

District of Maine Best Practices Seminar 2013

Motion Practice under Federal Rule of Civil Procedure 65

| Rule 65(b) <i>Temporary Restraining Order</i> | Rule 65(a) <i>Preliminary Injunction</i> |
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| <p>Will be brought to the attention of a judicial officer as soon as possible.</p> <p>Movant is usually contacted by Clerk’s Office within one business day. Counsel for movant should be immediately and readily available for conference with court.</p> | <p>Will default Local Rule 7 briefing deadlines (21 days for objections and 14 days for reply) and brought to attention of judicial officer once fully briefed.</p> <p>Note: Can file a motion to expedite, which would be brought to attention of judge within 24 hours of filing</p> |
| <p>Can issue without oral or written notice to other side only if:</p> <p>(1) Affidavit or verified complaint show immediate, irreparable harm; and</p> <p>(2) Attorney certified in writing any efforts to notice the other side and why notice should not be required</p> <p style="text-align: center;"><i>Fed. R. Civ. P. 65(b)(1)</i></p> | <p>Notice to other side required before issuing</p> <p style="text-align: center;"><i>Fed. R. Civ. P. 65(a)(1)</i></p> |
| <p>Order can only last 14 days</p> <p style="text-align: center;"><i>Fed. R. Civ. P. 65(b)(2)</i></p> <p>(Extensions available if court enters a good cause finding on record)</p> | <p>Order usually lasts until final judgment entered.</p> |
| <p>When TRO issued without notice, motion for preliminary injunction must be set for hearing “at the earliest time, taking precedence over all other matters”</p> <p style="text-align: center;"><i>Fed. R. Civ. P. 65(b)(3)</i></p> | |
| <p>Only those who receive actual notice of order are bound</p> <p style="text-align: center;"><i>Fed. R. Civ. P. 65(d)(2)</i></p> | <p>Only those who receive actual notice of order are bound</p> <p style="text-align: center;"><i>Fed. R. Civ. P. 65(d)(2)</i></p> |
| <p>Security required.</p> <p style="text-align: center;"><i>Fed R. Civ. P. 65(c)</i></p> | <p>Security required.</p> <p style="text-align: center;"><i>Fed R. Civ. P. 65(c)</i></p> |