

**Temporary Restraining Orders, Preliminary Injunctions
and Injunctions**

(In Case of Emergency Break Glass)

**James A. Murphy
Mahoney, Silverman & Cross, LLC
Joliet, Illinois**

INTRODUCTION

In far too many cases the distinction between a temporary restraining order, a preliminary injunction, and a permanent injunction becomes blurred during the proceedings. What begins as a proceeding to obtain a temporary restraining order results in the issuance of an order that is in fact a preliminary injunction, and what starts as a proceeding to obtain a preliminary injunction results in an order that is in fact a permanent injunction. This blurring of the distinction between these three types of restraining orders was noted in both the majority and dissenting opinions in *Bohn Aluminum & Brass Co. v. Barker* (1973), 55 Ill. 2d 177. In a hearing on a motion for a preliminary injunction such as was held in the case before us, it is quite easy and tempting to expand the hearing into the merits of the ultimate question as to whether a permanent injunction should issue. Such a temptation should be resisted, and the distinction between the two writs should be maintained. The purposes of these two writs are different and distinct. The proof that is required to support them is not the same. It is true that if the proof shows that the plaintiff has no protectable interest, as the appellate court held in this case, then a preliminary injunction should not issue. However, in a hearing for a preliminary injunction, plaintiff need not carry the same burden of proof that is required to support the ultimate issue. *Buzz Barton & Associates, Inc. v. Giannone*, 108 Ill.2d 373, 385-86 (1985).

The above statement reflects that there is often confusion between the types of injunctive relief that are available and what is required to obtain the various types of relief. The confusion can in part be attributed to the speed at which emergency injunctive relief is sought and defended against. Given the emergency nature of temporary restraining orders and preliminary injunctions, there is often not the time to spend on the fine distinctions between the temporary restraining orders and preliminary injunctions. This outline is written with this in mind and is an attempt to be a ready reference when confronted with the need to file for emergency relief or the need to defend against a request for such relief.

Overview

There are three types of injunctive relief based on their duration: temporary restraining orders, preliminary injunctions, and permanent injunctions. Judges, attorneys, and cases themselves often discuss temporary restraining orders and preliminary injunctions as if they were one and the same. While they are similar, they are not identical as discussed below.

TEMPORARY RESTRAINING ORDERS

Purpose:

The purpose of a temporary restraining order is to maintain the status quo until there can be a hearing on the motion for a preliminary injunction is concluded. *Delgado v. Board of Election Commissioners*, 224 Ill.2d 481, 483 (2007); *Stocker Hinge Mfg. v. Darnel Industries, Inc.* 94 Ill.2d 535, 545 (1983); *Bartlow v. Shannon*, 399 Ill.App.3d 560, 567 (5th Dist. 2010).

Requirements:

A *verified* complaint or supporting affidavits are required in order to obtain a TRO. 735 ILCS 5/11-101; *C.D.Peters Constr. Co. v. Tri-City Regional Port Dist.*, 281 Ill.App.3d 41, 47 (5th Dist. 1996. It must be shown through specific facts in the verified complaint or affidavits that immediate and irreparable injury, loss or damage will result before notice can be given and a hearing on a preliminary injunction can take place. *Id.*

Standard:

Whether a temporary restraining order is with or without notice, it is issued upon a summary showing of the necessity of the order to prevent immediate and irreparable harm. *Peoples Gas Light & Coke Co. v. Chicago*, 117 Ill.App.3d 353, 355 (1st Dist. 1983).

Regardless of whether there is notice, a party seeking a temporary restraining order must establish (1) a certain and clearly ascertainable right needing protection, (2) no adequate remedy at law, (3) that irreparable harm will be suffered without entry of a TRO, and (4) a likelihood of success on the merits. *Bradford v. Wynstone Prop. Owners' Ass'n*, 355 Ill. App. 3d 736, 739 (2d Dist. 2005).

Duration:

A. Without Notice

A temporary restraining order may be entered without notice to the other party but may only be entered for a period not to exceed 10 days 735 ILCS 5/11-101. TROs without notice may be extended for additional ten day periods. 735 ILCS 5/11-101.

