

7.03 Temporary restraining order

Fed. R. Civ. P. 65

Background

Considering an application for a temporary restraining order (TRO) is, by definition, an emergency proceeding of such urgency that relief may be granted *ex parte*. At the outset, the court should be satisfied that there is truly an emergency and decline to consider the application if there is not.

TRO without notice

Fed. R. Civ. P. 65(b) permits granting a TRO *without written or oral notice* to the adverse party or the party's attorney only if:

1. there are specific facts, shown by affidavit or verified complaint, indicating that immediate and irreparable injury will result to the applicant before the adverse party or his or her attorney can be heard in opposition; and
2. there is a written certification of the attorney's attempts, if any, to give notice, and an explanation of why notice should not be required.

Other factors the court may consider are:

1. probability of success on the merits;
2. balance of harm to other interested parties if TRO issues against harm to the applicant if relief is denied;
3. the public interest.

TRO with notice

1. If notice is given, the standards governing issuance of a preliminary injunction are applicable.
2. The petition may be treated like one for a preliminary injunction if there is notice and a hearing, with adequate opportunity for developing legal and factual issues. The court should, however, consider the applicability of Fed. R. Civ. P. 6(d) (requiring five days' notice before hearing