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Anatomy of a TRO and Temporary Injunction Hearing

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Supplemental Written Materials

This paper contains a brief discussion and overview of certain key Texas Rules of Civil Procedure relevant to seeking temporary restraining orders (“TROs”), temporary injunctive relief and permanent injunctive relief in state courts in Texas. This paper also describes certain key Federal Rules of Civil Procedure relevant to seeking such relief in federal court.

This paper is roughly organized in chronological order according to the process of requesting emergency injunctive relief.

This presentation is provided for educational and informational purposes only and is not intended, nor should it be construed, as legal advice. The citations in this paper are not exhaustive and may not be applicable in every case, depending on the facts and the law.

Preparing to File a TRO

Drafting the Pleadings and Proposed TRO

To obtain a TRO, plaintiff must file a verified petition, and submit a proposed TRO to the Court. *See* Tex. R. Civ. P. 682, 680; Fed. R. Civ. P. 65.

➤ **Rule 682, the Verified Petition**

Rule 682 requires plaintiff to submit a verified petition as a prerequisite to obtaining a TRO. Rule 682 provides:

No writ of injunction shall be granted unless the applicant therefor shall present his petition to the judge *verified* by his affidavit and containing a plain and intelligible statement on the grounds for such relief.

Tex. R. Civ. P. 682 (emphasis added).

A proper verification meets the following requirements: it (i) is based on personal knowledge, (ii) contains statements that would otherwise be admissible in evidence, and (iii) contains facts that would demonstrate the affiant’s competency to testify to the matters stated. *See e.g., Stone v. Midland Multifamily Equity REIT*, 334 S.W.3d 371, 375 (Tex. App.—Dallas 2011) (finding affidavit amounted to no evidence when it failed to demonstrate that the affiant had a basis for personal knowledge of the facts stated in the affidavit). This means that the affiant must have personal knowledge of the matters attested to. Plaintiff should consider whether multiple affiants are needed or appropriate, given the needs of the case and the range of facts in the petition. A common example is a lawsuit containing one verification concerning computer forensic evidence and another verification concerning employment-related evidence.

Plaintiff should also make sure that its verifications and/or affidavits are not conclusory and do not offer conclusions of law. *See Texas State Bd. of Med. Exam'rs v. McKinney*, 315 S.W.2d 387, 390 (Tex. App.—Waco 1958, no writ.) (“the general rule in Texas is to the effect that a [plaintiff] seeking injunctive relief must plead affirmatively the necessary facts and not legal conclusions”).

In addition, if plaintiff plans to request a TRO without notice to the putative defendant, the petition must (i) be “specific in terms” to show that plaintiff will suffer irreparable injury, loss, or damage if the TRO is not granted before notice can be given, and (ii) contain a statement that there is not enough time or that plaintiff will be hurt if they serve notice on the respondent before the hearing. *See* Tex. R. Civ. P. 680, 683; *see also In re County Hidalgo*, 655 S.W.3d 44, 53 (Tex. App.—Corpus Christi-Edinburg, 2022) (applying the requirements of both Rule 680 and 683 to the *ex parte* TRO to require the description of the injury that would occur without notice to be “specific in terms”) (citing Tex. R. Civ. P. 683).

➤ **Rules 680, 683, 684, 685 and 687, the Proposed TRO**

Plaintiff must submit a proposed TRO to the Court for entry. Rule 680 requires that the proposed TRO identify the putative defendant and include: (i) the reasons for its issuance, (ii) the irreparable harm that the TRO is preventing, (iii) the acts to be restrained, in reasonable detail and without reference to other documents, and (iv) the date the TRO expires. *See* Tex. R. Civ. P. 680, 683, 687; *see also In re Abbott*, 628 S.W.3d 288, 299 (Tex. 2021) (denying the TRO because the plaintiff failed to show that injury would occur before notice could be given to the defendant); *Fairfield v. Stonehenge Ass'n*, 678 S.W.2d 608, 611 (Tex. App.—Houston [14th Dist.] 1984, no writ) (“in order to warrant a court of equity to grant injunctive relief, the applicant must specify the precise relief sought and that a court is without jurisdiction to grant relief bound and in addition to that particularly specified”); *Hidalgo*, 655 S.W.3d at 54 (finding that a TRO explanation of irreparable harm that is conclusory and without facts “is not ‘specific in terms’”) (citing Tex. R. Civ. Pro. 683). The proposed TRO must also set the date of the preliminary injunction, the amount of bond to be given by plaintiff, and then be filed with the clerk. *See* Tex. R. Civ. P. 683, 684, 685.

Further, Rule 680 requires additional information where a TRO may be granted *ex parte*, including the injury that would occur if the Defendant is not restrained and the reasons why the TRO should be granted without providing notice to the Defendant. Rule 680 provides:

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 signing. ... Every restraining order shall include an order setting a certain date for hearing on the temporary or permanent injunction sought.

Tex. R. Civ. P. 680 (emphasis added).

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