B. With Notice

A TRO with notice may exceed 10 days. See *Kable Printing Co. v. Mr. Morris Bookbinders Union*, 63 Ill.2d 514, 523-24 (1976). However, the preliminary injunction hearing must be held within a short time period thereafter. *Greenspan v. Mesirov*, 132 Ill.App.3d 508, 511 (1st Dist. 1985).

Only one case appears to address the issue of when a TRO with notice has been entered

for too long of a period. In *Abdulhafedh v. Secretary of State*, 161 Ill.App.3d 413 (2d Dist. 1987), the court held that where a temporary restraining order had been entered and then extended on several occasions for a total period of 98 days without setting the date for a preliminary injunction hearing, the TRO had been effectively turned into a preliminary injunction. Thus, a short period is somewhere between ten days and 98 days. However, if the parties are in agreement as to when the preliminary injunction is to be heard, the defendant will not be in a position to claim that there has been the entry of a TRO that is too long in duration.

What is Notice/Necessity of Notice:

Notice is any type of communication that actually informs the opponent of when the motion for a temporary restraining order will be presented and the subject of the motion. In at least one case, a telephone call made 30 minutes before presentment of the motion for a temporary restraining order was deemed to be sufficient notice. *American Warehousing Servs. v. Weitzman*, 169 Ill.App.3d 708 (1st Dist. 1988). See also *Kolstad v. Rankin*, 179 Ill.App.3d 1022, 1029 (4th Dist. 1989) (recognizing that a telephone call or other oral notice might suffice). While these cases recognize that informal notice shortly before a presentment may be sufficient in some cases, a trial court would be well justified in rejecting a TRO based on such short notice unless it was shown that irreparable harm would occur were time taken to give notice. See e.g. *Board of Education v. Parlor*, 85 Ill.2d 397 (1981) (finding that there was sufficient time to give notice); 735 ILCS 5/11-101.

Requirements of the Order:

Temporary restraining orders granted without notice to the opposing party must contain (1) the date and hour of signing of the order (2) identification of the injury (3) why the injury is irreparable; and (4) why the order was entered without notice. 735 ILCS 5/11-101.

After the order is entered, it is to be filed “forthwith” in the clerk's office. The order should also provide when the order is to expire, which time is not to exceed ten days. 735 ILCS 5/11-101.

Dissolution of a TRO without notice:

Where a TRO has been entered without notice, and a motion has been filed to dissolve the TRO, it is not necessary to give the plaintiff time to file a written opposition to the motion to dissolve because such motion is deemed to be a continuance of the hearing that resulted in the TRO. *Geesbreght v. Geesbreght*, 63 Ill.App.3d 37, 43 (1st Dist. 1978).

Appeals of TROs:

A petition to appeal must be filed in 2 DAYS of the order being appealed.

Illinois Supreme Court Rule 307(d) governs the appeal of the granting or denial of a TRO. The rule also applies to orders modifying, dissolving or refusing to dissolve or modify a

TRO. Any such appeal must be filed within two days of the order being appealed. It is done by petition to the Appellate Court but notice pursuant to the Rule is also to be filed.

The filing of the petition must also include proof of personal service or by facsimile as provided in Rule 11(b)(5), which requires the consent of the opposing party to facsimile service.

A supporting record is to accompany the petition which is to include:

- a. the notice of interlocutory appeal;
- b. the temporary restraining order or proposed temporary restraining order;
- c. the complaint;
- d. the motion requesting the granting of the temporary restraining order;
- e. any supporting documents or matters of record necessary to the petition.

The supporting record must be authenticated by the certificate of the clerk of the trial court or by the affidavit of the attorney or party filing it.

Any legal memorandum supporting the petition for appeal must be filed within the 2 day period for filing the petition and is limited to 15 pages. Any responding memorandum must be filed within 2 days of the filing of the petition and must be accompanied by a certificate of personal service or by facsimile as provided in Rule 11(b)(5).

The Appellate Court is to determine the matter within 5 days of when the time to file a response has expired. Oral argument is not allowed.

Practice Pointer:

A. Service of process is often not required.

As a practical matter service of process will often not be required because of a motion for a temporary restraining order will be made through some other type of communication and defendant will file an appearance.

