

HOW TO ORGANIZE, PRIORITIZE & USE

EVIDENCE IN FAMILY COURT

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USE OF THIS GUIDE:

This guide is intended for the sole purpose of providing information on evidence in Family Court in the specific state mentioned. Its goal is not to replace the expertise of an attorney and should not be relied as the only resource for trial. In addition, it is meant to supplement the material presented in the related Workshop presented by the creator/author.

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The information in this guide is a compilation of original material and reproduced material found in public access platforms.

This guide is best used in conjunction with the material presented in the actual workshop, as well as the Worksheet that accompanies it. Understanding the material might require further exploration than what's included.

A more in-depth analysis of evidence gathered against specific state rules is available at The Divorce Solutionist under Unbundled Services or inside the Pro Se Family Court Membership Program.

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WHAT IS EVIDENCE?

Whatever you plan to present to the judge to prove your case or defend against the other party's case is Evidence. It falls under the following major categories:



Documents

The most common form of evidence. Includes letters, reports, records, emails, invoices, tax returns. Almost anything written or typed.



Recordings

The trickiest to get before the court but the next most gathered. Includes audio, video, or any other digital format of the communication.



Physical

Some are not often considered by the court but certainly important. Includes photos, journals, screenshots, etc.

NOTE: Witnesses as Evidence is under separate cover.

WHY IS EVIDENCE CRITICAL IN FAMILY COURT?

Family Court is a place of lots of "he said, she said" in most instances. However, if either party can persuade the judge to look at their proof they have a better chance of getting their desired result. Evidence has weight based on it's form and what it's intended to prove.

- **It creates a clear record:**

Some evidence speaks for itself with how convincing it is in proving what it's being submitted to prove. It makes it harder for the other party to dispute the claim you're making or defend theirs.

- **It helps build credibility:**

Parties can make all types of claims & allegations they want (and they usually do). But if either of you have evidence to back you up, depending on it's perceived, it can make you look more believable.

- **Helps to narrow down the issues:**

Family Court litigants are known for bringing up everything they can possibly think of. Most cases start with tons of claims made. Having evidence helps to eliminate some of them.

- **Can save you from future frivolous claims:**

Custody matters, specifically, can be neverending in most instances. At any random time either party can be brought back to court. Having solid evidence helps to minimize future cases from being dragged on.

HOW TO GATHER EVIDENCE



Start from the moment you start considering taking the other party to court or they start to threaten you with taking you to court. Gather, collect, inspect, record, get witnesses, etc. You only get one chance.



Be diligent but discreet. You don't need to let the other party know that you're gathering "intel" on them. (Of course there are laws that might apply in some instances.) Always be prepared.



Use whatever you can. Witnesses, cell phones, tablets, navigation devices, software, apps, journals/diaries, etc. It might not be admissible but you need to have it anyway.

WHAT ARE THE RULES OF EVIDENCE?

NORTH CAROLINA

NC Rules of Evidence are governed by Chapter 8C. The parts applicable to most Family Court matters are Objections; Judicial Notice; Relevancy/Admissibility; Hearsay & Exceptions; Witnesses, Authentication & Recordings, etc. The rules are:

- **Rule 103 Rulings (Objections)**

Refers to how objecting to a ruling of evidence admissibility must be timely to be "preserved" or saved, in case there is an appeal later.

- **Rule 104 Preliminary Questions**

Refers to how the judge should evaluate and rule on the admissibility of evidence, the qualification of a witness and the existence of privilege. It is NOT bound by the rules of evidence except for privilege.

- **Rule 201 Judicial Notice**

The court can accept something as fact, not to be unreasonably disputed, when it is generally known to the jurisdiction of the court or it can be proven by resources easily accessible & reliable.

- **Rule 401-403 Relevancy, Admissibility & Exclusion of Relevant Evidence**

Explains what is considered relevant evidence, anything having the tendency to make the existence of any fact more or less probable than it would without the evidence.

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- **Rule 601-608 Witnesses**

States that every person is competent to be a witness except if they are unable to express themselves or incapable of being understood about the case OR don't understand their duty. Also explains the criteria a witness must meet to be considered credible or believable and who can & cannot be witnesses.

- **Rule 702-706 Expert Witnesses**

Explains who qualifies as an expert witness, what info they can use to base their testimony, the method they need to use to state their expert opinion etc.

- **Rule 801-804 Hearsay & Exceptions**

This is the most important section as it covers most if not all, the evidence in Family Court cases. This section defines hearsay, explains what is not hearsay and lists all of the exceptions to hearsay.

- **Rule 901 Authentication of Evidence Required**

Lists the different types of evidence that needs to be authenticated (verified) or identified before it can be admissible into evidence. Things like phone conversations, public records/reports, distinctive characteristics, etc.

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- **Rule 1001 Writings, Photos, Recordings**

Defines each type of physical evidence (which are often used in Family Court), states when or if duplicates can be used. how the other party must be provided a copy of them.

How these Rules are Used:

1. These rules apply at the time of trial. In some instances the court will hold a hearing BEFORE trial to determine or to identify which evidence will be allowed or not but this is rare.

2. The judge has great discretion in how he/she applies these rules. Although it's important that they do it "on the records" in case you want to file an appeal later.

3. Judges can use what's called "the interest of justice" instead of the rules of evidence, instances where they see fit.

4. Although most judges will not clearly state which rules they will or will not apply, you might be able to learn his/her style by observing other trials they handle.

HOW TO USE EVIDENCE STRATEGICALLY?

Knowing how to use your evidence is something that should be plotted out at every stage.

1

Focus in on the most important issues

Every claim isn't worth fighting over. Narrow down the ones that you have the strongest chance of "winning".

2

Stay alert to the other party's position.

This is why it's extremely important to always pay attention to the other party's every move. To plot yours.

3

Know the law & procedures.

There is absolutely no way you can position your case for success without all the info needed to make informed decisions.

4

Have other uses for your intel.

Evidence that's not admissible inside court might still have a purpose.

5

Apply it all.

Knowing what's important, what the other party is up to, what rules apply all helps to decide which evidence is priority.

IT'S IMPORTANT TO NOTE:

Family Court typically applies rules of procedure, including rules with respect to evidence, as it sees fit. So although there are rules in place for how evidence should be used in custody and divorce matters, judges have a great deal of discretion. No two cases are ever going to get the same exact treatment.

- **Know your court.**

It is extremely important to visit the court to observe how it rules in similar cases. You are usually allowed to sit in on other trials in court. It's best to identify ones with similar issues.

- **Get acquainted with your court personnel.**

The court staff & personnel can be very useful when it comes to learning the way the court procedure works with submission of evidence, marking evidence, etc. Take the time to know them.

- **Always be prepared.**

As stated, Family Court is a wild card. It helps to anticipate any and every outcome you can imagine. You do this not by just learning the rules or laws, but by understanding the exceptions too.

- **Work on yourself as well as your case.**

What happens in Family Court is 20%, 80% strategy. In order to have a solid strategy, you must have a clear objective in mind and a well thought out tactical plan to get there. You can't leave anything to chance when it comes to doing your part.

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