

RULE 79

TEMPORARY RESTRAINING ORDERS AND
PRELIMINARY INJUNCTIONS

A. Availability generally. Subject to the requirements of Rule 82, a temporary restraining order or preliminary injunction may be allowed under this rule:

A.(1)(a) When it appears that a party is entitled to relief demanded in a pleading, and such relief, or any part thereof, consists of restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the party seeking the relief; or

A.(1)(b) When it appears that the party against whom a judgment is sought is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of a party seeking judgment concerning the subject matter of the action, and tending to render the judgment ineffectual. This paragraph shall not apply when the provisions of Rule 83 F., G.(4), and I.(2) are applicable, whether or not provisional relief is ordered under these provisions.

A.(2) Time. A temporary restraining order or preliminary injunction under this rule may be allowed by the court, or judge thereof, at any time after commencement of the action and before judgment.

B. Temporary restraining order.

B.(1) Notice. A temporary restraining order may be

granted without written or oral notice to the adverse party or to such party's attorney only if:

B.(1)(a) It clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the adverse party's attorney can be heard in opposition, and

B.(1)(b) The applicant or applicant's attorney submits an affidavit setting forth the efforts, if any, which have been made to notify defendant or defendant's attorney of the application, including attempts to provide notice by telephone, and the reasons supporting the claim that notice should not be required. The affidavit required in this paragraph shall not be required for orders granted by authority of paragraphs (c), (d), (e), (f), or (g) of subsection (1) of ORS 107.095.

B.(2) Contents of order. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith; shall define the injury and state why it is irreparable and why the order was granted without notice.

B.(2)(a) Duration. Every temporary restraining order shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

B.(2)(b) When 10-day limit does not apply. The 10-day limit of paragraph B.(2)(a) does not apply to orders granted by authority of paragraphs (c), (d), (e), (f), or (g) of subsection (1) of ORS 107.095.

B.(3) Hearing on preliminary injunction. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. When the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if such party does not do so, the court shall dissolve the temporary restraining order.

B.(4) Adverse party's motion to dissolve or modify. On two days' notice (or on shorter notice if the court so orders) to the party who obtained the temporary restraining order without notice, the adverse party may appear and move for dissolution or modification of such restraining order. In that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

B.(5) Temporary restraining orders not extended by implication. If the adverse party actually appears at the time of the granting of the restraining order, but notice to the adverse party is not in accord with section C.(1), the restraining order is not thereby converted into a preliminary injunction. If a party moves to dissolve or modify the temporary restraining order

as permitted by section B.(4), and such motion is denied, the temporary restraining order is not thereby converted into a preliminary injunction.

C. Preliminary injunction.

C.(1) Notice. No preliminary injunction shall be issued without notice to the adverse party at least five days before the time specified for the hearing, unless a different period is fixed by order of the court.

C.(2) Consolidation of hearing with trial on merits.

Before or after the commencement of the hearing of an application for preliminary injunction, the parties may stipulate that the trial of the action on the merits shall be advanced and consolidated with the hearing of the application. The parties may also stipulate that any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on trial and need not be repeated upon the trial.

D. Form and scope of injunction or restraining order.

Every order granting a preliminary injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation

with any of them who receive actual notice of the order by personal service or otherwise.

E. Scope of rule.

E.(1) This rule does not apply to a temporary restraining order issued by authority of ORS 107.700 to 107.720.

E.(2) This rule does not apply to temporary restraining orders or preliminary injunctions granted pursuant to ORCP 83 except for the application of section D. of this rule.

E.(3) These rules do not modify any statute or rule of this state relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee.

F. The writ of ne exeat is abolished.

COMMENT

This rule replaces ORS chapter 32. The existing ORS provisions are not complete, do not adequately distinguish between temporary restraining orders and preliminary injunctions, and have never been integrated with the provisional remedies procedure of ORS chapter 29 (now ORCP 83).

