How to Build a Strong Case: Evidence Strategies and Traps

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"I can take it.... The tougher it gets, the cooler I get."
Richard Milhaus Nixon

This paper gives some insight into the steps to prepare and present an application to a Family Law Court of the highest standard from the ground up.

The first step in building a strong case

1. Compose a case theory from the very outset of the matter, including the proposed orders, the evidence in support and how case is to be presented. An effective case theory is:

    a. Based on convincing facts and inferences that can be fairly drawn from those facts;

    b. Largely built on facts not subject to much, if any, dispute;

    c. Is consistent with any incontestable fact;

    d. Takes into account and explains away as many unfavorable facts as possible;

e. Not based on unrealistic or theoretical arguments.

f. Believable.

2. Preparing an effective case theory involves:

    a. Preparing a comprehensive chronology of facts (which will be added to and amended along the way);

    b. Analyzing the case from a practical perspective by asking:

        i. What is the essential problems for your client needs solved?
        ii. What relief is available under the Family Law Act to address those problems?
        iii. Identify any propositions or unifying principle that the facts of your case suggest.
        iv. Identify the elements your need to argue the matter or resist the application by your opponent; and
        v. Work on countering the arguments that you expect your opponent will raise.

3. Draft appropriate orders; see **Appendix "A"** for a guide.

A practical guide to drafting an affidavit.

4. Your affidavits should also be drawn paying attention to the rules of Evidence and the Rules of Court. They form the foundation of the case you are seeking to present. Your client's affidavit is a bit like a reference book for the judge to use when arguing your case. I am using this analogy as reference books are a practical way to quickly locate the information you need. Judges expect concise, relevant and straightforward affidavits that are easy to reference and manage. Here are a few things to avoid as they will irritate the judge dealing with your matter.

5. When you consider how many affidavits a judge reads in a week let alone in a month it is easy to understand how poorly drafted material not only irritates them, it distracts them from the case you are trying to present.

6. Your affidavit evidence should be limited to facts that prove the elements of your client's claim. The evidence needs to address the requirements of the law upon which you rely. For example if there is a claim for property settlement it will be necessary to include evidence that establishes each of the relevant elements of sections 79 or 90SM of the Family Law Act.

7. By doing this the evidence directly relates back to the application rather than leaving it to the judge to sift through the affidavit trying to figure out whether the basic elements of the claim have been established. Approaching it this way will make your affidavit(s) much more useful to the Court and more likely to be persuasive.

8. Clients often come to you with boxes of documents and "statements" that list more grievances than facts. Resist the temptation to "pad out" the affidavit with this material just to appease the client. No matter how much a client wants to include irrelevant details of their past life history you should never include them.

9. To this end Rule 15.13 of the Family Law Rules (2004) provides that:

> (1) The Court may order material to be struck out of an affidavit if the material:
>
> (a) is inadmissible, unnecessary, irrelevant, unreasonably long, scandalous or argumentative; or
>
> (b) sets out the opinion of a person who is not qualified to give it.
>
> (2) If the Court orders material to be struck out of an affidavit, the party who filed the affidavit may be ordered to pay the costs thrown away of any other party because of the material struck out.

Rule 15.29 of the Federal Circuit Rules is similar:

> (1) The Court or a Registrar may order material to be struck out of an affidavit at any stage in a proceeding if the material:
>
> (a) is inadmissible, unnecessary, irrelevant, prolix, scandalous or argumentative;
> (b) contains opinions of persons not qualified to give them.
>
> (2) Unless the Court or a Registrar otherwise directs, any costs caused by the material struck out must be paid by the party who filed the affidavit.

10. There is also available to the Court a more general power in sec 135 of the Evidence Act (1995). The Court may refuse to admit evidence if its probative value is substantially outweighed by the danger that the evidence might:

11. This is an age old problem and examples of irrelevant and prolix affidavits can be found as far back as ***Ensabella and Ensabella (1980) FLC ¶90-867***, where the respondent to a parenting application complained that the applicant had filed an affidavit in which irrelevant material had been set out at length and in which material that was only of marginal relevance had been dealt with at excessive length. Fogarty J held that the affidavit had been "grossly unreasonable". The Court considered the amount of costs to which the husband had been put in replying to that lengthy affidavit and assessed the affidavit as being at least 50% too long and accordingly ordered the wife to pay one-half of the husband's costs of preparing his affidavit in reply which took 21 hours of conference time. Somewhat amazingly, in 1980 a 43 page affidavit was considered to be of excessive length.