B. Be ready to negotiate.

At the time that a temporary restraining order is presented to the Court, it is likely that the parties will want to negotiate the terms of a temporary restraining order and the timing of a hearing on the preliminary injunction. In many instances, the timing of the presentment of the TRO will be up to the plaintiff and the defendant may be unaware of it until a day or two prior to its presentment. Indeed, the attorney representing the defendant may be representing the client may have met the client only the day before the TRO. Thus, counsel for the defendant may be interested in having a period of time prior to the hearing on the preliminary injunction to investigate the facts, file an answer, and prepare for the hearing.

PRELIMINARY INJUNCTIONS

Purpose:

The purpose of a preliminary injunction is to maintain the status quo until there is a final determination of the case on the merits. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill.2d 52, 80 (2006); *Happy R. Sec., LLC v. Agri-Sources, LLC*, 2013 IL App (3d) 120509 ¶31 (2013).

Standard:

To obtain a preliminary injunction, the party seeking such relief must show: (1) a clearly ascertainable right that needs protection; (2) irreparable harm in the absence of an injunction; (3) no adequate remedy at law; (4) a likelihood of success on the merits; *People v. Village of Lisle*, 202 Ill.2d 164, 177 (2002). Finally, before imposing a preliminary injunction, the trial court must conclude that the benefits of granting the injunction outweigh the possible injury that the opposing party might suffer as a result thereof. It thus must balance the equities between the parties. *Travelport, LP v. Am. Airlines, Inc.*, 2011 IL App (1st) 111761; *Granber v. Didrickson*, 279 Ill.App.3d 886, 890 (1st Dist. 1996).

The standard is no different on a motion to dissolve a preliminary injunction. Once evidence is presented in support of a motion to dissolve, the trial court is required to look at the pleadings and the evidence to determine if plaintiff has sustained its burden of proving a right to injunctive relief. *S&F Corp. v. American Express Co.*, 60 Ill.App.3d 824, 830 (1st Dist. 1978).

Hearing:

The type of hearing that is required for a preliminary injunction depends on the status of the pleading. A hearing on legal arguments is the only requirement when an answer has not been filed. However, where an answer has been filed that raises questions of material facts, an evidentiary hearing is required. *Carriage Way Apartments v. Pojman*, 172 Ill. App. 3d 827, 835-836 (2d Dist. 1988).

There is conflicting case law on what exactly is to be determined at the preliminary injunction stage. The Illinois Supreme Court has stated that in ruling on a motion for a preliminary injunction, controverted facts on the merits of the case are not to be decided. See *Dixon Association for Retarded Citizens v. Thompson*, (1982), 91 Ill. 2d 518, 524 (1982). This would suggest that a preliminary injunction hearing is to be determined similar to a motion for summary judgment, i.e. if there is an issue of fact, it should await determination.

At the same time, there are numerous Appellate Court decisions that indicate that the purpose of a preliminary injunction hearing is hear evidence and make credibility determinations. See *Proulx v. Illinois High School Asso.*, 125 Ill. App. 3d 781, 786 (4th Dist. 1984)(preliminary injunction should not be determined on affidavits, rather evidentiary hearing is required to decide credibility determinations); *Office Electronics, Inc. v. Adell*, 228 Ill. App. 3d 814, 819 (1st Dist. 1992)(evidentiary hearing on a motion for preliminary injunction is generally

required where a verified answer is filed denying material allegations in the complaint); *Five Mile Capital Westin N. Shore SPE, LLC v. Berkadia Commer. Mortg., LLC*, 2012 IL App (1st) 122812, P22-P23 (Ill. App. Ct. 1st Dist. 2012)(same). While these statements appear to be in conflict, they can perhaps be reconciled with the recognition that it is appropriate for a court to make preliminary determinations of credibility during a preliminary injunction hearing that are not binding at the final hearing on the merits. In this way, a court may consider whether a witness is credible when the court is determining if the moving party is likely to succeed on the merits.

Duration:

Unlike a TRO, there is no limitation on how long a preliminary injunction can last. It is to be in place until a final trial on the merits. See *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill.2d 52, 80 (2006)(purpose is to maintain the status quo until a final determination of the case on the merits).

Appeals from Preliminary Injunctions:

Pursuant to Illinois Supreme Court Rule 307, an interlocutory order granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction is appealable.

