

Rule 8.2. Interim Orders in Domestic Relations Cases

(a) Ex Parte Interim Order.

- (1) No interim order may issue except upon notice and hearing unless the court specifically finds exceptional circumstances. Exceptional circumstances include:
 - (A) Threat of imminent danger to any party or minor child of the party; or
 - (B) Circumstances indicating that an ex parte order is necessary to protect the parties, any minor children of the parties, or the marital estate.
- (2) No ex parte interim order may be issued unless the movant executes an affidavit setting forth specific facts justifying the issuance of the order. A restraining and eviction order may not be issued ex parte unless the movant also appears personally and good cause is shown for issuance of the order.
- (3) The provisions which may be included in an ex parte interim order are temporary parental rights and responsibilities, support and other appropriate expenses, use of real or personal property, restraining and eviction.
- (4) If there has been an appearance in the action by the adverse party, or if the attorney for the moving party has knowledge that the adverse party is represented by an attorney, the attorney for the moving party shall notify the court. After receiving notice of the appearance or representation, the court shall attempt to hold an emergency hearing, either in person or by telephonic conference, at which both parties may be heard, before issuing any order. The issuance of an order following an emergency hearing will in no manner affect a party's right to a further hearing on the merits of the order as provided in Rule 8.2(a)(5).
- (5) An interim order issued ex parte must provide specifically:
 - (A) That a hearing upon the necessity for the issuance of the order or the amounts to be paid be held within 30 days of the issuance of the ex parte interim order, unless an earlier hearing is required under N.D.C.C. ch. 14-07.1, or an application for change of venue is pending. If the ex parte order contains provisions delineated in N.D.C.C. ch. 14-07.1, the hearing must be scheduled in a timely manner to conform with the chapter.
 - (B) That the party obtaining the interim order must secure a hearing date and personally serve the interim order and a notice of hearing on the opposing party.

That the hearing on the ex parte interim order may be waived if the party not obtaining the interim order files a written waiver with the court no later than two days before the hearing date. The written waiver must be served on the party obtaining the ex parte interim order.

- (6) The ex parte interim order remains in effect until it is amended following a court hearing.

(b) Interim Orders Upon Motion and Hearing.

- (1) *Support.* An interim order may provide for payment of support and other appropriate expenses. In the event support is ordered, a current mailing address must be listed for both parties.
- (2) *Parental Rights and Responsibilities.* An interim order providing for temporary parental rights and responsibilities and a parenting schedule of minor children may be granted, in which case the order must provide for reasonable parenting time, unless the evidence establishes that parenting time should be restricted to certain times and places or prohibited.
- (3) *Attorney's Fees and Costs.* An interim order may provide for payment of attorney's fees and costs if evidence establishes that a party has insufficient personal income or funds with which to pay attorney's fees and costs.
- (4) *Use of Property.* An interim order may provide for the use of real or personal property, and for restraining and eviction.
- (5) An interim order may not be amended except upon stipulation of the parties or in the event of a material change of circumstances.

(c) Payment. The interim order must provide for any spousal support payment, child support payment, or combined payment of child support and spousal support, to be paid to and through the State Disbursement Unit. Payment must be in a manner acceptable to the State Disbursement Unit unless otherwise ordered by the court.

(d) Time for Hearing Upon Notice. If a notice of motion and motion are served to obtain an interim order, the court shall hold a hearing no later than 30 days from the date of filing the motion. If venue is changed before the hearing for an interim order is held, the hearing for an interim order must be held no later than 30 days after venue is changed.

(e) Submission of Evidence.

- (1) *Financial Statement.* In any proceedings under this rule, each party shall file an itemized financial statement prepared as illustrated in appendix B.
- (2) *Affidavit.* Unless the court otherwise orders, evidence either in support of or in opposition to the interim order must be presented by affidavit. Evidence presented by affidavit may not be considered unless, at the time of the evidentiary hearing, the party offering the affidavit makes the affiant available for cross examination.

- (3) *Time for Service and Filing.* The affidavits and itemized financial statement of the moving party must be served and filed no later than ten days prior to the commencement of the hearing. Respondent's affidavits and itemized financial statement must be served and filed no later than three days prior to the commencement of the hearing.
- (4) *Order of Proceeding.* The party initially seeking interim relief shall proceed first at the hearing.

[Amended September 1, 1983; amended effective January 1, 1995; March 1, 1996; amended January 17, 1996, on an emergency basis, effective March 1, 1996, subject to comment; March 1, 1999; March 1, 2001; October 9, 2002; August 1, 2009; March 1, 2010.]