Events described out of a logical sequence

12. Setting events out in an affidavit in a random or disorganised way is usually a product of how it was first assembled. As new information is obtained, due to time pressures, it is simply tacked on to the end without consideration about how this affects the readability and integrity of the whole document. Because the affidavit in interim proceedings is usually prepared in a rush the final product can be quite disordered.

13. Put simply, affidavits out of a chronological and/or logical sequence are hard to follow for anyone who is unfamiliar with the story your client is trying to tell. Because of the way we process information it becomes necessary for the reader to sort the events into a logical sequence to make sense of it. The judicial officer's time being wasted as this exercise should have been undertaken before the document was created rather then when it is first read at the hearing.

14. The risk is that important information will be missed or ignored by the bench because of the unnecessary effort required to sort out facts and events in the affidavit(s).

The most important rules of evidence when drafting an affidavit

Inadmissible material and material in bad form

15. Judges routinely read affidavit material with a view to its admissibility under the Rules of Evidence; it is after all a fundamental part of our legal training. Affidavits in financial proceedings that are full of rhetoric, speculation or unqualified opinions and which are not supported by

admissible facts invariably are given little weight so when a judge says something like: *"I'll allow it subject to weight"* you know you are in trouble.

16. It may sound obvious but your client's evidence must be relevant. Sec 55(1) of the Evidence Act provides that that evidence is relevant if it could rationally affect (directly or indirectly) the assessment of the probability of the existence of a fact in issue in the proceeding. You should resist demands by clients to add material that is irrelevant and/or intended to be offensive to the other party.

17. For cases that do not fall within Division 12A (child related proceedings), the rules of evidence strictly apply. Do not quote hearsay unless it falls within one of the recognised exceptions including:

(a) Sec 60: Evidence admissible for a non hearsay purpose.

(b) Sec 63 in civil proceedings, first hand hearsay if the maker is not available.

(c) Sec 64: in civil proceedings, first hand hearsay if the maker is available.

(d) Sec 67: requires reasonable notice in a specified form to be given in writing to the other party of the intention to adduce hearsay evidence.

(e) Sec 68: provides the method of objecting to notice of an intention to adduce hearsay evidence.

(f) Sec 69: business records

(g) Sec 71: telecommunications and electronic mail.

(h) Sec 72: contemporaneous statements about a person's health.

(i) Sec 73: marriage, family history or relationships.

(j) Sec 74: public or general rights.

(k) Sec 75: they are interlocutory proceedings (information and belief).

(l) Sec 78: lay opinions of what a person saw, heard or otherwise perceived which is necessary to obtain an adequate understanding of their perception.

(m) Sec 81: admissions.

(n) Sec 87(2): representations about employment or authority.

(o) Sec 91: sets out a general rule to exclude evidence of a decision or finding of fact in prior proceedings. This evidence is not admissible to prove a fact that was in issue in those proceedings.

(p) Sec 92(3): creates exceptions relating to evidence of some judgments (eg: grants of probate) or convictions in civil proceedings.

(q) Sec 93: creates further exceptions as to defamation, a judgment in rem, res judicata or issue estoppel.

18. Try to restrict the contents of affidavits as much as possible to the facts that have been seen and heard at first hand by the deponent. Avoid argumentative material whose place is in submissions not in an affidavit. Avoid unqualified opinions which offend sec 177 of the Evidence Act and the Court Rules referred to above.

Child-related proceedings – Division 12A – sec 69ZT

19. If the proceedings are child-related proceedings then many of the rules of Evidence do not apply. This is explained in **Appendix "B".**

Child-related Contravention proceedings

20. Contrary to popular belief sec 69ZT applies to contravention proceedings- ***Caballes and Tallant [2014] FamCAFC 112*** (Strickland, Ryan and Kent JJ) where the Full Court said that all proceedings wholly under Part VII (including proceedings under Division 13A [Contravention]) are child-related proceedings (paras 84 to 86).