The grounds spelled out in subsection A.(1) are identical to ORS 32.040, except reference to a restraining order where a defendant threatens to remove or dispose of property has been eliminated. Restraining orders to prevent a defendant from frustrating enforcement of a future judgment by disposition of property are covered under the provisional remedies procedure of ORCP 83. See Huntington v. Coffee Associates, 43 Or. App. 595, 603 P.2d 1183 (1979). The procedure in this rule applies either to the situation where the ultimate remedy sought in the case is a permanent injunction and the plaintiff needs immediate relief, or where the injunction sought to effectuate the eventual judgment does not consist of restraining the defendant from disposing of property because such property could be applied to satisfy any judgment.

Subsection A.(2) was taken from ORS 32.020(1).

Sections B. and C. are adapted from Federal Rule 65(a) and (b). Subsection B.(1)(b) was redrafted to make clear that a party seeking a temporary restraining order must try to inform the opposing party or such party's attorney of the application by telephone or any other possible means. An ex parte restraining order is authorized but only for 10 days. Under Rule 17, a complaint need not be verified, but it could be verified to provide a basis for an order under 79 B.(1)(a). Paragraph B.(2)(b) makes clear that the 10-day limit does not apply in domestic relations cases.

Subsection B.(5) is not in the federal rule and was drafted to avoid the confusion discussed in Granny Goose Foods, Inc. v. Teamsters, 415 U.S. 423, 432 n.7 (1974).

Section C. was adapted from the federal rule. Subsection C.(2), however, differs from the federal rule in only allowing an accelerated hearing on the merits where the parties agree.

Section D. is taken from Federal Rule 65 (d). Note, the bond requirements for preliminary injunctions and temporary restraining orders are found in ORCP 82.

Under section E. certain preliminary injunctions are not covered. Subsection E.(1) covers the Family Abuse Prevention Act. Subsection E.(2) carries out the distinction in section A. between preliminary accelerated injunctive relief and restraining orders designed to preserve a defendant's property to satisfy judgment. Subsection E.(3) is taken from Federal Rule 65 (e) and is designed to avoid conflict with state and federal acts limiting injunctions in labor relations matters.

The writ of ne exeat was a common law form of restraining order that prevented a person from leaving the jurisdiction. It was explicitly abolished by ORS 34.820, which was repealed in 1979.

RULE 79

TEMPORARY RESTRAINING ORDERS AND
PRELIMINARY INJUNCTIONS

A. Availability generally.

A.(1) Circumstances. Subject to the requirements of Rule 82, a temporary restraining order or preliminary injunction may be allowed under this rule:

A.(1)(a) When it appears that a party is entitled to relief demanded in a pleading, and such relief, or any part thereof, consists of restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the party seeking the relief; or

A.(1)(b) When it appears that the party against whom a judgment is sought is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of a party seeking judgment concerning the subject matter of the action, and tending to render the judgment ineffectual. This paragraph shall not apply when the provisions of Rule 83 F., G.(4), and I.(2) are applicable, whether or not provisional relief is ordered under those provisions.

A.(2) Time. A temporary restraining order or preliminary injunction under this rule may be allowed by the court, or judge thereof, at any time after commencement of the action and before judgment.

B. Temporary restraining order.

B.(1) Notice. A temporary restraining order may be

granted without written or oral notice to the adverse party or to such party's attorney only if:

B.(1)(a) It clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the adverse party's attorney can be heard in opposition, and

B.(1)(b) The applicant or applicant's attorney submits an affidavit setting forth the efforts, if any, which have been made to notify defendant or defendant's attorney of the application, including attempts to provide notice by telephone, and the reasons supporting the claim that notice should not be required. The affidavit required in this paragraph shall not be required for orders granted by authority of paragraphs (c), (d), (e), (f), or (g) of subsection (1) of ORS 107.095.

B.(2) Contents of order. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith; shall define the injury and state why it is irreparable and why the order was granted without notice.