The appeal must be perfected within 30 days of entry of the order being appealed by filing a notice of appeal designated “Notice of Interlocutory Appeal.” The record must also be filed within the same 30-day period unless the time for filing the record is extended by the Appellate Court.

Appellant’s brief is to be filed within 7 days of the filing of the record on appeal. Appellee’s brief is to be filed 7days thereafter. A reply may be filed 7 days after that.

CONCEPTS FOR BOTH TROs and PRELIMINARY INJUNCTIONS

Status Quo:

The term “status quo” has been subject to several interpretations. *Electronic Design & Manufacturing, Inc. v. Konopka*, 272 Ill. App. 3d 410, 415 n.2, (1st Dist. 1995). Most often it is defined as the last actual, peaceable, uncontested status which preceded the controversy. *Lindsey v. Board of Education*, 127 Ill. App. 3d 413, 419 (1st Dist.1984). Another interpretation of the term, however, is the condition necessary to prevent a dissipation or destruction of the property in question. *Kalbfleisch v. Columbia Cmty. Unit Sch. Dist. Unit No. 4*, 396 Ill. App. 3d 1105, 1118 (5th Dist. 2009).Under either interpretation, the preliminary injunction is designed to prevent a threatened wrong or the further perpetration of an injurious act. *Id.*

In *Kalbfleisch*, supra, the court explained that maintaining the status quo is usually done “by keeping all actions at rest, but sometimes it happens that the status quo is not a condition of rest but, rather, is one of action and the condition of rest is exactly what will inflict the

irreparable harm.” *Id.* In *Kalbfleisch*, the court found that it was appropriate to enter a preliminary injunction requiring a school to allow a five-year-old student with autism to bring his service dog with him to school even though he had previously not brought a service dog to school. The school had argued that because the student had not previously brought a service dog to school, the preliminary injunction actually altered the status quo. The court rejected this argument reasoning that refusing the preliminary injunction would be to allow the school to violate a law that allowed the student to have a service dog at school. The court indicated that that status quo that is preserved should never allow a continuing violation of the law.

Bond:

Section 11-103 of the Code of Civil Procedure provides that a court may impose bond as a condition of a TRO or preliminary injunction. 735 ILCS 5/11-103.

The purpose of bond is to “protect defendants by underwriting their losses in the event the interlocutory injunction is dissolved and damages are assessed against the plaintiff.” *Hill v. Pawnee*, 16 Ill. App. 3d 208, 210 (4th Dist. 1973). Thus, the amount of bond should be sufficient to cover the potential damages should the preliminary injunction later be found to have been wrongfully issued.

In determining what bond is appropriate, the court, in noncommercial cases, should consider the possible loss to the enjoined party together with the hardship that a bond requirement would impose on the applicant. Applicants in commercial cases -merchants, manufacturers, and others -- can be assumed capable of bearing most bond requirements, so hardship to them is less of a factor. The court should also consider whether a bond requirement would unduly restrict the right that is being enforced. Finally, a court may dispense with a bond where there has been no proof of likelihood of harm to the party enjoined. *Save the Prairie Soc’y v. Greene Dev. Group, Inc.*, 338 Ill. App. 3d 800, 804-805 (1st Dist. 2003).

Letters of credit can not be used in place of bond. *Powell v. Home Run Inn, Inc.*, 202 Ill. App. 3d 94 (1 Dist. 1990).

Prohibitory Injunctive Relief Compared to Mandatory Injunctive Relief:

Ordinarily, injunctive relief is prohibitive in nature. In other words, the order entered prohibits a party from engaging in certain conduct. However, there are instances where the party is ordered to take affirmative action. This type of order involves mandatory injunctive relief. See *City of Carbondale v. Bower*, 332 Ill.App.3d 928 (5th Dist. 2002).

Court’s often find that mandatory injunctive relief is inappropriate for a TRO or preliminary injunction because it gives all the relief to plaintiff that the plaintiff is seeking and is thus equivalent of a permanent injunction. See *Shodeen v. Chicago Title & Trust Co.*, 162 Ill.App.3d 667 (2d Dist. 1987).

