Children's Court of Western Australia

RESPONSE KIT - Protection and Care of Children

Why do a response?

If you are a respondent and want to tell the magistrate and the other parties:

- what you think is best for your children
- what you have to say about the Department for Child Protection and Family Support ("CPFS", "the Department") application and affidavit in support
- your side of the story

you can put it in writing in the response form. This will be your "affidavit in response".

It will be your "evidence" and it must be true.

Before filling this form in it is preferable you get legal advice

Often parents or other respondents do not put in a response until the case goes to a final hearing (trial). If you want the court to know your side of the story earlier you should put in a response as early as possible.

In your response you can:

- **respond** to the Department's application, or
- **ask for short term (interim) orders that you think should be in place** until the application is finalised **with evidence in your response, <u>and</u> respond** to the Department's application.

If your position changes later in the proceedings you can put in an amended response.

If you:

- have a lawyer they may help you do your affidavit.
- don't have a lawyer, or your lawyer can't help you (for example, because their grant of aid does not cover it) you can use this guide to do it yourself.

What is a response?

- It is an affidavit that presents written evidence in a court case setting out what you say is true.
- There are two ways to declare that what you say in the response is true:
    - Swear an oath on the Bible or other holy book
    - Affirm
- It must be sworn or affirmed to be true in front of an authorised official.
- You cannot sign the response until you are in front of the authorised official.

Child Protection and Family Support applications and affidavits

CPFS put in an affidavit to the court in several situations including:

- When CPFS starts a protection application at court ("initial affidavit"). This is usually a short document. It sets out briefly the reasons for bringing the case to court.
- When CPFS apply to extend, or revoke (cancel) an existing protection order.
- When a case is going to trial and CPFS want to give the court and other parties more information than was in the initial affidavit.

Where can I get the forms I need?

Get a blank response form (Response - Protection and Care of Children Form - PCRESP) and an Endorsement of Service Form (PC_EoS) from:

- any Children's Court of WA registry, or
- from the Children's Court of WA website (www.childrenscourt.wa.gov.au).

What do I put in my response?

Step 1

- Read through the Department affidavit carefully.

- Write down or mark which paragraphs in the Department's affidavit you:
    - Agree with in full, eg you might agree there has been police call outs on certain days, or that your urinalysis results were positive
    - Disagree with in parts
    - Disagree with in full.
- Write down the important things:
    - you think have been **left out** of the Department's affidavit, eg that show you were working on CPFS worries
    - that **have happened since your child/children were taken into care** to work on CPFS worries, eg
        - what you have done, eg counselling
        - new supports in place
- Where possible **get proof of what you say**, for example,
    - a certificate of completion of a program
    - a letter from a counsellor confirming counselling you have done and what you have got out of it
    - a letter from your doctor.

Step 2

Get legal advice if possible.

Start filling in the response form PCRESP

- FILED ON BEHALF OF: tick the box that applies to you
- CHILD: put in the names, dates of birth and gender for each child
- DEPONENT: put in your name, address (if you do not want another party to know your current address you can put another address where you could pick up your mail), and occupation
- FINAL ORDERS SOUGHT:
- INTERIM ORDERS SOUGHT: eg about placement or contact
- EVIDENCE: Additional pages can be added. See the examples at the end of this guide.
    - Make sure you put in the **numbers** of the CPFS paragraphs
        - you agree with
        - you disagree with in part and the reasons why
        - you disagree with fully and the reasons why
    - Each of your paragraphs should be numbered
    - Each paragraph should only refer to one point

- If you have “proof” of what you say you can attach these documents to your response.

What do I need to do after I write the response?

