

INJUNCTION PRACTICE

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Agenda

- Review legal standards for injunctions in state and federal court, including the form and scope of injunctions and prerequisites for obtaining injunctive relief.
- Discuss considerations when seeking an injunction and strategies for opposing an injunction

Classifying Injunctions

State Court Minn. R. Civ. P. 65.01	Federal Court Fed. R. Civ. P. 65
<ul style="list-style-type: none">• Temporary Restraining Order (“TRO”)	<ul style="list-style-type: none">• Temporary Restraining Order (“TRO”)
<ul style="list-style-type: none">• Temporary Injunction (“TI”)	<ul style="list-style-type: none">• Preliminary Injunction (“PI”)
<ul style="list-style-type: none">• Permanent Injunction	<ul style="list-style-type: none">• Permanent Injunction

Temporary Restraining Order

- Emergency Remedy
- May be granted without written or oral notice to the adverse party, if:
 - **Immediate and irreparable injury** will result until a hearing can be conducted; and
 - Applicant states **efforts**, if any, which have been made to **give notice** or addresses why notice should not be required.
- If *ex parte* TRO granted, a motion for a temporary injunction is to be set for hearing at the “earliest practicable time.”
- In federal court, a TRO can only issue for 14 days, unless extended once by the court for good cause.

Temporary Injunctions

- May be granted if “sufficient grounds exist therefor”.
- Purpose is to preserve the status quo before adjudication on the merits
- Supported by affidavit, deposition testimony, or oral testimony in court.
- Issued after a hearing to preserve the status quo until the case can be decided on the merits.
- Form and scope of injunction or restraining orders outlined in Rule 65 of both the federal and state rules of civil procedure.
 - Mandatory vs. Preventive
- District court has broad discretion when ruling on a request for a temporary injunction or preliminary injunction.

Permanent Injunctions

- Issued only after the right to permanent relief has been established at a trial.
- Before permanent injunctive relief may be awarded, the merits of a dispute must be determined.
- The party seeking a permanent injunction must show that legal remedies are inadequate and that the injunction is necessary to prevent great and irreparable harm. *River Towers Ass'n v. McCarthy*, 482 N.W.2d 800, 805 (Minn. Ct.App. 1992).
 - Note: no *Dahlberg* factors

Irreparable injury and inadequate legal remedy

- An injunction will be granted only to prevent great and irreparable injury and when the party's legal remedies are inadequate.
- Prerequisites for all three types of injunctions.
- Burden is on the moving party to establish the material allegations.
- Availability of money damages to compensate for some of the harm does not necessarily preclude an injunction.

Dahlberg factors

- (1) The **nature and background of the relationship between the parties** preexisting the dispute giving rise to the request for relief.
- (2) The **harm to be suffered by plaintiff** if the temporary restraint is denied **as compared to that inflicted on defendant** if the injunction issues pending trial.
- (3) The **likelihood that one party or the other will prevail on the merits** when the fact situation is viewed in light of established precedents fixing the limits of equitable relief.

Dahlberg factors (cont.)

- (4) The aspects of the fact situation, if any, which permit or require consideration of **public policy expressed in the statutes**, State and Federal.
- (5) The **administrative burdens** involved in judicial supervision and enforcement of the temporary decree.

Dahlberg factors (cont.)

- Balance of harms: Party requesting must show *irreparable* harm if *not* issued, while party opposing must show *substantial* harm if it *is* issued.
- Is the likelihood of prevailing on the merits the “most important” factor?

Dataphase factors – Federal

- (1) the threat of **irreparable harm** to the movant;
- (2) the state of the **balance between this harm** and the injury that granting the injunction will inflict on other parties litigant;
- (3) the probability that movant will **succeed on the merits**; and
- (4) the **public interest**.

Statutory Injunction

- A number of statutes contain injunctive relief provisions.
- When injunctive relief is explicitly authorized by statute, “proper exercise of discretion requires the issuance of an injunction **if the prerequisites for the remedy have been demonstrated** and the injunction would **fulfill the legislative purposes** behind the statute’s enactment.” *Wadena Implement Co. v. Deere & Co., Inc.*, 480 N.W.2d 383, 389 (Minn. Ct.App. 1992) (emphasis added).
- If there is no dispute about the applicability of the statute then there may not be a need to address the *Dahlberg* factors.

Examples of Injunction Statutes

- Minn. Stat. § 8.31, subd. 3: “On becoming satisfied that any of those laws **has been or is being violated, or is about to be violated**, the attorney general shall be entitled, on behalf of the state; (a) to sue for and have injunctive relief in any court of competent jurisdiction against any such violation or threatened violation without abridging the penalties provided by law....”
- See *State v. Minnesota Sch. of Bus., Inc.*, 899 N.W.2d 467, 472 (Minn. 2017).