Limit the length of your affidavits

21. On 1 January 2018 a new practice direction concerning interim hearings commenced in the Federal Circuit Court as set out below. It is reproduced at **Appendix "C".**

22. One of the changes is that unless express leave is granted by the Judge into whose docket the matter has been allocated, affidavit material in support of an interim application must not exceed 10 pages in length for each affidavit or contain more than 5 annexures.

23. There are certainly times when it may not be possible to confine an affidavit to just 10 pages and leave will have to be sought However in the majority of situations with discipline and ingenuity you can focus only on the essential evidence to support the orders you are seeking.

Limit the number of witness affidavits

24. There is no point filing four witness affidavits who all say much the same thing. Quantity does not equate to quality. Having witnesses making the same point over and over again does not necessarily make it more convincing. It is the content of your witnesses' evidence, in particular whether it is probative to the issues, that counts.

Annexures and Exhibits

Important changes to Affidavits in the Family Court since 1 March, 2018

25. Apart from the restrictions on annexures in the Federal Circuit Court there is an important change to affidavits filed on the Family Court. Annexures have been prohibited in the Family Court since 1 March 2018. Exhibits that are to be relied on must be referred to in the body of the affidavit and tendered separately. Hard copies of any document intended to be used in conjunction with an affidavit and tendered, must be served on the other party contemporaneously with the affidavit but not filed with the affidavit.

26. However the prohibition of Annexures does not apply to the affidavits of single experts and adversarial experts appointed pursuant to Divisions 15.5.2 or 15.5.3. This includes expert reports from valuers and private Family Report writers.

27. The prohibition on Annexures does apply to evidence of other professional witnesses as defined in Rule 15.41(1), such as treating medical practitioners.

28. There are many other rule changes not directly relevant to the topics in this paper but which for completeness, are summarised in **Appendix "D"**.

Preparing an effective Exhibit Book

28. Exhibits are more flexible than annexures in many respects, particularly when placed in a folder with numbered tabs and numbered pages. Use of and reference to the tabs make an exhibit to an affidavit very convenient to use. I cannot over emphasise how important it is to number all the pages of exhibits.

29. The affidavit should clearly identify what it is and where it is. In this way a reference to the exhibit can "index itself" by referencing the relevant pages of the exhibit; for example:

> *Exhibited to me and marked **"ZH5" (pages 35 to 41)** is a true copy of income tax return for the 2016-2017 financial year.*

30. I suggest that the reference to the exhibit ought to be underlined and the exhibits identifier should be in bold as should the relevant pages.

This may sound pedantic but it makes locating references to exhibits in affidavits infinitely quicker and easier for the judge and Counsel.

31. Best practice would be to tab the Exhibit Book as well. If not, a contents or index on the first page of the Exhibits Book provides ease of reference for the bench.

Witness preparation

32. If your client has never before given evidence they enter the witness box totally unprepared for what is to come. We all know that it will be a rude shock. I suggest that you explain to your client the process of the hearing, openings, objections and that firstly the applicant and witnesses give evidence in chief, are cross examined and re-examined. Explain that this is repeated for the respondent and witnesses and then how final submissions work.

33. With regard to giving evidence I suggest witnesses be advised to:

    a. Always tell the truth Your evidence must come from your own memory and personal experiences, not those of other people.

    b. Address the judicial officer correctly: Judges are addressed as "Your Honour" and Registrars are simply addressed as "Registrar".

    c. Listen to the question: Ask for the question to be repeated or re-phrased if you do not understand it.

    d. Stop answering if there is an objection

    e. Speak slowly and clearly

    f. Keep it short and do not guess the answer if you do not know or cannot remember.

    g. It is not a memory test: Generally you can ask to see your affidavit if you think it will help you remember something although the judge sometimes may not allow it.

    h. Remain courteous. Do not argue with the questioner. Never speak over or interrupt the judge.

