

How to run your family law case

Representing yourself at a final hearing

January 2013

Who should use this fact sheet?

Use this fact sheet if you had legal aid for your family law **case** and your lawyer helped you draft your court documents and prepare you for your final **court hearing**. You now plan to represent yourself in court. When you arrive at court, tell the judge's associate that you are representing yourself.

What do these words mean?

Words that are highlighted in **bold** the first time they appear are explained in the Family Law Courts' fact sheet *Legal words used in court*. See the Family Law Courts website.

How should I prepare?

Notice of Address for Service

Your lawyer will have helped you complete a *Notice of Address for Service*. This document notifies the court and the other side that you now will be self represented. You must file this document at court and send a copy of this, after it has been stamped by the court, to the other **party** to the case.

Case summary documents

Your lawyer will have helped you prepare your case summary documents, which should include:

- a list of the issues of the case. For example, religious or education issues, any allegations of **family violence** or child **abuse**, or the views of older children
- the **court orders** you want the court to make
- a list of the **affidavits** you want to rely on and you want the court to read
- a list of any other evidence you want to use (such as witnesses, documents and **subpoenas**).

This tells the court what things the parties might disagree on and the evidence each party wants to use.

Watching another case

Before your court case, it will help you to go to the court and watch how a case works. Ask at the counter and get permission from the court officer to watch a hearing.

How should I behave in court?

Some things to remember when you are in the courtroom:

- look neat and tidy
- bow to the judge or federal magistrate when you enter the court room
- stand when the judge or federal magistrate talks to you
- stand when you talk to the judge or federal magistrate

- refer to the judge or federal magistrate as 'Your Honour'
- never talk when someone else is talking at the bar table
- sit down when someone else is talking at the bar table
- turn your mobile phone off
- do not wear a hat or sunglasses on your head
- do not eat or chew gum.

Will my hearing be formal or informal?

Your final hearing will be heard in the Family Court of Australia or the Federal Magistrates Court (soon to be called the Federal Circuit Court of Australia).

Currently, if your case is heard in the Family Court it is called a 'trial' and is heard by a judge. Cases in the Federal Magistrates Court are heard by federal magistrates and are called 'hearings'. Soon in both courts the person hearing the case will be called a judge.

Your court case will proceed in one of two ways:

- **formal court proceedings**
- **informal proceedings** (called 'Division 12A of the *Family Law Act 1975* cases').

The judge or federal magistrate will let you know if your case is to proceed formally. Usually hearings about children proceed informally unless the judge or federal magistrate decide otherwise.

Formal court proceedings

What happens in a formal court proceeding?

The judge or federal magistrate will tell you who does what and when. Usually, a case will proceed in this order:

- the **applicant** speaks first and makes their **opening address**
- the applicant gives their **evidence in chief** by calling on their first witness. Usually this will be the applicant
- the **respondent cross-examines** the witness
- the applicant gets the chance to **re-examine** the witness to clarify any evidence that is unclear or incomplete
- the applicant calls their next witness if they have one. This witness gives evidence, they are cross-examined, and re-examined if necessary. This process is repeated until all of the applicant's witnesses have given evidence
- the respondent gives an opening address. They call witnesses to give evidence that is cross-examined and re-examined like the applicant's witnesses
- the applicant and respondent give **closing addresses**.

Where do witnesses wait?

All witnesses must wait outside the courtroom until they are called in to give evidence. The court officer will call out their names when they are needed. Make sure your witnesses are at court when needed.

What is an opening address?

An opening address is a statement to the court by each party at the beginning of their case. The applicant and respondent (and **independent children's lawyer** if there is one) will:

- say what orders they wish the court to make
- briefly outline evidence that supports their case.

What is evidence in chief?

Evidence in chief is the evidence you want the court to consider. It is included in your affidavit and your witnesses' affidavits. It sets out your side of the story.

When it is your turn to give evidence you can ask the judge or federal magistrate if you can take a copy of your affidavit, and pen and paper, with you. You will then take an 'oath' or 'affirmation', which is where you promise to tell the truth. Remember that everything you say in court will be recorded.

If you want to change anything in your affidavit, such as mistakes or typing errors, tell the court now. You may need to prepare an updated affidavit or you may be allowed to give this information from the witness box.

You must go through this process with all your witnesses. Ask each witness at the beginning of their evidence if they remember affirming their affidavit, and if it is true and correct. Generally the court allows only one affidavit per witness.

What is cross-examination?

Cross-examination is where you ask the other party about their evidence. Your questions should try to show the court that the other party's story is wrong or weak.

If you want to challenge the evidence in an affidavit, you need to give the other party notice that their witness must come to court for cross-examination. Do this by letter, once the date for trial has been set. Bring a copy of the letter to court.

See the fact sheet *How to prove your family law case*.

What is re-examination?

Re-examination happens after witnesses have been cross-examined. This gives the witness a chance to explain things further. The witness cannot give the court new information or go back to earlier evidence during re-examination.

What is the closing address?

The closing address happens at the end of the case, after all witnesses have given their evidence. The applicant and respondent (and independent children's lawyer, if there is one) give the court a summary of the main points and evidence of their case.

In your closing address try to convince the court why it should make the orders you want. Refer to the relevant parts of the Family Law Act and any case law that supports your argument. Case law is law made from specific cases that have gone before the courts.

Informal proceedings (Division 12A)

The judge or federal magistrate decide:

- what evidence will be used and how the court will use it
- what documents must be **filed** or **served** by either party
- which witnesses will be used, the issues they can give evidence on and when they can do so
- the order of questions and how they are asked
- whether subpoenas will be issued and the documents (or witnesses) to be subpoenaed.

In all cases evidence is given by an affidavit (including evidence from expert witnesses). Evidence by other witnesses can be given in person or by telephone or video-link if the judge or federal magistrate allows it.

During the hearing you will have the chance to give evidence, cross-examine and re-examine just as you would in formal proceedings. You might not make an opening address but you will usually make a closing address to sum up your case.

More information

Family Law Courts

See the court website for publications about court processes, case law, legislation and other legal material

www.familylawcourts.gov.au

Federation of Community Legal Centres

Call to find your nearest community legal centre

Tel: 9652 1500

Law Institute of Victoria

Referral to a private lawyer

Tel: 9607 9550

Where to find the law

Comlaw

The *Family Law Act 1975* and Family Law Rules 2004 are on www.comlaw.gov.au

Victoria Legal Aid

Legal Help

Free legal help by telephone and information about Victoria Legal Aid services

Tel: 9269 0120 or 1800 677 402 (country callers)

Public law library

The library is open to the public. Librarians can help you locate legislation, case law or other legal material

Tel: 9269 0232