

Rule 4.05 | TEMPORARY RESTRAINING ORDERS

(a) Pursuant to Rule 65(b), Fed.R.Civ.P., temporary restraining orders may be issued without notice to be effective for a period of fourteen (14) days unless extended or sooner dissolved. Such orders will be entered only in emergency cases to maintain the status quo until the requisite notice may be given and an opportunity is afforded to opposing parties to respond to the application for a preliminary injunction. (See Rule 4.06 of these rules.)

(b) Due to previously scheduled business it will not ordinarily be possible for the Court to interrupt its daily calendar in order to conduct a hearing or entertain oral presentation and argument incident to an application for a temporary restraining order. The Court's decision, of necessity, will usually be made solely on the basis of the complaint and other supporting papers submitted pursuant to this rule. Accordingly, all applications for temporary restraining orders must be presented as follows:

(1) The request for the issuance of the temporary restraining order should be made by a separate motion entitled **"Motion for Temporary Restraining Order"**.

(2) The motion must be supported by allegations of specific facts shown in the verified complaint or accompanying affidavits, not only that the moving party is threatened with irreparable injury, but that such injury is so imminent that notice and a hearing on the application for preliminary injunction is impractical if not impossible (Rule 65(b), Fed.R.Civ.P.)

(3) The motion should also:

(i) describe precisely the conduct sought to be enjoined;

(ii) set forth facts on which the Court can make a reasoned determination as to the amount of security which must be posted pursuant to Rule 65(c), Fed.R.Civ.P.;

(iii) be accompanied by a proposed form of temporary restraining order prepared in strict accordance with the several requirements contained in Rule 65(b) and (d), Fed.R.Civ.P.; and

(iv) should contain or be accompanied by a supporting legal memorandum or brief.

(4) The brief or legal memorandum submitted in support of the motion must address the following issues:

(i) the likelihood that the moving party will ultimately prevail on the merits of the claim;

(ii) the irreparable nature of the threatened injury and the reason that notice cannot be given;

(iii) the potential harm that might be caused to the opposing parties or others if the order is issued; and

(iv) the public interest, if any.

(5) If a temporary restraining order is issued by the Court it will be the responsibility of the successful movant to obtain immediate service of process upon the defendants, or parties enjoined, pursuant to Rule 4, Fed.R.Civ.P. In addition to the summons, complaint and temporary restraining order, the papers served must also include all motions, briefs, affidavits and exhibits submitted to the Court, as well as such additional affidavits or other papers upon which the moving party will rely in seeking to convert the temporary restraining order into a preliminary injunction. The papers so served must also include a notice of the hearing time fixed by the Court for consideration of the application for preliminary injunction. The hearing will usually be scheduled within fourteen (14) days or prior to expiration of the temporary restraining order under Rule 65(b), Fed.R.Civ.P.

(6) If a temporary restraining order is denied; and if the reason for the denial would not, as a matter of law, also preclude the issuance of a preliminary injunction; and if the moving party desires to pursue the request for a preliminary injunction; then the requirements of the preceding paragraph (5), and the remaining provisions of this rule, shall apply to the same extent as if a temporary restraining order had been issued.