



Ex Parte Orders by Jodi L. Wyman

Normally the law requires that notice of a court proceeding be given to anyone affected by it. In this way, the opposing party has the opportunity to respond to the court application and participate in the hearing. It is a common sense rule, and one based on fairness.

The court rules do however contain exceptions where the giving of notice of a court proceeding could lead to harm. It may be surprising for people to learn that someone could have a court order against them without their knowledge.

These sorts of orders are called “ex parte” or “without notice” orders.

For example, in family law, one spouse sometimes asks the court for an order that they be granted sole occupation of the family home and custody of the children before the other spouse is even served with any documents or notified of the court hearing.

Protection orders under The Domestic Violence and Stalking Act are also made without notice to the other spouse, obviously because of safety issues. If notice is given to the other spouse in

advance, before the order is in effect, there may be a risk of physical harm.

In civil law, sometimes injunctions are granted on a without notice basis for example to freeze a bank account or investment, or to prevent someone from disposing of an asset. The need for this sort of order without notice is obvious.

Given what a disadvantage this sort of order can be for the affected person, courts have a strong preference that notice be given of any proceeding. Courts will only grant these sorts of orders where there is an urgent case with clear and strong evidence. The person applying for a without notice order also has a very high standard of disclosure to meet. They are required to make full and fair disclosure of all material facts, which is not a requirement when the other party is given the opportunity to participate in the proceedings. It is imperative that the Judge have as much impartial information as possible before considering granting a without notice order.

Applicants must be very cautious in requesting without notice orders from the court. If it is later shown that they did not present all of the evidence to the court, or claimed exceptional circumstances where there were none, the order could be set aside with court costs awarded.

When the courts pronounce an order without notice to the other side, rules require that the responding party be served with all of the documents very soon after the hearing. Once the risk of harm has been resolved by an order, both sides will then be able to participate in a hearing and the order can be reviewed.

If a situation is not so urgent that a without notice order is justified, the court also has the option of simply proceeding with less notice than the rules would normally allow. This way, the matter can still proceed on an emergency basis, but the other party will have the opportunity to at least attend the hearing and participate, even with very short notice.