B.(2)(a) Duration. Every temporary restraining order shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

B.(2)(b) When 10-day limit does not apply. The 10-day limit of paragraph B.(2)(a) does not apply to orders granted by authority of paragraphs (c), (d), (e), (f), or (g) of subsection (1) of ORS 107.095.

B.(3) Hearing on preliminary injunction. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. When the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if such party does not do so, the court shall dissolve the temporary restraining order.

B.(4) Adverse party's motion to dissolve or modify. On two days' notice (or on shorter notice if the court so orders) to the party who obtained the temporary restraining order without notice, the adverse party may appear and move for dissolution or modification of such restraining order. In that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

B.(5) Temporary restraining orders not extended by implication. If the adverse party actually appears at the time of the granting of the restraining order, but notice to the adverse party is not in accord with section C.(1), the restraining order is not thereby converted into a preliminary injunction. If a party moves to dissolve or modify the temporary restraining order

as permitted by section B.(4), and such motion is denied, the temporary restraining order is not thereby converted into a preliminary injunction.

C. Preliminary injunction.

C.(1) Notice. No preliminary injunction shall be issued without notice to the adverse party at least five days before the time specified for the hearing, unless a different period is fixed by order of the court.

C.(2) Consolidation of hearing with trial on merits.

Before or after the commencement of the hearing of an application for preliminary injunction, the parties may stipulate that the trial of the action on the merits shall be advanced and consolidated with the hearing of the application. The parties may also stipulate that any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on trial and need not be repeated upon the trial.

D. Form and scope of injunction or restraining order.

Every order granting a preliminary injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation

with any of them who receive actual notice of the order by personal service or otherwise.

E. Scope of rule.

E.(1) This rule does not apply to a temporary restraining order issued by authority of ORS 107.700 to 107.720.

E.(2) This rule does not apply to temporary restraining orders or preliminary injunctions granted pursuant to ORCP 83 except for the application of section D. of this rule.

E.(3) These rules do not modify any statute or rule of this state relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee.

F. Writ abolished. The writ of ne exeat is abolished.

COMMENT

This rule replaces ORS chapter 32. The existing ORS provisions are not complete, do not adequately distinguish between temporary restraining orders and preliminary injunctions, and have never been integrated with the provisional remedies procedure of ORS chapter 29 (now ORCP 83).

The grounds spelled out in subsection A.(1) are identical to ORS 32.040, except reference to a restraining order where a defendant threatens to remove or dispose of property has been eliminated. Restraining orders to prevent a defendant from frustrating enforcement of a future judgment by disposition of property are covered under the provisional remedies procedure of ORCP 83. See Huntington v. Coffee Associates, 43 Or. App. 595, 603 P.2d 1183 (1979). The procedure in this rule applies either to the situation where the ultimate remedy sought in the case is a permanent injunction and the plaintiff needs immediate relief, or where the injunction sought to effectuate the eventual judgment does not consist of restraining the defendant from disposing of property because such property could be applied to satisfy any judgment.

Subsection A.(2) was taken from ORS 32.020(1).

Sections B. and C. are adapted from Federal Rule 65(a) and (b). Subsection B.(1)(b) was redrafted to make clear that a party seeking a temporary restraining order must try to inform the opposing party or such party's attorney of the application by telephone or any other possible means. An ex parte restraining order is authorized but only for 10 days. Under Rule 17, a complaint need not be verified, but it could be verified to provide a basis for an order under 79 B.(1)(a). Paragraph B.(2)(b) makes clear that the 10-day limit does not apply in domestic relations cases.

Subsection B.(5) is not in the federal rule and was drafted to avoid the confusion discussed in Granny Goose Foods, Inc. v. Teamsters, 415 U.S. 423, 432 n.7 (1974).

Section C. was adapted from the federal rule. Subsection C.(2), however, differs from the federal rule in only allowing an accelerated hearing on the merits where the parties agree.

