

Preparing Affidavits in the Family Law Context



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Jessica Hannam, Solicitor, Women's Legal Services NSW on 4 August 2015. This webinar can be viewed for free at www.asklois.org.au/webinars/past-webinars.

This factsheet looks at:

- What an affidavit is
- What goes in an affidavit
- Tips on putting an affidavit in the correct form
- Dos and don'ts
- Dealing with family violence

What is an affidavit?

- An affidavit is a sworn statement provided by a witness in a matter. It contains that person's evidence in chief.

When will you need to file an Affidavit?

- When parties commence court proceedings an affidavit will need to be filed with an Initiating Application.
- A party filing a Response to an Initiating Application will also need to file an affidavit.
- Parties also generally are required to provide updating consolidated affidavits before a hearing.

Where do I find the right form?

- There are special forms for affidavits in family law 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 each court's websites: www.familycourt.gov.au and www.federalcircuitcourt.gov.au

Why is an affidavit important?

- 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.

Legal Advice

- It is very important that some one gets legal advice before they file an affidavit!

Should a client swear or affirm an affidavit?

- A client can either swear an oath or affirm the truth of the affidavit.
- If someone believes in God then they may chose to swear and oath.
- If they do not believe in God or would prefer not to swear an oath they should make an affirmation.
- It is very important to make sure you do this properly and actually ask your client these questions. They will be asked to make an oath or an affirmation when they are giving evidence. It should be taken seriously, it is the first impression the court will have credibility and can be an embarrassing error if the client is cross-examined on this point.

Who should be present when drafting an affidavit?

- It is important that other potential witnesses are not present when you are drafting an affidavit with a client to avoid any potential concerns regarding collusion.

Rules and format

- 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](#) and the [Federal Circuit Court Rules 2001](#) (depending which court you are in).

Who should provide an affidavit?

- 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.

What information should I include?

- Paragraphs in an affidavit in family law parenting proceedings should be in chronological order and should address the [Section 60CC Family Law Act 1975](#) best interest factors.
- It is also important that your affidavit is focused around the orders that you are seeking.

Example: if you are seeking an order for sole parental responsibility you will need to make sure you have included information that forms the basis of this application by including evidence about things such as family violence and reasons why it might be difficult to communicate or conflict around major decisions such as those about education, culture, health, schooling and religion.

Language

- It is important to remember that an Affidavit is your client's own evidence. It is important that their own words are used. We can assist our client's to articulate what they are trying to say but it will be very obvious where a lawyer is using their own words. Remember your client will be cross examined on their affidavit so they will need to know and understand it.

Can I attach documents to the affidavit?

- Relevant documents can be annexed to an affidavit. Things that you might want to attached could include things like:
 - copies of AVOs;
 - copies of text messages or emails;
 - photographs (e.g. of injuries);
 - copies of school reports;
 - legal correspondence.
- In the body of the affidavit when after referring to a document you should include a statement to the following effect:
"Annexed and marked "A" is a true copy of the Final Apprehended Domestic Violence Order made 10 January 2014 at Penrith Local Court."

Striking out objectionable material

- The court may strike out material that is:
 - inadmissible;
 - unnecessary;
 - irrelevant;
 - unreasonably long;
 - scandalous or argumentative; or
 - sets out the opinion of a person who is not qualified to give it.

Family Violence

- It is very important that details about family violence is included in the affidavit. Evidence should be as detailed as and specific as possible. Include dates, times, places where events occurred and who was present.



Useful Tips

- **Be accurate:** It is important that you check the information and facts before you include them in the affidavit.
- **Be specific:** For example, if you are making allegations that the other parent drinks excessively include details about this. Explain how often, how much, what they drink and whether they drink in front of the children.
- **Don't exaggerate!**

Further resources

- [Federal Circuit Court Affidavit](#) forms and information
- [Family Court Affidavit](#) forms and information
- Factsheet: [Preparing an Affidavit](#)