TROs: Applying for a Temporary Restraining Order in a Civil Case

Warning: This is a complicated procedure with many steps, and you will be expected to follow all the same rules as a lawyer would. You will need to do extensive research and writing, go to court, and speak in front of the judge. If you cannot or prefer not to do these tasks, you should hire an attorney.

A temporary restraining order ("TRO") is an emergency *("ex parte")* court order prohibiting the defendant from taking some action.

An *ex parte* order is only granted when:

- Irreparable harm or immediate danger will occur before a standard motion for injunction can be heard (minimum of 16 court days), and
- The threatened harm outweighs the harm caused to the opposing party if the order is granted without notice.

Special forms cover protection from abuse. See the "Abuse and Harassment (http://www.courts.ca.gov/selfhelp-abuse.htm)" topic on the Judicial Council's website.

A TRO is only granted when:

- The moving party will probably eventually win the case ("likelihood of success on the merits"), and
- The relative interim harm to the moving party if the TRO is denied outweighs that to the opposing party if the TRO is granted.

The person asking for a TRO must present evidence establishing all of these factors, usually in a declaration under penalty of perjury, based on their own personal knowledge.

When a TRO is granted, the judge also issues an "Order to Show Cause" (OSC), scheduling a follow-up hearing for a preliminary injunction, which can last until the case is resolved. The TRO only lasts until this hearing.

A TRO application can only be filed in an ongoing lawsuit for the underlying problem or conflict. If you are not yet in a lawsuit, you must file a complaint to start one along with the TRO application.

Related Guides:

- Filing a New Civil Case (https://saclaw.org/resource_library/filing-a-complaint-to-start-a-civil-lawsuit-in-california/)
- Fee Waiver Guide (https://saclaw.org/resource_library/fee-waiver/)
- Motion for Preliminary Injunction (https://saclaw.org/resource_library/injunction-by-noticed-motion/)

Basic Process

Researching and writing the papers

There are no pre-printed forms for most civil *ex parte* situations. You will need to research and write (1) an "Application for TRO," stating what you are requesting and when the hearing will be; (2) a "Memorandum of Points and Authorities," explaining the relevant laws and how they apply to your facts; (3) a "Declaration" under penalty of perjury explaining **both** the facts of the case, **and** why the restraining order is so urgent it should be heard *ex parte*; and (4) a "Declaration re Notice" explaining if and how you give notice to the other parties. (This can be combined with the Declaration of the facts of the case.) You must also write a "Proposed Temporary Restraining Order and OSC for Preliminary Injunction" for the judge to sign if s/he agrees.

The Law Library has several books with samples and instructions of all these papers, which you can customize for your situation. See the "Secondary Sources and Forms" section, below, for specific recommendations.

Scheduling the hearing and notifying other parties

The applicant must schedule the *ex parte* hearing ahead of time with the court. In Sacramento, TROs are heard in the Home Court assigned for your case. If you call before 10 a.m. you can schedule a hearing as soon as the next court day. You should also file your paperwork prior to 10 a.m. the day before the hearing.

You must do your best to give the other parties notice before 10 a.m. the day before the hearing, unless there is a danger that it will cause them to take the disputed action right away. *Ex parte* hearings have unique notice procedures. You personally should phone the other party(s) (or their lawyer, if they have one) or contact them in another reliable way to tell them what you are asking

the court and when the hearing will be, and ask them if they plan to attend. California Rule of Court ("CRC") 3.1204. If you do not reach them, leave a detailed message with a reliable call-back number.

After you do this, you must write the "Declaration re Notice" stating whether the opposing party is represented by counsel, whether that party has been contacted and whether you think they will object. If you did not notify them because it would be dangerous to do so, you must explain why. This Declaration must be submitted to the department before 10 a.m. the day before the hearing. You must also pay the filing fee (usually $60 in Sacramento) unless you have a fee waiver in the case.

Attending the hearing

The applicant must attend the hearing. At the hearing, the judge may (1) grant the TRO and set a date for the OSC on preliminary injunction, (2) deny the TRO (on the grounds that the situation is not urgent) but set a date for the OSC, or (3) deny both. The applicant should serve any signed orders on the other parties and file the original order and proof of service at court.

() What's next?

The TRO is usually only good for a short time. In most cases, the judge will schedule the OSC hearing within a maximum 22 days; on the hearing date, the TRO expires and is hopefully replaced by a preliminary injunction, which lasts until the case is resolved. At the hearing, or in the written order scheduling the OSC, the judge may also state a date for you and the other party to file briefs or other papers. If so, be sure to follow that deadline.

For More Information

Court procedures (Sacramento County)

Civil Home Courts: Law and Motion Departments (https://www.saccourt.ca.gov/divisions/civil/civil-home-courts) , Sacramento County Superior Court.

Secondary sources and forms

There are no pre-printed forms or self-help resources for most temporary restraining orders. The Law Library recommends the following practice guides:

California Forms of Pleading and Practice (**KFC 1010 .A65 C3** (Ready Reference))
Chapter 303, "Injunctions," has in-depth information on temporary restraining orders and injunctions, including customizable samples of a complaint for injunction, the TRO application, notice of hearing, and proposed orders. There are also chapters on specific topics with sample paperwork for those situations, listed in section 303.02[2]. Sample memos of points and authorities can be found in the companion book *California Points and Authorities*, Chapter 116.
Electronic access: On the Law Library's computers, using *Lexis Advance*.

California Law and Motion Model Forms (**KFC 1012.A65 P37** (General Collection))
Chapters 34-35 include a sample *ex parte* application for TRO and OSC re preliminary injunction with all required elements, including a memorandum of points and authorities (unlike most others).

California Pretrial Practice & Forms (**KFC1020 .A65 K86** (General Collection))
Chapter 16 contains a succinct description of the requirements for TROs and a discussion of the types of evidence that can be used to establish their necessity, as well as sample forms. A useful discussion of the types of evidence that can be used to support motions and applications generally can be found at 14:80-122.
Electronic access: Forms, but not text, available on the companion CD-ROM, available at the Circulation Desk upon request.

In addition, all of the various practice guides on civil procedure before trial have forms for the complaint, *ex parte* application, declaration, declaration re notice, and/or proposed order, as well as substantive sections on opposing, enforcing, and modifying or dissolving TROs.