

# LEGAL BULLETIN 1.8

## Injunctive Relief

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### I. INTRODUCTION

An injunction is a court order to direct a litigant to take action. Some courts categorize injunctions as “mandatory” and “prohibitory.” In a “mandatory injunction,” the court mandates (i.e. directs) a litigant to take affirmative steps to do something new. In a “prohibitory injunction,” the court prohibits a litigant from engaging in certain conduct. Most courts omit the terms “mandatory” and “prohibitory.” Consequently, a person merely needs to ask for an “injunction” to make oneself understood to the court as to what that person wishes the court to do.

The purpose of an injunction is to prevent future violations of law. Injunctions are extraordinary remedies. Consequently, courts never order them haphazardly. Federal Rule 65 in the Federal Rules of Civil Procedure discusses the requirements for obtaining injunctions in federal court. Most state courts also publish a similar rule of civil procedure within their state rules. Only judges can grant injunctions. Juries cannot decide injunctions because juries do not issue orders. Only judges issue orders. You can ask both for an injunction and for money damages in a complaint. Then, the judge will decide your injunction while the jury will decide your money damages (if you wish to have a jury trial on that part of your case).

### II. TYPES OF INJUNCTIONS AT STAGES OF THE PROCEEDINGS

Three basic types of injunctive relief are available: a “temporary restraining order,” a “preliminary injunction,” and a permanent injunction.” Each of these is discussed at greater length in the following sections.

#### A. Temporary Restraining Orders

You should seek a temporary restraining order [often shortened to its “TRO” abbreviation] only if you require immediate relief to prevent irreparable injury. The court may grant a TRO petition without notice to the affected opposing party if the court agrees that the circumstances justify lack of notice. Such a petition operates as an exception to rules which require notice to the other side before approaching the court. The law refers to contact by one party with the court outside the presence of the other party as “*ex parte*” contact. Courts require emergency, exigent circumstances before entertaining such contact outside the presence of an opposing party. You do not want the court to conclude that you have disguised an ordinary petition as a TRO for devious, mischievous, underhanded, or sneaky motives to obtain the undivided, unopposed attention of the court. Otherwise, your intention may backfire against you.

The court will treat your TRO application as one for a preliminary injunction where the adverse party has notice of your application and is present at the hearing on the matter. A TRO is the most urgent form of preliminary injunction essentially. Rules often provide that a TRO will expire automatically after a certain amount of days unless the court holds a hearing with both sides present to

have a more complete argument on the matter.

A court will grant a TRO only if you can demonstrate the following:

- 1) irreparable injury/ harm
- 2) lack of an adequate remedy at law
- 3) a likelihood of success on the merits
- 4) lack of harm to the party opposing the motion
- 5) lack of harm to the public interest.

An irreparable injury can include deprivation of fundamental constitutional rights. The brief loss of First Amendment freedoms can constitute irreparable injury. Prison officials sometimes initiate TRO applications in court against inmates to obtain court orders for permission to invade the private bodies of prisoners in the contexts of hunger strikes and medication refusals. The government attorney appends a declaration or affidavit from the prison doctor to state to the judge that the inmate will suffer irreparable injury unless the court signs an immediate order to allow forced feeding or medication injection.

The court most often considers “money” to be the usual remedy “at law.” Many laws authorize people to sue others for money. The old English common law classified lawsuits for money as actions “at law” and lawsuits for injunctions as actions “in equity.” Some people define “equity” to mean “fairness.” Consequently, you must argue to the court why money is an inadequate remedy (at law) for the court to resolve your claim if you seek a TRO.

The remaining three factors to obtain a TRO are self-explanatory. You should have either legal material, affidavits, common sense, or any combination of these things to prove your likelihood of success on the merits. The judge should be convinced that you probably will win at trial in the future so the judge just should start the ball rolling as soon as possible by agreeing with you and to make a point against the prison staff. Finally, the court also will want assurance that you are not asking to replace the alleged irreparable harm to you with an equal irreparable illegal harm to anyone else. Otherwise, someone else will petition the court for a TRO back against you and the court will be right back at “square one.”

## **B. Preliminary Injunctions**

Courts entertain preliminary injunctions much more frequently than TRO petitions. Preliminary injunctions differ from TRO petitions in that the petitioner feels enough time exists to serve the other party with a copy of the petition as notice that someone is taking action against that party. Typically, courts require the parties to file briefs on the issues and then schedule an evidentiary hearing to learn more about the situation.

