
EMERGENCY MOTIONS IN FAMILY COURT

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STANDPOINT

Attorneys & advocates against domestic & sexual violence

CENTRAL  MINNESOTA

LEGAL SERVICES

GOALS

Understand what emergency relief is

Learn the procedure for requesting emergency relief in a family court action

Explore when an emergency is really an emergency (according to a family court judge)

Discuss alternate options to filing an emergency motion

Examine case examples—where have attorneys been successful?

Minnesota Rules
of General
Practice

Minnesota Rules
of Civil
Procedure 65.01

Minnesota
Statute 518.131

3: Ex Parte
Orders

303.04: Ex Parte
and Emergency
Relief

303.01-303.03:
Typical Motion
Practice

WHAT RULES APPLY?

WHAT IS EMERGENCY RELIEF?

Ex Parte Orders



Order signed by the Court solely upon the application of one party, without input from the opposing party

Accelerated Hearings

The Court has waived the 14-day notice requirement of Rule 303.03

WHAT DEFINES AN EMERGENCY?

" It clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition"

- MN Rules of Civil Procedure 65.01

In practice: typically only granted in cases where there will be irreparable harm to a child if the court does not act immediately.

- Possible for financial relief

Must serve the motion and affidavit, including notice of the time when and the place where the motion will be heard, on the other party or counsel, unless:

(i) 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

(ii) the supporting documents show good cause why notice to the other party should not be required and the court waives the notice requirement.

EMERGENCY
DOES NOT
ALWAYS MEAN
EX PARTE

WHEN IS NOTICE REQUIRED? FURTHER GUIDANCE

- In any application for ex parte relief, the court may require a demonstration or explanation of the efforts made to notify affected parties, or the reasons why such efforts were not made. The reasons supporting ex parte relief should be recited in the order.
 - Rule 3.01
- Advisory Comment: *Where destruction of property or evidence is threatened, assets appear to be concealed or are threatened to be concealed, or the abduction of children has occurred or is threatened, or other situations exist where the giving of notice is likely to make any relief impossible to obtain, the court may consider the matter ex parte (without notice to the other side)*

PROCEDURE

There *must* be an underlying action (divorce, custody, third party custody, etc.)

File:

- Motion for Ex Parte/Emergency Relief
- Supporting Affidavit
- Proposed Order
- Underlying paperwork (new case) or permanent motion*

Pay Filing Fee

If motion is granted: hearing must be held within 14 days.
Relief may be denied with or without a hearing.

NOTICE OF MOTION AND MOTION

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- Party seeking emergency relief can request the following:
 - For the Court to find that an emergency exists pursuant to Rule 303.04 of the Minnesota Rules of General Practice.
 - For the court to schedule an accelerated hearing in this matter within fourteen (14) days pursuant to Rule 303.04(f) of the Minnesota Rules of General Practice.
 - Other relief that addresses the emergency (temporary custody, suspend parenting time, ordering law enforcement to assist with the transfer of the child, etc.)

MAKE SURE TO INCLUDE

Why emergency relief is requested

The relief requested

Prior attempt to obtain the same or similar relief and the result

If applicable, the name of the judicial officer to whom the request was made

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

IF SEEKING EX PARTE RELIEF: JUSTIFY THE LACK OF NOTICE

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- If seeking not to give notice, also include:
 - A written statement that the party has made a good faith effort to contact the other party or counsel and has been unsuccessful
 - OR
 - Good cause why notice to the other party should not be required and the court waives the notice requirement.

