

THE INITIAL COURT APPEARANCE

A Guide to Help You Get the Most of Your First Time in Family Court

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Abstract

Family Court has its own set of rules, its own way of doing things and specific things to keep an eye out on.

Introduction

This guide was created to help Family Court litigants going through divorce and/or custody, get the most out of their first court appearance. Most first time Family Court individuals have some idea of what to expect but are often looking for ways to improve the experience. There are tons of horror stories all over, in every aspect of life, about the court system, particularly Family Court. This guide is a brief primer for those who need guidance and insight on the first major step in their court case.

The initial court appearance happens in every single case once a petition is filed in court. Even in states that have mandatory mediation, most of them still incorporate an initial court appearance.

The purpose of the initial appearance is multifaceted for the court, but should also serve your purposes as a litigant.

I hope you find this guide very helpful and useful no matter who you are in the case.

Best Regards,

Tracey Bee

I. The Process



The first appearance in Family Court is usually to address some basic procedural issues, as well as substantive ones. This means that the judge will make sure the pleadings (documents) are accurate; the parties are in fact the parents (or guardians) with

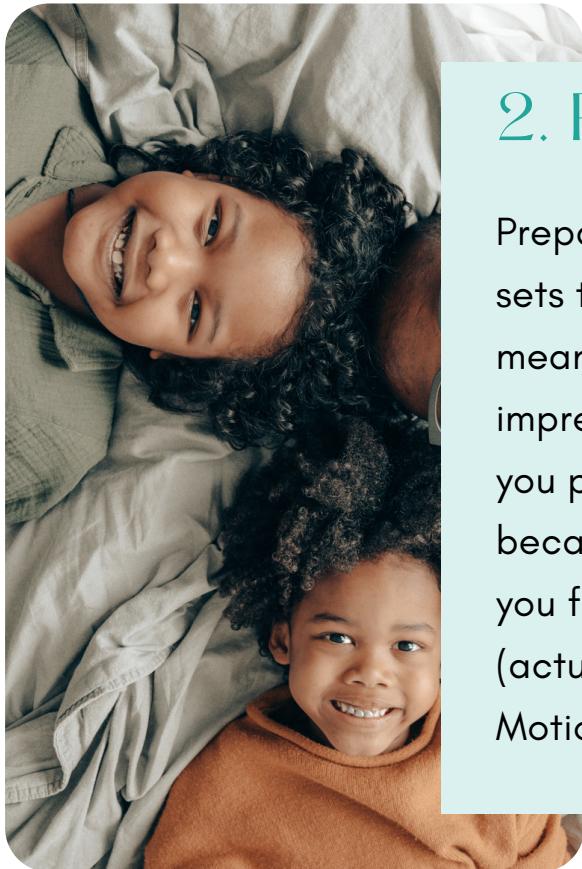
“standing” to be involved in the case; that the parties were “served” properly; that it has jurisdiction, and the case should be brought before it. These are all procedural issues that the court must ensure meet the local rules that apply. The court will also take time to explain each party’s rights if they are self-represented. If lawyers are involved, they might agree to “waive” some procedural things or dispute some based on how they impact the case.

Each jurisdiction (your court location) establishes its own way of doing things when it comes to procedure. Even when the state has a set of laws or rules regarding certain procedures, local courts tend to adopt what works for them based on how it runs. The factors they consider are things like staffing, the number of cases they manage daily, and so on.

The substantive issues are the ones that specifically deal with the laws as they pertain to Custody, Contempt, Modification, Relocation, or Divorce. For example, the best interest’s factors, the requirements for Modification, etc. The court will usually review the petition/motion and explain what each party is asking for. spend a brief amount of time on these issues unless there is the possibility of settlement at this first appearance.

Most first appearances will include the court’s attempt to get the parties to settle the overall case or at minimum, to resolve some of the issues.

NOTE: If there are Emergency issues, some of this process might change.



2. Preparation

Preparing for your first Family Court appearance sets the tone for the rest of your case. What this means is...you only get one time to make a first impression on the court. It's that simple. So how you present yourself, really your case, is important because the court will make its assumptions about you from the moment you open your mouth (actually from the way you write your Petition or Motion.)

Tips to Prepare:

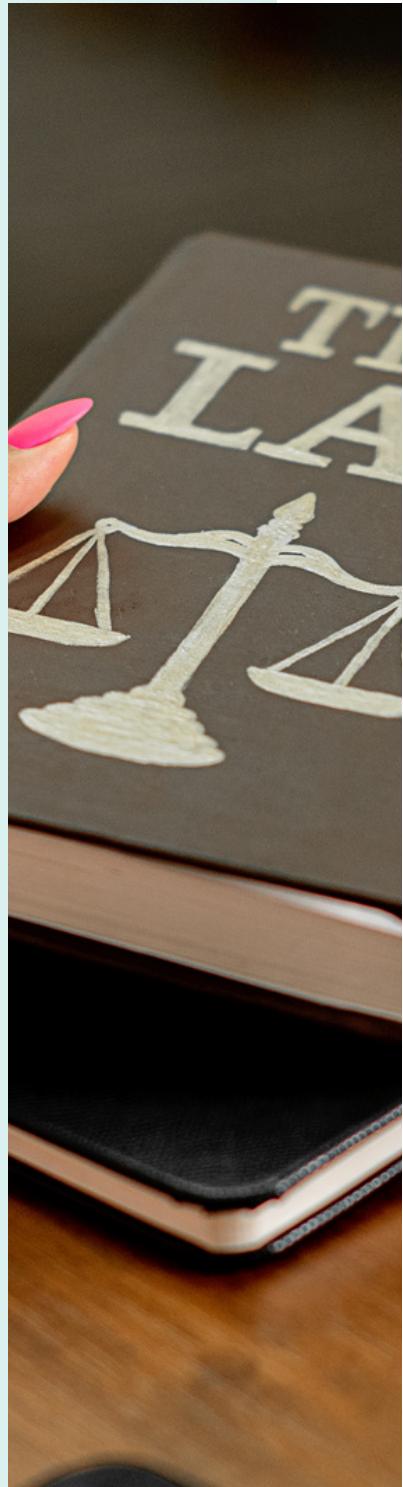
- Know your specific court procedures. This means acquainting yourself with how your specific courtroom operates. How do you check-in? Where do you wait? In what order does the court call your case? Is there a clerk in the courtroom, and what's their role?
- Make sure you have all the court documents, proof of service, your evidence, etc. It is particularly important to have all court papers with you every time you go to court just in case the court loses its copies. If you had to have the other party served, be sure to bring your proof of service with you.

