UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
Joel W. Solomon United States Courthouse
900 Georgia Avenue
Chattanooga, Tennessee 37402

WHEN MAY A JUDGE DECIDE A CASE WITHOUT A JURY?

November 2023

One of the keystones of the American judicial system is the jury. The jury represents the people in the judicial process, deciding factual questions of liability in civil cases and guilt or innocence in criminal cases. In this way, juries provide a critical limit on the power of federal judges, who do not have to stand for election and have life tenure to protect their independence from outside pressure. The jury's essential role in our government is embodied in the Constitution and mentioned in the Declaration of Independence.

Notwithstanding the jury's central role in the judicial decision-making process, there are certain exceptional cases where judges are authorized to act without juries.

Emergency Situations.

A prime example of such an emergency situation occurred when Dr. Martin Luther King went to federal court in Alabama after Bloody Sunday to obtain a court order prohibiting the state of Alabama from interfering with the resumption of the march from Selma to Montgomery. On March 7, 1965, state and local authorities had stopped a march in support of Black voting rights by beating and arresting the marchers. The federal district court held an emergency hearing and received evidence, including testimony from Dr. King. Ten days after Bloody Sunday, the court granted the order Dr. King sought, and the march was completed the following Sunday.

Dr. King and the other marchers could not have waited until a jury was empaneled, evidence presented, and a verdict rendered. The situation called for quick action. Many other cases come into federal courts where the parties need almost immediate action. Litigants may challenge a law they think will be used to punish them if they take action they believe is protected by the Constitution. A plaintiff may fear the defendant will hide or dispose of disputed assets before a case can be resolved. Or a former employee may take a business's sensitive, proprietary information with plans to use that information in direct competition against the business. These are just a few examples of when a court might find it necessary to act without having the benefit of an impartial jury.

In cases where immediate action is necessary, judges must act without the assistance of juries. Congress has given judges the authority to do so through two types of extraordinary remedies: temporary restraining orders and preliminary injunctions.

Temporary Restraining Orders.

Under federal law, a temporary restraining order (TRO) prohibits a person from taking certain actions or compels the person to take other actions. Most often, a TRO is issued to preserve the status quo—to keep the situation the same during the time it takes to decide the lawsuit.

The person seeking a TRO must show through affidavits that (1) the person is likely to prevail when the case is ultimately decided; (2) the person is likely to suffer irreparable harm without a TRO; (3) the balance of equities is in the person's favor: and (4) a TRO would be in the public's interest. A judge can issue a TRO without a hearing if the person seeking the TRO makes a sufficient case through the affidavits.

In addition, because a TRO is an emergency remedy, the person seeking the TRO does not always have to give notice to the person against whom the order is sought. This option can be critical where there is reason to believe the other party may do something harmful on receiving notice that a TRO is imminent.

The law nevertheless provides some degree of protection for the party against whom a TRO is issued. First, a person seeking a TRO without notice must explain to the judge's satisfaction why notice should not be required in that specific case. Second, the judge can require the person seeking the TRO to post a monetary bond as further protection for the defending party. Third, a TRO can only be in effect for a short period, and no more than fourteen days. At the end of that time, if the moving party wants the order to remain in effect, the court must hold a hearing on converting the order to a preliminary injunction.

Preliminary Injunctions.

Like a TRO, a preliminary injunction prohibits a person from taking certain actions or compels the person to take certain other actions. A preliminary injunction requires the same legal showing as a TRO, but it has more demanding procedural requirements. A preliminary injunction may be sought after a TRO or on its own. And while a TRO lasts no longer than fourteen days, a preliminary injunction can last as long as needed to bring the case to trial.

Unlike with a TRO, the party against whom a preliminary injunction is sought must be given notice of the motion before the court acts. The court must hold a hearing on the motion, and the responding party must have the opportunity to present evidence during the hearing. This is what happened with Dr. King in the example above. Because of the additional procedural requirements, a preliminary injunction is usually not issued with the same speed as a TRO.

Conclusion.

Courts deal with real-world situations. In the real world, sometimes waiting for a jury trial would cause one of the parties real harm. When immediate action is required, temporary restraining orders and preliminary injunctions give federal courts the flexibility and authority to provide

meaningful relief to real people in real time. Though temporary restraining orders and preliminary injunctions are considered extraordinary remedies, both empower the courts to act swiftly to fulfill their obligation to protect citizens' constitutional rights.

Curtis L. Collier
United States District Judge
Chair, Eastern District of Tennessee Civics and Outreach Committee

Carrie Brown Stefaniak
Law Clerk to the Honorable Curtis L. Collier
Past President, Chattanooga Chapter of the Federal Bar Association

Erienne Reniajal Lewis
Law Clerk to the Honorable Curtis L. Collier