

4.8 Witnessing family law documents

What court is responsible for hearing family law matters?

The Federal Circuit and Family Court of Australia (the court) was established by the *Federal Circuit and Family Court of Australia Act 2021*.

What type of family law matters are dealt with by the court?

The court's family law jurisdiction deals with several matters, including:

- applications for divorce
- applications for spousal maintenance
- property and financial disputes
- parenting orders
- enforcement of orders
- location and recovery orders
- determination of parentage.



What legislation governs family law documents?

When witnessing a document for a family law matter, generally the *Family Law Act 1975* (Cth) and the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* apply.

The rules outline how documents are to be filed in the court, including applications and evidence. As a JP or Cdec it is important you are familiar with these rules, how to witness an affidavit with annexures, as they differ to other court jurisdictions. Of particular note for family law documents is the necessity to properly witness annexures to an affidavit.

How do I witness family law documents?

Follow the general procedure for witnessing signatures as outlined in chapters 4.1 and 4.7 then:

1. Check the affidavit or divorce application to ensure the names of both parties appear.
 -  **Note:** When eFiling, the signatory is not required to produce the electronic copy of their application for divorce.
2. Warn the signatory, at the outset, and check they understand that if they knowingly make an affidavit and they know the information is false they commit an offence.
 - Ensure the signatory understands that swearing an oath or making an affirmation is a solemn matter.
3. Check the signatory understands the contents of the affidavit and they are making the document freely and voluntarily.
 -  **Note:** If you are not satisfied the signatory understands the contents or is not making the document freely and voluntarily, decline to witness the affidavit and explain why.
4. If you are satisfied the signatory understands the affidavit administer the oath or affirmation as outlined in chapter 4.6.
5. Remember both you and the signatory must sign the bottom of every page of the affidavit. Have the signatory sign the last page of the affidavit, witness their signature in the normal manner.
6. Record all relevant information in your logbook as outlined in chapter 2.4.

What is divorce?

Divorce is the legal end of a marriage (dissolution of marriage). A divorce proceeding may only be commenced by a party to the marriage and the application for divorce can be filed by one party (sole application) or both parties jointly (joint application).

If the signatory has lodged their divorce application using the Commonwealth Courts Portal you may be asked to witness an *Affidavit for eFiling application (Divorce)*.

If a signatory is unable to electronically file or access their application for divorce you may be presented with a physical copy of an application for witnessing.

Both of these documents need to be sworn or affirmed.

What is an Affidavit of Service (Divorce)?

Service is the process of sending or giving court documents to a party after they have been filed, in accordance with the rules of the court. Service ensures all parties have received the documents filed with the court.

The court will only grant a divorce once it is satisfied both parties have a copy of the application for divorce and are aware of the court hearing date. Service can be affected by either posting the documents or serving them by hand. Both methods require an affidavit of service to be witnessed.

Depending on how service was affected you will be presented with the following documents:

Service by post

- *Affidavit of Service by Post (Divorce)*
- *Acknowledgment of Service (Divorce)*.

Service by hand

- *Affidavit of Service by Hand (Divorce)*
- *Acknowledgment of Service (Divorce)*
- *Affidavit Proving Signature (Divorce)*.


How do I witness an Affidavit of Service (Divorce)?

Follow the general procedure for witnessing signatures as outlined in chapters 4.1 and 4.7 then:

1. Check the requirements for the affidavit of service have been met:
 - Ask the signatory how the other party was served, by post or by hand?
2. Check if the affidavit of service has any special requirements.
 - Service carried out by post:
 - Check the *Affidavit of Service by Post (Divorce)* to ensure the form appears to be fully completed.
 - Check the relevant sections have been completed on the *Acknowledgement of Service (Divorce)*.
 - Service carried out by hand:
 - Check the *Affidavit of Service by Hand (Divorce)* to ensure the form appears to be fully completed.
 - Check the relevant sections have been completed on the *Acknowledgement of Service (Divorce)*.
 - Check the respondent has signed the *Affidavit Proving Signature (Divorce)*.
3. Warn the signatory, at the outset, and check they understand that if they knowingly make an affidavit and they know the information is false they commit an offence.

Ensure the signatory understands that swearing an oath or making an affirmation is a solemn matter.

4. Check the signatory understands the contents of the affidavit and they are making the document freely and voluntarily.

