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Injunctive Relief Scenarios

"*A preliminary injunction ... is an extraordinary measure taken by a court to preserve the status quo of the parties during litigation. It will be issued only (1) if a plaintiff is able to show likelihood of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff's rights during the course of litigation*."[1]

***#1*:** Marshall Mathers is 18 years old and he graduated from Winston-Salem High School in the spring of 2003. He scored 1,600 on his SATs and prior to his senior year in high school his grade point average was 3.8 out of a possible 4.0. In April of 2003 Marshall received a letter from the University of North Carolina at Chapel Hill stating that Marshall had been admitted to the university's freshman class for the school year 2003-2004. The letter also stated that "*your enrollment will depend upon your successful completion of your current academic year. We expect you to continue to achieve at the same level that enabled us to provide this offer of admission; we also expect you to graduate on time*." Marshall accepted the offer by letter in May of 2003. Marshall's grades during his senior year, however, were all Cs, Ds and Fs. His grade point average fell from a 3.8 to a 3.5. Upon learning of these senior year grades the UNC-CH admissions office first met with Marshall and when Marshall's explanations and attitude proved unsatisfactory the office decided to rescind Marshall's offer of admittance due to poor academic performance. Marshall was notified of this decision by letter on July 15, 2003. Classes begin at UNC-CH on Wednesday, August 22, 2003.

Marshall hired a prominent Winston-Salem attorney to represent him and see if he can begin classes at UNC-CH. On Monday, August 20, 2003, this attorney approaches a superior court judge resident in Forsyth County who is holding the courts of Forsyth County (who is also a Wake Forest Law School grad) and asks him to grant a TRO allowing Marshall to attend classes at UNC-CH. The attorney argues the offer of admittance was accepted and was therefore a binding contract--and that Marshall will be irreparably damaged if he is prevented from attending classes with the rest of the freshman class--and that, in reliance on the UNC letter, Marshall has turned down all other college acceptances and so has no other university to attend this fall. The attorney

[1] *Investors, Inc. v. Berry*, 293 N.C. 688, 701, 239 S.E.2d 566 (1977).

also argued that Marshall had family and health problems that contributed significantly to his poor schoolwork during his senior year.

- what judge has jurisdiction to hear the TRO?[2]
- when should a judge decline to consider a TRO?
- should the judge granting the TRO set the injunction hearing before another judge?[3] should first judge let second judge know about the hearing?[4]
- should judge inquire if the TRO had already been presented to and denied by another superior court judge?[5]
- what is the standard for granting the TRO?[6] is plaintiff likely to prevail on the merits?
- will plaintiff suffer irreparable damage if TRO is not granted? will defendant suffer if TRO is granted?[7] is it a sliding scale?[8]

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[2] G.S. § 1-493 (*see addendum*). "A restraining order can be issued in any cause by any judge of the Superior Court anywhere in the State and made returnable at any time within twenty days, at any place, before a judge residing in or assigned to or holding by exchange the courts within the district in which the county where the cause is pending is situated." *Hamilton v. Icard*, 112 N.C. 589 (1893). *See also* *Investment Co. v. Pickelsimer*, 210 N.C. 541, 545 (1936). But no court has authority to grant a TRO or preliminary injunction unless there is an action pending to which the temporary injunction can be ancillary. *Brown v. Brown*, 91 N.C. App. 335, 339, 371 S.E.2d 752 (1988). *See also* Chief Judge Eagles' dissent in *State v. Bowes*, __ N.C.App. __, __ S.E.2d __ (7-15-2003)("Here, no complaint or petition was filed instituting the action. Likewise, no summons was issued and neither a complaint nor a summons were served on any DMV officer. While DMV, as an entity was given notice of the hearing and DMV's attorneys appeared on the agency's behalf, this was insufficient to establish personal jurisdiction over any individual DMV officer. Accordingly, I would hold that the district court lacked personal jurisdiction over the proper party defendants.").

[3] *See* G.S. 1-494.