B. Prior ex parte applications to the Court:

C. Notice given to the other party:

I declare under penalty of perjury that everything that I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____ Signature of Petitioner/Respondent _____

County and State where signed: _____

Name: _____
Address: _____
City/State: _____
Zip Code: _____
Telephone: _____
Email: _____

State of Minnesota

County Ramsey

District Court

Judicial District:	Second
Court File Number:	
Case Type:	Family

In Re the Matter of:

Name of Petitioner

and

Name of Respondent

**Ex Parte Motion
for Emergency Relief
(Rule 303.04)**

MOTION

- I am the Petitioner Respondent in this action.
- This case involves the following minor children:

Full Name of Child	Date of Birth

- I want temporary custody of the children Yes No
If yes, please fill out the information below. If no, skip to question 4.
 - I want immediate temporary sole legal custody of the minor children.
 immediate temporary sole physical custody of the minor children.
 - I want an Ex Parte Order authorizing law enforcement to use the full force of the law to obtain and transfer physical custody of the children as ordered herein.
- I want to change the other party's parenting time Yes No
If yes, please choose option A or B.

A. I want to suspend Petitioner's Respondent's parenting time with the minor children.

OR

B. I want Petitioner's Respondent's parenting time with the minor children be supervised.

i. The other party should have supervised parenting time on the following schedule: _____

ii. The other party's parenting time should be supervised by:

A safety center, or appropriate facility, if available, with costs to be paid by the Petitioner Respondent.

OR

Supervised by a relative, friend or other third party:

(Supervisor's name and contact information)

5. If my Ex Parte Motion is denied, I want an accelerated hearing to discuss these issues with my judicial officer.

6. Other: _____

7. I am attaching the following documents or affidavits, if any, in support of my request:

Affidavit in Support of Ex Parte Motion for Emergency Relief

Other: _____

Other: _____

8. I request such other and further relief as the Court may deem just, fair and equitable.

VERIFICATION AND ACKNOWLEDGEMENTS

- A. I have read this document. To the best of my knowledge, information and belief, the information contained in this document is well grounded in fact and is warranted by existing law.
- B. I have not been determined by any Court in Minnesota or in any other state to be a frivolous litigant and I am not the subject of an Order precluding me from serving or filing this document.
- C. I am not serving or filing this document for any improper purpose, such as to harass the other party or to cause delay or needless increase in the cost of litigation or to commit a fraud on the Court.
- D. I understand that if I am not telling the truth, or if I am misleading the Court or serving or filing this document for an improper purpose, the Court can order me to pay money to the other party, including the reasonable expenses incurred by the other party because of filing or serving this document, court costs, and reasonable attorney's fees.

DATE: _____

My Signature

Print Name

Address: _____

City/ State/Zip Code: _____

Telephone: () _____

3. List all minor children that are involved in this matter:

Name (first, middle, last)	Date of Birth	Who has the child now?
		<input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Other: _____
		<input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Other: _____
		<input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Other: _____
		<input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Other: _____
		<input type="checkbox"/> Petitioner <input type="checkbox"/> Respondent <input type="checkbox"/> Other: _____

4. There is not a custody or parenting time order regarding the minor children.

OR

There is a custody and/or parenting time order regarding the minor children.

A. The order was filed in this case filed in another case in the County of _____,
State of _____, and the court file number is _____.

B. The order grants the following legal custody:

- Joint legal custody to both parties,
- Sole legal custody to Petitioner, or
- Sole legal custody to Respondent.

C. The order grants the following physical custody:

- Joint physical custody to both parties,
- Sole physical custody to Petitioner, or
- Sole physical custody to Respondent.

D. The order grants the following parenting time:

Petitioner's parenting time with the minor children is:

- Unsupervised Supervised Reserved

Respondent's parenting time with the minor children is:

- Unsupervised Supervised Reserved

5. Ex parte relief is required in this situation because (303.04(c)):

I made a good faith effort to locate and/or contact the other party or counsel and was unsuccessful. My efforts to locate and/or contact the other party included: _____

OR

I have good cause why notice to the other party should not be required: _____

6. The emergency relief I requested in my motion is required in this situation because (303.04(c)(i)):

A. The children are in immediate danger of physical harm because: _____

B. Other: _____

7. The following is additional information regarding the reasons I am requesting the relief set forth in my motion: _____

8. My past attempts to obtain same or similar relief and the result (if there was a prior attempt, state the name of the judicial officer who considered the motion, and, if the relief was denied, state what new facts support this current motion) (303.04(c)(ii-v)):

- I have made no past attempts to obtain same or similar relief.
- Information about my past attempts to obtain same or similar relief:

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116.

