



Drug tests and Family Court hearings

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It is common in Family Court hearings regarding children's issues for one party to threaten the other party with random drug testing. Often as solicitors we receive panicked telephone calls from clients with respect to this, concerned that they may have to undergo an invasive process or be subject to random drug testing until the children turn 18 years.

Scenario:

Julie and Jack are undergoing Family Court proceedings with respect to their twin girls Molly and Polly, aged 3.

Julie has instructed her solicitor, and sworn in a Family Court affidavit, that Jack smokes marijuana regularly. Julie has also deposed that Jack takes the drug "ice" when he is socialising with his drug addicted cousin Jed.

Julie has concerns that Jack may be under the influence of drugs when he cares for Molly and Polly. Julie telephoned Jack last week and told him that her solicitor was going to seek a Court Order that Jack participate in random drug testing to establish whether or not he is a drug user.

Jack has denied any drug use in a responding affidavit.

Jack calls his solicitor. Although he has denied drug use, will he still be made to undertake random drug testing? Will he have to give blood or urine for the drug test? Will he have to undergo random drug tests until Molly and Polly reach 18 years? What are the costs involving random drug testing?

What if I deny any drug use?

If one party makes allegations that the other party is using drugs in a way that may put the children at risk of harm, the Court will consider these allegations very seriously. Even if you deny taking any drugs, it is possible the Court will order random drug testing anyway so they may be satisfied that you are not a drug user.

You must remember that the Court is only looking at the Affidavit material before them. The Court does not know you personally and an Order that you undertake random drug testing is not a personal attack against you. It is simply the most effective way the Court can gather reliable evidence as to whether or not you are a drug user. If you deny any drug use, then participating in random drug testing is an effective way to prove that the other party's allegations are baseless. This in turn may help to discredit the other party's case somewhat.

Blood or Urine?

It is well within the power of the Family Court to Order that one of the parties or each party participate in random drug testing. How that drug testing is carried out is in the Court's discretion. Drug testing by a urine sample is the most common form of testing.

The collection of that urine sample must adhere to the chain of custody protocol in accordance with the Australian Standard AS/NZ4308:2008. Such urine collection must be supervised/observed by a qualified medical practitioner or their authorised delegate.

It is therefore recommended that parties undertaking urine drug testing use a reputable pathology service, such as [Healthscope](#), who comply with the Australian Standard.

How long can Court Ordered random drug testing go on for?

The parties can be made to participate in random drug testing for as long as the Court orders. Whether this is 3 months, one year or two years (etc) is within the Court's discretion. The Court must be satisfied that there is no risk of harm to the children by way of parental drug use before they cease random drug testing.

What are the costs?

Each State has varying costs with respect to Court ordered drug testing.

It is generally accepted that each party meet the costs of their own individual drug testing.

In South Australia, if you are a Legal Aid client, your costs for the drug testing may be covered by Legal Aid funding.

For private paying client's, the costs vary depending on what pathology service you use. For example, [Healthscope](#) charge approximately \$160.00 per urine sample for Court ordered drug testing.

If the costs associated with Court ordered drug testing are not feasible to you, you must discuss this with your solicitor.

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