[4] According to the **N.C. Trial Judges' Benchbook**, Section III (Civil Pretrial), Chapter 16 (Preliminary Injunctions and Temporary Restraining Orders), at page 3: "**Do not sign TRO and allow return to another superior court judge without notice to judge who will hear preliminary injunction**." Also at page 9: "Do not set hearing before another judge without consulting him or her first."

[5] The **N.C. Trial Judges' Benchbook**, Section III (Civil Pretrial), Chapter 16 (Preliminary Injunctions and Temporary Restraining Orders), at page 9, states as a "Practical Suggestion:" "Inquire of counsel whether (1) petition has been presented to another judge and (2) other party has counsel. If the opposing party has an attorney, ask counsel to secure opposing counsel's presence in court." Also at page 3: If the judge denies the TRO, the judge should *not* "return unsigned papers to counsel."

[6] "A temporary restraining order is not predicated upon illusory injury, loss, or damage, ... but is entered only upon a showing of immediate and irreparable injury, loss, or damage. Because it is an ex parte injunction, a temporary restraining order, by its nature, necessarily issues upon plaintiff's evidence either by affidavit or by verified complaint. Such an order is to be entered only when plaintiff can 'show a need for relief so compelling that there is no time for notice and hearing.' ... [A TRO] does not determine the respective rights of the parties but preserves the status quo until a motion for a preliminary injunction can, after notice, be heard, affording the parties a full and fair investigation and determination according to strict legal proofs and the principles of equity." *Jolliff v. Winslow*, 24 N.C. App. 107, 108-109, 210 S.E.2d 221 (1974), *appeal dismissed*, 286 N.C. 545, 212 S.E.2d 656 (1975)..

[7] In considering the injunction request, the judge should balance the potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted. *Kaplan v. Prolife Action League of Greensboro*, 111 N.C. App. 1, 15, 431 S.E.2d 828 (1993).

[8] "The view has ... been expressed that ... the likelihood of success on the merits which the moving party for injunctive relief must demonstrate varies with the quality and quantum of harm it will suffer from denial of

- is it significant that plaintiff did not bring the action sooner so the ex parte hearing could have been avoided? does Marshall have clean hands?[9] what should be included in the order about this?[10]
- if he grants the TRO, should the judge require security?[11]

#2: Matt Osborne is the premier basketball player in the NBA. He plays for the Charlotte Hornets. Everyone expects the Hornets to battle the L.A. Lakers for the NBA Championship next month--the matchup between Osborne and Kobe Bryant is expected to draw record TV viewers and substantial profits for the network, the advertisers, the teams, etc. But Osborne has always been something of a free spirit. Despite his having signed the standard NBA contract which expressly states that he will not ride a motorcycle, Osborne is well known for owning, regularly using, and occasionally doing stunts with his several expensive motorcycles. Until now, the Charlotte Hornets have taken no legal action to prevent their superstar from riding his motorcycles. Osborne's brother, Ozzie, owns a motorcycle racetrack and regularly stages motorcycle races. Ozzie is promoting a big race that will happen in two weeks by promising that his famous brother, Matt, will be one of the contestants. In typical fashion Matt has publicly promised that he will compete in the race and win it. The Hornets have now filed suit against Matt Osborne and are seeking an injunction ordering Matt not to compete in the race, and ordering Ozzie not to allow Matt to compete in the race. The Hornets argue the likelihood that, if he competes, Matt would get injured and miss the playoffs and thereby irreparably injure the Hornets.

- are injunctions generally available to enforce contracts?[12] to address anticipatory breach matters?[13]

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an injunction ...." **42 Am. Jur. 2d**, *Injunctions*, Section 262, at page 844. Or is it in practice really only a "balance the hardships" test? See **42 Am. Jur. 2d**, *Injunctions*, Section 257, at page 838.

[9] "'He who comes into equity must come with clean hands,' is a well-established foundation principle upon which the equity powers of the courts of North Carolina rest." Creech v. Melnik, 347 N.C. 520, 529, 495 S.E.2d 907, 913 (1998).