Section D. is taken from Federal Rule 65 (d). Note, the bond requirements for preliminary injunctions and temporary restraining orders are found in ORCP 82.

Under section E. certain preliminary injunctions are not covered. Subsection E.(1) covers the Family Abuse Prevention Act. Subsection E.(2) carries out the distinction in section A. between preliminary accelerated injunctive relief and restraining orders designed to preserve a defendant's property to satisfy judgment. Subsection E.(3) is taken from Federal Rule 65 (e) and is designed to avoid conflict with state and federal acts limiting injunctions in labor relations matters.

The writ of ne exeat was a common law form of restraining order that prevented a person from leaving the jurisdiction. It was explicitly abolished by ORS 34.820, which was repealed in 1979.

RULE 75

TEMPORARY RESTRAINING ORDERS AND
PRELIMINARY INJUNCTIONS

A. Availability generally.

A.(1) Time. A temporary restraining order or preliminary injunction may be allowed by the court, or judge thereof, at any time after commencement of the action and before judgment.

A.(2) Grounds and notice of relief. A temporary restraining order or preliminary injunction may be allowed:

A.(2)(a) When it appears that a party is entitled to relief demanded in a pleading, and such relief, or any part thereof, consists of restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the party seeking the relief, or

A.(2)(b) When it appears that the party against whom a judgment is sought is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of a party seeking judgment concerning the subject matter of the action, and tending to render the judgment ineffectual. This paragraph shall not apply when relief is available by a restraining order under Rule 7 .

B. Temporary restraining order.

B.(1) Notice. A temporary restraining order may be granted without written or oral notice to the adverse party or to such party's attorney only if:

B.(1)(a) It clearly appears from specific facts shown by

affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the adverse party's attorney can be heard in opposition, and

B.(1)(b) The applicant or applicant's attorney submits an affidavit setting forth the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

B.(2) Contents of order. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith; shall define the injury and state why it is irreparable and why the order was granted without notice.

B.(2)(a) Duration. Every temporary restraining order shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

B.(2)(b) When 10-day limit does not apply. The 10-day limit of Section B.(2)(a) does not apply to orders granted by authority of paragraph (c), (d), (e), (f) or (g) of subsection (1) of ORS 107.095.

B.(3) Hearing on preliminary injunction. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for

hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. When the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if such party does not do so, the court shall dissolve the temporary restraining order.

B.(4) Adverse party's motion to dissolve or modify. On two days' notice (or on shorter notice if the court so orders) to the party who obtained the temporary restraining order without notice, the adverse party may appear and move its dissolution or modification. In that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

B.(5) Temporary restraining orders not extended by implication. If the adverse party actually appears at the time of the granting of the restraining order, but notice to the adverse party is not in accord with section C.(1), the restraining order is not thereby converted into a preliminary injunction. If a party moves to dissolve or modify the temporary restraining order as permitted by section B.(4), and such motion is denied, the temporary restraining order is not thereby converted into a preliminary injunction.

C. Preliminary injunction.

C.(1) Notice. No preliminary injunction shall be issued without notice to the adverse party at least five days before the time specified for the hearing, unless a different period is

fixed by order of the court.

C.(2) Consolidation of hearing with trial on merits.

Before or after the commencement of the hearing of an application for preliminary injunction and upon motion of a party, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on trial and need not be repeated upon the trial. This subsection shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

D. Security.

D.(1) General rule. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs, damages, and attorney fees as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

D.(2) Waiver or reduction. The court may waive, reduce, or limit the security provided for in subsection (1) of this section upon a showing of good cause, including indigency, and on such terms as shall be just and equitable.

D.(3) When no security required. No security will be required under this section where:

D.(3)(a) A restraining order or preliminary injunction is sought to protect a person from violent or threatening behavior; or

D.(3)(b) A restraining order or preliminary injunction is sought to prevent unlawful conduct when the effect of the injunction is to restrict the enjoined party to available judicial remedies.

D.(3)(c) ORS 32.010 does not require it.

