

TRIBAL CODE

CHAPTER 33

DOMESTIC ABUSE RESTRAINING ORDERS AND INJUNCTIONS

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HISTORY NOTE:

"Domestic Abuse Restraining Orders and Injunctions" adopted June 8, 1987, Resolution No. 179(87), effective immediately.

Docketing of injunctions with Vilas County Circuit Court ordered by said court July 2, 1987, reissued February 17, 1989.

"Harassment Restraining Orders and Injunctions" adopted August 8, 1994, Resolution No. 300(94), effective immediately.

Current Ordinance

Amendments

Resolution No. 416(94) November 11, 1994, revises 33.103(1), 33.104, 33.108, 33.109, 33.110, 33.112.

Resolution No. 173(04) June 15, 2004, amends section 33.103(1) adding: by an adult against a person whom they have or had a dating relationship; or, by an adult against a person who provides in home or community care., and,

Section 33.103(1) adding (b) intentional damage to physical property and (d) sexual contact or sexual intercourse without consent., and,

Section 33.106(1)(a) amended to include: or that the petitioner is the guardian of an adult incompetent person (ward). and,

Section 33.110(3)(a) be amended to maximum term of an injunction to four (4) years.

Cases:

Wisconsin Case Law, St. Germaine v. Chapman, 178 Wis.2d 869 (Ct.App. 1993), 505 N.W.2d 450.

Disclaimer: Effective July 7, 2004, the Tribal Court will use the Wisconsin State Forms, for petitions filed in Chapter 33 - Domestic Abuse Restraining Orders and Injunctions.

TRIBAL CODE

CHAPTER 33

DOMESTIC ABUSE RESTRAINING ORDERS AND INJUNCTIONS

33.101 Title.

This ordinance shall be known as the "Domestic Abuse Restraining Order and Injunction Ordinance."

33.102 Authority.

This ordinance is adopted pursuant to Article VI, Section 1 (a), (q), and (u) of the Tribal Constitution.

33.103 Definitions.

As used in this ordinance:

(1) "Domestic abuse" means any of the following engaged in: by an adult family member or adult household member against another adult family member or adult household member; by a minor family or minor household member against an adult family or adult household member; by an adult against his or her adult former spouse; by an adult against an adult with whom the person has a child in common; by an adult against a person whom they have or had a dating relationship; or, by an adult against a person who provides in home or community care:

- (a) Intentional infliction of physical pain, physical injury or illness.
- (b) Intentional damage to physical property.
- (c) Intentional impairment of physical condition.
- (d) Sexual contact or sexual intercourse without consent.
- (e) A threat to engage in any of the foregoing conduct.

(2) "Family member" means a spouse, a parent, a child or a person related by consanguinity to another person.

(3) "Household member" means a person currently or formerly residing in a place of abode with another person.

(4) "Reservation" means the area within the exterior boundaries of the Lac du Flambeau Indian Reservation.

(5) "Tribe" means the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(6) "Tribal Court" means the Lac du Flambeau Tribal Court.

33.104 Jurisdiction.

The Tribal Court shall have exclusive jurisdiction to issue domestic abuse restraining orders and injunctions pursuant to this ordinance in any case in which either the petitioner or respondent is an enrolled member of the Tribe and both parties reside on the reservation at the time the petition is filed. The Tribal Court shall also have jurisdiction in any case in which either the petitioner or the respondent is an enrolled member of the Tribe and either the petitioner or the respondent resides on the reservation at the time the petition is filed or the petitioner is temporarily living on the reservation at the time the petition is filed.

33.105 Commencement of Action and Response.

(1) An action under this ordinance may be commenced only by serving upon respondent a petition described in 33.106 and promptly filing a copy of it with the Tribal Court. A petition may be filed in conjunction with a divorce, separation or annulment action under the Domestic Relations Ordinance, Tribal Code Ch. 30, or a custody action under the Child Welfare Code, Tribal Code Ch. 31, but commencement of such an action is not necessary for the filing of a petition or the issuance of a temporary restraining order or injunction.

(2) The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at the hearing.

33.106 Petition.

(1) The petition shall allege facts sufficient to show the following:

(a) The name and residence of the petitioner and that the petitioner is the alleged victim or that the petitioner is the guardian of an adult incompetent person (ward).

(b) The name and residence of the respondent and that respondent is an adult.

(c) An indication of which of the parties is an enrolled member of the Tribe.

(d) That the respondent engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

(2) The Clerk of Court shall provide to petitioners a simplified form based upon the form developed by the State of Wisconsin pursuant to Wis. Stat. s. 46.95(3)(c), and shall help the petitioner complete the form. No filing fee shall be charged for filing a petition under this ordinance.