[10] Rule 65 requires that the TRO shall state "why it is irreparable and why the order was granted without notice." *See also* Herff Jones Co. v. Allegood, 35 N.C. App. 475, 480, 241 S.E.2d 700 (1978)(the TRO stated neither why the injury was irreparable nor why the order was issued without notice).

[11] Keith v. Day, 60 N.C. App. 559, 562, 299 S.E.2d 296 (1983): The trial court has the authority under G.S. 1A-1, Rule 65 (c) to dispense with the requirement of security by an applicant granted a preliminary injunction where the restraint will do the defendant no material damage, where there has been no proof of likelihood of harm, and where the applicant has considerable assets and is able to respond in damages if defendant does suffer damages by reason of a wrongful injunction.

[12] *See generally* Asheville Mall, Inc. v. Sam Wyche Sports World, 97 N.C. App. 133, 387 S.E.2d 70 (1990)(The trial court properly granted defendant's motion for summary judgment in plaintiff's action for an injunction restraining defendant from further violation of the terms of a lease where defendant had breached the lease by keeping its store closed during hours which it was required to be open, but there was no evidence that defendant had on any other occasions in the past closed its store or had otherwise displayed any intention to do so in the future in violation of the lease). *See also* Gibson v. Gibson, 49 N.C. App. 156, 158, 270 S.E.2d 600 (1980): "[A]n interlocutory injunction ordering specific performance of a

- why won't damages for breach of contract be sufficient?[14]
- should interests of non-parties be considered?[15]
- what evidence should the judge allow or require at the hearing? affidavits?[16] testimony?[17]
- can the court enjoin a non-party, e.g., Ozzie?[18]
- will a decision to grant the injunction effectively decide the case? does or should this affect the decision?
- should the Hornets be barred by laches from seeking this equitable remedy?[19]

#3: Flora MacDonald was convicted of driving while impaired and was sentenced as a Level 5 offender. At the time of conviction, Flora was nineteen years old. The court ordered Flora placed on twelve months of unsupervised probation, to pay $290.00 in costs and fines, to obtain a substance abuse assessment, to surrender her driver's license, to complete 24 hours of community service, to submit to any test for the detection of alcohol or drugs requested by a law enforcement officer, and not to operate a motor

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contract pending final trial may be an appropriate ruling. Resources, Inc. v. Insurance Co., 15 N.C. App. 634, 190 S.E.2d 729 (1972)."

[13] It is not required that plaintiff wait until the damage has occured but the apprehension of the irreparable injury must be based on facts that show the danger is real and immediate. *Causby v. High Penn Oil Co.*, 244 N.C. 235, 93 S.E.2d 79 (1956).

[14] "To constitute irreparable injury it is not essential that it be shown that the injury is beyond the possibility of repair or possible compensation in damages, but that the injury is one to which the complainant should not be required to submit or the other party permitted to inflict, and is of such continuous and frequent recurrence that no reasonable redress can be had in a court of law." *Barrier v. Troutman*, 231 N.C. 47, 50, 55 S.E.2d 923, 925 (1949). *But see Setser v. Cepco Development Corp.*, 3 N.C.App. 163, 164 S.E.2d 407 (1968)(plaintiff's allegations that it would suffer "irreparable damages to the extent of many thousands of dollars" is insufficient to allege that the legal remedy for breach of contract is inadequate.

[15] In determining whether a preliminary injunction should issue, the court may properly take into account probable injuries to persons not parties to the action and to the public if such an injunction were to be issued. *Huggins v. Board of Education*, 272 N.C. 33, 41, 157 S.E.2d 703 (1967); *Iredell Digestive Disease Clinic v. Petrozza*, 92 N.C. App. 21, 29, 373 S.E.2d 449 (1988), *aff'd per curiam*, 324 N.C. 327, 377 S.E.2d 750 (1989).

[16] "Our courts have historically heard motions for preliminary injunction on affidavits." *Morgan, Attorney General v. Dare To Be Great*, 15 N.C. App. 275, 276, 189 S.E.2d 802 (1972); G.S. 1-485(2)("When, during the litigation, *it appears by affidavit* ... (emphasis added)).

