

CHAPTER 3 EX PARTE MATTERS

Rule 5.3

Ex Parte Purpose

Ex parte hearings are strongly discouraged by the Family Law Court. The only purpose of ex parte hearings is to address emergency and procedural matters that cannot be heard on the court's regular motion calendar. Any ex parte request alleging an emergency must comply with California Rules of Court, rule 3.1202.

(Rev. & Num. 1/1/2010)

Rule 5.3.1

Time for Ex Parte Matters

Notice of ex parte hours will be posted in each of the Divisions of the court. Refer to the court's website for current ex parte information at www.sdcourt.ca.gov.

A judicial officer of any Division of the Family Court may hear an emergency ex parte request at any time that the business of the court permits during its normal business hours.

Ex parte requests will generally be heard and determined in open court and on the record except when, in the discretion of the judicial officer, such hearing would more properly be held in chambers and off the record.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

Rule 5.3.2

Required Notice to Opposing Counsel/Party

Except as provided in Family Code section 6300, counsel or a party requesting an ex parte hearing must notify the opposing counsel or party, including the Department of Child Support Services if appropriate, of the ex parte relief requested by no later than 10:00 a.m. on the previous court day.

"Notice" of an ex parte appearance given by message left on a voice mail machine DOES constitute notice under these rules. "Notice" of an ex parte appearance given by facsimile ("fax") machine DOES NOT constitute notice under these rules unless this method of notice has been previously agreed upon by and between counsel or the SRLs.

The requesting counsel or party must provide a Declaration of Notice to the Court at the time of the ex parte appearance. The Declaration of Notice must include, under penalty of perjury, the details of how, when, and to whom notice of the date, time, and place of the ex parte hearing and a description of the relief to be requested was given, or a complete description of the good faith effort to provide such notice.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010)

Rule 5.3.3

Exceptions to the Notice Requirement

Except as provided in Family Code section 6300, if the moving party asserts notification may negate the benefit of the requested relief, or explains why notice could not be given, ex parte relief may be granted without the required notice. The Declaration of Notice must set forth the facts upon which such claim is based. The parties may stipulate that notice is unnecessary.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.4

Case Number Required for an Ex Parte Appearance

The party making an ex parte appearance must obtain a case number before the court will consider the application for an emergency order, including a request for a temporary restraining order, provisional remedy, or any other emergency relief.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.5

Requesting the Court File Before an Ex Parte Appearance

When ex parte notice is given in the Central and North County Divisions, counsel must request that the court file be made available to the judicial officer assigned to hear the ex parte matter. No advance

notice to the court to pull a file is required in the South and East County Divisions. The telephone numbers for requesting the case file are available on the court's website at www.sdcourt.ca.gov. (Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009)

Rule 5.3.6

Order of Hearing Ex Parte Matters

Judicial officers will hear ex parte matters in an order which will facilitate the matter for the court and counsel and so as not to significantly interfere with the court's normal calendar. Any opposed ex parte request which cannot be heard prior to the court's normal calendar may be added to the calendar and heard in due course.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.7

Meet and Confer

If an ex parte request is contested, both sides must meet and confer on the issue(s) in dispute. The meet and confer conference must occur in a way that will ensure that all issues and positions of the parties have been discussed before appearing before the court. Failure to comply with this rule may result in sanctions, including denial of the ex parte request.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.8

Ex Parte Application Form, Supporting Declarations, and Proposed Order

The requesting party must completely fill out the pre-printed NCR ex parte application form (SDSC D-046). If the opposing party or counsel is present, the requesting party must personally serve the opposing party or counsel with the ex parte application form, all supporting declarations, and the proposed order. The completed form, all declarations, and the proposed order must be presented to the judicial officer or the bailiff of the court prior to the ex parte hearing.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008)

Rule 5.3.9

Evidentiary Declarations

The judicial officer will only consider ex parte requests that are supported by written evidentiary declarations that have been signed by the declarant under penalty of perjury. The supporting declaration(s) must describe why the ex parte request cannot be heard on the court's regular motion calendar. The supporting declaration(s) must be filed with the court and made a part of the court's file. If an ex parte is requested due to an alleged emergency, the supporting declaration must demonstrate, with admissible evidence, irreparable harm, immediate danger, or some other statutory basis for granting relief ex parte. Supporting declarations are not required for case management issues if jointly requested by the parties and/or counsel.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2010)

Rule 5.3.10

Exceptions to Notice, Application and Evidentiary Requirements

A. Requests for the following types of ex parte relief do not require notice to opposing counsel, an Ex Parte Application, or supporting declarations:

1. Signature of an order or judgment which opposing counsel has approved or agreed not to oppose;

2. Signature of an order or judgment after a default proceeding;

3. Wage and earning assignment order (see Local Rule 5.3.13);

4. Restoration of former name after judgment; and

5. Order for publication or posting.

B. The business office at each division has a drop box where these ex parte requests may be deposited for processing. An attorney service slip or stamped self-addressed envelope should be included if conformed copies are requested.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.11**Service of Documents**

If the opposing party or attorney appears at the ex parte hearing, the party seeking relief must provide copies of the motion and supporting documents at the earliest possible time. The court will not proceed with the ex parte hearing until the opposing counsel/party has had the opportunity to review the motion and documents. If no one appears to oppose the ex parte relief, the requesting party shall serve counsel or the other party with conformed copies of the ex parte application form, all supporting declarations, and the proposed final order (if one is signed), by mail within 24 hours of the ex parte hearing.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.12**Ex Parte Motions Re Order Shortening Time for Hearing Taking of Deposition**

When requesting an order shortening time for hearing and/or taking deposition, the supporting evidentiary declaration(s) must set forth the necessity for the order shortening time. For good cause shown, time for service may be shortened up to two court days before the hearing date and up to five calendar days before the taking of a deposition.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2008)

Rule 5.3.13**Earnings Assignment Orders for Arrearages**

Earnings assignment orders for arrearages accrued under any support order may be requested ex parte by completing a declaration, signed under penalty of perjury, setting forth the month to month accrual of amounts paid and amounts unpaid, and the total amount of arrearages (principal and interest) requested. Notice to the opposing counsel or party is not required. The court generally will grant ex parte earnings assignment orders for arrearages. Nevertheless, such orders are without prejudice to subsequent attack by a motion to quash.

Attorney fees will not be granted in connection with ex parte earnings assignment orders for arrearages. Fees incurred to obtain an earnings assignment order for arrearages may be requested by a noticed motion set on a regular motion calendar.
(Adopted 1/1/2008)

Rule 5.3.14**Ex Parte Motions Re Custody and Visitation**

Pursuant to Family Code section 3061, an order regarding custody stipulated to by counsel may be signed by a judicial officer only when a copy of the custody agreement signed by the parties and counsel or an appropriate declaration is attached to the application.

Pursuant to Family Code section 3064, other than stipulated orders, ex parte orders regarding child custody and visitation will be granted only upon a clear showing of immediate harm to the child or immediate risk that the child will be removed from the State of California.
(Adopted 1/1/2005; Renum. 1/1/2006; Renum. 1/1/2008)

Rule 5.3.15**Ex Parte Motions Regarding Vacation and/or Holiday Schedules**

Ex parte motions to change a child's vacation or to request a change to the holiday visitation schedule or the school that the child attends are disfavored. Requests for such changes should be presented on a regular motion calendar. A judicial officer may grant an order shortening time for such hearing.
(Adopted 1/1/2005; Renum. 1/1/2006; Rev. & Renum. 1/1/2008)