

## DEBORAH NELSON FAMILY LAW

Here are some basic and universal rules on how to present yourself and case to the court:

**BE PREPARED** - when you are in the middle of strong emotions it is often difficult to remember what you want to say and words can come out jumbled. It is so important to have a clear and well drafted Position Statement that sets out what you want and the reasons why the Judge should favour your position. You will find that when you go before the Judge he either will not want to hear further from you or ask you questions which takes considerable pressure off you.

**BE ON TIME** – I would suggest allowing yourself an extra 30 minutes to find the court and get parked or to account for any delay to public transport. Additionally, the Family Court notice of Hearing usually requests you to attend 30 to 60 minutes before the hearing.

**BE GROOMED** - I do not suggest that you need to wear a suit (unless you wish to do so), but it can give a good impression to the Judge if you look smart and well groomed.

**ADDRESSING THE JUDGE** - The normal way of addressing the Judge depends upon the category of Judge:

District Judge – Sir or Madam

Circuit Judge – Your Honour

Magistrates – Your Worships

Court of Appeal – My Lord

**BE OPEN TO DISCUSSION** - If the other party is legally represented it is entirely normal procedure for them to approach you to discuss the case. I would suggest that if a legal representative approaches you that you be open to discuss the case, it is entirely normal procedure. If you do not feel comfortable speaking to them this is fine, I would suggest you say so and that you would prefer for all discussions to take place before the Judge. If you do feel comfortable speaking to them, then listen, take notes and take your time to consider what they have said before you respond.

**CREATE A GOOD IMPRESSION** – it is beneficial to your case to create a good impression with the Judge. I would suggest that you avoid arguing with the Judge, your former partner or their legal representative. In court it is best not to interrupt the Judge or other party when they are speaking. It is helpful to take notes of what you want to say when you wish to interrupt, they speak when they have finished.

**KNOW WHEN TO SPEAK** – as I indicated above it is best not to interrupt the Judge. Knowing that you will have the opportunity of speaking will go some way to help the urge to speak immediately when you do not agree with something that is being said. The speaking order that flows in court is generally that the person who has made the Application speaks first, and then the other party has their say. A simple

helpful opening statement at the first hearing before a District Judge to get you flowing could be: “Good Morning Sir, I am Mr Smith and this is my application to change my son’s surname from Wilson to Smith”. Then carry on with what you want to say.

If you have a clear well drafted Position Statement, there may be no need to open, because the Judge may just say he has read the Position Statements and the ask questions. Whatever happens and in which order please be assured that I have never been in court where a Judge has not allowed both parties to speak.

**KNOW THE PROTOCOL** - knowing what can and cannot be achieved at each hearing goes a long way to avoid stress and disappointment. It is unhelpful at the first hearing to argue that your child’s surname should be changed expecting the Judge to make an order on that day. If an agreement has been reached between you and the opposing party, the Judge can make an order. If no agreement has been reached the Judge will not make an order until he has heard evidence and chances are he will have a full list and the final hearing will be set at a future date. The exception to this is more robust Judges will try to get contact going if there is no contact between a parent and child and may make an order for the child to see the parent even where parties do not agree. If there are welfare and safety concerns the Judge will err on the side of caution and want these issues investigated before making an order. I would suggest that you bear this in mind at each hearing except at the final hearing where the Judge will be looking to make a final order.

Believe it or not Judges do not want to make orders, they want parties to agree and throughout the course of the proceedings, there is an expectation that parties will try to reach agreement. Attending a Mediation and Information Session is a requirement before you make an application and mediation will be considered again through the course of the proceedings (unless there is a specific exception that applies)

Wishing you good luck, I hope these tips have been helpful, if you require any further guidance or support at court please contact me.