Subpoenas

34. Subpoenas are often an underutilised forensic tool. The decision about what to seek via a subpoena must be linked back directly to the orders you seek. That means that you work your way through the factors that need to be established and give thought to whether documents can be produced on subpoena that will help.

35. Remember always that sometimes issuing subpoenas can be a 2 edged sword and may inadvertently assist the other side. They may contain unexpected information or fail to include information that you would have expected.

36. Be economical and careful when seeking documents to be returned on subpoena. It is unwise to inundate a judicial officer with pages and pages subpoenaed material in a hearing for the reasons I have previously discussed. Limit it to material only that will make a difference. Tab and number the pages with stickers.

37. If at all possible, get the subpoena returned before the hearing date. It is also very important to make notes ahead of time about facts or records produced so that they are readily available to be identified and tendered. Copies, if permitted, are a very good idea.

Notices to Produce

38. Notices to Produce can be useful not just to obtain evidence from the other side, as you may make submissions to the Court about what they have not produced as well. A Notice to Produce should be served well ahead of the hearing date so that complaints are not made about insufficient time to produce.

39. Rule 15.76 of the Family Law Rules (2004) provides that:

> (1) A party may, no later than 7 days before a hearing or 28 days before a trial, by written notice, require another party to produce, at the hearing or trial, a specified document that is in the possession or control of the other party.
>
> (2) A party receiving a notice under subrule (1) must produce the document at the hearing or trial.

40. By way of contrast Rule 15A.17 of the Federal Circuit Rules does not state time limits:

(1) A party may, by notice in writing, require another party to produce, at the hearing of the proceeding, a specified document that is in the possession, custody or control of that other party.

(2) Unless the Court otherwise orders, the party given notice to produce must produce the document at the hearing.

41. Notices to produce typically ask for a "kitchen sink" of documents. It makes much more sense to consider exactly what you need and ask only for that. For example asking for every receipt for purchases at a supermarket covering the last 24 months is unlikely to be as helpful as getting the tax returns and assessments of the other party from the date of cohabitation to date.

Obtaining Tax Returns via Freedom of information

42. Invariably and understandably parties often say that they have not kept all of their taxation returns going back many years. However in financial proceedings they are absolutely essential in my view, particularly those that cover the period of the relationship. For example if a party claims that they made all the mortgage payments for 15 years and yet their average assessable income was $20,000 per annum they are bound to be in trouble.

43. I am told that It is possible to obtain Tax Returns through freedom of information going back 50 years or more and after obtaining the signature of the other party the form can be lodged with the Australian taxation office to get copies. Often the other party will resist and at some interlocutory stage you may have to seek an order requiring the other party to complete and sign the form and return it to your office.

44. It is also possible to obtain other documents out of the reach of subpoenas by freedom of information. Anyone who has dealt with Centrelink will have a file and that file can be released to them via a freedom of information application. The same procedure outlined for tax above applies here.

45. Overseas financial records can often (but not always) be obtained by the other party signing an authority addressed to the institution concerned. Here is an example of the husband's solicitor seeking wife to sign an authority:

Authority to "Name of Bank and Department"

at Address

I, name of wife or (address)

I am (or was) an account holder with your bank.

My former husband and I are involved in proceedings before the (name of court) in Australia.

I authorise you to provide to (name of husband's lawyers), the solicitors for my former husband (at their expense) all documents and information requested by them in the attached letter.

Please forward same as promptly as possible.

Signed & dated etc

Miscellaneous strategies and traps

46. There are 3 questions you should ask your opponent before the matter is called on:

    a. What orders and directions are you seeking today?

    b. Do you have a copy of your case outline for me? and

    c. Could you show me what you are tendering and/or showing my client?

47. Part of building an effective is to anticipate the arguments that the other side are proposing to run and then working out how to counter their arguments. One of the first steps is to know what documents they propose to rely on and to show witnesses in the case. Surprisingly many people are unaware of Court rules that are of great assistance.

