

# Temporary Restraining Orders and the Church

By Adam L Weitzel, Esq.

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All states have laws that allow for the granting of temporary protective orders, often referred to as temporary restraining orders, or TROs. The point of a TRO is to restrain or prevent somebody (the “**restrained party**”) from coming within a certain distance of identified people or entering upon their property. TROs are unique in American law because they allow one party to go before a court and get an order against another person without that other person being present. Because the restrained party does not have an opportunity to appear in court and argue their case before the TRO is granted, the courts put significant restrictions on who can get a TRO and when a TRO is appropriate.

## Who can obtain a TRO

Typically, individuals seek a TRO on their own behalf. It should be no surprise that most TROs are obtained in domestic matters when threats or actual domestic abuse is involved. That does not mean, however, that TROs cannot be a useful tool in your church security toolbox. If someone is making threats against church leaders or employees, the church can seek a TRO on their behalf, or assist them in getting a TRO. When doing so, the church should be identified as one of the places the restrained party is prohibited from entering upon. This approach extends the benefits of a TRO to the individual as well as the church.

In some states, businesses and employers, including churches, can get a TRO to protect its own interests and its employees. Organizational TROs are effective when someone is making threats against the church’s property or organization as a whole. For example, if someone were threatening several members of the church’s staff, it would be expensive and redundant to seek individual TROs for each staff member. Also, if a person threatened to damage the church’s property, simply getting a TRO in the name of the senior pastor may not be effective if the senior pastor is out of town or away from the church. Instead, consult with the church’s local attorney to see if your state allows businesses to secure a TRO and consider whether it is better to seek the TRO in the name of the church, or individual employees of the church.

## Why consider a TRO

In theory, a TRO should keep a restrained person from entering the church’s property or from harassing or assaulting church personnel. In practice, however, if a person is determined to harm someone, it is unlikely a TRO will stop them. That does not mean, however, that a TRO has no practical use. First, a TRO allows you to call the police as soon as a restrained party enters upon the church’s property. You do not have to ask them to leave first. You do not have to inquire into their motives. You do not have to warn them of trespass. If they enter restricted property, you can and should call the police immediately. Second, the police will often respond quicker, and in greater force, for a TRO violation than they will for a simple trespass call. Finally, if the restrained party is on parole or probation, a TRO violation will likely send them back to prison or jail, while a trespass charge may not.

Also, a TRO can be an effective tool in dealing with domestic disputes that have the potential of spilling into the work or church environment. Violence in the workplace is a growing phenomenon, and a significant number of those incidents are caused by over-spilling domestic violence. We know where our spouses, boyfriends/girlfriends, and former spouses live, work, worship, and play. Of all of those locations, the most consistent place to find someone is usually the work place. If a staff member is in a troubled domestic relationship, consider getting a TRO to protect that person in the workplace. Additionally, people often seek refuge and comfort at church when family life goes awry. It is not uncommon for an angry

husband or wife to seek out and confront an estranged spouse at church, because they know they will be there ever Sunday morning.

### **How to Prepare for a TRO**

Preparation is the key to obtaining a TRO. There is a folk tale that Abraham Lincoln once said, "Give me six hours to chop down a tree, and I will spend the first four sharpening my axe." The same holds true for obtaining a TRO. You must spend the bulk of your time and efforts preparing for the court hearing. Time spent in preparation is never wasted.

**Gather Information on the Restrained Party.** The preparation phase is the time to gather as much information as you can on the person against whom you will seek the TRO. Make sure you have a valid home address and work address, if possible. Update phone numbers and e-mail addresses. Gather pictures. All of this information will be useful when trying to serve or enforce the TRO, and it will be difficult to gather once the TRO is in place.

**Adequately Document All Threats.** TROs are granted to prevent imminent harm. That means you need to be able to adequately explain how and why the restrained party poses a risk of imminent harm. If the restrained party is making e-mail or written threats, capture and save the e-mails or letters. If they are making threatening phone calls, keep notes of the conversations or record them if it is legal to do so. Keep recordings of and transcribe any threatening phone messages. Collect affidavits from church leaders, security team members, and others who have interacted with the restrained party. Prepare a thorough file on the restrained party documenting and explaining why they pose a threat or risk of imminent harm.

**Plan to Explain Your Concerns.** Churches deal with troubled individuals on a regular basis. You need to be prepared to explain to a judge why this particular troubled individual is different and poses a risk of imminent harm. It may require a senior member of the church, or the pastor or staff member being threatened, to become familiar with the file you've created on the restrained party and be prepared to discuss the threats in court. It may also require you to explain the significance of the threat. If the restrained party is threatening "biblical woes" against the church, or is citing destructive scriptural passages, you will likely need to explain why the restrained person's actions are threatening. The judge may not have a religious background that enables him or her to understand the significance of a biblically-based threat.

Finally, be prepared to deal with pastoral management from the bench. The world expects pastors to spend time with troubled individuals working out their issues. That is what pastors do. The judge may ask whether a pastor has tried working with the restrained party to sort out their issues. In one case I handled, a man was threatening biblical destruction upon a church because he felt the senior pastor was leading the congregation astray. The man sent numerous e-mails to the pastoral staff stating that God had sent him to this particular church, not to learn, but to teach. Further, the man prophesied of biblical wrath and destruction if the senior pastor would not meet with him and agree to change his sermons. Naturally, the church's security team kept the man as far from the senior pastor as it could. When we stood before the judge to request a TRO, the judge asked whether the senior pastor had sat down with the troubled man to discuss how his sermons may have been wrong and to sort out and to provide counseling to the troubled man. My response was to ask whether the judge would require other victims or targets to sit down with a threatening stalker to discuss the situation before granting a TRO. It was difficult for the judge to understand that a senior pastor should not be required to provide counseling to a threatening individual as a prerequisite to obtaining a TRO.