D.(4) Liability of sureties. The provisions of Rule 92 apply to a surety upon a bond or undertaking under this rule. The liability of the surety shall be limited to the amount specified in the undertaking.

E. Form and scope of injunction or restraining order.

Every order granting a preliminary injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

F. Scope of rule.

F.(1) This rule does not apply to a temporary restraining order issued by authority of ORS 107.700 to 107.720.

F.(2) This rule does not apply to temporary restraining orders or preliminary injunctions granted pursuant to ORCP 79 except for the application of section E. of this rule as required by Rule 79 H.

F.(3) These rules do not modify any statute or rule of this state relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee.

G. The writ of ne exeat is abolished.

plaintiff believes money was held or property owned. Note, notice to the defendant and a bond is required by Rule 72 since this is a form of attachment.

Lacy's sections 83 B., C., and D. were excluded because they applied only to garnishment as an execution method.

Section B. is taken from Lacy's Rule 83 E. Again, the corporate bond requirement is eliminated.

RULE 74 - CLAIM AND DELIVERY

This was adapted from Lacy's Rule 87 A. Lacy's Rule 87 A.(3) was not included. This appears substantive and should be left in the statutes. Section C. of this rule was not in Lacy's rule and requires a bond prior to claim and delivery. Section F. is also new and requires indemnity to the sheriff. These two requirements exist for the similar procedure of attachment. The rule does not make the redelivery by bond procedure available. Since plaintiff sued to replevin this specific property, he should be enabled to insist the sheriff hold it until judgment.

RULE 75 - TEMPORARY RESTRAINING ORDER

This was formerly denominated Rule 90. The only changes are those suggested by the Jackson subcommittee. Note, the provisional process rule (Rule 71) excludes restraining orders under this rule. Paragraph A.(2)(b) would only apply when the restraining order did not restrict or prevent alienation of defendant's property

for the purpose of protecting plaintiff's ability to satisfy the judgment. There might be situations where some other type of preliminary order is needed to prevent a judgment from being useless. Both the provisional process rules and the preliminary injunction rules have the same basic due process elements: (a) court order, (b) bond, and (c) hearing before or soon after the provisional remedy. The exact procedure specified, however, is different.

The only change suggested by the Jackson subcommittee was in paragraph B.(1) where an affidavit, rather than a certificate, is required.

RULE 79 - BONDS AND UNDERTAKINGS

This rule is not limited to provisional remedies and would govern for all bonds. The most important and common bond provisions are in the area of provisional remedies, and this would cover bonds referred to in Rules 72, 73, 74, and 75.

The Jackson subcommittee did not suggest any changes in the draft of this rule.

RULE 90 - JUDGMENTS FOR SPECIFIC ACTS

This rule relates to enforcement of judgments. It covers the same area as Rule 70 of the federal rules. This was taken from Lacy's Rule 87 E.

RULE 91 - RECEIVERS

This rule again includes only receiverships ancillary to judgment and relating to corporations. Provisional receiverships to preserve property for enforcement of judgment, if one is

RULE 79

TEMPORARY RESTRAINING ORDERS AND
PRELIMINARY INJUNCTIONS

A. Availability generally.

A.(1) Circumstances. Subject to the requirements of Rule 82 A.(1), a temporary restraining order or preliminary injunction may be allowed under this rule:

A.(1)(a) When it appears that a party is entitled to relief demanded in a pleading, and such relief, or any part thereof, consists of restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the party seeking the relief; or

A.(1)(b) When it appears that the party against whom a judgment is sought is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of a party seeking judgment concerning the subject matter of the action, and tending to render the judgment ineffectual. This paragraph shall not apply when the provisions of Rule 83 F., G.(4), and I.(2) are applicable, whether or not provisional relief is ordered under those provisions.

A.(2) Time. A temporary restraining order or preliminary injunction under this rule may be allowed by the court, or judge thereof, at any time after commencement of the action and before judgment.

