



Guide to Preparing for a Temporary Relief Hearing

I. What is the purpose?

To quickly review the circumstances of your legal matter, then issue a formal temporary order to set limits and a structure for the spouses and/ or children until a final, longer, and more detailed hearing can be scheduled and held.

II. How is it handled?

By a single judge who:

- a. Reads/ scans sworn and properly notarized statements (affidavits) of people who know something important about the disputes in the case;
- b. Usually listens to brief statements by attorneys for both sides regarding the case. Most judges "allow" arguments by attorneys, but they do not have to do so (which is why your written affidavits are so important).

III. Updated Financial Declaration with Current Paystub is Required

Each party must file an updated financial declaration with an attached current paystub. A Financial Declaration is a form created and required by all South Carolina Family Courts, which gives an overview or "snapshot" of each spouse's finances at the time it is signed.

IV. What can a judge order at a temporary hearing?

- a. Terms of "temporary" custody and visitation.
- b. If child support and/ or temporary alimony should be paid by a spouse and how much.
- c. Which party gets "temporary" use and possession of the marital home and other properties. Note, without consent of both parties, a judge is not justified by law to order the sale of property, until a final hearing is held. So, you can not force the sale of real property until the final hearing unless both parties agree.
- d. Which spouse gets "temporary" use and possession of what personal property, such as cars, furniture, boats, etc.
- e. Which spouse pays what marital debts, such as, mortgages, credit cards, tax debts, car loans, etc.
- f. Payment/ reimbursement of attorney fees and expenses for either party.

V. *What is the difference between a temporary relief hearing and a final hearing?*

A temporary hearing is based solely on affidavits and usually brief statements by both attorneys. There is no witness testimony at a temporary hearing, even by the parties. The only exception is in the rare event the judge determines it to be necessary to directly question one or both parties.

Conversely, at a final hearing only live witness testimony is admissible. Affidavits can not be submitted in lieu of appearing to testify at a final hearing.

VI. *What if someone lies or misrepresents the circumstances in their affidavit?*

Each spouse tends to feel the other spouse's affidavits are untruthful or that they otherwise misstate the circumstances. This is understandably very frustrating. After the hearing, the affidavits can be, and often are, "checked" for truthfulness by both parties. If someone's statement is later shown to not be true, or is extremely misleading, the affidavit may be used to demonstrate at the final hearing that the witness is not

credible. If the false statement is serious enough, another temporary relief hearing can be held to identify the fraud upon the court and justification for changing a temporary relief order based on the fraudulent statements or information.

Affidavits should not be used to mislead the judge or just to try to get what you want. You should be clear and truthful not only because it is morally correct, but because it is the best way to present your case (not to mention avoid perjury charges).

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