### **General Process**

**Notice is Not Enough.** TRO applications generally do not allow for "notice pleading." Attorneys know that in a typical lawsuit, the complaint only has to include enough specifics to put the other party on notice of the underlying claims. The details come out in court. In a TRO proceeding, however, the restrained party is usually not present. That means your complaint, or TRO application, must contain all of the

relevant facts and information for the judge to make a determination. In fact, most TRO applications are decided by the judge after reviewing the written complaint and asking a single question, “Are you afraid of the person to be restrained?” You generally do not get much of a chance, if any, to orally present your argument. Therefore, you have to make your application count. Attach as much information as possible, including copies of threatening letters, e-mails, and affidavits from the pastoral staff and security team members. Attach as many additional pages, statements, and exhibits as necessary to make your point.

**Keep it clean.** The TRO application often requires the applicant to provide a significant amount of personal information, such as addresses, birthdates, phone numbers, and e-mail addresses. If you’re trying to keep the restrained party away from your house, office, and family, you may be required to list those addresses. The person you are seeking to restrain may not already have that information. You don’t want to give it to them, if possible. Sanitize the application to the fullest extent possible. Ask the local court clerk what information you can omit from the application and still keep it effective. For example, you may be able to list the “Senior Pastor’s residence” as a protected location, without necessarily putting down the actual address.

**Make a day of it.** The TRO process is time consuming. It generally involves showing up relatively early in morning when the courthouse opens to turn in the application. An hour or two later, all of the applicants for the day will likely enter a single court room and be sworn in as a group. A clerk will explain the process and how to address the court. Finally, the judge will come in and adjudicate each application in an order that may or may not be explained to you. If you are not present the moment the judge calls your case, chances are your application will be denied. If the judge grants your TRO, you must wait for the clerk to prepare and deliver the final paperwork. The entire process can take several hours. Mondays and Fridays tend to have a higher number of filings as people try to clean up after, or prepare for, the weekend. Mid-week filings are generally processed a little faster.

**Serving the TRO.** If the TRO is granted, it must be served on the restrained party before it is effective. Service usually requires someone over the age of 18 to hand-deliver a copy of the TRO and supporting material to the restrained party. Do not do this yourself. Do not send a church employee or security team member to serve the TRO. You just spent a whole morning explaining to a judge why the restrained party is such an immediate threat. Why would you send a church employee to go confront that dangerous person and deliver copies of all of the things you said about that person in court? It is dangerous. Don’t do it.

In most states, the Sheriff is the primary law enforcement officer within the county, and often has responsibility of serving TROs and other similar notices. When the judge’s clerk delivers the signed TRO, ask for directions to the Sheriff department’s office inside the court house. The Sheriff’s office will likely serve the TRO for a modest fee.

**Make It Permanent.** A TRO is temporary by its nature—it’s a temporary restraining order. It likely has a two-week shelf life. In order for the TRO to remain effective after its initial term, it must be made permanent. A permanent injunction hearing may be scheduled when the TRO is granted. If not, you will have to request an additional hearing to make the TRO permanent. At the permanent injunction hearing, you will need to re-present the evidence and re-convince a judge to make the injunction permanent. This time, however, the restrained party may be present with legal counsel to defend against your allegations. He or she will have an opportunity to dispute the evidence and cross-examine witnesses. Accordingly, you will need legal counsel to advocate for your best interests.

### **Effectively Use the TRO**

Once you get the TRO, put it to good use. Do not simply file it away in the church’s records. Do not keep it a secret to protect the dignity of the restrained party. Share the basic information of the TRO with the senior leadership of the church, receptionists, greeters, members of your church’s security team. They should know who is not allowed on the church’s property and why. A TRO provides little benefit if the people watching the church’s doors and parking lots are unaware of the restrictions placed upon the restrained party. Also, if you were able to gather pictures of the restrained party during the preparation

stage, post copies of the pictures at your receptionist's desk and distribute copies to parking lot attendants and security team personnel with the specific direction to call law enforcement immediately if the restrained party enters church property. Use the information you have gathered to improve the effectiveness of the TRO.

### **Become Familiar with TROs Obtained by Parishioners**

It is likely that members of your church have already obtained, or will obtain, TROs on their own. Encourage your members to share this information with the church. If a member is being threatened by a current or former spouse or boyfriend/girlfriend, it would be beneficial for the church to have a copy of the TRO and a picture of the restrained party. This especially holds true if a parishioner has a protective order to prevent someone from being near his or her children. The risk of parental kidnapping at church can be reduced if the church, and particularly the children's ministry, is aware of TROs and permanent restraining orders. Develop a system to solicit and collect TROs obtained by church members. Once you have that information, categorize it, disseminate the relevant information to the appropriate people on your staff/team and occasionally monitor the files to make sure you have the most up-to-date information.



### **About the Author**

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