

## Alabama Rules of Civil Procedure

### VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

#### Rule 65.

#### Injunctions.

##### (a) *Preliminary Injunction.*

(1) NOTICE. No preliminary injunction shall be issued without notice to the adverse party.

(2) CONSOLIDATION OF HEARING WITH TRIAL ON MERITS. Before or after the commencement of the hearing of an application for a preliminary injunction, 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 the trial and need not be repeated upon the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) *Temporary restraining order; notice; hearing; duration.* A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record, and shall expire by its terms within such time after entry not to exceed ten (10) days, as the court fixes (except in domestic relations cases, the ten- (10-) day limitation shall not apply), unless within the time so fixed the order for good cause shown is extended or unless the party against whom the order is directed consents that it may be extended for a longer period. 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 of all matters except older matters of the same character; and 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 he does not do so, the court shall dissolve the temporary restraining order. On two (2) days' notice to the party who obtained the temporary restraining order

without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) *Security.* 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 reasonable attorney fees as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained; provided, however, no such security shall be required of the State of Alabama or of an officer or agency thereof, and provided further, in the discretion of the court, no such security may be required in domestic relations cases.

The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

(d) *Form and scope of injunction or restraining order.*

(1) Every order granting a restraining order 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.

(2) Every order granting an injunction 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.

(dc) *District court rule.* Rule 65 does not apply in the district courts.

[Amended 6-17-75; Amended eff. 10-1-95.]

### **Committee Comments on 1973 Adoption**

The rule is similar to Federal Rule 65. Subdivision (e) of the federal rule has no application in Alabama and has been omitted. And a specific reference has been made to attorneys' fees in the first sentence of subdivision (c) in order to preserve Alabama practice which permits recovery of attorneys' fees. *McGraw v. Little*, 198 Ala. 553, 73 So. 915 (1917); cf. *French Piano & Organ Co. v. Porter*, 134 Ala. 302, 32 So. 678 (1901). The formalities attending a temporary restraining order are not as strict as in federal practice.

This rule makes important changes in the procedure for obtaining an injunction, but it neither enlarges nor restricts the grounds on which injunctive relief can be granted. Although the procedural distinction between law and equity is abolished by merger, an injunction will continue to be available in those situations where it would have been available prior to the adoption of these rules.

In Alabama there have been two distinct methods of obtaining injunctions. *Berman v. Wreck-A-Pair Bldg. Co.*, 234 Ala. 293, 175 So. 269 (1937). The first of these two procedures is an abbreviation of ancient English practice. The second was adopted as an alternative procedure by the Code of 1907. Code 1940, Tit. 7, § 1054 et seq. See Sims, *Chancery Practice*, § 651, p. 429 (1909). The chief difference between the two proceedings has been that under the alternative procedure notice and a hearing must be given the adverse party before a preliminary injunction is issued.

The procedure provided by this rule is very similar to the alternative procedure in Alabama. Thus adoption of the rule will eliminate the older procedure and in substance make the alternative procedure the sole method of obtaining an injunction.

The principal change in procedure made by this rule is that no preliminary injunction will be granted without notice—and hearing, *Sims v. Greene*, 161 F.2d 87 (3d Cir.1947)—being granted the adverse party. At the same time the rule recognizes that there are some extraordinary cases where immediate action is necessary. *Lukes v. Alabama Power Co.*, 257 Ala. 590, 60 So.2d 349 (1952). This need is met by the rigidly circumscribed provisions of subdivision (b) authorizing issuance of temporary restraining orders.

The party seeking injunctive relief ordinarily files simultaneous application for a temporary restraining order and a motion for a preliminary injunction. His first thrust is the application for a temporary restraining order, and, whether successful or not, he should anticipate an early hearing on the motion for preliminary injunction.

This Rule and its federal companion are not presented in the precise order in which they are usually applied. Although Rule 65(a) speaks to preliminary injunctions, the plaintiff in need of injunctive relief usually desires it more quickly than might be available under a preliminary injunction. Rule 65(b) speaks to the drastic emergency relief generally sought at the outset. For this reason, discussion of Rule 65(b) precedes Rule 65(a) in these comments.