As the term indicates, “preliminary” injunction is not a final injunction on the merits. A preliminary injunction definitely indicates which way the court is leaning if the court grants it. However, denial of a preliminary injunction does not mean that the court necessarily disfavors your claim. The court may find your claim to have merit yet may disagree with your belief that the court must rule at that moment to prevent harm. Rather, the court may reason that the matter is not as urgent as you think and can wait until the scheduling of a trial on your right to have a permanent (i.e. “final”) injunction.

Sometimes, the court will conclude that the best thing to do would be to consolidate the preliminary and permanent injunction requests into one prompt trial on the issue in order to economize resources and time for all concerned parties if the court sees no prejudice to anyone by doing so. Parties may encourage the court to enter a prompt order on the petitions for both forms of injunction if the

parties agree that all witnesses, documents, and other discovery is known already to each side and available for court right away.

A petitioner must prove the same things as one must prove to obtain a TRO. You must show that you will suffer more without an injunction than the prison official will suffer with an injunction. A preliminary injunction expires once the court decides whether to make the injunction “permanent.” You must establish that the violation is of a continuing nature against you, and so you want the court to interrupt this continuum with a preliminary order for the prison staff to quit the offensive conduct now.

In 1996, Congress passed the PLRA. The PLRA refers to injunctions by the synonym “prospective (i.e. future) relief.” Under the PLRA, preliminary injunctions automatically expire after ninety days.<sup>1</sup>

Prison overcrowding is a common subject of petitions for preliminary injunctions. The PLRA authorizes courts to grant preliminary injunction release orders to alleviate overcrowding only if a less intrusive order failed despite a reasonable amount of time for government officials to have complied.<sup>2</sup> The court must find that the petitioner has established the need through presentation of “clear and convincing evidence.” The PLRA allows a three-judge panel to hear such drastic requests.

The PLRA requires courts to give substantial weight to any adverse impact on public safety or the operation of a criminal justice system that might be caused by the proposed preliminary relief.

### **C. Permanent Injunctions**

Permanent injunctions are final trial orders requiring the defendants to behave in a certain way. They pick up where any earlier TRO and preliminary injunction left off. Often, courts can determine whether to enter permanent injunctions based upon motions for summary judgment filed by either you or the prison officials. Many times, both sides agree on the facts but disagree whether the conduct in question is legal. Consequently, the judge may not need to see everyone in court if the issue can be resolved on paper.

The PLRA allows prison officials to petition for termination of “prospective relief” after two years. Inmates must respond that the federal law violation is ongoing and therefore, the injunction should be as well. Prison officials may renew their termination request annually if they deem their position to be justified.<sup>3</sup> Notably, the PLRA provides that the injunction is stayed if the court renders no ruling on the termination petition within thirty days of the filing date.<sup>4</sup>

Finally, the PLRA requires inmates to exhaust their administrative remedies through your institutional grievance process before you may file a federal complaint for a permanent injunction.

### **III. Conclusion**

Inmates sometimes request an attorney to obtain an immediate court order to force prison officials to respect the constitutional rights of inmates. As you can see, you must meet established standards to get such relief. You should anticipate showing the court two things if you have no attorney and are proceeding *pro se*.

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<sup>1</sup> 18 U.S.C. §3626(a)(2).

<sup>2</sup> *Id.* at §3626(a)(3)(A)(i).

<sup>3</sup> *Id.* at §3626(b)(1).

<sup>4</sup> *Id.* at §3626(e).

First, present to the court only those situations in which one of your fundamental rights truly is threatened. You should be able to demonstrate jeopardy to your freedoms of speech, religion, or other such constitutional right. For example, you could present a situation where the practices of officials wholly preclude you from: getting your papers into court, practicing your religion, corresponding with the outside, or receiving and reading books and magazines. Mere “inconvenience” is inadequate. Likewise, sudden restrictions will pass constitutional muster if prison officials can prove they have implemented new restrictions for certain security reasons which the court will find acceptable.

Second, base your claim as nearly as possible on facts. Concentrate on showing the court what actions prison officials took and the negative impact these actions imposed on some guaranteed right. Prepare to show the court what you have tried to do to alleviate your circumstance, such as resort to the grievance process. Hopefully, you can get on the good side of the court by recommending some form of relief that requires no additional financial or administrative burden on prison officials. The court will be more inclined to ask whether the prison officials are pursuing reasonable and necessary regulations to achieve the penological goals of the institution.

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