

THE IMPORTANCE OF “THE AFFIDAVIT”

Commencing litigation should always be used as last resort in family law matters, unless you need urgent Court Orders to protect your/your children’s interests.

However, if you do end up in litigation, the most crucial document which you can file with the Court is your affidavit in support of the Orders which you seek. This applies to both property and children’s matters.

Particularly with regards to children’s matters, where your matter is at an interim hearing stage only, as you will not be giving evidence in the witness box at an interim hearing, your affidavit is one of the most important pieces of evidence the Judge will rely on when making a decision at an interim level. It is therefore absolutely crucial, that you prepare an affidavit which is as helpful to the Judge as possible. Below are some of our helpful hints as to what you should keep in mind when preparing your affidavit (the list is not exhaustive):

- (a) If you are representing yourself, if at all possible, raising funds so as to pay a family law specialist to draft your affidavit would be well worth your while;
- (b) A family law specialist will always know what information needs to be included in an affidavit and what information should not be included;
- (c) What you will often want included in your affidavit, and what your solicitor advises you should be included, are often two very different things. If you have retained a family law specialist, always go with their advice;
- (d) Remember, the affidavit is a document which is to contain evidence as to events which have taken place, not a document which should contain opinion/conclusions which you have formed about the matter/other party;
- (e) Where possible, include documentation such as medical reports, school reports, financial documents etc as annexures to your affidavit so as to support your allegations/statements;
- (f) Make sure that the affidavit reads well, is not long winded, and that you do not contradict yourself throughout the affidavit;
- (g) Refer to the relevant sections of the legislation where appropriate;
- (h) As the affidavit is the document you will be relying on to convince the Judge to give you the Orders you seek, make sure all relevant evidence pursuant to the legislation/case law is included. The Judge cannot make the Orders you seek if there is no appropriate evidence before the Judge so as to allow him/her to make such Orders;
- (i) If necessary, have your solicitor prepare supporting affidavits by third parties and have those affidavits form part of your case. Your solicitor will advise you as to whether any third party affidavits are required;
- (j) In parenting matters do not denigrate the other party and turn the affidavit into an “attack” on them as a parent/person. There is a skill to drafting your affidavit whereby any concerns you may have about the other parent, appear in the affidavit in

a context which is helpful to the Judge. More often than not, a sure way of losing your parenting case is to file an affidavit which consists of pages and pages of denigration of the other parent;

- (k) Do not lie in your affidavit. If you are caught out in a lie, the Judge is likely to dislike you and not believe anything you have to say which could cost you your case.

Given the importance of “the affidavit” in family law litigation, it is not a document that you should “skimp” on preparing, either in time or in cost. You have the best possible chance of success if you retain a family law specialist to not only prepare your affidavit, but act on your behalf throughout the proceedings. Where you do not have the financial means to retain a solicitor, keep the above points in mind when drafting your own affidavit material.

Oner Family Law can assist with all your family law needs. Contact us for more information.