

Family Code section 3064. (a) The court shall refrain from making an order granting or modifying a custody order on an ex parte basis unless there has been a showing of immediate harm to the child or immediate risk that the child will be removed from the State of California. (b) "Immediate harm to the child" includes, but is not limited to, the following: (1) Having a parent who has committed acts of domestic violence, where the court determines that the acts of domestic violence are of recent origin or are a part of a demonstrated and continuing pattern of acts of domestic violence. (2) Sexual abuse of the child, where the court determines that the acts of sexual abuse are of recent origin or are a part of a demonstrated and continuing pattern of acts of sexual abuse.

California Rules of Court, Ex Parte

## 2014 California Rules of Court

### Rule 5.151. Request for emergency orders; application; required documents

#### **(a) Application**

The rules in this chapter govern applications for emergency orders (also known as ex parte applications) in family law cases, unless otherwise provided by statute or rule. These rules may be referred to as "the emergency orders rules." Unless specifically stated, these rules do not apply to ex parte applications for domestic violence restraining orders under the Domestic Violence Prevention Act.

#### **(b) Purpose**

The purpose of a request for emergency orders is to address matters that cannot be heard on the court's regular hearing calendar. In this type of proceeding, notice to the other party is shorter than in other proceedings. Notice to the other party can also be waived under exceptional and other circumstances as provided in these rules. The process is used to request that the court:

- (1) Make orders to help prevent an immediate danger or irreparable harm to a party or to the children involved in the matter;
- (2) Make orders to help prevent immediate loss or damage to property subject to disposition in the case; or
- (3) Make orders about procedural matters, including the following:
  - (A) Setting a date for a hearing on the matter that is sooner than that of a regular hearing (granting an order shortening time for hearing);
  - (B) Shortening or extending the time required for the moving party to serve the other party with the notice of the hearing and supporting papers (grant an order shortening time for service); and
  - (C) Continuing a hearing or trial.

### **(c) Required documents**

A request for emergency orders must be in writing and must include all of the following completed documents when relevant to the relief requested:

- (1) *Request for Order* (form FL-300) that identifies the relief requested;
- (2) A current *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) and *Property Declaration* (form FL-160);
- (3) *Temporary Orders* (form FL-305) to serve as the proposed temporary order;
- (4) A written declaration regarding notice of application for emergency orders based on personal knowledge; and
- (5) A memorandum of points and authorities only if required by the court.

### **(d) Contents of application and declaration**

#### *(1) Identification of attorney or party*

An application for emergency orders must state the name, address, and telephone number of any attorney known to the applicant to be an attorney for any party or, if no such attorney is known, the name, address, and telephone number of the party, if known to the applicant.

#### *(2) Affirmative factual showing required in written declarations*

The declarations must contain facts within the personal knowledge of the declarant that demonstrate why the matter is appropriately handled as an emergency hearing, as opposed to being on the court's regular hearing calendar.

An applicant must make an affirmative factual showing of irreparable harm, immediate danger, or any other statutory basis for granting relief without notice or with shortened notice to the other party.

#### *(3) Disclosure of previous applications and orders*

An applicant should submit a declaration that fully discloses all previous applications made on the same issue and whether any orders were made on any of the applications, even if an application was previously made upon a different state of facts. Previous applications include an order to shorten time for service of notice or an order shortening time for hearing.

#### *(4) Disclosure of change in status quo*

The applicant has a duty to disclose that an emergency order will result in a change in the current situation or status quo. Absent such disclosure, attorney's fees and costs incurred to reinstate the status quo may be awarded.

#### *(5) Applications regarding child custody or visitation (parenting time)*

Applications for emergency orders granting or modifying child custody or visitation (parenting time) under Family Code section 3064 must:

- (A) Provide a full, detailed description of the most recent incidents showing:
  - (i) Immediate harm to the child as defined in Family Code section 3064(b); or
  - (ii) Immediate risk that the child will be removed from the State of California.
- (B) Specify the date of each incident described in (A);
- (C) Advise the court of the existing custody and visitation (parenting time) arrangements and how they would be changed by the request for emergency orders;
- (D) Include a copy of the current custody orders, if they are available. If no orders exist, explain where and with whom the child is currently living; and
- (E) Include a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (FL-105) if the form was not already filed by a party or if the information has changed since it was filed.

**(e) Contents of notice and declaration regarding notice of emergency hearing**

**(1) Contents of notice**

When notice of a request for emergency orders is given, the person giving notice must:

- (A) State with specificity the nature of the relief to be requested;
- (B) State the date, time, and place for the presentation of the application;
- (C) State the date, time, and place of the hearing, if applicable; and
- (D) Attempt to determine whether the opposing party will appear to oppose the application (if the court requires a hearing) or whether he or she will submit responsive pleadings before the court rules on the request for emergency orders.

**(2) Declaration regarding notice**

An application for emergency orders must be accompanied by a completed declaration regarding notice that includes one of the following statements:

- (A) The notice given, including the date, time, manner, and name of the party informed, the relief sought, any response, and whether opposition is expected and that, within the applicable time under rule 5.165, the applicant informed the opposing party where and when the application would be made;
- (B) That the applicant in good faith attempted to inform the opposing party but was unable to do so, specifying the efforts made to inform the opposing party; or

(C) That, for reasons specified, the applicant should not be required to inform the opposing party.

