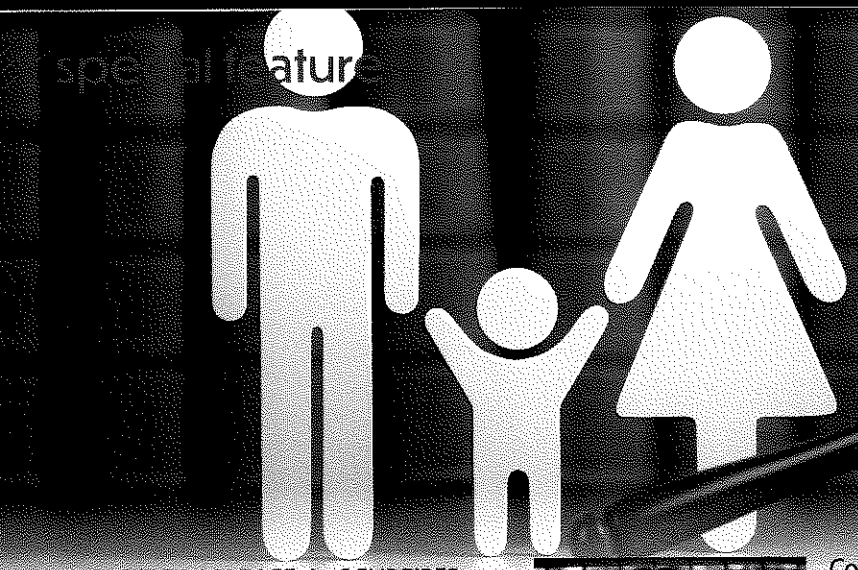
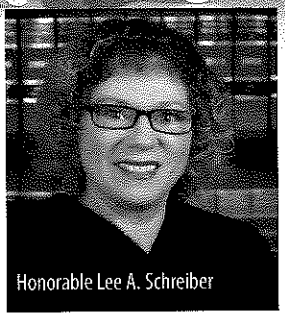


SO YOU THINK THERE IS A FAMILY LAW "EMERGENCY?" – *NOT SO FAST!*

BY HONORABLE LEE A. SCHREIBER


Honorable Lee A. Schreiber

This article hopes to educate family lawyers about the Lee County Family/"DR" Divisions' collective judicial thoughts on what constitutes a true "emergency" warranting expedited or emergency consideration for scheduling family court matters. What you/your client may think is an emergency is not necessarily in the eye of the beholder/judge. Failure to plan ahead does not constitute an emergency on our part. Filing a motion and taking no action on it only to later suggest it needs "emergency" treatment will, by the passage of time, not likely qualify as an emergency.

Loudermilk v Loudermilk, 693 So. 2d 666 (Fla. 2d DCA 1997) and the cases cited therein are instructive. Entering ex-parte orders without notice requires an ***actual*** emergency situation such as where a child is threatened with harm or where the opposing party plans to improperly remove a child from the state.

Even if there is an actual and imminent credible threat of harm to a child, the Department of Children and Families is the emergency child safety agency and should be contacted. ***Section 39.201(1)(a), Florida Statutes*** provides that ***all persons are mandatory reporters of child abuse***. The child abuse hotline telephone number is: 1-800-96ABUSE.

The 20th Judicial Circuit Court Administrative Order 2.17 gives further guidance as to what qualifies for an emergency such as "matters of life and death or instances of irreparable harm." Common sense dictates that with matters of life and death, call 9-1-1! That a parent is withholding a child from other does ***not*** qualify as "irreparable harm."

Rule 5.215, Fla. R. Jud. Admin. provides that when an attorney signs a document, the attorney is certifying that (s)he read the document and there is "good ground" to support the document to the best of the attorney's knowledge, information and belief. If, after careful consideration, you believe in good faith that a true emergency exists, the better practice is to file a verified pleading or motion. State the facts briefly and with specificity. Even this may not eliminate the "good ground" rule. Believe it or not, clients don't always tell you (or us) the truth. Don't be blind-sided.

We are experiencing a significant influx of "emergency" motions. Most are not legally sufficient to qualify for an ex-parte order and many are legally insufficient for emergency hearing time. Applications invoking the emergency powers of the family court are a privilege, not an entitlement. These "emergency" requests require a fairly immediate screening for an actual "emergency." Unfounded emergencies take time away from the true emergencies and misuse of the process is disrespectful to your colleagues who properly screen for true "emergencies." Those attorneys who abuse the emergency application process by not carefully reviewing the allegations and giving sound legal advice for how to address the allegations may unwittingly be undermining their credibility with the client, colleagues and the court.

Motions for emergency child pickup orders must be verified and require the existence of a child custody/timesharing order being violated, with limited exceptions. Putative fathers of a child born out of wedlock have no standing to bring a motion for child pickup order where there is no court order awarding timesharing. See, ***Section 744.301 (1), Florida Statutes***. A child pick up order may not be used as a vehicle by which to seek an initial custody determination. See, ***Williams v Primerano***, 973 So. 2d 645 (Fla 4th DCA 2008) and ***Perez v Giledes***, 912 So. 2d 32 (Fla. 4th DCA 2005).

Domestic violence injunction petitions are heard on a dedicated docket, so those matters are not addressed here. Domestic violence petitions require routing through the Lee County DV Unit as that office is designed to expedite paperwork and coordinate service with law enforcement.

True emergencies can almost always be addressed through DCF or law enforcement. Renaming your motion as "expedited" or "urgent" does not change how judges assess the urgency of a matter. "Not so fast" means stop, assess the allegations from the finder of fact's perspective, and advise your client accordingly, especially when you/your clients have not availed yourselves of these alternate methods for seeking emergency protective relief. We trust you will find this article instructive for your family law practice. RG