B. Temporary restraining order.

B.(1) Notice. A temporary restraining order may be

granted without written or oral notice to the adverse party or to such party's attorney only if:

B.(1)(a) It clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the adverse party's attorney can be heard in opposition, and

B.(1)(b) The applicant or applicant's attorney submits an affidavit setting forth the efforts, if any, which have been made to notify defendant or defendant's attorney of the application, including attempts to provide notice by telephone, and the reasons supporting the claim that notice should not be required. The affidavit required in this paragraph shall not be required for orders granted by authority of paragraphs (c), (d), (e), (f), or (g) of subsection (1) of ORS 107.095.

B.(2) Contents of order. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith; and shall define the injury and state why it is irreparable and why the order was granted without notice.

B.(2)(a) Duration. Every temporary restraining order shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

B.(2)(b) When 10-day limit does not apply. The 10-day limit of paragraph B.(2)(a) does not apply to orders granted by authority of paragraphs (c), (d), (e), (f), or (g) of subsection (1) of ORS 107.095.

B.(3) Hearing on preliminary injunction. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. When the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if such party does not do so, the court shall dissolve the temporary restraining order.

B.(4) Adverse party's motion to dissolve or modify. On two days' notice (or on shorter notice if the court so orders) to the party who obtained the temporary restraining order without notice, the adverse party may appear and move for dissolution or modification of such restraining order. In that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

B.(5) Temporary restraining orders not extended by implication. If the adverse party actually appears at the time of the granting of the restraining order, but notice to the adverse party is not in accord with section C.(1), the restraining order is not thereby converted into a preliminary injunction. If a party moves to dissolve or modify the temporary restraining order

as permitted by section B.(4), and such motion is denied, the temporary restraining order is not thereby converted into a preliminary injunction.

C. Preliminary injunction.

C.(1) Notice. No preliminary injunction shall be issued without notice to the adverse party at least five days before the time specified for the hearing, unless a different period is fixed by order of the court.

C.(2) Consolidation of hearing with trial on merits.

Before or after the commencement of the hearing of an application for preliminary injunction, the parties may stipulate that the trial of the action on the merits shall be advanced and consolidated with the hearing of the application. The parties may also stipulate that any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on trial and need not be repeated upon the trial.

D. Form and scope of injunction or restraining order.

Every order granting a preliminary injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation

with any of them who receive actual notice of the order by personal service or otherwise.

E. Scope of rule.

E.(1) This rule does not apply to a temporary restraining order issued by authority of ORS 107.700 to 107.720.

E.(2) This rule does not apply to temporary restraining orders or preliminary injunctions granted pursuant to ORCP 83 except for the application of section D. of this rule.

E.(3) These rules do not modify any statute or rule of this state relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee.

F. Writ abolished. The writ of ne exeat is abolished.

COMMENT

This rule replaces ORS chapter 32. The existing ORS provisions are not complete, do not adequately distinguish between temporary restraining orders and preliminary injunctions, and have never been integrated with the provisional process procedure of ORS chapter 29 (now ORCP 83).

The grounds spelled out in subsection A.(1) are identical to ORS 32.040, except reference to a restraining order where a defendant threatens to remove or dispose of property has been eliminated. Restraining orders to prevent a defendant from frustrating enforcement of a future judgment by disposition of property are covered under the provisional remedies procedure of ORCP 83. See Huntington v. Coffee Associates, 43 Or. App. 595, 603 P.2d 1183 (1979). The procedure in this rule applies either to the situation where the ultimate remedy sought in the case is a permanent injunction and the plaintiff needs immediate relief, or where the injunction sought to effectuate the eventual judgment does not consist of restraining the defendant from disposing of property because such property could be applied to satisfy any judgment.

Subsection A.(2) was taken from ORS 32.020(1).

