







65.03 – Restraining Order

When can you issue a TRO?

- At the commencement of a proceeding or during pendency of the proceeding.

Can you issue a TRO without notice?

If and only if:

- Specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard in opposition; and
- The applicant's attorney (or pro se applicant) certifies in writing efforts made to give notice and the reasons why it should not be required.

How long does a TRO last?

- Begins upon the earlier of service OR when party is informed.
- If granted without notice, automatically expires in 15 days.
- You cannot extend a TRO without an agreement or express findings reflecting good cause.

65.04 – Temporary Injunction

Unlike a TRO, you can never issue a temporary injunction without notice.

Unlike a TRO, the temporary injunction does not expire after 15 days, and lasts for as long as you say it does.

Unlike a TRO, any ruling you make on an injunction must be accompanied by findings of fact and conclusions of law under Tennessee Rule of Civil Procedure 52.01. *Moore v. Lee*, 644 S.W.3d 39 (Tenn. 2022).

- The threat of irreparable harm to plaintiff if the injunction is not granted;
- The balance between this harm and the injury that granting the injunction would inflict on defendant;
- The probability that plaintiff will succeed on the merits; and
- The public interest.

Remember, you can expedite the trial on the merits and consolidate it with the hearing of the request for an injunction if appropriate. Alternatively, any evidence at the injunction hearing which would be admissible at trial becomes part of the record at trial and need not be repeated at trial.

65.05 – Injunction Bond

Cannot grant a TRO or Temporary Injunction without a bond “for the payment of such costs and damages as may be incurred or suffered by any person who is found to have been wrongfully restrained or enjoined.”

One of the many instances in your career in which you will exercise discretion.

- Use it wisely, but remember the restrained party can always move for additional security.

Rule 65.07 - Exceptions

Most common exception is domestic relations cases, in which "restraining orders or injunctions may be issued upon such terms and conditions and remain in force for such time as shall seem just and proper to the judge to whom application therefor is made, and the provisions of this Rule shall be followed only insofar as deemed appropriate by such judge."

Two notes:

- This does not include the requirement to issue findings of fact and conclusions of law.
- Beware the domestic lawyer pleading "exigent circumstances."

Tenn. Code Ann. § 29-1-107

"No such extraordinary process shall be granted, unless the party applying therefor state in the party's bill or petition that it is the first application for such process."

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*See you in the
 Hospitality Suite!*
