

**Nottawaseppi Huron Band of the Potawatomi**

**Tribal Court**

**Court Rules for Restraining Orders**

**Chapter 10**

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# **Nottawaseppi Huron Band of the Potawatomi**

## **Tribal Court**

### **Court Rules for Restraining Orders**

#### **Chapter 10**

##### **Section 1. Title**

The name of this Chapter of Court Rules is “*Court Rules for Restraining Orders*”.

##### **Section 2. Purpose**

The purpose of this Chapter of Court Rules is to establish a procedure for the Tribal Court to issue Emergency Restraining Orders (ERO's); Temporary Restraining Orders (TRO's); and Permanent Restraining Orders (PRO's). Further this Chapter is to provide a means of challenging those Orders by establishing a fair and timely hearing review process.

##### **Section 3. Definitions**

For the purposes of this Chapter of Court Rules, the following definitions will be used:

- A. “*Attorney*” and “*Counselor*” and “*Lawyer*” are synonymous and mean an individual who is admitted to practice before the courts of any state and any other tribe recognized by the Nottawaseppi Huron Band of the Potawatomi.
- B. “*Band*” and “*Tribe*” are synonymous and mean the Nottawaseppi Huron Band of the Potawatomi.
- C. “*Chief Judge*” means the Chief Judge of the Tribal Court.
- D. “*Court*” and “*Tribal Court*” are synonymous and mean the trial level court of the Nottawaseppi Huron Band of the Potawatomi.

- E. “*Day*” means calendar day.
- F. “*Defendant*” or “*Respondent*” means the party against whom a petition for Restraining Order is filed.
- G. “*Emergency Restraining Order*” (ERO) means a Court order, often issued *ex parte*, which has as its purpose to protect persons or property from significant or substantial harm until a court hearing can be convened to review the facts of the matter.
- H. “*Ex parte*” means outside the presence of all of the persons or parties to a legal proceeding. It usually refers to a court making a decision and/or issuing an order without notice or a hearing with all interested persons present.
- I. “*Party*” means a person concerned with, requesting or having been subject to a judgment, order, decree, warrant, subpoena or other judicial act.
- J. “*Permanent Restraining Order*” (PRO) means a court order for protection or prohibition of an activity that is usually issued after a full hearing that makes the protection or prohibition permanent and final.
- K. “*Person*” means an individual, corporation, association, trust, partnership, or any other organization or legal entity.
- L. “*Petitioner*” or “*Plaintiff*” means the person who submits a petition for a Restraining Order.
- M. “*Temporary Restraining Order*” (TRO) means a court order for protection or prohibition of activity that is issued for a specific, but usually a short fixed period of time.

#### **Section 4. Emergency Restraining Orders**

- A. To obtain an Emergency Restraining Order (ERO) the party requesting the ERO must do the following:

1. File a written request for the ERO with the Tribal Court Administrator in person, by FAX or by mail;
2. Set forth in the ERO request the following information:
  - a. The names and addresses, if known, of all the parties concerned with, requesting and subject to the requested ERO;
  - b. The reasons for the emergency necessitating the ERO with may include but not be limited to the following:
    - i. Unless the ERO is issued right away the party requesting the ERO will suffer immediate and irreparable physical, mental or financial harm;
    - ii. Unless the ERO is issued right away the party or minor children of the party will suffer immediate and irreparable physical, mental or financial harm; and/or
    - iii. Unless the ERO is issued right away the Tribe will undertake an action that will cause the party petitioning for the ERO irreparable financial harm.
3. Pay the required filing fee.

B. Upon receipt of the ERO request the Tribal Court Administrator (TCA) shall:

1. Immediately contact the Tribal Judge by phone to inform him or her that the Court is in receipt of an ERO request and the required fee has been paid.
2. FAX or e-mail a copy of the ERO to the Judge, who will have twenty-four (24) hours from the receipt of the ERO request to grant or deny the request;
3. Distribute the Order of the Judge granting or denying the ERO by e-mail, FAX or personal service to all parties to the ERO within twenty-four (24) hours of the receipt of the Judge's decision.

## **Section 5. Judicial Review of the Emergency Restraining Order**

- A. The TCA shall, upon receipt of an Order granting an ERO set a hearing within forty-eight (48) hours or two (2) business days whichever is sooner, unless there is good cause to delay the scheduling of a hearing.
- B. The TCA shall notice all interested parties of the hearing date and time as soon as is practicable, in writing, by FAX, by e-mail or regular mail.
- C. The parties may file answers or objections to the ERO, in writing, with the TCA anytime up to the time for convening the ERO hearing.
  - 1. The TCA shall make certain that all parties receive copies of any pleadings and responsive pleadings relevant to the ERO.
- D. All ERO hearings shall be open to all Tribal members and the public unless one or more parties requests a closed hearing and the Court, after taking proofs on the record, finds that there is good cause for closing the hearing.
- E. All ERO hearings are to be recorded.
- F. The burden of proof and persuasion is on the party requesting the ERO and the level of proof to continue a temporary ERO after hearing is a preponderance of the evidence.
  - 1. The rules of evidence as adopted by the Tribal Court in Chapter of Court Rules shall apply at all ERO hearings;
  - 2. The parties may agree to suspend some or all of the rules of evidence with the Court's approval.
- G. The Court may make an oral order at the conclusion of the hearing with the understanding that any oral order will be reduced to writing within seven (7) days from the date of the hearing.
- H. All TRO's will expire twenty-one (21) days after issuance unless otherwise ordered by the Court

- I. If the Court chooses not to make an oral order then it must issue a written order within twenty-four (24) hours of the conclusion of the hearing.
  1. The Court's order is to be filed with the TCA who shall distribute copies to all parties without delay;
  2. If the Court's order continues or upholds the ERO the order shall state the duration of time that the ERO continues in effect.

## **Section 6. Procedures for Making an ERO or Temporary Restraining Order Permanent**

- A. At any time after an initial ERO hearing, the party that sought the ERO may request the Court to enter an order making a Temporary Restraining Order or an Emergency Restraining Order permanent.
  1. This request needs to be in writing and filed with the TCA and the appropriate filing fee paid;
  2. The TCA shall schedule a hearing as soon as is practicable and notify the requesting party;
  3. The requesting party shall notify all other interested parties by certified mail of the scheduled hearing date and time and file a proof of service with the TCA;
  4. The procedures set forth in Section 5(D)(E) and (F) shall apply to a hearing for a Permanent Restraining Order (PRO).
- B. The Court shall render a decision on the PRO request within seven (7) days of the hearing date.
  1. The Court may:
    - a. Deny the PRO;
    - b. Modify or extend the TRO or ERO to a time certain;

- c. Continue the TRO or ERO under its present terms; or
  - d. End the TRO or ERO.
- 2. The Court's decision and order shall be in writing;
  - 3. The TCA shall serve all parties with a copy of the written opinion and/or order by first class mail as soon as practicable, but not more than fourteen (14) days after the date of hearing.
- C. Any attorney who has filed a request for a TRO and then files a civil complaint with the Tribal Court and/or seeks a PRO must become a member of the Tribal Bar.

**Section 7. Citation Form**

The abbreviated citation form for this Chapter of Court Rules is NHBPCR, Chapter 10.

**CERTIFICATE OF ADOPTION**

The Chief Judge of the Tribal Court adopts the above Chapter of Court Rules on \_\_\_\_\_, 2011.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Melissa L. Pope  
Chief Tribal Court Judge