48. The issue of disclosure could occupy a paper 5 times the length of this one, however there are some strategies concerning disclosure (or lack of it) that can be very effective at a hearing. Rule 13.14 of the Family Law Rules provide as follows: [1]

[1] Emphasis added

FAMILY LAW RULES 2004 - RULE 13.14

Consequence of non-disclosure

If a party does not disclose a document as required under these Rules:

(a) the party:

(i) must not offer the document, or present evidence of its contents, at a hearing or trial without the other party's consent or the Court's permission;

(ii) may be guilty of contempt for not disclosing the document;

(iii) may be ordered to pay costs; and

(b) the Court may stay or dismiss all or part of the party's case.

Note 1: Under rule 15.76, a party who discloses a document under this Part must produce the document at the trial if a notice to produce has been given.

Note 2: Section 112AP of the Act sets out the Court's powers in relation to contempt of Court.

In summary, if your opponent tries to use a document they have not disclosed to you beforehand it cannot be used in the trial without your consent.

Whilst the Federal Circuit Court does not have a similar rule, you can still write to the other side indicating that you require disclosure of the documents they propose to use at trial and that if you do not that your client will oppose the use of any document not disclosed.

Balance Sheets

A lot of time is wasted at Court attempting to come up with an agreed balance sheet or some sort of compromise document. This wastes Court time and diverts resources away from the real contest. If at all possible the process of putting an agreed balance sheet together should commence several weeks before the trial. When sending a draft balance sheet to the other side I would suggest that routinely you request that they make no changes to your column without your consent but that if they wish to add items that this be clearly indicated, for example in a different colour.

Default Concessions

Colleagues often complain to me about a lack of response from their opponent to correspondence seeking concessions. There is a simple solution

- include this as the last line of your letter:

"Please note that in the absence of a response by (deadline) our client will be conducting his/her case on the basis that your client has made the concessions sought herein."

You then get a response nearly every time.

Conclusion

Building a strong case requires ingenuity and diligence. Hopefully you can apply some of my suggestions to do just that and conduct your cases in a more efficient and effective way.

Richard Maurice
March, 2018

APPENDIX "A"

A Guide to Drafting effective orders

1. The first step is to identify with some precision the power(s) the Court will rely on to make the orders you are seeking. You might have to amend your orders to comply the Court's rules, jurisdiction or powers.

2. You ought to formulate a set of orders that resolve or contain your client's immediate financially related problems for interim proceedings. Interim proceedings should always be focused upon finding fast and relatively uncomplicated solutions to problems that need immediate attention. The orders of necessity will be short term and of limited scope. Applications for interim orders should not replicate the final orders sought by your client. Final orders should be comprehensive.

3. I cannot overemphasise how important it is to ensure clarity and effectiveness for any Family Law orders so that the parties understand what it is they are required to do without the need for orders to be interpreted.

4. If the orders require technical action, eg: something in the nature of accounting or corporate governance, make sure you seek advice from a qualified person about the form of the order so that it can actually be carried out lawfully and is effective in its terms.

5. The orders you draft should be "in personam"; that is imposing an obligation on one or more than one of the parties to do or not to do something. If a person or entity might be affected by an order you seek it would be wise to serve a copy of your Court Application and affidavit(s) upon them even if they are not a party and you do not seek orders against them. An example would be serving the co owner of real estate owned with spouse party.

6. Consider including orders in the alternative to increase your options.

APPENDIX "B"

Summary of the effect of sec 69ZT of the Family Law Act on the Rules of Evidence in parenting proceedings

Pursuant to sec 69ZT(1) the following parts of the Evidence Act do not apply in parenting cases .[2]

Part 2.1

a. Parties being able to question any witness.

b. The order of examination-in-chief, cross examination and re-examination.

c. Manner and form of questioning witnesses and their responses.

d. Attempts to revive memory in Court (being limitations on a witness's ability to rely on a document when answering questions).

e. The effect of calling for production of documents in Court.

f. Compelling someone in Court to be examined without subpoena or other process.

g. Rules against leading questions.

h. Rules about cross examining unfavourable (hostile) witnesses.

i. Usual limits on re-examination.

j. Rules about prior inconsistent statements of witnesses.

k. Rules about previous representations (statements) of other persons.

l. Production of documents relating to prior inconsistent statements or previous representations.

