# TROs & Preliminary Injunctions

Litigation Basics

Vikrama Chandrashekar
Billy Jones
Jennifer Knight Lang
Dean Richardson

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# Meet the Faculty

## Panelists

Billy Jones - Lathrop GPM

Jennifer Knight Lang - Fennemore Craig P.C.

Dean Richardson - Gould & Ratner LLP

## Moderator

Vikrama Chandrashekar - Vicente LLP

About This Webinar

# TROs and Preliminary Injunctions

- Sometimes, at the beginning of a case, you need the court to take immediate action to protect your client's interests or to maintain the status quo while the litigation progresses. This webinar discusses procedures and strategies for obtaining temporary restraining orders and preliminary injunctions.

- The topics discussed include the procedural and substantive requirements for obtaining TROs and preliminary injunctions, some best practices for succeeding on motions seeking TROs and preliminary injunctions, and how to challenge and defeat those motions.

## About This Series

# Litigation Basics 2026

This series is designed specifically for attorneys who are just starting to get involved in civil litigation or who could use a refresher on litigation fundamentals. The purpose is to introduce different components and phases of litigation, from motions for injunctive relief to dispositive motions, through discovery and trial, and on to appeal and post-judgment collection.

# Episodes In This Series

1. TROs and Preliminary Injunctions
   *Premiere date: 1/15/26*
2. Dispositive Motions
   *Premiere date: 4/9/26*
3. Discovery Practice
   *Premiere date: 5/28/26*
4. Anatomy of a Trial
   *Premiere date: 7/23/26*
5. Enforcement: Post-Judgment Proceedings & Collections
   *Premiere date: 9/24/26*
6. Appellate Practice
   *Premiere date: 11/12/26*

# Episode 1

# TROs & Preliminary Injunctions

Each Financial Poise Webinar is delivered in Plain English, understandable to investors, business owners, & executives without much background in these areas, yet is of primary value to attorneys, accountants, & other seasoned professionals. Each episode brings you into engaging, sometimes humorous, conversations designed to entertain as it teaches. Each episode in the series is designed to be viewed independently of the other episodes so that participants will enhance their knowledge of this area whether they attend one, some, or all episodes.

# TROs vs. Preliminary Injunctions

## Temporary Restraining Order (TRO):

- Limited in duration - often only 10 or 14 days
- Can be granted either with notice or *ex parte*
- Open to extension

## Preliminary Injunction:

- Must be given notice
- Duration set by the judge after hearing
- Issued after presentation of evidence

# Purpose of TROs & Preliminary Injunctions

**Preserve the "status quo" between the parties.**

"The status quo is the last uncontested status which preceded the pending controversy."

*Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963).

+

**Need everything to stop *IMMEDIATELY!***

→

**Mandatory Injunctions Disfavored:**

Higher likelihood of obtaining a prohibitory injunction.

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# Mandatory v. Prohibitory Injunctions

## Mandatory Injunctions

Typically require a party to take a specific action

Courts typically disfavor mandatory injunctions

## Prohibitory Injunctions

Requires a party to refrain from performing a specific act

Can be easier to obtain than a mandatory injunction

# Common Cases Where TROs & Preliminary Injunctions Are Used



Threat of releasing confidential or trade secret information

Trademark or copyright infringement

Restrictive covenants: non-competes and non-solicitation agreements

Freezing or seizing accounts

Sale of particular property *i.e. real estate*

Constitutional Rights cases

# Obtaining Injunctive Relief

- Easier When:
  - ➢ Contract provides for injunctive relief if a breach occurs due to irreparable harm that cannot be remedied by monetary damages
  - ➢ Common in non-competes, confidentiality agreements
  - ➢ An applicable statute provides for injunctive relief

# Procedure for Obtaining a TRO

- State requirements vary; federal requirements in *Fed. R. Civ. P. 65(b)*
- Verified pleadings and/or affidavits
- Proposed order identifying requested relief
- Notice (if any – can be limited) to the other side
- Bond preparations if successful
- TRO and emergency relief can now be obtained in arbitration – check the applicable arbitration rules

# *Ex Parte* v. Notice Given

**Courts are generally averse to entering injunctions with no notice**

- Some notice, even if very limited, is usually preferable to an *ex parte* proceeding
- Can be as little as 30 minutes notice before the return hearing

**When to proceed *ex parte:***

- Only when necessary; ambush by *ex parte* hearing is **not advisable**
- Real danger of opposing side taking final action prior to hearing
- Time sensitivity of TRO proceeding