[17] *See* **42 Am. Jur. 2d**, *Injunctions*, Section 259, at page 840: "The hearing on an application for a temporary injunction is not intended to be a full-scale hearing on the merits, and the court need not permit the parties to offer an unlimited amount of evidence. The kind and extent of the hearing that will be held on a motion for an interlocutory injunction is a matter committed to the discretion of the court."

[18] Rule 65 states that the preliminary injunction 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 in any manner of the order by personal service or otherwise." "Under the 'virtual representative' concept of privity, a nonparty is bound by an injunction if there is an express or implied legal relationship between a party to the litigation and the nonparty, such that the nonparty could be said to have had its day in court with respect to the validity of the injunction." **42 Am. Jur. 2d**, *Injunctions*, Section 298, at page 876.

[19] One who seeks equity must do equity. **42 Am. Jur. 2d**, *Injunctions*, Section 274, at page 855.

vehicle until properly licensed to do so. Subsequently another judge signed an order in the same file granting Flora a limited driving privilege. A week after this order was entered, the Division of Motor Vehicles (DMV), pursuant to statute,[20] notified Flora by certified mail that the DMV "considers the limited driving privilege void and our records will not indicate that she has a limited driving privilege."[21] Flora then filed a "Motion in the Cause for Contempt and for Injunctive Relief" in the DWI case seeking to have the court hold the DMV in criminal and/or civil contempt for refusing to honor the limited driving privilege and seeking to enjoin the DMV from denying her a limited driving privilege.[22]

- can defendant seek a civil remedy, i.e., an injunction, in a criminal proceeding?[23]
- does the judge presiding over the criminal matter have jurisdiction to enjoin the DMV as an entity or individuals working for the DMV?[24]
- should Flora have sought an order of mandamus rather than an injunction?[25]
- did the DMV's actions in invalidating Flora's limited driving privilege violate the separation of powers doctrine[26] or Flora's constitutional rights to due process and equal protection?
- has Flora shown irreparable harm?
- is Flora likely to prevail on the merits? [27] what are the merits--is it the authority of DMV to overrule a judge or the authority of the judge to grant the privilege in the first place?

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[20] G.S. 20-179.3(k). Limited driving privilege: "If the limited driving privilege is invalid on its face, the Division must immediately notify the court and the holder of the privilege that it considers the privilege void and that the Division records will not indicate that the holder has a limited driving privilege."

[21] DMV reasons that G.S. 20-179.3(e) allows a limited driving privilege to issue if defendant's license is revoked "solely under G.S. 20-17(a)(2)" but that since Flora was under the age of 21 at the time she was convicted of driving while impaired, her license was revoked under both section 20-17(a)(2) (impaired driving) and 20-13.2(b) (impaired driving while under the age of 21). Thus, her license was not revoked "solely under G.S. 20-17(a)(2)," and therefore the limited driving privilege was invalid on its face.

[22] This scenario is based on State v. Bowes, __ N.C.App. __, __ S.E.2d __ (7-15-2003).

[23] Yes, according to Bowes, *supra.*

[24] Yes, according to Bowes, *supra*: "Since the DMV is the intended audience of a limited driving privilege, the statute implicitly places the district attorney in privity with the DMV for purposes of limited driving proceedings." *But see* Chief Judge Eagles' dissent in Bowes: "Since all of the remedies prayed for and granted were directed toward the North Carolina Division of Motor Vehicles, as an entity, and not toward any individual public officer, I would hold that the doctrine of sovereign immunity barred the district court from granting the prayed for relief."

[25] A mandatory injunction to compel a public official to perform a duty imposed by law is identical in its function and purpose with that of a writ of mandamus and is governed by the rules applicable to mandamus. Sutton v. Figgatt, 280 N.C. 89, 92, 185 S.E.2d 97 (1971). *See also* Chief Judge Eagles' dissent in Bowes which indicates a writ of mandamus was the proper remedy.

[26] Both the majority opinion and the dissenting opinion in Bowes agreed that the statute permitting the DMV to unilaterally invalidate a properly entered court order violated the separation of power provisions of the North Carolina Constitution.