[2] I have excluded parts of the Evidence Act not relevant to Family Law cases

Part 2.2

m. Strict method for proving the contents of documents including voluminous or complex documents and foreign documents.

n. Rules when judge conducts a view.

Part 3.2

o. Rules against Hearsay including all the exceptions.

Part 3.3

p. Rules about Opinion evidence including all the exceptions.

q. Rules concerning admissions particularly as they relate to the rules against hearsay and opinions.

Part 3.5

r. Rules excluding the use of judgments and convictions to prove facts.

Part 3.6

s. Rules limiting tendency and coincidence evidence.

Part 3.7

t. Credibility Rule and exceptions (ie: that evidence that is relevant only to a witness's credibility is not admissible).

Comments by Richard Maurice:

- *Some subsections of sec 69ZT(1) are the very important when drafting an affidavit. The most significant exemptions from the rules of evidence (from the point of view of drafting) are found in Part 3.*
- *Sec 69ZT(2) allows the Court to give such weight to evidence admitted by sec 69ZT(1) as it thinks fit; see: Amador & Amador (2009) 43 Fam LR 268.*
- *Sec 69ZT(3) allows the Court to re-impose the rules of evidence in certain circumstances; see: Maluka & Maluka (2011) FLC 93-464*
- *Sec 69ZT applies to Contravention applications in parenting matters.*
- ***Sec 56 of the Evidence which makes only relevant evidence admissible still applies***

APPENDIX "C"

Federal Circuit Court of Australia – Practice Note for Interim Family Law Proceedings which came into effect on 1 January 2018

Part 1 Preliminary

1. This Practice Direction sets out arrangements for the management of interim proceedings in the family law jurisdiction in the Federal Circuit Court of Australia.

2. This Practice Direction commences 1 January 2018 and supersedes the following Information Notices:

Notice to Litigants and Practitioners – Interim Proceedings- Adelaide Registry;
Notice to Litigants and Practitioners – Interim Parenting Proceedings – Sydney, Newcastle and Canberra Registries.

3. The conduct of proceedings in the Court is governed by the Federal Circuit Court of Australia Act 1999 and the Federal Circuit Court Rules 2001. Consistent with its legislative mandate, the Court applies the rules of Court flexibly and with the objective of simplifying procedures to the greatest possible extent.

4. It is expected that parties and their representatives will assist the Court to ensure that proceedings are conducted expeditiously and consistently with the objectives of early identification of the issues in dispute requiring adjudication and the efficient use of judicial resources.

Commencing proceedings

5. Proceedings in the Court are commenced by an Initiating Application supported by an affidavit. Interim orders may be sought at the time of filing an Initiating Application for final orders or during the proceedings by way of an Application in a Case. Applications for any interim orders must be supported by an affidavit. In financial matters they must also be supported by a financial statement or an affidavit of financial circumstances.

6. Pursuant to section 51 of the Federal Circuit Court of Australia Act 1999 the Court directs that, unless express leave is granted by the Judge into whose docket the matter has been allocated, affidavit material in support of an interim application must not:

- exceed 10 pages in length for each affidavit;
- contain more than 5 annexures.

Interim hearing

7. The Judge determines whether to conduct an interim hearing on the first return date of an Initiating Application, or Application in a Case. The Judge will also determine whether to deal with all or part of the application and/or the Response as filed.

8. Any interim hearing will be conducted as an abridged process with a circumscribed scope of inquiry. Only those issues, specifically identified by the Judge as the subject matter of the interim hearing, will be dealt with.

9. The relevant facts to be relied on by a party at an interim hearing must be set out succinctly in their affidavit material complying with paragraph 6 above. Division 15.4 of the Federal Circuit Court Rules 2001 sets out the rules in relation to affidavits.

10. Where the respondent seeks interim orders additional to those sought by the applicant, and the applicant opposes the orders sought, the applicant may file a second affidavit in answer, complying with paragraph 6 above, and setting out:

- any additional orders sought;
- any additional relevant facts relied on in opposition to the respondent's orders.

