How To Draft An Affidavit

In family law, an Affidavit is the main way you give your evidence. Generally, whenever you file an Initiating Application or an Application in a Case, you must also file an Affidavit in support of that application.

There are some rules you need to know about how to draft (write) an Affidavit so that it is acceptable to the Court and the contents of it are admissible (allowed) to be relied on.

What do you put in there? Some facts about facts.

Only put facts in your Affidavit. A fact is something you know to be true. It's something that happened to you or in your presence. A fact is not what your neighbour said (hearsay), it's what you said. If your neighbour said or did something factual and relevant to your case, then they might need to put that in their own Affidavit.

A fact should preferably be able to be proven - for example: it's a fact to say you paid the phone bill from your own bank account on a particular day. If you need to prove this, you can produce the bank statement showing the payment.

Facts must be relevant to the issues. Think about what you are asking the Court to do. If you are asking for a Divorce order (you generally won't need to file an Affidavit for Divorce unless there is a fact in dispute like the date of separation) you will only put facts into your Affidavit that are relevant to this issue.

For example, your spouse claims that you separated from a particular date, but you know this is not the case. You know you were still together as a couple at and after this time as you attended events together or you were still sharing a bed, a bank account and the household chores. Only facts relevant to this issue and these events should go in your Affidavit.

Facts are not emotive. While the circumstances surrounding a relevant fact or event may well be very emotive, an Affidavit is not the place to vent your anger/hurt/contempt or hatred for your spouse. Avoid using emotive words, exaggeration or lots of adjectives to describe the event.

For example, don't say "He always viciously screamed blue murder at me and the poor little kids"; instead say "He often yelled at the children and I". If you recall particular relevant key words or phrases, then include them in quotation marks. For example: On one occasion he yelled at me "You're just a filthy bitch! You're worthless!"

Facts are not opinion. Your opinion is not a fact. Under rules of evidence, only Court accepted "expert witnesses" are allowed to express their opinion in an Affidavit or verbal evidence given in Court. Expert witnesses are professionals like family report writers, valuers, psychologists and doctors and they must only give their opinion within their area of specialisation.

How do you write it?

The main keys to a well written Affidavit are clarity, chronology and conciseness.

Clarity. Write in simple clear terms. Use your own words - don't try to use "herewith" and "verily believe" if that's not how you normally speak (and I'm betting you don't come out with this at a BBQ). Just state the facts - dates, times and how you know things.

Chronology. Generally, most Affidavits are best written with events (facts) in chronological order and starting with the date. Things occur in order and they make more sense if they're written that way too. It makes it much easier for the Court to follow (and be persuaded) and it's the simplest way to tell your story - " X date, this happened. As a result, on Y date I responded with that."

It's only when writing more detailed and complete Affidavits like for a final trial that it can be better to break up the chronology into subjects or topics and group all relevant facts under these headings.

Conciseness. Use as few words as possible to get your message across. No-one wants to read pages of waffle.

Remember - if it's not relevant to the issue to explain something in great detail, then don't.

Following the Rules

Both Courts that deal with family law matters, the Family Court of Australia and the Federal Circuit Court, has their own set of forms and Rules on how things have to be done. Some of these forms and Rules overlap, many don't. It can be very confusing.

Family Law Tool Kits will provide you with instructions on the procedures applicable to your specific matter and circumstances - we'll take care of making sure you're following the right Rules and using the right Court forms.

Some Rules about Affidavits are universal.

1. **Fonts.** Affidavits should be typed in at least a 10pt basic font, but preferably 11 or 12pt. Use Arial or Times Roman. Lines should be spaced at 1.5 lines (not single) spacing.
2. **Numbering.** Each paragraph in the Affidavit must be sequentially numbered. Try to make each paragraph about a particular fact or event. If you need to include dot points to make your message clearer using less words, then these should be indented and use letters like this:
    a. here's how you include dot points within your Affidavit paragraphs;
    b. this way, each point can be specifically identified and referred to.
3. Each page must be sequentially numbered.
4. **Annexures.** If it is necessary to include any documents to support the facts stated in the Affidavit, they will need to be attached to the Affidavit (after the last page) with a cover sheet. These are called "Annexures" and should also be page numbered.
    a. Where the fact appears in the content of the Affidavit, you must refer to the Annexure with the following words: *"Attached hereto and marked Annexure-1 is a true copy of [the document description]"*. You can replace "Annexure-1" with your initials followed by the -1 if you prefer, e.g. "JFB-1" for Joe Frank Bloggs.

b. Family Law Tool Kits provide Annexure cover sheets for the Courts with the correct wording on them which reads: *"This is the document referred to as [Annexure number] in the Affidavit of [deponent's name] sworn/affirmed at [place] on [date] before me [witness name, signature and qualification]."*

c. The Annexure cover sheet must be signed at the same time by the same witness as for the Affidavit itself.

5. **NOTE:** all Affidavits in support of applications for interim orders in the Family Court are limited to a maximum of 10 pages in total. Annexures are not to be attached and filed with the Affidavit for these hearings, but must be served the other party(s) with the Affidavit and handed up (tendered) to the judge on the day of the hearing.
6. **Address for Service.** The block of contact information that appears at the bottom of page 1 must appear only on the bottom of that page. This contact information is collectively known as the "address for service". Documents for "normal service" will be considered to be "served" on you if mailed to that address. "Personal service" where required will be by delivering documents to that address and being left with you or someone over the age of 18 at that address.
7. **Witnessing.** All other pages (except for the last one) must leave room at the bottom of the page to be signed by the deponent (the person making the Affidavit) and the witness.
8. The last page must contain the "jurat" - a block of text that has room for the deponent's signature as well as the name, signature and qualification of the witness to the deponent's signature. Suitably qualified witnesses are:
    a. a lawyer;
    b. a Justice of the Peace;
    c. a Commissioner for Declarations; or
    d. a Notary Public.
9. Any alterations to the Affidavit (after printing it out) must be initialled by the deponent and the witness.
10. Do NOT sign the Affidavit until you are in the physical presence of the qualified witness. They must see you sign it.
11. **Service.** Once properly witnessed, the Affidavit (and any Annexures) needs to be filed with the Court and a "sealed" copy (one which has the Court seal stamped in the corner) must be served on all parties. Family Law Tool Kits will walk you through this stage in separate instructions, depending on your circumstances.

If you use all of these tips and rules, you're more likely to produce a good, short and fact-rich Affidavit. This will help your case by getting straight to the point and having nothing in there that might be stuck-out as inadmissible.

Please download some of our worked examples of a Federal Circuit Court Affidavit. Seeing a typical sample should help you understand exactly how to do it right.