Sections B. and C. are adapted from Federal Rule 65(a) and (b). Subsection B.(1)(b) was redrafted to make clear that a party seeking a temporary restraining order must try to inform the opposing party or such party's attorney of the application by telephone or any other possible means. An ex parte restraining order is authorized but only for 10 days. Under Rule 17, a complaint need not be verified, but it could be verified to provide a basis for an order under 79 B.(1)(a). Paragraph B.(2)(b) makes clear that the 10-day limit does not apply in domestic relations cases.

Subsection B.(5) is not in the federal rule and was drafted to avoid the confusion discussed in Granny Goose Foods, Inc. v. Teamsters, 415 U.S. 423, 432 n.7 (1974).

Subsection C.(2) differs from the federal rule; consolidation with trial on the merits requires agreement of the parties.

Section D. is taken from Federal Rule 65 (d). Note, the bond requirements for preliminary injunctions and temporary restraining orders are found in ORCP 82.

Under section E. certain preliminary injunctions are not covered. Subsection E.(1) covers the Family Abuse Prevention Act. Subsection E.(2) carries out the distinction in section A. between preliminary accelerated injunctive relief and restraining orders designed to preserve a defendant's property to satisfy judgment. Subsection E.(3) is taken from Federal Rule 65 (e) and is designed to avoid conflict with state and federal acts limiting injunctions in labor relations matters.

The writ of ne exeat was a common law form of restraining order that prevented a person from leaving the jurisdiction. It was explicitly abolished by ORS 34.820.

RULE 79

TEMPORARY RESTRAINING ORDERS AND
PRELIMINARY INJUNCTIONS

A. Availability generally.

A.(1) Circumstances. Subject to the requirements of Rule 82 A.(1), a temporary restraining order or preliminary injunction may be allowed under this rule:

A.(1)(a) When it appears that a party is entitled to relief demanded in a pleading, and such relief, or any part thereof, consists of restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the party seeking the relief; or

A.(1)(b) When it appears that the party against whom a judgment is sought is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of a party seeking judgment concerning the subject matter of the action, and tending to render the judgment ineffectual. This paragraph shall not apply when the provisions of Rule 83 F., G.(4), and I.(2) are applicable, whether or not provisional relief is ordered under those provisions.

A.(2) Time. A temporary restraining order or preliminary injunction under this rule may be allowed by the court, or judge thereof, at any time after commencement of the action and before judgment.

B. Temporary restraining order.

B.(1) Notice. A temporary restraining order may be

granted without written or oral notice to the adverse party or to such party's attorney only if:

B.(1)(a) It clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the adverse party's attorney can be heard in opposition, and

B.(1)(b) The applicant or applicant's attorney submits an affidavit setting forth the efforts, if any, which have been made to notify defendant or defendant's attorney of the application, including attempts to provide notice by telephone, and the reasons supporting the claim that notice should not be required. The affidavit required in this paragraph shall not be required for orders granted by authority of paragraphs (c), (d), (e), (f), or (g) of subsection (1) of ORS 107.095.

B.(2) Contents of order; duration. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance, shall be filed forthwith, shall define the injury and state why it is irreparable, and shall state why the order was granted without notice.

B.(2)(a) Every temporary restraining order shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

B.(2)(b) The 10-day limit of paragraph (a) of this subsection does not apply to orders granted by authority of paragraphs (c), (d), (e), (f), or (g) of subsection (1) of ORS 107.095.

B.(3) Hearing on preliminary injunction. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. When the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if such party does not do so, the court shall dissolve the temporary restraining order.

B.(4) Adverse party's motion to dissolve or modify. On two days' notice (or on shorter notice if the court so orders) to the party who obtained the temporary restraining order without notice, the adverse party may appear and move for dissolution or modification of such restraining order. In that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

B.(5) Temporary restraining orders not extended by implication. If the adverse party actually appears at the time of the granting of the restraining order, but notice to the adverse party is not in accord with subsection C.(1), the restraining order is not thereby converted into a preliminary injunction. If a party moves to dissolve or modify the temporary restraining order

as permitted by subsection (4) of this section, and such motion is denied, the temporary restraining order is not thereby converted into a preliminary injunction.

