

## EX PARTE REQUESTS FOR TEMPORARY RESTRAINING ORDERS

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

### BACKGROUND

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

For **protection from abuse**, different forms and rules are used. See the “Abuse and Harassment” topic on the Judicial Council’s website for info and links to forms.

[www.courts.ca.gov/selfhelp-abuse.htm](http://www.courts.ca.gov/selfhelp-abuse.htm)

An *ex parte* order is only granted when:

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

A TRO is only granted when:

1. The moving party will probably eventually win the case, and
2. 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.

You must file a lawsuit for the underlying problem or conflict before or at the same time as the TRO application.

**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.

**Related Guides:** [Filing a New Civil Case](#) [Fee Waiver Guide](#) [Motion for Preliminary Injunction](#)

### 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 of 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. (Sometimes this is combined with the Declaration of

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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 at the Law and Motion courthouse, 813 Sixth St. 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.

After you do this, you must write the “Declaration re Notice” detailing how you notified the other party(s) of the hearing, 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.

### **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):**

“*Ex Parte* Motions: Law and Motion Departments”

Sacramento County Superior Court

[www.saccourt.ca.gov/civil/motions-hearings-exparte.aspx](http://www.saccourt.ca.gov/civil/motions-hearings-exparte.aspx)

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## 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, which contain sample forms you can adapt for your situation. Most of these books also have more details about the legal standards and procedures that apply to requests for temporary restraining orders.

[California Forms of Pleading and Practice](#) KFC 1010 .A65 C3 (Ready Reference) (Matthew Bender). 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 dozens of chapters on specific topics, from "Adjoining Landowners" to "Zoning," 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](#) (KFC1010 .B4 (Ready Reference)), 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) (Rutter Group). Chapters 34-35 include a sample *ex parte* application for TRO and OSC re preliminary injunction with all required elements, and a proposed TRO. This book includes a sample memorandum of points and authorities, unlike most others. It has less background information and primarily offers the customizable form to copy or download. Does not include a complaint.

**Electronic access:** On the Law Library's computers, using *Westlaw*.

[California Pretrial Practice & Forms](#) KFC1020 .A65 K86 (General Collection) (James Publishing, Inc.). 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 following practice guides 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:

- [California Civil Practice: Procedure](#) KFC 995.A65 B3 (Bancroft-Whitney). General Collection and Westlaw
- [California Practice Guide: Civil Procedure before Trial](#) KFC995. W45 (Rutter Group) General collection and Westlaw
- [California Pretrial Civil Procedure](#) KFC 995 .M38 (Matthew Bender) General Collection and Lexis Advance
- [California Civil Procedure before Trial](#) KFC 995 .C34 (CEB) General Collection and OnLaw

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## Statutes, Court Rules, and Judicial Opinions (Case Law)

### **California Statutes and Court Rules**

California Code of Civil Procedure (“CCP”) §527 governs temporary restraining orders in California. The rules for *ex parte* applications, including *ex parte* TROs, are set out in California Rule of Court (“CRC”) 3.1150 and 3.1200–3.1207. The California Code and California Rules of Court are available at the Law Library in several annotated (includes summaries of cases interpreting the laws) print versions and on the Internet at the California State Legislature’s website in unannotated form.

**Deering’s California Code Annotated** [KFC 30.5 .D4 P76](#) (Compact)

**West’s Annotated California Code** [KFC 30 .W48 P76](#)

**Electronic Access:** On the Law Library’s computers, using *WestlawNext*.

### **California Law Code Search: Free Online Statutes**

The California State Legislature provides this free online source for California statutes. To access the Code of Civil Procedure, click “Code of Civil Procedure - CCP Code” in the list of codes to browse or select “CCP” from the drop-down menu at the top right to find a specific section.

**Electronic Access:** Via the Internet at [leginfo.legislature.ca.gov/faces/codes.xhtml](http://leginfo.legislature.ca.gov/faces/codes.xhtml)

### **California Rules of Court Online**

The Judicial Council of California has posted the California Rules of Court online for free.

**Electronic Access:** Via the Internet at [www.courts.ca.gov/rules.htm](http://www.courts.ca.gov/rules.htm).

### **California Judicial Opinions**

California courts interpret the statutes and rules and are an important source of authority and clarification. California Court of Appeal and California Supreme Court opinions are published in the standard California reporters:

*California Supreme Court:*

**California Reports (Cal.)**, series 1-current [KFC 45 .A21](#) (Compact)

**West’s California Reporter (Cal.Rptr.)**, series 1-current [KFC 51 .W48](#) (Compact)

**Electronic Access:** On the Law Library’s computers, using *WestlawNext*.

*California Appellate courts:*

**California Appellate Reports (Cal. App.)**, series 1-current [KFC 48 .A212](#) (Compact)

**West’s California Reporter (Cal.Rptr.)**, series 1-current (ongoing) [KFC 51 .W48](#) (Compact)

**Electronic Access:** On the Law Library’s computers, using *WestlawNext*.

### **California Case Law: Free Online Cases**

There are several websites offering free access to California case law. Perhaps the best combination of coverage, function, and ease of use is Google Scholar, which provides a dedicated search engine for California cases (1950-present). Other options include California Official Reports Public Access page ([www.lexisnexis.com/clients/CACourts/](http://www.lexisnexis.com/clients/CACourts/)) and Findlaw’s California case search ([www.findlaw.com/cacases/#dirsearch2](http://www.findlaw.com/cacases/#dirsearch2)).

**Electronic Access:** Via the Internet at <http://bit.ly/Scholar-Cal-Case-Search>.

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OR USING THE MATERIALS LISTED, DON’T HESITATE TO ASK A REFERENCE LIBRARIAN.