed with reference to the statement of issues
- A notice (in Form G) in relation to whether the hearing can be used for a Financial Dispute Resolution Appointment.

I'm going to tell you briefly about what these documents should look like. The questionnaire is more complicated so I will describe that separately.

Chronology

A chronology should be between 1 and 2 pages. It can start off with the parties' dates of birth so the court knows how old they are. It should also include dates of birth of the children, when you were married and when you were separated. There can then be listed other important dates in relation to the finances and the divorce. For example when the court pronounced a decree nisi. Also when someone inherited a sum of money or when the matrimonial home was bought. Chronologies are often padded out by things which don't really help: when a form E was served for example. The events in the chronology should be dates which make a difference.

Statement of issues

A statement of issues is supposed to be informed by the financial statements which have been provided by both sides (the Form Es). Remember the court is considering the finances. It is rare for the conduct of either party to be taken into account, so the reasons for the divorce are not usually issues the court will be interested in considering. The statement of issues is not an opportunity for a party to express their dislike of the other side. Judges are generally annoyed by parties who wish to sound off and are much more likely to respect parties who confront the actual financial issues.

The issues are likely to be based on the factors set out in section 25 of The Matrimonial Causes Act 1973. That is the Act of Parliament which sets out what things a court has to take into account when it is deciding how to make financial orders on divorce. A common statement of issues on behalf of a Wife might for example include reference to:

- The value of a property and whether there should be any valuations undertaken;
- The values of other assets;
- Whether there are any other properties which the Husband has an interest in;
- Whether the debts stated by the Husband are indeed owed by him and if they are, whether they are matrimonial debts or not;
- The true level of the Husband's income, with reference to the information he has supplied with his Form E;
- What the Husband's true earning capacity is;
- In an unusual case, whether there is any relevant conduct which should be taken into account;
- What the Husband's financial needs are, e.g. in relation to housing;
- Whether the former matrimonial home should be sold or whether it should be retained;
- Whether the court should give any weight to the fact that some of the property is inherited;
- Whether the Husband should pay spousal maintenance and for how long;
- Whether there should be a pension sharing order and whether there should be a report from an expert about this;

Notice in form G

The idea behind the Family Procedure Rules is that financial remedies proceedings are dealt with at 3 hearings:

- FDA (First Directions Appointment);
- FDR (Financial Dispute Resolution Appointment); and,
- Final hearing

Before parties attend an FDA they have to file a Form G setting out whether they think the hearing can be used instead as an FDR. An FDR is a hearing where a judge hears from both sides and sets out what they would do if they were deciding the case. It is an opportunity

for the parties to see what a judge, who comes at it from a neutral stand-point would do. The judge's indication is supposed to "grease the wheels" of negotiation.

For FDA purposes you need to be in a position to say whether you would like the court to treat the hearing as an FDR. Clearly if an effective FDR can take place there is a chance that the parties could:

- Save money on legal costs by having 2 hearings rather than 3; and
- Get the case finalized more quickly with a saving in costs and stress.

On the other hand many cases are not suitable for having the FDR at the FDA:

- There may be a significant dispute about the value of the assets;
- There may be questions that the parties want answered before considering their position;
- There may be an important dispute of fact, for example whether a house which is in someone else's name actually belongs to one of the parties;
- The parties may want to go away and further consider their position.

Ultimately if a party does not wish to have an FDR at the first directions appointment no one can force them to.