C. Preliminary injunction.

C.(1) Notice. No preliminary injunction shall be issued without notice to the adverse party at least five days before the time specified for the hearing, unless a different period is fixed by order of the court.

C.(2) Consolidation of hearing with trial on merits.

Before or after the commencement of the hearing of an application for preliminary injunction, the parties may stipulate that the trial of the action on the merits shall be advanced and consolidated with the hearing of the application. The parties may also stipulate that any evidence received upon an application for a preliminary injunction, which would be admissible upon the trial on the merits, becomes part of the record on trial and need not be repeated upon the trial.

D. Form and scope of injunction or restraining order.

Every order granting a preliminary injunction and every restraining order shall set forth the reasons for its issuance, shall be specific in terms, shall describe in reasonable detail (and not by reference to the complaint or other document) the act or acts sought to be restrained, and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation

with any of them who receive actual notice of the order by personal service or otherwise.

E. Scope of rule.

E.(1) This rule does not apply to a temporary restraining order issued by authority of ORS 107.700 to 107.720.

E.(2) This rule does not apply to temporary restraining orders or preliminary injunctions granted pursuant to ORCP 83 except for the application of section D. of this rule.

E.(3) These rules do not modify any statute or rule of this state relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee.

F. Writ abolished. The writ of ne exeat is abolished.

COMMENT

This rule replaces ORS chapter 32. The existing ORS provisions are not complete, do not adequately distinguish between temporary restraining orders and preliminary injunctions, and have never been integrated with the provisional process procedure of ORS chapter 29 (now ORCP 83).

The grounds spelled out in subsection A.(1) are identical to ORS 32.040, except for elimination of a specific reference to a restraining order where a defendant threatens to remove or dispose of property. Restraining orders to prevent a defendant from frustrating enforcement of a future judgment by disposition of property are covered under the provisional remedies procedure of ORCP 83. See Huntington v. Coffee Associates, 43 Or. App. 595, 598, 603 P.2d 1183 (1979). The procedure in this rule applies either to the situation where the ultimate remedy sought in the case is a permanent injunction and the plaintiff needs immediate relief, or where the injunction sought to effectuate the eventual judgment does not consist of restraining the defendant from disposing of property because such property could be applied to satisfy any judgment.

Subsection A.(2) was taken from ORS 32.020(1).

Sections B. and C. are adapted from Federal Rule 65(a) and (b). Paragraph B.(1)(b) was redrafted to make clear that a party seeking a temporary restraining order must try to inform the opposing party or such party's attorney of the application by telephone or any other possible means. An ex parte restraining order is authorized but only for 10 days. Under Rule 17, a complaint need not be verified, but it could be verified to provide a basis for an order under 79 B.(1)(a). Paragraph B.(2)(b) makes clear that the 10-day limit does not apply in domestic relations cases.

Subsection B.(5) is not in the federal rule and was drafted to avoid the confusion discussed in Granny Goose Foods, Inc. v. Teamsters, 415 U.S. 423, 432 n.7 (1974).

Subsection C.(2) differs from the federal rule; consolidation with trial on the merits requires agreement of the parties.

Section D. is taken from Federal Rule 65 (d). Note, the bond requirements for preliminary injunctions and temporary restraining orders are found in ORCP 82.

Under section E. certain preliminary injunctions are not covered. Subsection E.(1) refers to the Family Abuse Prevention Act. Subsection E.(2) carries out the distinction in section A. between preliminary accelerated injunctive relief and restraining orders designed to preserve a defendant's property to satisfy judgment. Subsection E.(3) is taken from Federal Rule 65 (e) and is designed to avoid conflict with state and federal acts limiting injunctions in labor relations matters.

The writ of ne exeat was a common law form of restraining order that prevented a person from leaving the jurisdiction. It was explicitly abolished by ORS 34.820.