- With respect to your evidence, it's important to have it ready, organized, and prepared to submit to the court. Although this is not a trial or hearing, the court might be interested to hear or see the evidence you must substantiate your claims. Since the court can make temporary rulings at the first appearance, it would need some proof to help it do that.
- Check your emotions before you go. This might sound cliché, but it is necessary. You must learn to speak FROM emotion as opposed to speaking WITH emotion. It's no secret that judges are human, and they have emotions too. It's also widely known, in the legal community, that custody and divorce bring out a range of emotions in even the unemotional. However, no judge wants to see parties interject their anger or resentment into their case. Right, wrong, or indifferent, they would rather you keep that out of the courtroom.
- If you get nervous at the thought of speaking in public, learn techniques to calm your anxiety. Whenever we are overthinking, overwrought with fear, or unable to destress, it's difficult to think clearly. If you can't think clearly, you are sure to miss something super important. Your first court appearance will give a clear insight into so many things related to your case, it's important that you are "present."
- Bring support if you can. It helps to bring support to help you do #3 and #4. Having someone with you gives you that extra comfort helps to remind you that you can get through it, and helps to stay focused on what's important. If you can't bring a family member or friend, then bring something symbolic that you know will help you accomplish these same things.

3. Know Your Rights

Knowing your rights as a Family Court litigant is extremely important. Many people are unaware of the difference between the things the court can do and the things the court should not do. We all know that Family Court is the most unregulated venue in the legal community. They have almost no oversight and great latitude in how it operates. And unfortunately, this means that Due Process is hardly ever exercised, infringing on the rights of many of its litigants.

However, it is still your right to have your rights acknowledged and adhered to in any court proceeding.



1. You have the right to be properly served. Any court documents that the opposing party filed must be served upon you. (If either of you have an attorney, they can “waive” formal service.)
2. You have the right to present your case or your defense. This means that you should be allowed to present your case (if your case meets the requirements.) The court can limit you in how you present your case or defense, but you have the right to present it, nonetheless.
3. You have the right to be “heard.” This is a tough one because the courts tend to limit litigants’ ability to speak in court, especially when they are self-represented. This is very controversial because every citizen has the right to speak in his or her defense in court.
4. You have the right to “object.” This means that if you don’t agree with something the court has said or done, you have the right to let it know that you disagree.
5. You have the right to have your court proceeding be done “on the record.” This is another very controversial issue because courts are using their authority to make procedural rules to obliterate this right. Any time you can have your court proceeding recorded, whether by audio or an in-person transcriber, you should definitely request it



4. Court Actions

The initial court appearance usually results in a few things by the time it's over. The court will have a clear picture of the issues; have an understanding of each party's representation (or intentions for representation at least); know whether the case can settle via mediation or another method; know if forensics might be necessary; decide if services for the parties are justified and will issue temporary orders.

So, it is crucial for you to have some idea of what you are willing to agree to for now. You should have an idea of a visitation schedule, temporary support, temporary residence (for your &/or the children), and anything else that can temporarily resolve the most pressing issues.

It is your responsibility to get the court to address all the issues that are imminent because there might not be another opportunity to address these issues until your next court date. Once you leave court you can only get back before the judge if an emergency arises, and even then, the court will decide if your emergency is a court emergency.

5. Moving Forward

Everything you do today will set the stage for how your case proceeds from this point on.

The way you speak, the way you appear, the way you present, the way you answer, the way you listen...all these things set the tone.

By the same token, you must use this opportunity to help you to prepare your case for YOUR JUDGE. Preparing, presenting, and positioning your case requires some key actions on your part.

- Watch your judge, his/her body language is very telling.
- Listen to your judge, they typically use the same key terms in their own nuanced way at times.
- Listen to the opposing party, not so that you know HOW to respond but so that you know WHAT to respond to.
- Pay attention to the opposing party's evidence, it usually gives you some hints at what your trial will entail.
- Keep an eye out for the details. People tend to give away way too much information, use that to help you narrow down the key elements.
- Notice any patterns or repetitive behaviors, you can learn to respond effectively when you do this.
- Watch out for any opportunity to gather key information so that you can plot your next move. You always want to stay at least one step ahead.

Conclusion

This guide is not exhaustive of everything you need to know before your first court appearance, but it hits on some especially important things. You are in the best position to decide what you can get out of this appearance because you're the one there. Energy, emotion, etc. all have an impact on how any court proceeding is played out, so your presence (physically and mentally) is irreplaceable.

Thank you!

