

A GUIDE TO EMERGENCY MOTIONS (WITHOUT NOTICE)
UNDER RULE 14(12)

The following is not a comprehensive outline of situations where it is appropriate to bring an ex parte motion under Rule 14(12). It is only a guide.

THREE IMPORTANT THINGS TO REMEMBER

1. These motions should only be brought in exceptional circumstances.
2. In all cases, there must be evidence that clearly supports the applicant's claims. Corroborating evidence would be helpful.
3. In all cases the applicant and his/her counsel must make full and frank disclosure of all relevant facts, even those not helpful to the applicant's position.

SITUATIONS WHERE AN EMERGENCY EX PARTE MOTION IS APPROPRIATE

1. Where there is a real risk of abduction of a child. There must be evidence of the risk; the risk must be immediate and the applicant must show that the delay involved in serving the notice of motion would have probable serious consequences.
2. Where there is danger to the child or to the applicant. The case law suggests that danger means physical danger - not danger, for example, arising from not having child support.
3. Where service would probably have serious consequences. For example, where there is evidence that a party would use the time until the hearing of a motion to deplete assets or to leave with a child.

SITUATIONS WHERE AN EMERGENCY EX PARTE MOTION IS NOT APPROPRIATE

1. Where someone is being denied access.
2. Where someone is not being paid support; and/or is on social assistance.