

A plastic surgeon left her business partner to open her own plastic surgery clinic in a neighboring state. The business partner brought a diversity action against the plastic surgeon in federal court for violating a noncompete clause in the partnership agreement. The business partner properly filed an ex parte application for a temporary restraining order (TRO) that would prohibit the plastic surgeon from operating her new clinic. After a hearing at which only the business partner was present, the court properly issued the ex parte TRO, finding that the partner would be immediately and irreparably harmed by the loss of goodwill caused by the plastic surgeon's violation of the noncompete clause. The TRO was served on the plastic surgeon the next day.

One week later, the business partner moved to convert the TRO into a preliminary injunction. He requested that the court grant the motion immediately without providing notice to the plastic surgeon.

Will the court grant the business partner's request?

- A. No, because notice must be given to an opposing party before a court may issue a preliminary injunction.
- B. No, because the partner's attorney failed to certify in writing why the plastic surgeon need not be notified.
- C. Yes, because the ex parte TRO had expired and was no longer in effect.
- D. Yes, because the partner will suffer immediate and irreparable harm if the request is not granted.

Explanation:

Preliminary relief

(FRCP 65)

Type		Required contents	Effect
Preliminary injunction	Notice of hearing	<ul style="list-style-type: none">• State reasons issued	Persons bound upon receiving actual notice of order:
Temporary restraining order		<ul style="list-style-type: none">• Reasonably describe acts restrained or required• Specify terms	<ul style="list-style-type: none">• parties to the case• parties' officers, agents, employees & attorneys• anyone in active concert/participation with above persons
	Ex parte	Above requirements plus:	
	(no notice)	<ul style="list-style-type: none">• date & hour issued• why injury is irreparable• why issued without notice• promptly filed with clerk & entered into record	

FRCP = Federal Rule of Civil Procedure.

A **temporary restraining order** (TRO) is a court order that commands a party to do or stop doing a specified action for 14 days or until a preliminary-injunction hearing can take place—whichever occurs first. A **court may issue** a TRO **without notice** to the adverse party (ie, ex parte). But when a party **attempts to convert** a TRO into a **preliminary injunction**, the adverse party **must receive notice**. Therefore, the court will deny the business partner's request because the plastic surgeon did not receive notice of the preliminary-injunction hearing.

(Choice B) The business partner's attorney must certify in writing why the plastic surgeon need not be notified when applying for an ex parte TRO—not a preliminary injunction. That is because, unlike an ex parte TRO, a preliminary injunction may be issued only after the adverse party has received notice of the preliminary-injunction hearing.

(Choice C) An ex parte TRO automatically remains in effect for 14 days unless that time period is (1) shortened by the court or (2) extended by the court for good cause or the adverse party's consent. Here, the TRO was seven days old when the business partner

moved to convert it into a preliminary injunction. Since there is no indication that the TRO was to last fewer than 14 days, it had not expired and was still in effect.

(Choice D) Although the business partner will suffer immediate and irreparable harm if his motion to convert the TRO into a preliminary injunction is denied, the court cannot grant a preliminary injunction on that basis alone. Even if it could, the motion cannot be granted because the plastic surgeon did not receive notice of the hearing.

Educational objective:

A court may issue a temporary restraining order without providing notice to the adverse party (ie, ex parte). However, the adverse party must receive notice before the court can convert a TRO into a preliminary injunction.

References

- Fed. R. Civ. P. 65(a) (preliminary injunction).