

Re F: Litigants in Person Guidelines (2001) FLC 93-072; [2001] FamCA 348 (4 June 2001) – Full Court of the Family Court of Australia

‘Contact orders’ – ‘Guidelines for matters involving self-represented litigants’ – ‘Parenting orders and effect on children’ – ‘Self-represented litigants’

Appeal type: Appeal against parenting and contact orders.

Facts: While not a case specifically dealing with family violence, there is a large proportion of self-represented litigants in family law proceedings and as such the guidelines set out in this case pertain.

Issue/s: Did the trial judge contravene the guidelines in respect of the litigants in person set out by the Court in *Johnson v Johnson* (1997) FLC 92-764?

Reasoning/Decision:

The Full Court provided guidelines as follows (taking a number from *Johnson v Johnson* (1997) FLC 92-764):

1. A judge should ensure as far as is possible that procedural fairness is afforded to all parties whether represented or appearing in person in order to ensure a fair trial;
2. A judge should inform the litigant in person of the manner in which the trial is to proceed, the order of calling witnesses and the right which he or she has to cross examine the witnesses;
3. A judge should explain to the litigant in person any procedures relevant to the litigation;
4. A judge should generally assist the litigant in person by taking basic information from witnesses called, such as name, address and occupation;
5. If a change in the normal procedure is requested by the other parties such as the calling of witnesses out of turn the judge may, if he/she considers that there is any serious possibility of such a change causing any injustice to a litigant in person, explain to the unrepresented party the effect and perhaps the undesirability of the interposition of witnesses and his or her right to object to that course;
6. A judge may provide general advice to a litigant in person that he or she has the right to object to inadmissible evidence, and to inquire whether he or she so objects. A judge is not obliged to provide advice on each occasion that particular questions or documents arise;
7. If a question is asked, or evidence is sought to be tendered in respect of which the litigant in person has a possible claim of privilege, to inform the litigant of his or her rights;
8. A judge should attempt to clarify the substance of the submissions of the litigant in person, especially in cases where, because of garrulous or misconceived advocacy, the substantive issues are either ignored, given little attention or obfuscated. (*Neil v Nott* [1994] HCA 23; (1994) 121 ALR 148 at 150);
- 9.

Where the interests of justice and the circumstances of the case require it, a judge may:

- > draw attention to the law applied by the Court in determining issues before it;
- > question witnesses;
- > identify applications or submissions which ought to be put to the Court;
- > suggest procedural steps that may be taken by a party;
- > clarify the particulars of the orders sought by a litigant in person or the bases for such orders.

The above list is not intended to be exhaustive and there may well be other interventions that a judge may properly make without giving rise to an apprehension of bias.