



July 2013 Tip of the Month
Emergency Relief in Family Court
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The information contained in this tip is designed for use by attorneys. The information in this tip is not intended as legal advice. Each person's situation is different. Determining whether emergency relief is appropriate in a particular case requires individualized advice. If you are seeking legal assistance please go to www.lawhelpmn.org to learn about legal resources in your area.

A common issue faced by new and experienced family law practitioners is the need for emergency relief. When is an emergency really an emergency? What are the procedures for obtaining emergency relief? What does a judge or referee consider when deciding whether to grant emergency relief? This tip focuses on emergency relief related to children.

WHAT IS EMERGENCY RELIEF?

The two main forms of emergency relief in family court cases are ex parte orders and accelerated hearings. An ex-parte order is an order signed by the court solely upon the application of one party without argument from the adverse party. An accelerated hearing is a hearing where the court has waived the 14 day notice requirement required by MN Rules of Practice 303.03. Depending on the court's determination of the level of emergency the accelerated hearing may be granted in addition to or instead of the relief requested in the ex parte order. Where the ex parte relief granted affects custody and parenting time, Rule 304.04 requires an accelerated hearing within 14 days from the date the emergency relief is granted.

PROCEDURE

Rule 303.04 of the General Rules of Practice addresses the procedure for requesting emergency relief. The party seeking relief must state in specificity in a motion and affidavit:

- a) Why emergency relief is requested;
- b) The relief requested;
- c) Disclosure of any prior attempt to obtain the same or similar relief and the result;
- d) If there was a prior attempt to obtain emergency relief, the name of the judicial officer to whom the request was made;

¹ This tip was inspired by an article by Larry McGee in the Family Law Forum, Volume 21, No. 1 (Winter 2012-13). The article can be found online at: <http://www.mnbar.org/sections/family-law/2012-13%20Newsletter/FLNewsWinter12-13.html>.

- e) If the prior request was denied for the same or similar relief, explain what new facts are presented to support the current motion.

A party has an obligation to serve the adverse party with the motion and affidavit, including notice of the time and place the motion will be heard unless:

- a) The party seeking emergency relief provides a written statement that the party has made a good faith effort to contact the other party or counsel and has been unsuccessful or
- b) The supporting documents show good cause why notice to the other party should not be required and the court waives the notice requirement.

If a case has not been filed an emergency filing order is necessary to expedite the opening of a case file. Note that in order to open a file you must include the underlying pleadings and paper-work in addition to the materials requesting emergency relief. For example, if you are seeking an ex parte order granting a grandparent temporary custody you must also file a petition for 3rd Party Custody at the same time.

In Hennepin County, the party seeking relief shall contact the chambers of the judicial officer assigned to the case. If the case has not yet been filed, the motion, affidavit and accompanying materials are provided to the signing judge.

PRACTICE TIPS

While the procedure for seeking emergency is relatively straight forward, determining whether to seek emergency relief in the first place is not. The following practice tips can help guide you through the process.

- 1) **Nature of the Emergency** – Emergency relief is a high standard to meet. There is not a checklist of circumstances or occurrences that are pre-determined emergencies. The facts and circumstances of each case determine whether emergency relief is appropriate. Generally an emergency situation resulting in action by the court requires the potential for immediate harm to a child should the court fail to act. This could include where a child is being exposed to a sexual predator, removing the child from the state without permission, withholding a child and not providing necessary medical care or medication.
- 2) **Accelerated Hearings vs. Ex Parte Orders** – In practice the standard to obtain an ex parte order is often whether the children are in imminent danger of harm. Where this standard is not met the court will often schedule an accelerated hearing to address the emergency issues with both parties present. While not immediate relief the accelerated hearing allows the issue to be addressed in an expedited manner. Keep in mind that a party can request an accelerated hearing without seeking an ex parte order.
- 3) **Notice** – Notice is a prime consideration for the court in these cases. You will be asked if you gave notice to the other party that you were seeking emergency relief. Where appropriate consider submitting an affidavit of counsel detailing your efforts to contact the opposing party.

If you are asking for relief without notifying the other party specifically state the reason why in your client's affidavit. If you obtain an order for accelerated hearing or ex parte relief, be prepared to immediately serve the opposing party.

- 4) **Be prepared to provide the court additional information** – This could include taking testimony from your client or contacting the adverse party from the courtroom.

- 5) **Do your homework** – Your client is asking the court to grant extraordinary relief. Your credibility is at stake if the court determines the reality of the situation does not match the facts presented by your client. You may also lose credibility when bringing a motion that does not meet the high standard that is required for emergency relief.