

RULE 65. INJUNCTIONS

(a) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. The verification of such affidavit or verified complaint shall be upon the affiant's own knowledge, information or belief; and, so far as upon information and belief, shall state that the affiant believes this information to be true. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry as the court fixes, unless within the time so fixed the order, for good cause shown, is extended or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(b) Preliminary Injunction.

(1) *Notice.* No preliminary injunction shall be issued without notice to the adverse party. The application for preliminary injunction may be included in the complaint or may be made by motion.

(2) *Consolidation of Hearing With Trial on Merits.* Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (b)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(c) *Security.* No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained, provided, however, that for good cause shown and recited in the order, the court may waive the giving of security.

A surety upon a bond or undertaking under this rule submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

(d) *Form and Scope of Restraining Order or Injunction.* Every restraining order and every order granting a preliminary or permanent injunction shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) *Statutes.* These rules do not modify any statute relating to temporary restraining orders and preliminary injunctions in domestic relations actions, actions affecting employer and employee or any other actions where an injunctive proceeding is conducted according to statute.

(f) Presentation to Other Justice or Judge. When an application for an injunction or for an order or decree under this rule is made to one justice or judge and has been acted upon by that justice or judge, it shall not be presented to any other justice or judge except by consent of the first justice or judge which may be oral.

Advisory Committee's Notes
May 1, 2000

Subdivision (e) is broadened. The present language is the same as that adopted in 1959. At that time, statutes may have only significantly affected injunctive relief issues in labor disputes. Since then a number of statutes have been adopted in other areas, particularly domestic relations, that prescribe injunctive practice for particular causes of actions, for example, the automatic injunctions that issue to protect against dissipation of property in divorce cases. Accordingly, the amendment broadens the language of the rule to recognize these other statutory impacts on injunctive practice.

Advisory Committee's Note
November 15, 1976

This amendment is intended to facilitate the on-going prosecution of requests for temporary restraining orders or preliminary injunctions. The rule still is intended to prohibit counsel from showing an application for a temporary restraining order or preliminary injunction in the first instance to more than one Justice. As noted in Field, McKusick & Wroth, *Maine Civil Practice*, § 65.9 at p. 114, this rule is intended to “. . . [P]revent the plaintiff's counsel from shopping around from judge to judge until he finds one who will grant the desired injunction.” The language of the rule as amended is not intended, however, to restrict the on-going consideration of the application to the judge who initially hears the matter and grants the temporary restraining order or preliminary injunction. It is the purpose of this amendment to permit subsequent proceedings on the application to be held before any justice who has the oral consent of the justice who initially heard the application. It is not intended that the rule should delay proceedings on such applications according to the scheduling needs of the justice initially hearing the application.

Advisory Committee's Note
December 31, 1967

This amendment makes the effective period of a temporary restraining order a matter of the discretion of the court. The rigid time limit of 10 days, with one extension for a like period, is eliminated. However, it would be expected that the court will continue to fix only a very limited duration for a temporary restraining order, and will exceed the present time periods only in the unusual circumstance where the situation of the parties and the schedule of the court require a greater amount of time before the hearing on the application for preliminary injunction. Also, the defendant against whom the temporary restraining order has been issued without notice can move for the dissolution of the order. The last sentence of Rule 65(a) assures him of a prompt hearing.

Explanation of Amendments (Nov. 1, 1966)

The amendment of Rule 65(a) was taken from a 1966 amendment to F.R. 65(b). It adverts specifically to the possibility of oral notice to the adverse party or his attorney before granting a temporary restraining order. It has been common in Maine for the judge to insist upon such notice if it is practicable. The amendment codifies this practice and requires an opportunity for the adverse party or his attorney to be heard in opposition to a temporary restraining order unless irreparable injury will result.

The amendment of Rule 65(b) was taken from a 1966 amendment to F.R. 65(a). It adds a new subdivision (2) providing express authority for consolidation of an application for a preliminary injunction with the trial on the merits (a power presumably existing without need of specification by rule). The new subdivision provides further that when there is no such consolidation, evidence received in connection with an application for a preliminary injunction which would be admissible on the trial on the merits becomes part of the trial record and need not be repeated at trial.

Reporter's Notes December 1, 1959

This rule is like Federal Rule 65, but with minor changes. It is somewhat more elaborate than the procedure under R.S.1954, Chap. 107, Sec. 34 (repealed in 1959), but not significantly different. The second sentence of Rule 65(a) is not in the federal rule but is taken from Equity Rule 12.

Similarly the second sentence of Rule 65(b) has no federal counterpart. It is designed to make clear that when the complaint demands only a permanent injunction, a preliminary injunction may be sought by motion. Ordinarily it may be assumed that a preliminary injunction will be prayed for in the complaint if the plaintiff desires such relief.

The proviso giving the court power, for good cause shown, to waive the giving of security under Rule 65(c) is not in the federal rule.

Subdivision (e) makes it clear that R.S.1954, Chap. 107, Sec. 36 [now 26 M.R.S.A. § 5], dealing with injunctions in labor disputes, is not affected by the rule.

Rule 65(f) is not in the federal rule. It is taken from Equity Rule 37, with the added proviso that a justice who has acted upon a matter may direct that because of his necessary absence it may be presented to another justice.