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Family Law

Going to Court v1

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Going to Court (Some Practical Advise)

The Court has the difficult job of making a decision on what should happen in each case. Often the people involved in cases have never been to Court before and are emotionally attached to the result of the case. They do not know how the Court works or what the proper procedure is. Giving evidence can be a daunting experience - this handout is designed to give a practical outline to potential witnesses of what they can expect and how best they can prepare.

Evidence in Court

The Court makes its decision based on evidence. Evidence is in two forms: written and spoken. Written evidence takes the form for example of statements, affidavits, letters and reports. Spoken evidence is given by witnesses, that is all the parties in the case or whose views are important, and who the Court will need to hear from to come to the right decision. Remember the Court wants you to do well as a witness. The Court needs to hear you clearly and understand your evidence.

Some top tips to giving evidence

1. Tell the truth

This sounds obvious but needs to be stated. You will have taken an Oath promising to tell the truth and if you knowingly lie you will be committing a criminal offence. Telling the truth will also give you confidence. There is a tendency to improve a story, but lawyers spot this and will expose any inconsistencies. If you do not understand a question, ask for it to be put in a different way. If you do not remember something, say so.

2. Answer the Judge, not the Lawyer

Remember the only person ever to speak to in Court is the Judge. The Judge makes the decision. Do not try to persuade the questioning lawyer or ever even speak to them. A good way to remind you of this is as follows:-



- * If you give evidence, directly face the Judge and point your feet at them.
- * Do not move your feet. Now twist at your hips to face the lawyer.
- * Look at the lawyer and listen carefully to the question.
- * When the lawyer has finished their question, and not before, turn back to face the Judge. Your feet will already be pointing that way as a reminder. You have a few moments in the turning to prepare your answer. In any event you should never hurry your answer.
- * When you are directly facing the Judge give your answer. You can see if they are with you or if you are speaking too quickly as they may be writing down your answer. Do not worry if they are not looking at you if they are writing.
- * When you have finished your answer, turn back to the lawyer slowly. This signals to them to ask the next question.

Although this may sound unnatural, it is very easy with practice and will give you control of the speed of the questions. The Judge can also hear better and you will not be tempted to get into conversation with the lawyer.

If you give evidence sitting down, turn the chair a little towards the Judge or sit in that direction,

3. Ask your Lawyer any questions you have before you get to Court

As a witness you are not supposed to know anything about the law. So make sure you clear up any questions you have beforehand. Ask the lawyer to run through with you what will happen. Find out when and where you are needed. Ask where you should meet and wait in the Court building. Some witnesses can be in the Court all the time and others must wait outside the courtroom until asked to come into the witness box. Check with your Solicitor whom you can and cannot speak to. You may not be allowed to talk to the witnesses or parties in the case.



3. Practical preparation

Make sure you know all the practicalities. It gives you confidence if you arrive in good time and are clear about what is going to happen.

- * Where do you have to be? How can you get there? Is there parking, is there a bus or train? When do you have to be there?
- * Arrange where and when to meet your Solicitor.
- * Find out how long the hearing will take.
- * Put the date in a diary or put up a note to remind you. Cases can go very wrong if witnesses do not turn up.
- * Re-read the affidavits, statements and reports to refresh your memory.
- * If you are not in a local Court, plan everything for being away from home, including your domestic arrangements.
- * Think about your appearance in Court and plan what you are going to wear.
- * Arrive at Court on time to meet your lawyers.
- * If you are a witness of fact, you should wait outside the Court. Find out where the waiting room is and any other facilities, such as toilets and refreshment area. Tell your Solicitor where you will be.

4. Know what happens in the Court

When you give evidence the order will be as follows:-

- * **Oath or Affirmation.** The Oath is a promise on the Bible or other Holy book, to tell the truth. The Affirmation is simply a promise, not based on a Holy book. You will be asked to read the words from a card or paper in front of you and if swearing the Oath, to hold the book in your uplifted right hand. It is entirely up to you which you choose to do. They carry equal weight. Take your time and read slowly, clearly and audibly, facing the Judge.



- * **Examination in chief.** The purpose of the examination in chief is so the Judge can hear your evidence in your own words. You will be questioned by your lawyer who will ask you what happened or your views.
- * **Cross-examination.** The purpose of the cross-examination is for the other side to try to get their view of the case across by asking questions that favour that view. This can be upsetting. But say what you want to say and remember to give your answers to the Judge.
- * **Re-examination.** This does not always take place. If it does it is a chance for your lawyers to clarify something that may have been discussed during cross-examination.

After your evidence has been give, you will remain in the Court to hear the rest of the case. If you are a witness to the case and you are not entitled to remain in the Court, you will be so advised by the lawyer or Judge.

5. Do not take things personally.

Finally, keep your cool! It will help if you remember that you intend the Court to come to the right decision and that you only speak to the Judge. Do not argue with the lawyers. Do not be afraid of the lawyers. Just focus on your evidence.

Because of severe delays at Court, it could be at least one year from the date the Court proceedings are started until the final hearing.

Even if it is necessary to start Court proceedings, that does not mean that the case must go all the way to a final hearing. Most cased are resolved by agreement long before a final hearing

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