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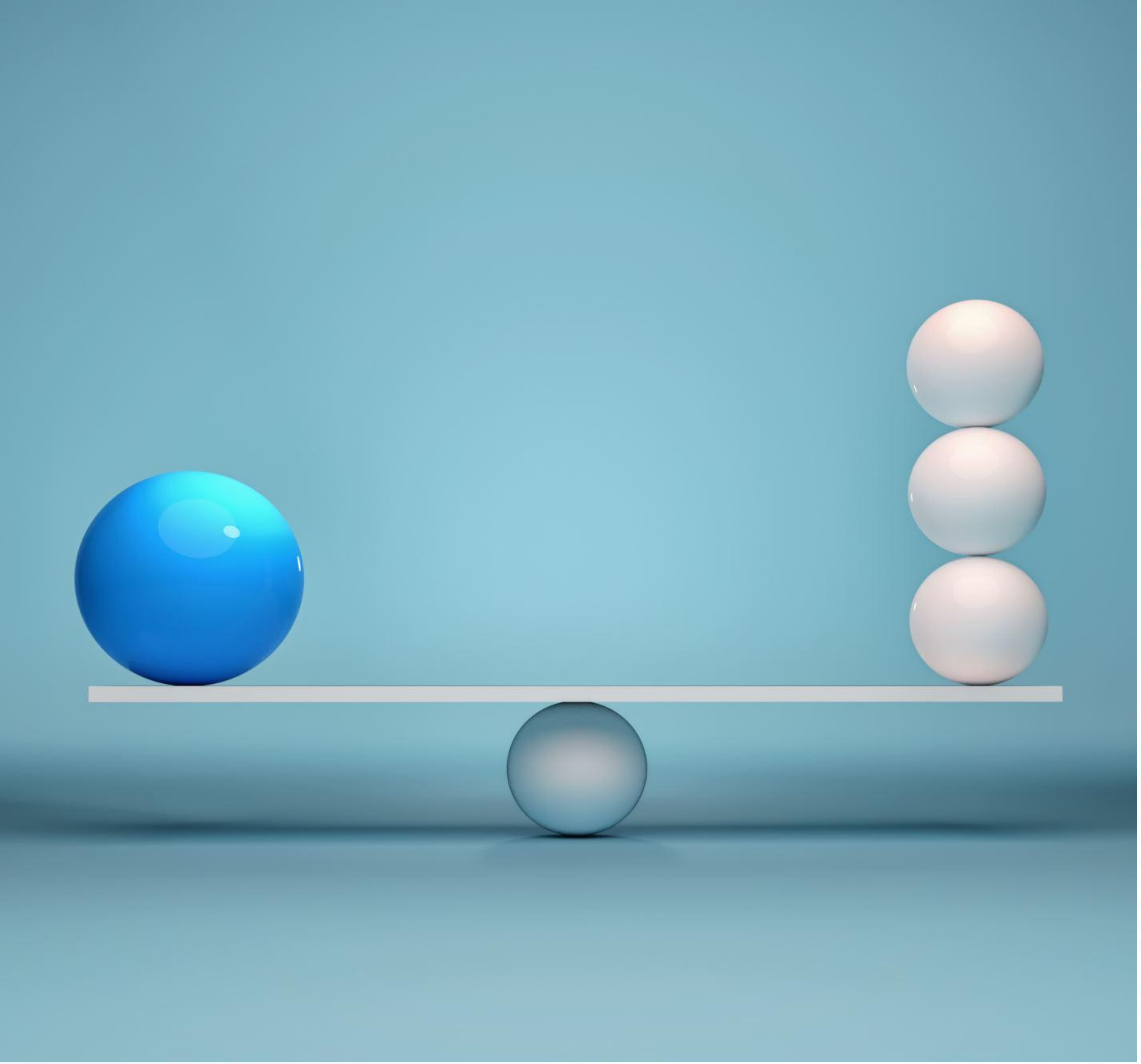

# Elements of Injunctive Relief

1. Likelihood of success on the merits
2. Likelihood of irreparable harm in the absence of preliminary relief
3. The balance of equities tips in plaintiff's favor
4. An injunction is in the public interest

Some courts use a sliding scale where a higher likelihood of success on the merits requires a smaller showing of irreparable harm.

# What is Irreparable Harm?

Not money!

