

# 13 BUILDING BLOCKS FOR BECOMING A GREAT TRIAL LAWYER

# HOW TO SEEK INJUNCTIVE RELIEF



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# PURPOSE OF INJUNCTIVE RELIEF

MAINTAIN THE STATUS QUO



# THE BASIC ELEMENTS

- A party seeking a TRO or temporary injunction must show:
  - (1) A claim for relief
  - (2) A probable right to the relief sought
  - (3) A probable, imminent and irreparable injury

*Butnaru v. Ford Motor*, 84 S.W.3d 198, 204 (Tex. 2002)

# THE RULES

- TRCP 680 – TRO Requirements
- TRCP 682 – Sworn Petition
- TRCP 683 – Form and Scope of Order
- TRCP 684 – Applicant's Bond
- TRCP 687 – Requisites of Writ

# TRCP 680 – TRO

- TRCP 680 requires that you give notice to the other party except under certain circumstances.
  - Immediate injury, loss or damage will result from notice
- The local rules often contain more stringent requirements for notice.



# DALLAS LOCAL REQUIREMENTS

- 2.02. APPLICATION FOR TRO AND OTHER EX PARTE ORDERS
  - a) Counsel presenting any application for a temporary restraining order or other ex parte relief shall **NOTIFY** the opposing party's counsel, or the opposing party if unrepresented by counsel in the present controversy, and provide opposing counsel or party with a copy of the application and proposed order **AT LEAST 2 HOURS BEFORE** the application and proposed order are to be presented to the Court for decision, except as provided in subparagraph b) hereof.
  - b) Compliance with the provisions of subparagraph a) hereof is **NOT REQUIRED IF** a verified certificate of a party or a certificate of counsel is filed with the application,
    - 1) That irreparable harm is imminent and there is insufficient time to notify the opposing party or counsel; or
    - 2) That to notify the opposing party or counsel would impair or annul the court's power to grant relief because the subject matter of the application could be accomplished or property removed, secreted or destroyed, if notice were required.
  - c) Counsel presenting any application for a temporary restraining order shall at the time the application is presented further certify that to the best of counsel's knowledge, the case in which the application is presented is not subject to transfer under Local Rule 1.06. If the case is subject to transfer, counsel shall fully advise the Court of the circumstances, particularly as to whether there has been any previous application for the same or similar relief or whether the relief sought will conflict with any other previous order, and the Judge to whom the application is presented may decline to act and refer the application or the entire case to the Judge of the Court to which the earlier related case is assigned.



# TRCP 682 – SWORN PETITION

This petition must be supported by sworn testimony in the form of an affidavit or a verification.



# GENERAL ARGUMENTS IN SUPPORT OF TRO

- A cause of action against defendant
  - Injury must be actual and substantial -- not speculation
  - Must include a claim for permanent relief
- Probability of success on the merits





# WHAT DO IMMINENT HARM AND IRREPARABLE INJURY MEAN

- Evidence of mere breach of a non-compete alone is not necessarily sufficient.
- Can damages alone adequately compensate the injury?
- Certain circumstances create a rebuttal presumption of harm (*e.g.*, breach of confidentiality agreement, theft of trade secrets)

# TRCP 680 – THE ORDER

- There is a DATE and TIME OF ISSUANCE requirement;
- the INJURY must be DEFINED;
- it must state WHY it is IRREPARABLE and WHY it was granted (if it was);
- The order shall also DESCRIBE in REASONABLE DETAIL the acts sought to be restrained and WHO is to be bound by the order. WITHOUT NOTICE



# TRCP 680 -- TIMING

- The order has to set the Temporary Injunction hearing within 14 days.
- It can be extended once for another 14 days per rule.
  - More by agreement



# TRCP 684 – APPLICANT’S BOND

- Must file a bond
- Go down with a blank check
- No bond – NOT ENFORCABLE

(even if agreed – consider nominal)



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# EXPEDITED DISCOVERY?

- Motion and Order
- Be able to articulate what you need
- Typically bring with you or attach
- Protective Order (have drafted)



# PITFALLS

- Not following the rules
- Not attempting notice
- Not verifying petition at all
- No date or time on the order
- No TI hearing set
- No bond
- Bond not paid (not enforceable)



# PITFALLS

- The Order
  - Requesting an unclear order
  - Facts need to be recited
  - Must state why injury is irreparable
  - Order doesn't state why no notice
  - Doesn't have an expiration date
  - Doesn't clearly define who or what is er
- Overreaching
  - Equitable remedy
- Asking for specific money damages
- Not telling a good story (ethical considerations)



# CHECKLIST – MAKE SURE YOU DO

- ✓ Gathering information from your Client (ethical considerations)
- ✓ Include Trial date in injunction order; Include injunction date in TRO Order
- ✓ Allow enough time to draft, to file, to seek





# QUESTIONS

## CONTACT INFORMATION

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