

## The Seventh Circuit's Separate Document Requirement for Injunctions

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By Michael T. Brody

For all I knew after one year of law school, the Federal Rules of Civil Procedure ended with Rule 37. OK, we studied Rule 56, and maybe dabbled with Rule 54, but once one got past Rule 37, the Rules were terra incognita. Yet as the U.S. Court of Appeals for the Seventh Circuit recently made clear in *MillerCoors v. Anheuser-Busch*, \_\_\_ F.3d \_\_\_, 2019 (7th Cir. Oct. 18, 2019), the court understands all of the rules and insists that district courts and litigants understand them too.

The *MillerCoors* appeal arose from advertising-related litigation between two beer giants. Anheuser-Busch's advertising campaign touted the contents of Anheuser-Busch beer. MillerCoors took offense and filed suit. The district court issued an "opinion and order" in which it analyzed the facts and law. In a section titled "order," the district court preliminarily enjoined Anheuser-Busch from using specified language in commercials, print advertising and social media. Anheuser-Busch appealed. While the appeal was pending, the district court entered two

additional rulings "modifying" its prior decision. Anheuser-Busch appealed those rulings as well.

The U.S. Court of Appeals for the Seventh Circuit recognized the district court's intent to provide enforceable injunctive relief was "sufficiently clear to provide appellate jurisdiction." Nonetheless, the court remanded the matter to the district court because that court's rulings failed to comply with two rules, making the scope and exercise of appellate jurisdiction uncertain.

First, the Seventh Circuit found the district court's action did not comply with Rule 65(d)(1)(C), "which requires every injunction to be set forth without referring to any other document." The court relied on prior Seventh Circuit decisions requiring a "separate document" containing the terms of the injunction. The original injunction was insufficient because it was found in an opinion that analyzed the issues in the case.

Second, the Seventh Circuit found the district court failed to provide a clear jurisdictional basis for its later rulings modifying its prior injunction.



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The district court entered its modifying orders while the initial order was before the Seventh Circuit on appeal. Ordinarily, the filing of a notice of appeal deprives the district court of jurisdiction to address the appealed order. The court explored two ways the district court could have modified its prior order. Rule 62(d) grants the district court a limited ability to modify an interlocutory injunction while an appeal is pending from the injunction. The district court did not rely on Rule 62(d), and the Seventh Circuit stated Rule 62(d) permits the court "to make

changes linked to bonds or other terms that secure the enjoined party's rights." Rule 62(d) is not a "blanket grant of permission to impose new obligations." Alternatively, Rule 62.1 permits a district court to issue an "indicative ruling" regarding a motion for relief that is barred by a pending appeal. The district court may indicate how it would rule on a further request for relief, such as to modify an appealed injunction, if it had jurisdiction to rule, see Fed. R. Civ. P. 62.1. The court of appeals may then remand the matter to the district court pursuant to Federal Rule of Appellate Procedure 12.1 for the limited purpose of entering a ruling consistent with the indicative ruling.

The court explained that the district court's subsequent orders modifying the injunction, which had already been appealed, did not comply with either procedure authorized under the rules. Enforcing compliance with these rules was "sufficiently important that we order a limited remand with instructions to enter the injunction on a document separate from the opinions." The court of appeals remanded the case for the limited purpose of entering a new injunction on a separate document, noting that "once the district court complies with the court's order and makes such further changes as are appropriate in light of discovery in the ongoing litigation, the parties may file new notices of appeal and propose a schedule for briefing and resolution of the case."

The majority's discussion of Rules 62, 62.1, and 65 prompted a lengthy dissent

from Judge David Hamilton. Fundamentally, Hamilton disagreed with the majority's ruling that Rule 65(d)(1) required a preliminary injunction be contained in a separate document. Parsing the text of the rule, he concluded that the rule requires only that a party restrained by a preliminary injunction know what conduct is being restrained and why. Oral orders can be easily misunderstood, and incorporating other documents can lead to uncertainty. Thus, the injunction must be in a writing that clearly states the injunctive relief. To Hamilton, those requirements do not require a separate document and a preliminary injunction may be included in a document that does more than set forth the relief. The separate document requirement finds textual support in Rule 58, which requires that all final judgments be set forth in a separate document. That textual argument does not apply, he concluded, to preliminary injunctions. If it did, the "majority's rule would seem to require high-church Rule 58-compliant separate documents, not only for grants of preliminary injunctions but also, for example, for any order denying or 'refusing to ... modify' a preliminary injunction" or even "any mine-run Rule 12(b)(6) or Rule 56 order denying qualified immunity ... and every other collateral order subject to interlocutory appeal."

As for the power of the district court to modify the appealed interlocutory injunction, Hamilton concluded the orders did not undermine the integrity of the pending appeals and the court

should treat modification issues as case management problems for the district court, not as impediments to review. He concluded Rule 62(d) gave the district court all the authority it needed to modify its prior injunction.

Where does this leave litigants—and district courts—in the Seventh Circuit? First, notwithstanding the dissent, the Seventh Circuit requires that injunctions are contained in separate, self-contained documents. District courts should abide by this requirement and parties obtaining injunctions should make sure that the court order complies with Rule 65(d). Second, if a district court enters a preliminary injunction and a party appeals, the parties should tread carefully if they return to the district court to modify that injunction. Unless the request for modification falls within Rule 62(d), the parties should consider the limited remand procedure of Rule 62.1.

While litigators may take no greater pleasure than winning a case based on their superior knowledge of the rules, being schooled on a provision in the rules is no treat. The Seventh Circuit has been, and remains, a vigilant guardian of its limited jurisdiction. Lawyers are well-advised to make sure that all jurisdictional requirements are satisfied, including for injunctions.

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