Failure to comply

11. Parties and practitioners should expect that failure to comply with any part of this Practice Note will result in loss of hearing priority, or adjournment of an interim hearing with costs orders.

12. In particular, if a party proposes to rely upon an affidavit which does not comply with paragraph 6 above, parties and practitioners should expect that:
in the discretion of the Judge:

- non complying affidavits will not be read; or
- the responsible party will be required to select 10 pages out of their non complying material that they seek to rely upon;

Specific costs orders may be made

13. Documents filed less than 48 hours prior to hearing (electronically or otherwise) ('a late document') cannot be relied upon at the hearing without leave of the Court. A party or practitioner seeking to rely upon a late document must seek leave to tender a copy of it at the commencement of the hearing.

APPENDIX "D"

Family Court of Australia

Family Law Rule Changes which came into effect on 1 March 2018.

There are **five major changes** as follows:

1. Exhibits and annexures are no longer to be attached to affidavits (or otherwise filed) after 1 March 2018. Documents that are to be relied on must be referred to in the body of the affidavit and tendered. Hard copies of any document intended to be used in conjunction with an affidavit and tendered, must be served on the other party contemporaneously with the affidavit.
2. Two new 'Notice of Risk' forms have been approved - one for use in current cases and one to be used in conjunction with Applications for Consent Orders. The form 'Annexure to Proposed Consent Parenting Order' has been abolished.
3. It is no longer necessary to file a SIF with an Application for Consent Orders, provided an alternative document is filed which allows the Court to determine the value of the superannuation interest, such as an up to date member statement.
4. A new Submitting Notice has been created, to be used in situations where a party is served with an Initiating Application, Response, Reply or Notice of Appeal and they do not wish to contest the making of the orders sought. The party filing the notice must provide an address for service and state in the notice that they will submit to any order the Court may make. The notice must indicate if the party wants to be heard as to costs.
5. A new Notice of Contention in appeals is to be used when the respondent to an appeal does not seek to cross-appeal, but seeks to have the Order affirmed on grounds other than those relied on by the first-instance Court.

Other changes include:

a. Increasing Deputy Registrars' delegated powers to include *inter alia* the making of location orders; dismissing cases in certain circumstances; the appointment of a case guardian.
b. It is now sufficient to produce a copy of a document in answer to a subpoena and the documents can now be produced in any electronic form capable of being printed without loss of content.
c. Family Violence Orders: If a copy of a current FVO is unavailable, it is no longer necessary to file an undertaking to file it.
d. Multiples copies of consent orders sought no longer need to be filed if the orders are filed electronically.
e. The addition of "safety concerns" as a factor for consideration in transfer of venue applications.
f. A new rule governing undertakings to the Court, including that oral undertakings must be subsequently reduced to writing and filed, and providing that an undertaking to pay damages is to submit to any order the Court might consider just for the payment of compensation.
g. Cost Assessment Orders now have the force and effect of an Order of the Court.

Amendments were made to the rules for consistency with recent changes to child support legislation.

About the Author

Richard Maurice holds degrees in Law and Economics from Sydney University.

Richard was admitted as a solicitor in 1984 and was employed in private general practice and later for the Federal Attorney General's Office representing disadvantaged clients as a duty solicitor in the Family Court, in NSW State Children's Courts and in many NSW Local Courts. In 1988, he was called to the private bar. Since then he has practiced mainly in the areas of Family Law, De facto relationships and Child Support, together with Wills and Probate. He has for over 20 years worked as a Mediator in Family Law financial and parenting matters. He has appeared in a number of significant Family Law cases including seminal cases on Family Law and De Facto property division like Pierce and Pierce (1999) FLC 92-844, and other important cases like Black v. Black (1991) DFC ¶ 95-113, Jonah & White [2011] FamCA 221, Sand & Sand [2012] FamCAFC 179, Vega and Riggs [2015] FamCA 797 and more recently the Full Court decisions of Achayra & Bhatt [2016] FamCAFC 192 and Padley and Padley [2016] FamCAFC 82. He has been presenting papers on various topics for most of his career at the Bar.

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