Part 6.1—Duty of disclosure

Division 6.1.1—General duty of disclosure

6.01 General duty of disclosure

(1) Subject to subrule (4), each party to a proceeding has a duty to the court and to each other party to give full and frank disclosure of all information relevant to the proceeding, in a timely manner.

Note: The proceedings to which the duty of disclosure applies include both parenting proceedings and financial proceedings. Failure to comply with the duty may result in the court excluding evidence that is not disclosed or imposing a consequence, including punishment for contempt of court.

(2) The duty of disclosure applies from the start of the proceeding and continues until the proceeding is finalised.

Note: Parties are also expected to comply with the duty of disclosure when complying with the pre-action procedures.

(3) The duty of disclosure also applies to a litigation guardian appointed under Part 3.5.

(4) This rule does not apply to a respondent to an application alleging contravention or contempt.

6.02 Undertaking by party

(1) A party (but not an independent children's lawyer) must file a written notice:

(a) stating that the party:

(i) has read Parts 6.1 and 6.2 of these Rules; and

(ii) is aware of the party's duty to the court and each other party (including any independent children's lawyer) to give full and frank disclosure of all information relevant to the issues in the proceeding, in a timely manner; and

(b) undertaking to the court that, to the best of the party's knowledge and ability, the party has complied with, and will continue to comply with, the duty of disclosure; and

(c) acknowledging that a breach of the undertaking may be a contempt of court.

(2) A party commits an offence if the party makes a statement or signs an undertaking the party knows, or should reasonably have known, is false or misleading in a material particular.

Penalty: 50 penalty units.

Note: Subrule (2) is in addition to the court's powers under section 112AP of the Family Law Act relating to contempt and the court's power to make an order for costs.

(3) If the court makes an order against a party under section 112AP of the Family Law Act in respect of a false or misleading statement referred to in subrule (2),

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the party must not be charged with an offence against subrule (2) in respect of that statement.

(4) A notice under subrule (1) must be in accordance with the approved form and must be filed before the first court date, unless the court otherwise orders.

6.03 Duty of disclosure—documents

The duty of disclosure applies to each document that:

(a) is or has been in the possession, or under the control, of the party disclosing the document; and

(b) is relevant to an issue in the proceeding.

Note: In particular types of proceedings, practice directions may specify the documents that must be disclosed in those proceedings. See also rules 6.05 and 6.06.

6.04 Use of documents

(1) A person who inspects or copies a document, in relation to a proceeding, under these Rules or an order:

(a) must use the document for the purpose of the proceeding only; and

(b) must not otherwise disclose the contents of the document, or give a copy of it, to any other person without the court's permission.

(2) However:

(a) a solicitor may disclose the contents of the document or give a copy of the document to the solicitor's client or counsel; and

(b) a client may disclose the contents of the document or give a copy of the document to the client's solicitor or counsel; and

(c) this rule does not affect the right of a party to use a document or to disclose its contents if that party has a common interest in the document with the party who has possession or control of the document.

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