#### **Rule 5.167. Service of application; temporary restraining orders**

##### **(a) Service of documents requesting emergency orders**

A party seeking emergency orders and a party providing written opposition must serve the papers on the other party or on the other party's attorney at the first reasonable opportunity before the hearing. Absent exceptional circumstances, no hearing may be conducted unless such service has been made. The court may waive this requirement in extraordinary circumstances if good cause is shown that imminent harm is likely if documents are provided to the other party before the hearing. This rule does not apply in cases filed under the Domestic Violence Prevention Act.

##### **(b) Service of temporary emergency orders**

If the judicial officer signs the applicant's proposed emergency orders, the applicant must obtain and have the conformed copy of the orders personally served on all parties.

#### **CALIFORNIA JUDGE'S BENCHGUIDE 200--CHILD CUSTODY AND VISITATION 2012**

##### **[§200.7] Ex Parte Custody or Visitation Requests**

(1) *If you are hearing an ex parte request for custody or visitation, determine whether:*

- The child is faced with immediate harm that includes:
  - A recent act of domestic violence directed to child or to other party or in presence of child;
  - A pattern of domestic violence in the past; or
  - Lack of supervision for the child.

OR

- There is an immediate risk that the child will be removed from the state.

(2) *If any of the factors in item 1 are present:*

- Issue an ex parte temporary custody order.
- Set a hearing date within 20 days.
- Issue an order to show cause on the responding party.
- Enter an order restraining the party receiving custody from removing the child from the state pending notice and the hearing on the order.

For discussion of ex parte orders, see §200.35.

##### **2. [§200.35] Ex Parte Order**

A party seeking an initial or modified custody order may request an ex parte temporary custody order before the hearing date set for the order to show cause if there is no agreement, understanding, or stipulation. An ex parte custody order may be granted if there is a showing of “immediate harm to the child or immediate risk that the child will be removed from the State of California.” Fam C §3064. These are the only circumstances under which a court may issue ex parte custody or change of custody orders.

“Immediate harm to the child” includes:

- Having a parent who has committed recent acts of domestic violence or when such acts are a part of a demonstrated and continuing pattern. Fam C §3064.
- Failing to provide supervision for a young child. *Marriage of Slayton* (2001) 86 CA4th 653, 656–657, 103 CR2d 545 (also relying on definitions of neglect and matters subject to mandatory reporting laws in analyzing what constitutes “immediate harm”; see Pen C §§11165.2 and 11166).
- Sexual abuse of the child, where the court determines that the acts of sexual abuse are of recent origin or are a part of a demonstrated and continuing pattern of acts of sexual abuse. Fam C §3064.

If the court issues an ex parte order, it must also issue an order to show cause and set a hearing date within 20 days. That date may be extended pending entry of final judgment if the responding party is served and does not appear or respond within the time set. Fam C §3062(a). Ex parte orders may be extended up to an additional 90 days and a hearing date reset if the responding party is not served, despite good faith efforts, and the party who received ex parte orders shows by affidavit or other proof under penalty of perjury that the responding party has possession of the minor child and seeks to avoid the jurisdiction of the court or is concealing the child. Fam C §3062(b).

## **MARIN SUPERIOR COURT LOCAL RULES**

### **6.6 EX PARTE MATTERS AND ORDERS**

**A. Ex Parte Applications.** Except in an emergency or when the assigned judicial officer is unavailable, all applications for ex parte orders shall be made to the judicial officer to whom the case has been assigned. All applications for ex parte relief will be heard in open court at 8:30 a.m. in Department H and 9:00 a.m. in Department O Monday through Friday. Ex parte matters involving the Department of Child Support Services (DCSS) will be heard at the beginning of the regularly scheduled DCSS calendar. The ex parte procedure shall not be used as a means of avoiding the calendaring requirements for non-emergency matters, and at the time of the hearing litigants should be prepared to make a showing justifying their need to proceed ex parte. The ex parte application filing fee shall be paid in the Clerk’s Office prior to the hearing in a department.

**B. Conditions for Issuance of Ex Parte Orders.** Before submitting ex parte orders for the judge's signature, parties shall comply when applicable with CCP §527.6, Fam. C. §§2045, 3060-3064 and CRC 5.151 et seq., including all requirements for a declaration setting forth that notice to the other party has been given or, alternatively, the reason notice has not been given. A party seeking an ex parte order shall notify all parties no later than 10:00 a.m. the court day before the ex parte appearance, absent a showing of exceptional circumstances. Notice of the application may be by telephone. Notice of the application and/or service of the moving papers may be made by personal service or by facsimile transmission. The party seeking the order must notify the Court by calling 415-444-7044 and leaving a message no later than 10:00 a.m. the court day before the ex parte appearance. Parties appearing at the ex parte hearing shall serve the ex parte application or any written opposition on all other appearing parties at the first reasonable opportunity. Absent exceptional circumstances, no hearing shall be conducted unless such service has been made.

**C. Modified Orders.** If the Court modifies any requested orders, it is the responsibility of the applicant to conform all copies with the changes before filing and

service.

[Rule 6.6 adopted effective 5/1/98; amended 1/1/14]