Longer answer:

The party cannot be adequately compensated in damages or when damages cannot be measured with any certainty

Violations of constitutional rights usually qualify as irreparable harm

# Bond Requirement

- Federal Rule of Civil Procedure 65(c) requires a plaintiff to post a bond for TROs issued to protect against the wrongful enjoining of a party
- Many state courts have bond requirements as well
- Be prepared to argue the need for, and amount of, any bond at the TRO hearing

# Defending Against a TRO

- Difficulty of defending against a TRO when given little or no notice
  - ➢ Might be reading papers while running to court
- Need extreme cooperation of the client quickly
- Keep the briefs & papers from your last TRO handy to use as models
- What to bring to court, if possible:
  - ➢ Answers to factual allegations
    - ✔ Affidavits (submit in advance if time allows)
    - ✔ Witnesses (if court will allow any evidence)
  - ➢ Arguments on other available remedies
    - ✔ Unclean hands
    - ✔ Monetary damages

# Defending Against a TRO *(cont'd)*

- Argue no irreparable harm to plaintiff absent entry of a TRO
  - ➢ Money damages will suffice
- Argue status quo is more inequitable to your client than to plaintiff
  - ➢ Affidavits/witnesses are helpful if available
- Argue that there is no need for emergency relief
  - ➢ Judges are very good at distinguishing a real emergency from a lawyer-created one!
- Argue need for a substantial bond from plaintiff

# Negotiating a Standstill Agreement

- Judges will often order attorneys to go discuss in the hallway before arguing the merits of a TRO Motion
  - ➢ See if the parties can adequately preserve status quo without entry of a true TRO
- As plaintiff, understand what your client wants stopped immediately & what could continue without causing your client harm
  - ➢ If you can agree with the opposing side, no need to post a bond for a TRO
- As defendant, be prepared with facts from your client to discuss any possible concessions you can grant to the other side to avoid entry of a TRO

# You Win a TRO – What's Next?

Make sure TRO language is clear & capable of enforcement

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Lay out factual & legal findings in a proposed order

+

Plan to provide copies of the TRO to any relevant third parties

Post any required bond

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# Enforcing Your TRO

A TRO is a court order and can be enforced as such:

- Contempt of court
- Contempt sanctions
- Criminal contempt possible

Keep counsel involved on both sides so that business people can do their jobs without violating the court's order

# You're a Plaintiff That Lost a TRO – What's Next?

- Did you lose on a procedural basis?
  - ➢ Might have ability to file a new motion
- Case may continue absent injunctive relief with other claims
- Attempt at negotiated resolution, but with a weakened position if lost on irreparable harm

# You Lost a TRO – Can You Appeal?

- In some state courts, you may appeal.
  - ➢ Illinois allows appeals of TROs in expedited proceedings
    - ✔ Illinois Supreme Court Rule 307(d)
- In federal court, almost never.
  - ➢ Federal rules require truly exceptional circumstances for an appeal of a grant or denial of a TRO

# Preparing for the Preliminary Injunction Hearing

- After the TRO hearing, parties usually schedule a preliminary injunction hearing regardless of who won the TRO hearing
- If TRO was sought *ex parte*, preliminary injunction hearing usually follows very quickly
  - Often within weeks
- Court may order expedited discovery
  - Based on timing of the preliminary injunction hearing & needs of the case
  - You may be able to conduct written discovery, depositions, etc.
- Preliminary injunctions require the plaintiff to show the same elements as a TRO
  - Parties will present both evidence & legal arguments
  - Witness testimony is common, as are demonstrative exhibits
- Determine whether your issues are legal or factual, & prepare accordingly

# Defending Against a Preliminary Injunction

By now, you will have had time to put in a responsive brief opposing the Motion for TRO/Preliminary Injunction.

Can also pair with a Motion to Dismiss (if applicable) ***OR*** Verified Answer, but typically not required

Marshal evidence showing lack of need for any/continuing injunctive relief
*i.e. that money damages would satisfy the plaintiff*

If possible, present evidence & legal arguments illustrating why plaintiff has no likelihood of success on the merits
*i.e. the non-compete is unenforceable or the information is not a trade secret*

# After the Preliminary Injunction Hearing

- Cases often will settle following the preliminary injunction hearing
  - ➢ The court's ruling on a preliminary injunction is, effectively, a ruling that one side will most likely win
  - ➢ Cases may proceed to trial, but a mini-trial has already occurred on the merits of the case, so witness testimony will have been locked in, etc.

# Questions or Comments?

If you have any questions about this webinar that you did not get to ask during the live premiere, or if you are watching this webinar On Demand, please do not hesitate to email us at info@financialpoise.com with any questions or comments you may have. Please include the name of the webinar in your email & we will do our best to provide a timely response.

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