 **Note:** If you are not satisfied the signatory understands the content or is not making the document freely and voluntarily decline to witness the affidavit and explain why.

5. If you are satisfied the signatory understands the affidavit administer the oath or affirmation as outlined in chapter 4.6.
6. Remember both you and the signatory must sign the bottom of every page of the affidavit. Have the signatory sign the last page of the affidavit, witness their signature in the normal manner.
7. Record all relevant information in your logbook as outlined in chapter 2.4.

What are attachments and annexures?

‘Attached’

Inserted as an addendum within an affidavit, ‘attached’ means a continuation of evidence and is still part of the signatory’s affidavit. The bottom of each page must be signed by the signatory and you. All attached evidence is placed between the first page of the affidavit and the last.

‘Annexure’

Annexures are referenced as evidence. They include any documents provided to support the facts deposed in an application or affidavit, such as bank statements, bills, medical reports or school reports. Copies of these must accompany the affidavit at the time of witnessing. Annexures should be photocopies of the original documents, noting there is no requirement for these to be certified as copies.

Annexures must be referred to in the body of the affidavit and titled i.e. Annexure 1 or Annexure A.

If there is more than one annexure, they must be referenced consecutively i.e. Annexure A, Annexure B, Annexure C and so on.

The page numbers of all annexures must run consecutively – that is, from the first page of the first annexure to the last page of the last annexure. For example, if there are three annexures totalling 30 pages, the first page of the first annexure is page 1 and the last page of the third annexure is page 30. Each annexure must have a statement signed by the witness identifying it as the document referred to in the affidavit. The statement must be signed at the same time as the affidavit and by the same witness.

Annexures should be marked in the following way to meet the requirements of the court.

This is the document referred to as Annexure [insert reference number] in the affidavit of [insert signatory’s name], sworn/affirmed at [insert place] on [insert date] before me [authorised person to sign and provide name and qualification].

Full-page photographs

In some circumstances, you may be asked to sign and complete a full-page photograph as an annexure. The most appropriate procedure to follow is to place a blank sheet of paper in front of the photograph and use the above wording. Certification on the back of the photograph is not acceptable.

Things to bear in mind

- Generally, three copies of documents are to be filed in the courts, with an applicant instructed to file an original and two copies. It is reasonable to expect an applicant will present with one copy to be witnessed prior to making additional copies. However, if you are presented with three copies, there is no objection by the courts to having all three witnessed.
- There is no requirement for any annexures or additional copies of applications to be certified as copies of originals.
- An application for divorce can be electronically filed through the Commonwealth Courts Portal. The applicant is required to print off the application, called the *Affidavit for eFiling application (Divorce)*. This application must be witnessed. The affidavit of eFiling only requires you to witness the signature of the applicant and/or respondent to the divorce application. The signatories are required to attest they have read the application identified by the noted transaction number. From the courts' position, you do not have to physically see the signatory read the application, nor do they need to read the application themselves.

Where can I get more information?

Federal Circuit and Family Court of Australia

www.fcfcoa.gov.au

Court forms and Divorce Service Kit

www.fcfcoa.gov.au/form/affidavit

www.fcfcoa.gov.au/fl/forms/divorce-service-kit


Legislation and Court Rules

www.legislation.gov.au

4.8 Quick guide

Witnessing family law documents

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- ① Check the affidavit or divorce application to ensure the names of both parties appear.
 **Note:** When eFiling, the signatory is not required to produce the electronic copy of their application for divorce.
- ② Warn the signatory that if they knowingly make a false affidavit they commit an offence.
- ③ Check the signatory understands the affidavit.
- ④ Ask the signatory to make their oath or affirmation.
- ⑤ Both you and the signatory sign each page of the affidavit and then witness their signature on the last page.
- ⑥ Record all relevant information in your logbook as outlined in chapter 2.4.

Affidavit of service

Follow the general procedure for witnessing signatures as outlined in chapters 4.1 and 4.7 then:

- ① Check the requirements for the affidavit of service have been met.
 - Was it served by post or hand?
- ② Check if the affidavit of service has any special requirements.
- ③ Warn the signatory that if they knowingly make a false affidavit they commit an offence.
- ④ Check the signatory understands the affidavit of service.
- ⑤ Ask the signatory to make their oath or affirmation.
- ⑥ Both you and the signatory sign each page of the affidavit and then witness their signature on the last page.
- ⑦ Record all relevant information in your logbook as outlined in chapter 2.4.