- Read it carefully to make sure it says what you want to say.
- Get the response witnessed in front of an authorised official for example, a justice of the peace, a lawyer, or a registrar at a court.
- Make a copy for:
  - Yourself
  - CPFS
  - The child representative/s (if there is one)
  - Each respondent, for example, the other parent, and anyone else who has been made a party.
- Take all of the copies to the court registry where your case is on.
  - The court will stamp your original and copies with the date and court file number
  - The court will keep the original and give you the stamped copies.
- Serve (give) a copy in person, by post, or arrange for someone else to serve it as soon as possible to:
  - The Department (preferably the lawyer) but the caseworker will get it to the lawyer.
  - The child representative (if there is one)
  - Each respondent

If there is a violence restraining order in place against someone you have to serve, or some other problem in relation to service, get legal advice or ask court staff for help with service.

- Fill in the Endorsement of Service form for **each person** you served saying:
  - who you served
  - when you served them
  - how you served them
- File the Endorsement of Service forms at the court registry where your case is on as soon as possible. These should be filed before the court date so the court knows when the person got them.

Examples for your response

Interim orders

Listed below are examples of the type of short term (interim) orders you may seek:

- The child to remain with the mother
- The child to be returned to the care of the mother
- The child to be placed with Jane smith
- The mother to have contact with the child each Monday, Wednesday and Friday between 10am-12pm.

Final orders

Listed below are examples of the type of final orders you may seek:

- A protection order (supervision) (instead of a protection order (time limited)
- An extension of the protection order (time limited) made on [put in date](instead of a protection order (time limited)

Evidence

This will be different in each case. It depends what issues are mentioned in the CPFS affidavit.

For example, you may need to talk about some or all of the following:

- Where you are living/where the children will live
- Family or other support you have
- Changes in your relationship since the children went into care
- What you are doing about family violence, eg separation from your partner, counselling
- What you are doing about drug issues, eg drug and alcohol counselling
- Mental health support, eg is there a mental health plan, what if any medication are you on.

<u>If you want to dispute all of the contents of a paragraph in the CPFS affidavit</u>
You could say:

- "I deny the contents of paragraph [put in the number] because……."

or

- "In response to paragraph [put in the number] I disagree with ….. [put in what you disagree with and the reasons why].

<u>If you want to dispute part of the contents of a paragraph in the CPFS affidavit</u>
You could say:

- "I agree with the [put in which sentences you agree with eg the first] sentence but disagree with ….. [put in what you disagree with and the reasons why].

<u>How to attach documents supporting what you say</u>
If you have "proof" of what you say you can attach these documents to your response. For example, if CPFS say there are drug problems and you have done counselling you could say "Since [insert date] I have completed 10 drug and alcohol counselling sessions with Mary Smith at Palmerston. A letter from her stating this is attached and marked as 'Attachment A'". A blank Attachment form is included at the end of this kit.

<u>If you are responding to more than one affidavit</u>
You will need to make clear which affidavit you are responding to:
For example "In response to the affidavit of [put in name] witnessed on [put in date] I disagree with paragraph [put in number].

Where to get legal advice

- Legal Aid WA can help you complete the forms and obtain legal advice and information about the court process. Phone the **Legal Aid WA Infoline** on **1300 650 579** between 9.00am and 4.00pm or go to the **Legal Aid WA Children's Court (Protection) Services** (CCPS), 160 Pier Street, Perth.
  You can also phone CCPS on **9218 0160**.
- **Aboriginal Legal Service of WA** on **9265 6666 / 1800 019 900** (freecall)
- The **Aboriginal Family Violence Prevention Legal Service** at Perth. Contact the service on **9200 2202**.
- **Aboriginal Family Law Service** on **9355 1502** or **1800 469 246** (freecall) to find the office nearest to you.

Other help

- Contact **Family Inclusion Network of Western Australia Inc** (FINWA) on **9328 6434**.

ATTACHMENT "[put in letter eg A, B etc]"

This is the Attachment marked with the letter "__" [put in letter eg A, B etc]
referred to in the response of [put in your name]

Sworn/affirmed on the
[date] _____

Before me [signed]

Justice of the Peace, Lawyer, Registrar, Deputy Registrar