

LET ME GET DIVORCED NOW! – What counts as an emergency for filing a divorce complaint?

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If you follow TMZ, you may have seen this headline about Mary-Kate Olsen on May 13, 2020: **“LET ME GET DIVORCED NOW! Denied Emergency Relief Request in NY Court.”**

The headline could lead someone to think that New York is a jurisdiction for an emergency or “quickie” divorce- whatever that might mean.

Mary-Kate Olsen's Request for Emergent Order

According to news reports, Mary-Kate's husband Oliver Sarkozy gave Mary-Kate until May 18th to remove herself and all her belongings from their New York City apartment. Mary-Kate says she has an “iron-clad” [pre-nuptial agreement](#) and therefore, one can assume that this demand for her to leave the apartment was consistent with the terms of that agreement. She said that her husband had terminated the lease without her consent. As a result of her husband's demand that she leave the apartment, Mary-Kate asked the court for an emergent order to let her file for divorce and restrain her husband from removing her from the apartment until May 30th, because New York City was “on pause” as a result of the Coronavirus, and she could not relocate by May 18th. The New York court denied that relief.

What was going on here? No doubt, it is confusing.

Filing for Divorce During the Pandemic

First, the timing: Mary- Kate says that she signed a petition for divorce back on April 17, but was informed that NY courts were not accepting divorce filings, other than emergencies, due to the

pandemic. She then requested an emergency order to allow her to file for divorce in mid-May, but the court rejected the request.

What Counts as an Emergency in Family Law?

In May, New York courts were only handling emergencies, and not matters that one might describe as a “disagreement” about a move-out date. Likewise, New Jersey courts would handle emergencies only during this pandemic, however, the New Jersey court system did establish a procedure to address legitimate emergencies, for example those arising from victims of domestic violence, by addressing their concerns with remote, rather than in-person, proceedings.

Courts Require a Filed Divorce Complaint

In New Jersey, as in New York, one cannot ask any court for any relief without first filing a complaint for some kind of relief. The complaint essentially opens the courthouse door to the litigant. In family matters, once the divorce complaint is filed, then, at any point in time, a litigant can ask the court to intervene in the parties’ marital lives and make decisions for couples who cannot agree.

Would New Jersey have Rejected Mary-Kate’s Emergent Request Too?

If there is a true emergency and no divorce complaint has been filed, a party may file an Order to Show Cause for emergent relief at the same time one files for divorce. New Jersey courts, not even during the pandemic, would deny a person the right to file a complaint for divorce.

What would constitute an emergency for a court to intervene in a divorce case? Here are some examples:

- One party has emptied out the joint accounts, leaving no other assets available to make the other spouse whole.
- One spouse moves his paramour into the house while the other spouse is at work and the other spouse wants the paramour out.

- One spouse hires a moving van and removes all the furniture from the home, including the children's furniture items, while the other spouse is at work.
- The wage-earning spouse fails to pay rent and the other spouse who has the children and is living in the apartment is served with an eviction notice.

Proof of Irreparable Harm is Required

The emergency must be "irreparable" which means that if money can make the other spouse whole at a later date, the incident may not be deemed an emergency by the court. Of course, this factor has to be weighed against the needs of the spouse who is injured by the other's actions. The failure of one spouse to pay support is not an emergency. Similarly, the denial of parenting time is not an emergency.

Why the New York Court Rejected Mary-Kate's Request

In Mary-Kate's situation, the headlines, at first, led one to believe that she had told the court she had no other place to go if she were forced to leave the apartment by May 18th. That sort of headline did not garner sympathy for her. Of course, the public knows that Mary-Kate is worth more than \$200,000,000 and that she certainly has the wherewithal to move anywhere, even during the pandemic. Therefore, the New York court reasoned that:

1. Mary-Kate's divorce complaint was not an emergency, and the court was only receiving emergent filings, and
2. the additional relief she requested was not irreparable, as Mary-Kate had the ability to make herself whole because of her personal wealth.

While clients may think another spouse's actions toward him or her during the divorce must be addressed immediately by a court, in fact, that is not the case, and, more often than not, Orders to Show Cause are not granted because the person filing the emergent request is unable to show irreparable harm.

How is Mary-Kate now, you ask?

Fast forward to June, 2020, and Mary-Kate has reportedly either moved into her twin sister's home or she has rented a summer home in the Hamptons for \$325,000. Also, she filed for divorce on the very first day New York City courts reopened.