[27] The majority opinion in Bowes agreed that the restricted driving privilege was invalid on its face.

#4: In 1960, Elisha Mitchell gave Tom Clingman a written deed of easement across Elisha's land for "ingress and egress to Clingman's dwelling" on Clingman's adjoining land. Tom Clingman died in 1975 and his son, Zeb Clingman, inherited his father's property. In 1996, Zeb began construction of a campground on the property. In the past few years the campground's popularity has surged and Zeb has constructed cabins and a lake and a paint-ball park--all permitted under the zoning regulations. As a result there is substantially more traffic on the easement. 90 year old Elisha Mitchell has objected to this increased scope of the easement but Zeb has ignored him. Elisha has now erected a locked gate across the easement blocking all use for access to Zeb's land. Zeb filed suit and sought a TRO and then a preliminary injunction requiring Elisha to remove the obstruction. Both were granted by a superior court judge who has since rotated out of the district. Elisha has now returned to court asking a new superior court judge to reconsider or void the preliminary injunction for three reasons: (1) the first judge erroneously concluded that the narrow language in the deed of easement allowed the new expanded use so that it was unlikely that Zeb would prevail on the merits when the matter came to trial; (2) Elisha recently found a letter from Tom Clingman to Elisha, dated 1959, in which Clingman assured Elisha that he would never develop the property and that he only wanted an easement sufficient for his family's access to his little cabin on the property; and (3) Elisha has learned that Zeb has recently purchased additional adjoining land that contains an old roadway connecting the new land with a state road that could be used to access the campground, and that Zeb has already improved the road and extended it to the campground.

- when can an order granting a preliminary injunction be reconsidered or modified?[28]
- is Judge 2 being asked to reconsider Judge 1's injunction order or has there been a change of circumstance?[29]
- can Judge 2 dissolve the injunction based on his conclusion that plaintiff is not likely to prevail on the merits? or on his conclusion that there is no longer irreparable damage? can Judge 2 consider new evidence on either of these issues?
- is a better course for Elisha to appeal Judge 1's granting of the preliminary injunction to the Court of Appeals? can Elisha appeal this order?[30] or is the better course for Elisha to seek, as soon as possible, a final hearing on the merits?[31]

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[28] See G.S. 1-498. "A preliminary injunction is an interlocutory order which the issuing court may modify or vacate so long as the court has jurisdiction over the underlying action ...." **42 Am. Jur. 2d**, *Injunctions*, Section 302, at page 880. *Compare* McGuinn v. High Point, 219 N.C. 56, 62, 13 S.E.2d 48 (1940)(permanent injunction may be modified upon a clear showing of changed conditions).

[29] The general rule is that interlocutory orders addressed to the discretion of the trial judge may be reconsidered by a second judge if there has been a material change in circumstances. Madry v. Madry, 106 N.C.App. 34, 38, 415 S.E.2d 74, 77 (1992). *Compare* Daimler Chrysler Corp. v. Kirkhart, 148 N.C. App. 572, 561 S.E.2d 276 (2002)(motion to modify preliminary injunction heard and allowed without discussion); Barr-Mullin, Inc. v. Browning, 108 N.C. App. 590, 598, 424 S.E.2d 226 (1993)(trial court heard and denied defendants' motion to reconsider the preliminary injunction based on new evidence); Buie v. Johnston, 69 N.C. App. 463, 317 S.E.2d 91 (1984)(new evidence that preliminary injunction was "no longer equitable" was sufficient to allow trial court to reconsider and modify injunction).

[30] A preliminary injunction is generally a non-appealable interlocutory order. An immediate appeal from an interlocutory order will lie, however, where (1) the order or judgment is final as to some but not all of the claims or parties, and the trial court certifies the case for appeal pursuant to N.C. Gen.Stat. 1A-1, Rule

Summary: TROs and injunctions are equitable remedies--their proper use will depend on the unique facts of each case and therefore the decision as to whether their use is proper in a given cse will rest in the sound discretion of the trial court.[32] On review by the appellate division, the trial court's order granting a preliminary injunction, "will be upheld if there is ample competent evidence to support the decision, even though the evidence may be conflicting and the appellate court could substitute its own findings."[33] On appeal there is also a presumption that the judgment of the trial court is correct and the burden is upon the appellants to assign and show error.[34]

Addendum

Rule 65. Injunctions.

