Preparing for Family Court Temporary Hearings

1. Temporary relief [SCRFC 21](http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=21.0&subRuleID=&ruleType=FAM)
   1. Substantive relief one is seeking at the conclusion of a case that is sought prior to trial
   2. Can be brought once automatically prior to trial
   3. Can be brought to seek relief that wasn’t previously sought
   4. Can only be sought a second time to modify prior temporary order if there is *pendent lite* substantial change of circumstances [*Calhoun v. Calhoun*](https://scholar.google.com/scholar_case?case=18084493201481079801&q=calhoun+v.+calhoun&hl=en&as_sdt=4,41), 331 S.C. 157, 501 S.E.2d 735, 739 (Ct.App. 1998)
   5. Burden of proof
      1. Preponderance of the evidence for initial case
      2. Substantial change of circumstances for modification cases and subsequent temporary motions
2. When to seek temporary relief?
   1. Is the status quo acceptable?
   2. Would discovery strengthen one’s ability to obtain temporary relief
      1. Automatic discovery under new [SCFCR 25](http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=25.0&subRuleID=&ruleType=FAM)
   3. Seeking procedural relief prior to temporary relief
      1. Appointment of guardian ad litem to investigate prior to seeking custody modification
      2. Substance abuse testing prior to seeking alimony/custody
3. The distinction between temporary relief and procedural relief [SCRCP 6](http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=6.0&subRuleID=&ruleType=CIV) and [SCFCR 21](http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=21.0&subRuleID=&ruleType=FAM)
   1. Temporary relief is relief sought in the pleading that is being sought prior to trial
   2. Procedural relief is relief addressing the litigation process
   3. Temporary relief, [Rule 21, SCFCR](http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=21.0&subRuleID=&ruleType=FAM); procedural relief [Rule 6, SCRCP](http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=6.0&subRuleID=&ruleType=CIV)
   4. Temporary relief, 5 business day’s notice; procedural relief 10 days notice
   5. Temporary relief, serve affidavits at hearing; procedural relief, serve supporting affidavits with motion; serve defending affidavits two days prior to hearing
4. Drafting initial motion
   1. What relief is being sought
   2. What factual and legal arguments will lead the court to grant that relief
   3. How will one develop the factual argument
      1. Affidavits
      2. Records
      3. Discovery
      4. Subpoenas
      5. Guardian’s report
      6. Financial declarations
   4. Grounds “therefor” [SCRCP 7(b)](http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=7.0&subRuleID=&ruleType=CIV)
   5. Burden of proof
      1. Modification versus initial case
   6. How much time
      1. 15 minutes for very simply motions with eight pages of affidavits or less
      2. 30 minutes for more complex motions
      3. Even more time if seeking testimony. [Rule 21(b), SCFCR](http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=21.0&subRuleID=&ruleType=FAM)
5. Initial preparation
   1. How to obtain affidavits, who to obtain affidavits from, and what should the affidavits say
   2. Subpoenas
   3. Begin preparation of [financial declaration](http://www.sccourts.org/forms/word/SCCA430.dot)
      1. Proof of income
      2. Listing assets and debts
      3. Documenting values of assets and debts
   4. Preparing [proposed parenting plan](http://www.sccourts.org/forms/word/SCCA466.dot)
      1. Strategic considerations
      2. Goals in custody will shape affidavits being sought
      3. Statutory custody factors [S.C. Code § 63-15-240(B)](https://law.justia.com/codes/south-carolina/2012/title-63/chapter-15/section-63-15-240)
6. Turning statements into affidavits
   1. Personal knowledge?
   2. Detail
   3. Exhibits
7. Using financial experts in temporary hearing preparation
8. Defending temporary hearings
   1. Return?
      1. Rules don’t require it
      2. Possibly needed if seeking attorney’s fees
      3. Not proper vehicle to see relief that is not part of the opposing party’s motion for temporary relief
   2. Cross-motion
      1. If seeking affirmative relief not sought by opposing party’s motion, best practice is to file cross-motion
      2. Permission from clerk or chief administrative judge on docketing scheduling
9. Final preparation
   1. Final preparation of financial declaration
      1. List other side’s assets and debts even if one cannot yet value them
      2. Check for accuracy and plausibility
      3. Be prepared to explain accurate but implausible information in client’s affidavit
      4. Attach supporting documentation to client’s affidavit or financial declaration if you believe accuracy will be disputed
   2. Witness affidavits
      1. Are they based upon personal knowledge
      2. Hearsay
         1. Can always include what the other side says
         2. Should try to limit repeating what one’s own client says
         3. Statements of the children
            1. If not offered for truth of matter asserted, not hearsay
            2. Hearsay exceptions
         4. Can be included even if not admissible
         5. Can be objected to if not admissible and other party catches it
         6. Can later damage that witnesses credibility if not accurate
      3. Are they useful
         1. Too opinionated
         2. Too one sided
         3. Remember the client and the witness may both be impeached at trial on the information contained in the affidavits that party submits at the temporary hearing
            1. [Rule 801(d)(2)(B), SCRE](http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=801.0&subRuleID=&ruleType=EVD), “a statement of which the party has manifested an adoption or belief in its truth”
            2. Relief may be “won” at the temporary hearing based on inaccurate affidavits but render the case basically untryable by the victor
      4. Client’s affidavit
         1. Should be revised repeatedly as one learns more
         2. Should harmonize with other witness affidavits being presented
         3. Show, don’t tell, whenever possible with exhibits
         4. Cover disputed issues and relief sought in the motion
            1. Don’t need histories unless relevant
            2. Too much information is merely impeachment material for trial
      5. [Temporary hearing background information](http://www.sccourts.org/forms/word/SCCA459.dot)
   3. Fee affidavit
      1. Must include itemized statement of time spent. [*Strickland v. Strickland*](https://scholar.google.com/scholar_case?case=2058137228510516866&q=Strickland+v.+Strickland&hl=en&as_sdt=4,41), 297 S.C. 248, 376 S.E.2d 268 (1989).
   4. Argument outline