

A plaintiff obtained an ex parte temporary restraining order (TRO) in a federal civil action and posted a bond the same day. One day later, the plaintiff served the defendant with copies of the summons and complaint, the TRO, and supporting documents. The court scheduled a hearing on the preliminary injunction to occur 14 days after the TRO had been issued.

Two days before the hearing, the plaintiff moved to extend the TRO and postpone the hearing for one week on the ground that its principal witness would be unavailable to testify on the scheduled day due to a planned vacation. The defendant opposed the motion and moved to dissolve the TRO.

Is the court likely to grant the defendant's motion to dissolve the TRO?

- A. No, because a TRO can be extended once for 14 days.
- B. No, because the plaintiff posted a bond and its principal witness's testimony is critical to the hearing.
- C. Yes, because the plaintiff's principal witness's vacation is not good cause to extend the TRO.
- D. Yes, because the TRO will expire before a rescheduled hearing can be held.

Explanation:

Temporary restraining orders

(FRCP 65(b))

Obtaining Movant must provide:

- specific facts in affidavit or verified complaint clearly showing immediate & irreparable injury, loss, or damage
- written certification by movant's attorney of efforts to give notice & reasons why it should not be required *and*
- security to pay costs & damages sustained by wrongfully restrained party

Extending Limited to 14 days or until preliminary-injunction hearing can take place unless:

- opposing party consents to extension *or*
- good cause exists

Dissolving

- Party moving to dissolve order must give two days' notice
- Court must hear & decide motion as promptly as justice requires

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. Once this period expires, the court should dissolve the TRO unless it has already been **extended** because:

- the **opposing party consented** to the extension (not seen here) *or*
- there was **good cause**, which generally requires the movant to show that an unforeseeable event prevents the scheduled hearing from taking place.

Here, the witness's vacation was planned, so the witness's unavailability at the preliminary-injunction hearing was not a surprise. The plaintiff should have known the availability of its principal witness before seeking a TRO and planned accordingly. Since the plaintiff cannot provide good cause for extending the TRO and postponing the preliminary-injunction hearing, the court is likely to grant the defendant's motion to dissolve the TRO.

(Choice A) A TRO can be extended only if the opposing party consents or good cause exists. Therefore, it cannot be automatically extended once for 14 days.

(Choice B) A federal court will issue a TRO only if the movant provides security (eg, a bond) sufficient to pay the costs and damages if the nonmovant is improperly

restrained. However, the plaintiff's posting of a bond does not affect whether the court should extend the TRO. Additionally, the critical nature of the principal witness's testimony does not alone establish good cause needed to extend a TRO.

(Choice D) Had the plaintiff provided good cause, the court could have extended the TRO for a "like period," which cannot exceed the period provided in the initial order. Here, the initial TRO period was 14 days, so extending the TRO and postponing the hearing for a week would have been valid had good cause existed.

Educational objective:

A TRO generally applies for 14 days or until a preliminary-injunction hearing can take place—whichever occurs first. A court can extend a TRO beyond this time if (1) the opposing party consents or (2) the movant provides good cause.

References

- Fed. R. Civ. P. 65(b)(2) (extension of TRO).
- 11A Charles Alan Wright et al., Federal Practice and Procedure § 2953 (3d ed. 2020) (explaining how a TRO can be extended beyond 14 days).

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