PERMANENT INJUNCTIONS

Purpose:

A permanent injunction is a final adjudication of the rights between the parties, it thus may alter the status quo and be of unlimited duration. *Dep't of Health Care & Family Servs. v. Cortez*, 2012 IL App (2d) 120502, P13 (2d Dist. 2012).

Standard:

To be entitled to a permanent injunction, the party seeking the injunction must demonstrate (1) a clear and ascertainable right in need of protection, (2) that he or she will suffer irreparable harm if the injunction is not granted, and (3) that no adequate remedy at law exists. *Swigert v. Gillespie*, 2012 IL App (4th) 120043, P27.

CONCEPTS RELATED TO ALL FORMS OF INJUNCTIVE RELIEF

Irreparable harm and no adequate remedy at law

The elements of irreparable harm and no adequate remedy at law are closely related. *Happy R Sec., LLC v. Agri-Sources, LLC*, 2013 IL App (3d) 120509, P36. Simply put, no adequate remedy at law means that money damages will be insufficient. *Behl v. Hong Duffin*, 406 Ill. App. 3d 1084, 1093 (4th Dist. 2010). Indeed, it has been stated that irreparable harm occurs only where the remedy at law is inadequate.

An example of where the issues both merge and separate somewhere is where there is a potential for losing customers. It is generally recognized that the loss of customers and sales and the threat of continuation of such losses is sufficient to show that plaintiff will suffer irreparable injury unless protected. *Gold v. Ziff Communications Co.*, 196 Ill. App. 3d 425, 434-435 (1st Dist. 1989). In such instances, the immediate damages in loss of sales may be calculable and relatively easy to ascertain. However, the potential loss of future business and the effect of a situation on repeat customers or the failure to grow a business is highly speculative and thus incapable of adequate computation. *Id.*

Certain unique instances arise where the loss of money will constitute irreparable harm because plaintiff cannot function without the continued stream of funds. For example in *City of Kankakee v. Department of Revenue*, 2013 IL App (3d) 120599, the Appellate Court held that irreparable harm would occur if the Illinois Department of Revenue withheld funds from the City of Kankakee. Clearly, the amount of funds that would have been withheld were subject to easy determination. Nevertheless, the court found that there was an inadequate remedy at law because, in the absence of the funds, the City of Kankakee would suffer a financial hardship, it would be left with a shortfall in its funds and suffer consequences detrimental to its citizens. There, the

City of Kankakee had filed an affidavit stating that if the funds were withheld the City would have to cut essential City services, including Police, fire, Public Utilities and Health, Life, Safety regulations.

Enforcement of Injunctions:

Injunctions are enforced through contempt proceedings.

To enforce an injunction through contempt proceedings, the order must be set forth “with certainty, clarity and conciseness precisely what actions are enjoined.” *People ex re. City of Chicago v. LeMirage, Inc.*, 2013 IL 113482 P66 (2013), quoting *O’Leary v. Allphin*, 64 Ill.2d 500, 513-14 (1976).

APPLICABLE PROVISIONS OF CODE OF CIVIL PROCEDURE

§ 735 ILCS 5/11-101. Temporary restraining order

Sec. 11-101. Temporary restraining order. No temporary restraining order shall be granted without notice to the adverse party unless 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 notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be indorsed with the date and hour of signing; shall be filed forthwith in the clerk's office; 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 the signing of the order, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the granting of the extension shall be stated in the written order of the court. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set for hearing at the earliest possible time and takes precedence over 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 he or she 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.

Every order granting an injunction and every restraining order shall set forth the reasons for its entry; 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, 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.

§ 735 ILCS 5/11-102 Preliminary injunction

Sec. 11-102. Preliminary injunction. No court or judge shall grant a preliminary injunction without previous notice of the time and place of the application having been given the adverse party. 735 ILCS 5/11-102

§ 735 ILCS 5/11-103 Bond

Sec. 11-103. Bond. The court in its discretion, may before entering a restraining order or a preliminary injunction, require the applicant to give bond in such sum, upon such condition and with such security as may be deemed proper by the court, 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.

No such bond shall be required of any governmental office or agency.

A surety upon a bond or undertaking under Article XI of this Act [735 ILCS 5/11-101 et seq.] 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. Such liability may be enforced on motion without the necessity of an independent action. The motion and such notice of 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.