33.107 Two-Part Procedure.

Procedure for an action under this ordinance is in two parts. First, if the petitioner requests a temporary restraining order the court shall issue or refuse to issue that order. Second, the court shall hold a hearing under Section 33.110 on whether to issue an injunction, which is the final relief. If the court issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction.

33.108 Temporary Restraining Order.

(1) A judge shall issue a temporary restraining order ordering the respondent to refrain from committing acts of domestic abuse against the petitioner, to avoid the petitioner's residence, except as provided in par. (2), or any premises temporarily occupied by the petitioner or both, and to avoid contacting or causing any person other than a party's attorney to contact the petitioner unless the petitioner consents in writing, if all of the following occur:

(a) The petitioner submits to the judge a petition alleging the elements set forth under Section 33.106(1).

(b) The judge finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

(2) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under par. (1) the judge may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(3) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

33.109 Hearing.

The temporary restraining order is in effect until a hearing is held on issuance of an injunction under 33.110. The temporary restraining order is not voided if the respondent is admitted into a dwelling that the order directs him or her to avoid. A judge shall hold a hearing on issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for a reasonable time determined by the court upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

33.110 Injunction.

(1) A judge may grant an injunction ordering the respondent to refrain from committing acts of domestic abuse against the petitioner, to avoid the petitioner's residence, except as provided in par. (2), or any premises temporarily occupied by the petitioner or both, or to avoid contacting or causing any person other than a party's attorney or lay advocate to contact the petitioner unless the petitioner consents to that contact in writing, or any combination of these remedies requested in the petition, if all of the following occur:

(a) The petitioner has filed a petition alleging the elements set forth under 33.106(1).

(b) The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.

(c) After hearing, the judge finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.

No injunction may be issued under this subsection under the same case number against the person petitioning for the injunction. The judge may not modify an order restraining the respondent based solely on the request of the respondent.

(2) If the petitioner and the respondent are not married, the respondent owns the premises where the petitioner resides and the petitioner has no legal interest in the premises, in lieu of ordering the respondent to avoid the petitioner's residence under par.

(1) the judge may order the respondent to avoid the premises for a reasonable time until the petitioner relocates and shall order the respondent to avoid the new residence for the duration of the order.

(3) (a) An injunction under this subsection is effective according to its terms, but for not more than 4 years. An injunction granted under this subsection is not voided by the admittance of the respondent into a dwelling that the injunction directs him or her to avoid.

(b) When an injunction in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect him or her. This extension shall remain in effect until 6 months after the date the court first entered the injunction.

(c) If the petitioner states that an extension is necessary to protect him or her, the court may extend the injunction for up to 2 years after the date the court first entered the injunction.

(d) Notice need not be given to the respondent before extending an injunction under sub. (b) or (c). The petitioner shall notify the respondent after the court extends an injunction under sub. (b) or (c).

33.111 Enforcement.

(1) The provisions of this ordinance shall be enforced by all tribal law enforcement officers. In addition, any state or local law enforcement officer may enforce this ordinance and institute proceedings for violation of this ordinance.

(2) The tribal law enforcement department shall serve petitions, notices, and orders under this ordinance without charge to the petitioner.

(3) If an order is issued under this ordinance, upon request by the petitioner the court shall order tribal law enforcement personnel to accompany the petitioner and assist in placing him or her in physical possession of his or her residence or to otherwise assist in executing or serving the temporary restraining order or injunction.

(4) Within 24 hours after request by the petitioner, the Clerk of Court shall send a copy of any order extended under this ordinance to the tribal law enforcement department.

(5) The tribal law enforcement department shall make available to other law enforcement agencies, through a verification system, information on the existence and

status of any order issued under this section. The information need not be maintained after the order is no longer in effect.

33.112 Docketing With State.

Upon request of the petitioner and the payment of the \$10 filing fee therefore, unless waived by the state of Wisconsin or Vilas County Circuit Court, the Clerk of Court shall certify under seal pursuant to Wis. Stat. s. 889.07 and .08 any order issued under this ordinance and docket the same with the Vilas County Circuit Court, together with an affidavit setting forth the name and last known address of the petitioner and the respondent.

33.113 Arrest.

(1) A law enforcement officer shall arrest and take a person into custody if all of the following occur:

(a) An injunction issued pursuant to 33.110 has been filed with the Vilas County Circuit Court pursuant to 33.112, and over 15 days has elapsed since the injunction was so filed.

(b) The law enforcement officer has probable cause to believe that the person has violated the injunction.

(2) Notwithstanding any other provision hereof, a law enforcement officer may physically remove a respondent from any premises if respondent's actions constitute a violation of any temporary restraining order or injunction issued under this ordinance.