(a) Preliminary injunction; notice. - No preliminary injunction shall be issued without notice to the adverse party.

(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 (i) it clearly appears from specific facts shown by affidavit or by 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,

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54(b); or (2) when the challenged order affects a substantial right that may be lost without immediate review. N.C. Gen. Stat. § 1-277(a). *Quality Merchandising Group v. Sides*, __ N.C. App. __, 582 S.E.2d 80 (7-1-2003).

[31] The findings of fact and other proceedings of the trial court which hears the application for a preliminary injunction are not binding at a trial on the merits. *Kaplan v. Prolife Action League of Greensboro*, 111 N.C. App. 1, 15, 431 S.E.2d 828 (1993). Several cases have advised litigants that in some preliminary injunction cases "the appellate process is not the procedural mechanism best suited for resolving the dispute and that the parties would be better advised to seek a final determination on the merits at the earliest possible time." *Corpening Ins. Ctr., Inc. v. Haaff*, 154 N.C. App. 190, 193, 573 S.E.2d 164 (2002).

[32] "To issue or to refuse an interlocutory injunction is usually a matter of discretion to be exercised by the trial court. ... The issuing court does not decide the case, but after weighing the equities, the advantages and disadvantages to the parties, determines, in the exercise of its sound discretion, whether an interlocutory injunction should be granted or refused. Its primary function is to prevent irreparable injury." *In Re Reassignment of Albright*, 278 N.C. 664, 669, 180 S.E.2d 798 (1971). *See also Creel v. Gas Company*, 254 N.C. 324, 325, 118 S.E.2d 761 (1961): The issuance of a preliminary injunction rests in the sound discretion of the trial court and will not be disturbed on appeal unless contrary to some rule of equity or unless the trial court abused its discretion.

[33] *Wrightsville Winds Homeowners' Assn. v. Miller*, 100 N.C. App. 531, 535, 397 S.E.2d 345, 346 (1990), *disc. rev. denied*, 328 N.C. 275, 400 S.E.2d 463 (1991) (citing *Robins & Weill v. Mason*, 70 N.C. App. 537, 540, 320 S.E.2d 693, 696, *disc rev. denied*, 312 N.C. 495, 322 S.E.2d 559 (1984)).

[34] *Puett v. Gaston County*, 19 N.C. App. 231, 234, 198 S.E.2d 440 (1973). *See also Edmisten, Attorney General v. Challenge, Inc.*, 54 N.C. App. 513, 516, 284 S.E.2d 333, 335-36 (1981); *Kaplan v. Prolife Action League of Greensboro*, 111 N.C. App. 1, 15, 431 S.E.2d 828 (1993).

and (ii) the applicant's attorney certifies to the court in writing the efforts, if any, that 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; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the judge 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. In case a temporary restraining order is granted without notice and a motion for a preliminary injunction is made, it shall be set down for hearing at the earliest possible time and takes precedence over 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 a motion for a preliminary injunction, and, if he does not do so, the judge shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the judge may prescribe, the adverse party may appear and move its dissolution or modification and in that event the judge shall proceed to hear and determine such motion as expeditiously as the ends of justice require. Damages may be awarded in an order for dissolution as provided in section (e). (c) Security. - No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the judge deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the State of North Carolina or of any county or municipality thereof, or any officer or agency thereof acting in an official capacity, but damages may be awarded against such party in accord with this rule. In suits between spouses relating to support, alimony, custody of children, separation, divorce from bed and board, and absolute divorce no such security shall be required of the plaintiff spouse as a condition precedent to the issuing of a temporary restraining order or preliminary injunction enjoining the defendant spouse from interfering with, threatening, or in any way molesting the plaintiff spouse during pendency of the suit, until further order of the court, but damages may be awarded against such party in accord with this rule.