Dated: _____ Signature: _____

Print Name: _____

County and State Where Signed: _____

Forgetting a proposed order

Assuming notice isn't required

Client control—
not everything is
an emergency,
even if very
urgent to client

Not realizing
that a hearing
will be set

COMMON
MISTAKES/MISCONCEPTIONS

INTRO TO ORDERS FOR PROTECTION

-
- Minnesota Statute 518B.01 defines domestic abuse as:
 - (1) physical harm, bodily injury, or assault;
 - (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or
 - (3) terroristic threats, within the meaning of section [609.713, subdivision 1](#); criminal sexual conduct, within the meaning of section [609.342](#), [609.343](#), [609.344](#), [609.345](#), or [609.3451](#); sexual extortion within the meaning of section [609.3458](#); or interference with an emergency call within the meaning of section [609.78, subdivision 2](#).
 - When committed against a Family/Household member

OFP's limited to situations where domestic abuse has occurred;
Emergency Motions can be broader

Can obtain temporary custody in both types of proceedings. Child must be a direct victim of abuse to be a protected party in an OFP.

Court can consider the statutory best interest factors when determining temporary custody/parenting time in an OFP, but is not required to do so

No contact provisions/criminal charges

COMPARE AND CONTRAST: ORDER FOR PROTECTION

IN SUM: WHEN SHOULD YOU FILE...



AN EMERGENCY MOTION?



AN ORDER FOR PROTECTION?

CASE EXAMPLES

- Remember that the court is reactive and not proactive!
- Kidnapping
- Mental Health Concerns that impact the child
- Exposing child to domestic abuse in home
- Chemical Dependency issues that impact the child

HYPOTHETICALS

- Mary contacts you and tells you that her former partner, John, left their children alone and went out to the bar during his parenting time. Mary found out that this happened a few days after she picked their children up from parenting time. Their oldest child told her that no one was home, and they didn't want to be at their Dad's house anymore because there were cigarette butts and beer cans everywhere. They told Mary that John didn't change their youngest sibling's diaper before he left, and he put the child in their crib before leaving. Mary wants you to file an emergency motion before Dad has parenting time again. What should Mary do?

HYPOTHETICAL

- Steve and Sally are co-parenting their four-year old daughter Susie. Steve and Sally have a 5-2-2-5 parenting time schedule. Susie has a health condition that requires her to take medication every 12 hours. When Steve brings Susie to Sally for parenting time, he always provides the medication. Both Steve and Sally know that Susie needs her medication. During Sally's last weekend with Susie, Sally forgot to give Susie her medication. To try and correct the mistake, she gave Susie two doses 12 hours later. When Steve picked Susie up, he could tell something wasn't right. He brought Susie to the urgent care and she was admitted to the hospital for observation. Steve tells you that this exact scenario has occurred 3 times in the past month, and it takes Susie several days to get back to normal after Sally over medicates her. What should Steve do?

HYPOTHETICAL

- You are contacted by Greta. She tells you that she needs to help her grandchildren. Her daughter, Gina, is living with a man named, Greg. Greg is not the father of her grandchildren. Gina and Greg have been behaving erratically and dropping the children off at Greta's home at all hours of the day and night. They sometimes disappear for days or weeks at a time. Greta is worried that Gina and Greg may be using some kind of drug, but she's not sure what. While staying with Greta, one of her grandchildren told her that Greg pushed him into a wall. He also told her that Greg threatened that if he told Greta about it, he would never see Greta again. Shortly after her grandson told her this, Greta got a text from Gina that she would be picking the children up the next day. Gina has not seen the children for three weeks. What should Greta do?

QUESTIONS?

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