ASKING A FAMILY LAW LAWYER IF YOU CAN BE JOINED TO PROCEEDINGS

Date : October 15, 2022

It is not uncommon for family members to engage in business with one another. A family law lawyer is aware of the existence of a provision in the *Family Law Act 1975* (Cth) which allows for 'any other person whose interests would be affected by the making of the order' to be joined to a proceeding.

It is not ideal to approach a family law lawyer with an intention to go to litigation. However, sometimes the complications that can arise from the breakdown of a relationship may indirectly affect your interests as an external party.

Are there any rules or procedures to follow when joining?

If your rights are at risk of being directly affected by an issue in family law proceedings, it is important to seek advice from a family law lawyer. With a detailed understanding of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) ('*Family Law Rules*'), a family law lawyer will advise you of rule 3.01.

The importance of this rule allows for you to be joined to proceedings in the case that there may be an interference with your rights as a result of an issue in the proceeding. It operates subject to the condition that the participation of the affected party is 'necessary' for the court to be able to determine all the relevant issues in dispute.

What is considered 'necessary'?

The court has recently clarified what the word necessary means in the context of rule 3.01. Warnick J in *Wayne & Dillon & Anor* [2008] FamCAFC 204 noted that the term means something more than 'useful' or 'expeditious'. Further, if a cause of action (that is recognizable at law) and against a 'third party' is particularized then it is highly likely the court will consider the joinder's involvement as 'necessary'.

What if I want to join but the court date has passed?

Pursuant to rule 3.03(4) of the *Family Law Rules*, if a party seeks to join proceedings as a third party, and the first court date has passed, the court must grant the party leave.

As difficult and complex family litigation can get, it will always remain in the court's interest to reduce the level of difficulty and time that parties spend in litigation. Joining proceedings as a third party is a complicated but often necessary step towards preventing any unjust interferences with your legal rights.

As a result it is recommended that you seek legal advice from a family law lawyer who will be

able to advise you of the best way to proceed.

Contact us on 1800 300 170 or email us at famlaw@matthewsfolbigg.com.au

Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family Lawyers.