Family Law Interim Hearings

This fact sheet summarises the Ask LOIS webinar on this topic, presented Gabrielle Craig, Senior Solicitor, Women's Legal Service NSW on 21 July 2016.
This webinar can be viewed for free at www.asklois.org.au/webinars/past-webinars.

This factsheet looks at:

What is an interim hearing?

Interim hearings usually happen early on in family law proceedings.

At an interim hearing you are asking the court to make interim orders. These are temporary orders made by the court until the court can look at all of the evidence and make a final decision.

To start the court process one of the parties needs to file:

- an Initiating Application; and
- an affidavit

In an Initiating Application you need to tell the court the Final Orders you are seeking and what Interim Orders you would like.

If you have been served with an Initiating Application you need to file:

- a Response; and
- an affidavit.
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In your Response you need to tell the court what the Final Orders you are seeking and what Interim Orders you would like.

There are a wide range of orders that the court can make in an interim hearing. These might include:

- an order for supervised time;
- an order that one or both parties undertake urinalysis; and/or
- an order that a child be returned to a particular location.

It is **possible but unlikely** that the court will make an order about parental responsibility.

It is very important to get legal advice as early on in the proceedings as possible!

The best interests of the child

At an Interim Hearing the court will make a decision based on the best interests of the child. The law divides the relevant considerations into "primary" and "additional" considerations.

Primary Considerations - s 60CC(2) Family Law Act

A. The benefit to the child of having a meaningful relationship with both of the child's parents; and
B. the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

S 60CC(2A) – the court is to give greater weight to protecting the child from harm than having a meaningful relationship with the parents.

Additional Considerations - s 60CC(3)

A. Any views expressed by the child.
B. The nature of the relationship with of the child with each parent and other persons (such as grandparents).
C. The extent to each parent has taken and not taken to participate in making major decisions regarding the child, time spent and communication with the child. Also the extent to each parent fulfilling their obligation to maintain the child.
D. The likely effect of any changes in the child's circumstances including the effects of separation.
E. The practical difficulty and expense of a child spending time with and communicating with a parent.
F. The capacity of each parent and any other persons.
G. The maturity, sex, lifestyle (including tradition) and background of the child and of either of child's parents.
H. For Aboriginal or Torres Strait Islander children only: the child's right to enjoy his/her culture and the likely impact of parenting orders.
I. The attitude to the child and the responsibilities of parenthood, demonstrated by each of the parents.
J. Any family violence involving the child or a member of the child's family.
K. Any family violence order that applies to the child or a member of the child's family.
L. To make the orders that would least likely to lead to further court proceedings.
M. Any other fact or circumstance that the court thinks its relevant.

Evidence

At an Interim Hearing the primary piece of evidence will be your affidavit. It is unlikely that you will have to give oral evidence or be cross-examined. An affidavit is a sworn statement provided by a witness in a matter. It contains that persons evidence in chief. An affidavit is a very important document.In family law proceedings someone's evidence in chief is given by affidavit evidence and in interim proceedings it might be the only evidence available. An affidavit is the primary way that someone tells the court their story so it is very important that it includes all the information that they want to tell the court that is relevant to the proceedings.

An affidavit should include numbered paragraphs.
There should also be clear headings.
There are rules about formatting. These can be found in the *Family Law Rules* 2004.

Generally each party to an application should provide one affidavit. Witnesses can also provide one affidavit provided that the information is relevant and cannot be given by a party to the proceedings.

If your client is needing to prepare an affidavit, they should look at the s 60CC factors relevant to their matter, address each and link back to what they're seeking.

Where there's been family violence, give specific detail in about in your affidavit!

It is also important that your affidavit is focused around the orders that you are seeking. For example, if you are seeking an order that a parent undergo urinalysis you will need to have set out the evidence that supports the necessity of this order in your affidavit.

There are special forms for affidavits in family court proceedings. The form will depend on whether proceedings are commenced in the Family Court of Australia or the Federal Circuit Court. You will find the forms on the Family Court of Australia website at familycourt.gov.au.

If there is other evidence you may be able to use it e.g. something that has been produced on subpoena, so make sure you tell the court about it if you think it is relevant!

There are other things that you can do to assist the court:

- Prepare a chronology
- Prepare a Case Outline (summary of your argument)

Make sure you have multiple copies of any documents that you want to use (you will need at least three – one for each party and one for the court).