



NHBPT TRIBAL COURT

NOTTAWASEPPI HURON BAND OF THE POTAWATOMI

Court Rules for Restraining Orders

Chapter 10

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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) 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, and in good standing, before the courts of any state and is admitted to practice before the Nottawaseppi Huron Band of the Potawatomi Tribal Courts.
- B. "Band" and "Nation" 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 a calendar day.
- F. "Defendant" or "Respondent" means the party against whom relief or recovery is sought in an action or suit.
- 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. “*Filed*” means the time when a document is accepted by the Court to for processing. See Section 4.B
- J. “*Filing Fee*” means the money paid to and received by the Court to enable the Court to accept a document for processing.
- K. “*Party*” means a person or entity who is either the petitioner or respondent in the petition for an ERO.
- L. “*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, or sets a specific time for the duration of the ERO.
- M. “*Person*” means an individual, corporation, association, trust, partnership, or any other organization or legal entity.
- N. “*Petitioner*” or “*Plaintiff*” means the person who submits a petition for a Restraining Order.
- O. “*Tribal Court Administrator*” (TCA) means the person employed as the Tribal Court Administrator for the Nottawaseppi Huron Band Tribal Court or that person’s designee.

Section 4. Emergency Restraining Orders

- A. To obtain an Emergency Restraining Order (ERO) the party petitioning for the ERO must do the following:
 - 1. File a written Petition for the ERO with the Tribal Court Administrator (TCA) in person, by FAX or by mail.
 - 2. Set forth in the ERO Petition the following information:
 - a. The names and addresses, if known, of all the parties
 - b. The reasons for the emergency necessitating the ERO which may include but not be limited to the following:

- i. Unless the ERO is issued right away, the Petitioner will suffer immediate and irreparable physical, mental or financial harm;
- ii. Unless the ERO is issued right away, the Petitioner or minor children of the Petitioner 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 Petitioner irreparable financial harm.

3. Payment of the Filing Fee

- a. The Petitioner shall pay the applicable \$50.00 filing fee at the time of filing the Petition for the ERO.
- b. The filing fee can be paid in cash, by personal check or money order made out to "NHBP Tribal Court". Cash should not be sent by regular mail.

4. Waiver or Delay in Payment of Filing Fee

- a. The Court may allow the waiver of the required filing fee for an ERO Petition or may allow a delay in payment of the filing fee.
- b. The Affidavit for Fee Waiver or Request for Delayed Payment in an ERO Petition must be filed at the same time as the ERO Petition. If so filed, the TCA will forward both the ERO Petition and the Affidavit to the Tribal Court Judge. See 4.B.1.
- c. If an Affidavit of Fee Waiver is filed the Court will consider the ERO Petition filed.
- d. The Judge will issue a decision regarding the request for fee waiver or request for delay in payment at the same time as the order granting or denying the ERO.
 - 1) If the waiver is not granted, the TCA shall inform the Petitioner in writing by regular mail that the filing fee must be paid within seven (7) days of the date of notice.

B. Upon receipt of the ERO request the TCA shall:

1. Immediately contact the Tribal Judge to inform him or her that the Court is in receipt of an ERO Petition and the required fee has been paid or waiver submitted.
2. FAX or e-mail a copy of the ERO Petition to the Judge, who will have twenty-four (24) hours from the receipt of the ERO Petition 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 and in consultation with the Chief Judge, schedule a hearing as the circumstances require, but not more than five (5) business days after the date of the order.
- B.** The TCA shall send the notice of the hearing within two (2) business days.
- C.** The TCA shall notice all interested parties of the hearing date and time in writing, by FAX, by e-mail or regular mail, as circumstances permit.
- D.** The parties may file answers or objections to the ERO, in writing, with the TCA before the convening of the ERO hearing.
 1. The TCA shall make certain that all parties receive copies of any pleadings and responsive pleadings relevant to the ERO.
- E.** 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.
- F.** All ERO hearings are to be recorded.
- G.** The burden of proof and persuasion is on the Petitioner 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 7 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.
- H.** The Court may make an oral order at the conclusion of the hearing with the understanding that any oral order shall be reduced to writing within seven (7) days from the date of the hearing.
- I.** All ERO's will expire twenty-one (21) days after issuance unless otherwise ordered by the Court.
- J.** 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. If the Court's order continues or upholds the ERO the order shall state the duration of time that the ERO continues in effect.
 2. The Court's order is to be filed with the TCA who shall distribute copies to all parties without delay.

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 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. Grant the PRO;
- c. Modify or extend the existing ERO to a time certain;
- d. Continue the existing ERO under its present terms to a time certain; or
- e. End the 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 seven (7) days after the date of hearing.

C. Any attorney who has filed a Petition for an ERO and then files a civil complaint with the Tribal Court and/or seeks a PRO must become a member of the NHBP Tribal Bar.

Section 7. Citation Form

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

CERTIFICATE OF ADOPTION

The Chief Judge of the Tribal Court adopts the above *Chapter of Court Rules* on April 14, 2014.

April 14, 2014
Date

Melissa L. Pope
Hon. Melissa L. Pope, Chief Judge

JUDICIAL HISTORY

The *Court Rules for Restraining Orders* were adopted by the Chief Judge on January 5, 2012. Amendments to these Rules were adopted by the Chief Judge Melissa L. Pope on April 14, 2014.