§ 735 ILCS 5/11-104. Bond before court or clerk

Sec. 11-104. Bond before court or clerk. The bond may be entered into before the court granting or ordering the injunction, or before the clerk of the court, if the court has approved the security.

§ 735 ILCS 5/11-105. Filing of bond

Sec. 11-105. Filing of bond. All bonds required by Article XI of this Act [735 ILCS 5/11-101 et seq.] shall be filed with the clerk of the court who is to certify the injunctive order or judgment.

§ 735 ILCS 5/11-106. Injunctive relief on Saturday, Sunday or legal holiday

§ 735 ILCS 5/11-106. Injunctive relief on Saturday, Sunday or legal holiday

Sec. 11-106. Injunctive relief on Saturday, Sunday or legal holiday. When an application is made on a Saturday, Sunday, legal holiday or on a day when courts are not in session for injunctive relief and there is filed with the complaint an affidavit of the plaintiff, or his, her or their agent or attorney, stating that the benefits of injunctive relief will be lost or endangered, or irremediable damage occasioned unless such injunctive relief is immediately granted, and stating the bases for such alleged consequence, and if it appears to the court from such affidavit that the benefits of injunctive relief will be lost or endangered, or irremediable damage occasioned unless such injunctive relief is immediately granted, and if the plaintiff otherwise is entitled to such relief under the law, the court may grant injunctive relief on a Saturday, Sunday, legal holiday, or on a day when courts are not in session; and it shall be lawful for the clerk to certify, and for the sheriff or coroner to serve such order for injunctive relief on a Saturday, Sunday, legal holiday or on a day when courts are not in session as on any other day, and all affidavits and bonds made and proceedings had in such case shall have the same force and effect as if made or had on any other day.

§ 735 ILCS 5/11-107. Seeking wrong remedy not fatal

Sec. 11-107. Seeking wrong remedy not fatal. Where relief is sought under Article XI of this Act [735 ILCS 5/11-101 et seq.], and the court determines, on motion directed to the

pleadings, or on motion for summary judgment or upon trial, that the plaintiff has pleaded or established facts which entitle the plaintiff to relief but that the plaintiff has sought the wrong remedy, the court shall permit the pleadings to be amended, on just and reasonable terms, and the court shall grant the relief to which plaintiff is entitled on the amended pleadings or upon the evidence. In considering whether a proposed amendment is just and reasonable, the court shall consider the right of the defendant to assert additional defenses, to demand a trial by jury, to plead a counterclaim or third party complaint, and to order the plaintiff to take additional steps which were not required under the pleadings as previously filed.

§ 735 ILCS 5/11-108. Motion to dissolve

Sec. 11-108. Motion to dissolve. A motion to dissolve an injunction may be made at any time before or after answer is filed. Upon a motion to dissolve an injunction after answer is filed the court shall decide the motion upon the weight of the evidence.

§ 735 ILCS 5/11-109. Affidavits in support of motion to dissolve

Sec. 11-109. Affidavits in support of motion to dissolve. The plaintiff may support the complaint and the defendant may support the answer by affidavits filed with the same, which may be read in evidence on the hearing of the motion to dissolve the injunction.

§ 735 ILCS 5/11-110. Assessing damages

Sec. 11-110. Assessing damages. In all cases where a **temporary restraining order** or a preliminary injunction is dissolved by the circuit court or by the reviewing court, the circuit court, after the dissolution of the **temporary restraining order** or preliminary injunction, and before finally disposing of the action shall, upon the party claiming damages by reason of such **temporary restraining order** or preliminary injunction, filing a petition under oath setting forth the nature and amount of damages suffered, determine and enter judgment in favor of the party who was injured by such **temporary restraining order** or preliminary injunction for the damages which the party suffered as a result thereof, which judgment may be enforced as other judgments for the payment of money. However, a failure so to assess damages as hereinabove set out shall not operate as a bar to an action upon the injunction bond.

