

The background features abstract, overlapping green geometric shapes in various shades, including light lime green, medium green, and dark forest green. The shapes are primarily triangles and polygons, creating a dynamic, layered effect. The text is centered on a white background within this composition.

the way you do the things you do

Therese Catanzariti, 13 Wentworth Chambers

outline

- ▶ Initial client conference
- ▶ Negotiations before commencing proceedings
- ▶ Preparing the client for commencing proceedings
- ▶ Preparing for the first directions hearing
- ▶ Disclosure – notices to produce and subpoena
- ▶ Registrar mediation / private mediation / settlement conference / judicial settlement conference
- ▶ Preparation for trial
- ▶ Costs

initial client conference

- ▶ managing expectations - realistic outcomes
 - ▶ not *fair* - and what you think is fair is not what they think is fair
 - ▶ not *what you deserve*
 - ▶ not *compensation for bad treatment or a reward for services*
 - ▶ not *equal between the three children*
- ▶ why are they doing this
 - ▶ financial stress
 - ▶ vindicate position as a child, as a spouse
 - ▶ standing up to the family bullies

negotiations before commencing proceedings

- ▶ check underlying source documents
- ▶ ensure statements in letter are consistent with source documents
- ▶ risk if inconsistent with affidavits and source documents

- ▶ ensure informal settlement conference not destroy right to mediation

- ▶ may still need commence proceedings to formalise agreement as a court order

preparing client for commencing proceedings

- ▶ manage client expectations - realistic outcomes
- ▶ warn that will be stressful, go in with eyes open
- ▶ warn that may destroy family relationships
- ▶ warn that other parties may come “out of the woodwork”
compulsory service other eligible persons
- ▶ don't have to go all the way to trial - natural jump off points
 - ▶ before commence proceedings
 - ▶ after mediation

need to commence proceedings

- ▶ limitation period
- ▶ already out of time
- ▶ benefit of order being a codicil
 - ▶ Centrelink
 - ▶ Family law
 - ▶ Capital gains tax
 - ▶ Stamp duty

preparing for the first directions hearing

- ▶ Justice Hallen's associate's email - try to confirm consent orders
- ▶ related matter - notify associate so matters can run together
- ▶ e-file before first return date PL affidavit, costs affidavit, NOE
- ▶ ideally, defendant para 9 affidavits - don't need PL affidavit
- ▶ be prepared with potential mediation dates

disclosure notices to produce and subpoena

- ▶ wait for the affidavits
- ▶ notice to produce is cheaper - they may have the documents
- ▶ what are their vices?
 - ▶ Hopeless with money - bank statements, credit card statements
 - ▶ Gambling - BetEasy statements, membership cards then subpoena
 - ▶ Drinking - bank statements, credit card statements
 - ▶ Online shopping - Paypal account, Amazon account, credit card statement
 - ▶ Undisclosed / Missing assets (trust distributions, shares, bank accounts) - tax returns

alternative dispute resolution

- ▶ not persuading the court - negotiating with the other side
 - ▶ the enemy is the person you are negotiating with
 - ▶ don't file nasty affidavits until *after the mediation*
- ▶ negotiated result may be very different from court result
 - ▶ residual personal goodwill
 - ▶ character
 - ▶ stress / can't go on to hearing
 - ▶ legal blackmail - costs to go further not proportionate
- ▶ manage client's stress
 - ▶ bring snacks and medication and have lunch
 - ▶ friend / partner attend or available on phone
 - ▶ plan something positive to do after the mediation

alternative dispute resolution

- ▶ *Settlement conference*
- ▶ relying on the expertise and experience of other side counsel + solicitor
- ▶ there is no-one else in the room

- ▶ *Court annexed mediation*
- ▶ mediator scrupulously impartial and no pressure
- ▶ no fees for mediator or room

- ▶ *Private mediation*
- ▶ more flexibility of time
- ▶ choose mediator that works for the particular parties / dispute

preparation for trial

- ▶ costs turbo-charge

pre-trial directions, court book, transcript, submissions, valuations

Its always more expensive than you think

- ▶ warn client

they will not be found out as liars - they are speaking their truth

you can't tell the judge your side of the story

- ▶ warn client

The first day is objections and really boring

costs

- ▶ the costs don't automatically come out of the estate!!
- ▶ negotiate on a costs inclusive basis
- ▶ except person under legal incapacity
- ▶ difference between party/party and indemnity
- ▶ early offer better than late offer because of costs