Examples of Injunction Statutes (cont.)

- Minn. Stat. § 115B.18, subd. 4: The release or threatened release of a hazardous substance, or a pollutant or contaminant, shall constitute a public nuisance and may be enjoined in an action, in the name of the state, brought **by the attorney general**.
- Minn. Stat. § 144.99, subd. 5: In addition to any other remedy provided by law, **the commissioner** may bring an action for injunctive relief in the district court in Ramsey County or, at the commissioner's discretion, in the district court in the county in which a violation of the statutes, rules, or other actions listed in subdivision 1 has occurred to enjoin the violation.

Security/bond requirement

- Minn. R. Civ. P. 65.03 requires deposit of security for temporary injunction or TRO to protect the party restrained against loss suffered by the order or injunction.
- Exception for state and local governments, including school boards.

Timing

- A request for a TRO is often filed with a complaint. Request for TI can be filed with a complaint, but there is no specific timing limit.
- TRO not required to move for TI and will depend on facts of the case.
- A motion for a TI is nondispositive, so the deadlines in Rule 115.04 of the Minnesota General Rules of Practice apply.
 - But, keep in mind Rule 115.07 – Relaxation of Time Limits.
- Court may advance the trial of the action on the merits and consolidate with the hearing of the TI or PI application.
- Unique opportunity to get a judge's initial impressions of the case at the outset.

Required Papers

- Summons and Complaint (if not already filed).
- Typical documents for nondispositive motion under Rule 115.04.
- The proposed order is very important because it can lead to reversal of the trial court decision.
 - TI should be served on opposing party's counsel to ensure proof of knowledge and start the appeals clock
 - May also want to consider inserting a certification of compliance provision with a proposed TRO.

Evidence

- Bare pleadings are insufficient. Vague or conclusory affidavits or declarations are insufficient.
- An evidentiary hearing is an option; however, keep in mind the requirements of Minn. Gen. R. Prac. 115.08.

Appellate Review

- An appeal may be taken from an order which grants, refuses, dissolves or refuses to dissolve, an injunction. Minn. R. Civ.App. P. 103.03(b).
- The standard of review on appeal is abuse of discretion.
- The district court *may* suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party. Minn. R. Civ. P. 62.02.
- Note that an appeal under Rule 103.03(b) is an **exception** to the general rule that the filing of a timely and proper appeal suspends the trial court's authority to make orders affecting the order or judgment on appeal. Minn. R. Civ.App. P. 108.01, subd. 2.

Practice Tips - Defending

- Identify a person at the client to marshal the client's employees
 - Client employees without legal experience may not understand the nature or urgency of temporary injunction practice
 - Have the client contact set clear expectations for availability of employees, and clear calendars
 - In-house counsel is the natural choice, but if you lack that, you need a senior contact with the power to control all needed employees

Practice Tips - Defending

- Defending temporary injunctions requires multi-tasking
- Identify the work-
 - Drafting a brief in response to the request for a TI
 - Drafting a brief in support of a motion to dismiss (if applicable)
 - Drafting supporting declarations for the opposition to a TI
 - Getting support staff lined-up for document assembly and filing
- Develop a clear plan for who is doing what at the inception

Briefing Tips - Defending

- Don't brief all the factors in detail if you don't need to
 - The “relationship of the parties” *Dahlberg* factor, for example, is often not relevant
 - There are opportunities to build and lose credibility with good honest briefing of the *Dahlberg/Dataphase* factors
- Focus on success on the merits and irreparable harm
 - While irreparable harm is not explicitly listed among the *Dahlberg* factors (it is folded into the balancing test), it is a requirement
 - Federal case law is more explicit on the requirement for irreparable harm
 - If the plaintiff can't show irreparable harm, no injunction should issue

See the Big Picture - Defending

- A TRO/TI is often the Court's first opportunity to dig into the case
- Be deliberate in what you are briefing, and how you are briefing it
 - Judges are human – sometimes an expedited first take on the case won't be the Judge's best work
 - Consider whether you want to brief into a thorny legal question where giving the judge more time and briefing at a latter date will be better

Address Timing - Defending

- In many cases, there will be a significant delay between the events that create the emergency, and the plaintiff's injunction filings
- Not strictly relevant under *Dahlberg/Dataphase* but it can be an important consideration for you and the Court
- If the plaintiff has delayed in seeking relief, and now brings a request for an emergency injunction, don't be shy in arguing these facts to the Court