APPLICABLE ILLINOIS SUPREME COURT RULES

Rule 307. Interlocutory Appeals as of Right

(a) *Orders Appealable; Time.* An appeal may be taken to the Appellate Court from an interlocutory order of court:

- (1) granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction;
- (2) appointing or refusing to appoint a receiver or sequestrator;

(3) giving or refusing to give other or further powers or property to a receiver or sequestrator already appointed;

(4) placing or refusing to place a mortgagee in possession of mortgaged premises;

(5) appointing or refusing to appoint a receiver, liquidator, rehabilitator, or other similar officer for a bank, savings and loan association, currency exchange, insurance company, or other financial institution, or granting or refusing to grant custody of the institution or requiring turnover of any of its assets;

(6) terminating parental rights or granting, denying or revoking temporary commitment in adoption proceedings commenced pursuant to section 5 of the Adoption Act (750 ILCS 50/5);

(7) determining issues raised in proceedings to exercise the right of eminent domain under section 20-5-10 of the Eminent Domain Act [735 ILCS 30/20-5-10], but the procedure for appeal and stay shall be as provided in that section.

Except as provided in paragraph (b) and (d), the appeal must be perfected within 30 days from the entry of the interlocutory order by filing a notice of appeal designated "Notice of Interlocutory Appeal" conforming substantially to the notice of appeal in other cases. The record must be filed in the Appellate Court within the same 30 days unless the time for filing the record is extended by the Appellate Court or any judge thereof.

(b) *Motion to Vacate.* If an interlocutory order is entered on ex parte application, the party intending to take an appeal therefrom shall first present, on notice, a motion to the trial court to vacate the order. An appeal may be taken if the motion is denied, or if the court does not act thereon within 7 days after its presentation. The 30 days allowed for taking an appeal and filing the record begins to run from the day the motion is denied or from the last day for action thereon.

(c) *Time for Briefs and Abstract if an Abstract Is Required.* Unless the Appellate Court orders a different schedule or orders that no briefs be filed, the schedule for filing briefs shall be as follows: The brief of appellant shall be filed in the Appellate Court, with proof of service, within 7 days from the filing of the record on appeal. Within 7 days from the date appellant's brief is filed, the appellee shall file his brief in the Appellate Court with proof of service. Within 7 days from the date appellee's brief is filed, appellant may serve and file a reply brief. The briefs shall otherwise conform to the requirements of Rules 341 through 344. If the Appellate Court so orders, an abstract shall be prepared and filed as provided in Rule 342.

(d) *Appeals of Temporary Restraining Orders; Time; Memoranda.*

(1) *Petition; Service; Record.* Unless another form is ordered by the Appellate Court, review of the granting or denial of a temporary restraining order or an order modifying, dissolving, or refusing to dissolve or modify a temporary restraining order as authorized in paragraph (a) shall be by petition filed in the Appellate Court, but notice of interlocutory appeal as provided in

paragraph (a) shall also be filed, within the same time for filing the petition. The petition shall be in writing, state the relief requested and the grounds for the relief requested, and shall be filed in the Appellate Court, with proof of personal service or facsimile service as provided in Rule 11, within two days of the entry or denial of the order from which review is being sought. An appropriate supporting record shall accompany the petition, which shall include the notice of interlocutory appeal, the temporary restraining order or the proposed temporary restraining order, the complaint, the motion requesting the granting of the temporary restraining order, and any supporting documents or matters of record necessary to the petition. The supporting record must be authenticated by the certificate of the clerk of the trial court or by the affidavit of the attorney or party filing it.

(2) *Legal Memoranda.* The petitioner may file a memorandum supporting the petition which shall not exceed 15 typewritten pages and which must also be filed within two days of the entry of the order that is being appealed under paragraph 1 of this section. The respondent shall file, with proof of personal service or facsimile service as provided in Rule 11, any responding memorandum within two days following the filing of the petition, supporting record, and any memorandum which must be personally served upon the respondent. The respondent's memorandum may not exceed 15 typewritten pages and must also be personally served upon the petitioner.

(3) *Replies; Extensions of Time.* Except by order of court, no replies will be allowed and no extension of time will be allowed.

(4) *Time for Decision; Oral Argument.* After the petitioner has filed the petition, supporting record, and any memorandum and the time for filing any responding memorandum has expired, the Appellate Court shall consider and decide the petition within five days thereafter. Oral argument on the petition will not be heard.

(5) *Variations by Order of Court.* The Appellate Court may, if it deems it appropriate, order a different schedule, or order that no memoranda be filed, or order the other materials need not be filed.