A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the persons giving the security and the sureties thereon if their addresses are known.

(d) Form and scope of injunction or restraining order. - Every order granting an 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 enjoined or 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 in any manner of the order by personal service or otherwise.

(e) Damages on dissolution. - An order or judgment dissolving an injunction or restraining order may include an award of damages against the party procuring the injunction and the sureties on his undertaking without a showing of malice or want of probable cause in procuring the injunction. The damages may be determined by the judge, or he may direct that they be determined by a referee or jury.

G.S. § 1-485. When preliminary injunction issued.

A preliminary injunction may be issued by order in accordance with the provisions of this Article. The order may be made by any judge of the superior court or any judge of the district court authorized to hear in-chambers matters in the following cases, and shall be issued by the clerk of the court in which the action is required to be tried:

(1) When it appears by the complaint[35] that the plaintiff is entitled to the relief demanded, and this relief, or any part thereof, consists in restraining the commission or continuance of some act the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or,

(2) When, during the litigation, it appears by affidavit that a party thereto is doing or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party to the litigation respecting the subject of the action, and tending to render the judgment ineffectual; or,

(3) When, during the pendency of an action, it appears by affidavit of any person that the defendant threatens or is about to remove or dispose of his property, with intent to defraud the plaintiff.

G.S. § 1-493. What judges have jurisdiction.

All judges of the superior court and judges of the district court authorized to hear in-chambers matters have jurisdiction to grant injunctions and issue restraining orders in all civil actions and proceedings pending in their respective divisions.

G.S. § 1-494. Before what judge returnable.

[35] Affidavits may be considered by the trial court in a show cause hearing for a preliminary injunction, the court not being limited by G.S. 1-485 (1) to what appears in the complaint. *Morgan, Attorney General v. Dare to be Great*, 15 N.C. App. 275, 189 S.E.2d 802 (1972).

All restraining orders and injunctions granted by any of the judges of the superior court shall be made returnable before the resident judge of the district, a special judge residing in the district, or any superior court judge assigned to hold court in the district where the civil action or special proceeding is pending, within 20 days from date of order. If a judge before whom the matter is returned fails, for any reason, to hear the motion and application, on the date set or within 10 days thereafter, any regular or special judge resident in, or assigned to hold the courts of, some adjoining district may hear and determine the said motion and application, after giving 10 days' notice to the parties interested in the application or motion. This removal continues in force the motion and application or motion. This removal continues in force the motion and application theretofore granted till they can be heard and determined by the judge having jurisdiction.

All restraining orders and injunctions granted by any judge of the district court shall be made returnable before the judge granting such order or injunction or before the chief district judge or a district judge authorized to hear in-chambers matters in the district where the civil action is pending, within 20 days from the date of the order. If the judge before whom the matter is returned fails, for any reason, to hear the motion and application on the date set, or within 10 days thereafter, any district judge of the district authorized to hear in-chambers matters may hear and determine the said motion and application, after giving 10 days' notice to the parties interested in the application or motion.

G.S. § 1-495. Stipulation as to judge to hear.

By a stipulation in writing, signed by all the parties to an application for an injunction order, or their attorneys, to the effect that the matter may be heard before a judge of the appropriate trial division designated in the stipulation, the judge before whom the restraining order is returnable by law, or who is by law the judge to hear the motion for an injunction order, shall, upon receipt of the stipulation forward it and all the papers to the judge designated, whose duty it then is to hear and decide the matter, and return all the papers to the court out of which they issued.

G.S. § 1-498. Application to extend, modify, or vacate; before whom heard.

Applications to extend, modify, or vacate temporary restraining orders and preliminary injunctions issued in the superior court division may be heard by the judge having jurisdiction if he is within the district or in an adjoining district, but if out of the district and not in an adjoining district, then before any judge who is at the time in the district, and if there is no judge in the district, before any judge in an adjoining district.

Applications to extend, modify, or vacate temporary restraining orders and preliminary injunctions issued in the district court division may be heard by the district judge who made the original order or by the chief district judge or by a district judge of the district authorized to hear in-chambers matters.