Rule 65(b) does provide for injunctive relief without notice to the adverse party. This relief, known as a temporary restraining order, can be accorded without notice provided that the verified facts of the complaint clearly justify plaintiff's apprehension about the threat of irreparable injury.

The formalities attending the granting of a temporary restraining order are not as strenuous as under federal rule. Note that with respect to a temporary restraining order the requirement of setting forth the reasons for its issuance and specificity in terms have been dropped. However, these requirements are preserved with respect to the form of the order granting an injunction.

Once entered, a temporary restraining order expires by its terms. During the time it is in effect, extensions for good cause are permissible. The method of attack by the restrained party is a motion to dissolve or modify. The motion to discharge is abolished.

The court having been confronted with an application for a temporary restraining order must immediately set down the companion motion for a preliminary injunction. If the application for a temporary restraining order is denied, the plaintiff will generally press for the hearing on the motion for preliminary injunction. Of course, if the application has been granted, the then restrained defendant will usually be the movant in efforts to set the hearing on the motion or upon his motion for dissolution.

When the motion for a preliminary injunction is heard, under Rule 65(a)(2) the trial court can consolidate such hearing with the trial of the action on its merits. As a practical matter, in many proceedings for injunctive relief, the hearing on preliminary injunction, although hurriedly prepared in many instances, develops into as full a review of the evidence as the parties might be capable, financially or otherwise.

In the event Rule 65(a)(2) consolidation has not been ordered, the record upon the hearing of the motion for preliminary injunction, according to Rule

65(a)(2), becomes a part of the record at the trial on the merits without necessity for repetition.

Rule 65(d) governs the form and scope of the order and is discussed above, with respect to orders granting an application for a temporary restraining order. The final clause of Rule 65(d), delineating the parties upon whom the order is binding is in accord with previous doctrine. See *Ex parte State*, 162 Ala. 181, 50 So. 143 (1909).

This rule, read in conjunction with other of these rules, supersedes Code 1940, Tit. 7, §§ 1050-1056, 1058-1062 and Equity Rules 58, 78 and 97-100.

Rule 65(c) exempts the state or an officer or agency thereof from the requirement of giving security. This conforms with Tit. 7, § 72, Code of Ala.

#### **Committee Comments to Amendment to Rule 65(b), June 17, 1975**

The Committee has recommended the amendment of Rule 65(b) on account of dissatisfaction with present Rule 65(b) in that it does not focus enough attention upon the necessity for the giving of notice in the event of an application for a temporary restraining order. Present Rule 65(b) is similar to Federal Rule 65(b) as it stood prior to an amendment of February 28, 1966, effective July 1, 1966. In that connection, the remarks of the United States Supreme Court Advisory Committee are pertinent. See Lyons, *Alabama Practice*, Vol. 2, p. 540 (1973).

The Committee's initial recommendation of Rule 65 was based upon a desire to guard against injury in two emergency situations. First, in an action seeking a declaratory judgment in an insurance coverage dispute where there is a separate action pending against the insured, the necessary time for the giving of notice prior to the action against the insured going into default may be unavailable. Second, in certain domestic cases, the defendant might do the acts which were sought to be enjoined if he or she knew that the Court was about to enter an Order prohibiting such act. This revision contains adequate language to justify dispensation with notice in both of those situations since the amended rule would permit the Court to hear reasons in support of a claim that notice should not be required. In a case decided since the aforementioned amendment to Federal Rule 65(b), to which this proposal is identical, the United States Supreme Court observed in *Carroll v. President & Commissioners of Princess Anne*, 393 U.S. 175, 21 L.Ed.2d 325, 89 S.Ct. 347 (1968) that "there is a place in our jurisprudence for the ex parte issuance without notice, of temporary

restraining orders of short duration ...”. However, such an order should only be entered in an extremely exceptional case such as outlined herein.

**Committee Comments to October 1, 1995,  
Amendment to Rule 65**

The amendment is technical. No substantive change is intended.

**District Court Committee Comments**

Section 12-12-30(1), Code of Ala., generally precludes the district courts from exercising jurisdiction over actions seeking equitable relief.