(3) Nothing contained herein shall be construed to limit the authority of any law enforcement officer to arrest any person for violation of any other law.

33.114 Penalties.

In addition to any penalties provided by state law for violation of an injunction filed with the Vilas County Circuit Court under Sec. 33.112, violations of any temporary restraining order or injunction issued under this ordinance shall be punishable by a civil remedial money penalty of not more than \$500 per violation, together with court costs.

33.115 Relations to Other Laws.

The provisions of this ordinance shall not be construed as the exclusive remedy for domestic abuse. Nothing herein shall be deemed to prohibit criminal prosecution for any of the acts defined as domestic abuse herein, nor to prohibit the inclusion of

injunctive provisions in any order or judgment entered pursuant to the Child Welfare Code, Tribal Code, Ch. 31, or Domestic Relations Ordinance, Tribal Code Ch. 30.

33.116 Severability and Non-liability.

If any section, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby. The Tribe asserts that there is no liability on the part of the Tribe, its agencies or employees for damages that may occur as a result of reliance upon or conformance with this ordinance.

33.117 Effective Date.

This ordinance shall take effect upon adoption by resolution of the Tribal Council.

HARASSMENT RESTRAINING ORDERS AND INJUNCTIONS

33.201 Title.

This ordinance shall be known as the "Harassment Restraining Order and Injunction Ordinance."

33.202 Authority.

This ordinance is adopted pursuant to Article VI, Section 1(a), (q), and (u) of the Tribal Constitution.

33.203 Definitions.

As used in this ordinance:

- (1) "Harassment" means any of the following:
 - (a) Striking, shoving, kicking or otherwise subjecting another person to physical contact or attempting or threatening to do the same.
 - (b) Engaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose.

(2) "Reservation" means the area within the exterior boundaries of the Lac du Flambeau Indian Reservation.

(3) "Tribe" means the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(4) "Tribal Court" means the Lac du Flambeau Tribal Court.

33.204 Jurisdiction.

The Tribal Court shall have jurisdiction to issue harassment restraining orders and injunctions pursuant to this ordinance in any case in which either the petitioner or respondent is an enrolled member of the Tribe and both parties reside on the reservation at the time the petition is filed.

33.205 Commencement of Action and Response.

(1) An action under this ordinance may be commenced only by serving upon respondent a petition described in 33.206 and promptly filing a copy of it with the Tribal Court. A petition may be filed in conjunction with a divorce, separation or annulment action under the Domestic Relations Ordinance, Tribal Code Ch. 30, or a custody action under the Child Welfare Code, Tribal Code Ch. 31, but commencement of such an action is not necessary for the filing of a petition or the issuance of a temporary restraining order or injunction.

(2) The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at the hearing.

33.206 Petition.

(1) The petition shall allege facts under oath sufficient to show the following:

(a) The name and residence of the person who is the alleged victim.

(b) The name and residence of the respondent.

(c) An indication of which of the parties is an enrolled member of the Tribe.

(d) The respondent has with the intent to harass or intimidate another person done any of the following:

(i) Strikes, shove, kicks or otherwise subjects the person to physical contact or attempts or threatens to do the same.

(ii) Engages in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose.

(2) The Clerk of Court shall provide simplified forms. A \$20.00 filing fee shall be charged for filing a petition under this ordinance unless said fee is waived by the Tribal Court because of the person's indigency.

33.207 Temporary Restraining Order.

(1) A judge may issue a temporary restraining order ordering the respondent to cease or avoid the harassment of another person, if all of the following occur:

(a) The petitioner files a petition alleging the elements set forth under sub. 33.206.

(b) The judge finds reasonable grounds to believe that the respondent has violated sub. 33.206(1)(d).

(2) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(3) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. 33.208. A judge shall hold a hearing on issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 7 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

33.208 Injunction.

(1) A judge may grant an injunction ordering the respondent to cease or avoid the harassment of another person, if all of the following occur:

(a) The petitioner has filed a petition alleging the elements set forth under sec. 33.106(1)(d).

(b) The petitioner serves upon the respondent a copy of a restraining order obtained under sec. 33.206 and notice of the time for the hearing on the issuance of the injunction under sec. 33.206(3).

(c) After hearing, the judge finds reasonable grounds to believe that the respondent has violated sec. 33.206(d).

(2) The injunction may be entered only against the respondent named in the petition.

(3) An injunction under this subsection is effective according to its terms, but for not more than 2 years.

33.209 Penalties.

Whoever violates a temporary restraining order or injunction issued under this section shall be punished by the imposition of a civil remedial money penalty of not more than \$1000.00 per violation, together with court costs. In addition the court may impose sanctions for contempt of court.