



NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

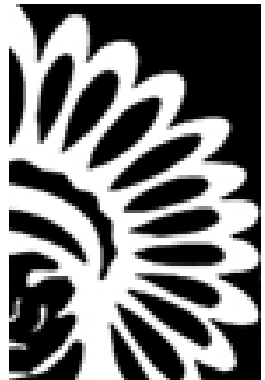
TRIBAL PROTECTION ORDERS ISSUING PROTECTION ORDERS

Hon. Steven D. Aycock
Judge-in-Residence

National Council of Juvenile and Family Court
Judges

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Learning Objectives

As a result of this session, you will be better able to:

- Define Protection Orders and what they can accomplish on your communities
- Identify the legal requirements of federal Full Faith and Credit as applied to protection orders;
- Create enforceable protection orders that contain the maximum protection available under Tribal law;

Why Are Protection Orders Important?



BENEFITS OF PROTECTION ORDERS

- Sets forth clear commands from the Court
- Issued with victim safety in mind
- Set parameters of acceptable behavior for the batterer as determined by the Court
- Takes some power and control away from the batterer
- Used to hold batterers accountable

WHY ARE CAREFULLY CRAFTED DOMESTIC VIOLENCE PROTECTION ORDER SO CRITICAL TO VICTIM SAFETY?

- Promotes enforcement in all jurisdictions as victim crosses jurisdictional lines so that the victims does not need to refile every time they travel into a new jurisdiction
- Promotes consistency in enforcement of protection order provisions across jurisdictional lines
- Promotes victim safety by creating a framework to determine protection order violations

What is a PO?



VAWA Full Faith and Credit Definition

- Any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or behalf of a person seeking protection;

VAWA Full Faith and Credit Definition

- Any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining order, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.
- 18 USC 2266(5)(A),(B)

What Is Required for it to be enforceable?



Full Faith and Credit Requirements

- Subject matter jurisdiction
- Personal jurisdiction
- Notice and opportunity to be heard
- Ex parte order – will be given notice and opportunity within reasonable time
- Order has not expired

Jurisdiction

- “(e) Tribal Court Jurisdiction.—For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to **issue and** enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe.”

18 USC 2265

Jurisdiction

- **Personal Jurisdiction:** the legal power of the court to render judgment over a specific person
- **Subject Matter Jurisdiction:** the power of the court to hear the general type of case before it

Notice

Notice must be sufficient to protect that person's right to due process.

A person has notice of a protection order if that person:

- (1) has actual knowledge of the protection order; or
- (2) has received a written notice of the protection order; or
- (3) has reason to know about the protection order

WHAT HAPPENS IF THE DOMESTIC VIOLENCE PROTECTION ORDER DOES NOT MEET THE VAWA FULL FAITH AND CREDIT REQUIREMENTS?

- Enforcing court may refuse to enforce the protection order at all
- Enforcing court may enforce only certain provisions of the protection order that are consistent with enforcing court's laws

Jurisdiction Over Non-Indians on Non-Indian Land

- In matters arising outside of Indian Country involving non-members, the federal restrictions on tribal civil jurisdiction may still apply. **Two U.S. Supreme Court cases held that tribes have limited powers over matters involving non-members on non-Indian lands.**
- *Montana v. United States*, 450 U.S. 544 (1981) and *Strate v. A-1 Contractors*, 5520 U.S. 438 (1997) resulted in a test to determine whether a tribal court has jurisdiction over non-members in civil matters.

Jurisdiction Over Non-Indians on Non-Indian Land

- The Montana test requires the tribal court to find that: 1) the parties entered into a consensual relationship with the tribe or its members through commercial dealing, contracts, leases or “other arrangements” or 2) the conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. If neither of the two factors listed in the Montana test are present, the tribal courts may not exercise civil jurisdiction over non-members on non-Indian lands.

Subject Matter?

- **IN THE DISTRICT COURT**
- **OF THE DEER NATION**
-
- THIS COURT has reviewed the Petition for Domestic Abuse Protection Order and Motion for Temporary Protection Order in this case. This Court has subject matter and personal jurisdiction over this matter.
- It is hereby ordered that...

Subject Matter and Personal Jurisdiction??

- This court has jurisdiction to issue this protection order as the parties are married, reside within the jurisdiction of the Deer Nation, the petitioner is non-Indian and the Respondent is a member of the Deer Nation (DNTC 1-213). Both parties reside within the jurisdictional boundaries of the Deer Tribe and the Petitioner is employed by the Deer Tribe. (DNTC 1-215). The acts of violence occurred within the jurisdictional boundaries of the Deer Nation. (DNTC 1-218)

Firearms

- A person subject to a qualifying protection order is prohibited from possessing any firearm or ammunition.
- To be a qualified protection order:
 - Must be issued after a hearing in which Respondent had actual notice and an opportunity to be heard.

Firearms

Qualifying order must:

- Restrain the person from:
 - harassing, stalking or threatening an intimate partner (or the child of the restrained part or the intimate partner) OR
 - Engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the person or child
- Must also include:
 - A finding that the Respondent represents a credible threat to the person, OR
 - An explicit prohibition against the use, attempted use or threatened use of physical force which would reasonably cause bodily injury

What Language Should Be Used In A PO?



LANGUAGE IS IMPORTANT BECAUSE....

- May determine whether other jurisdictions are mandated by federal law (VAWA) to give full faith and credit to the order
- May trigger the Federal Firearms prohibition against possessing ammunition or firearms during the period of a valid Protection Order
- Any violation may be the basis for a criminal prosecution of Indians and/or non-Indians (VAWA 2013)
- May form jurisdictional basis for custody (filing under the Uniform Child Custody Juris. Enf. Act)
- May engage a presumption of custody to non-violent parent

Contents

Order should contain:

Specific, concrete language

Meet all the requirements of Tribal law, VAWA, Full Faith and Credit, and federal jurisdictional law

Language that allows officer to enforce

Language that allows your court or another court to enforce.

Contents of Protection Order

FINDINGS OF FACT

The Court finds that domestic abuse as defined in sec. ____ of Tribal Ordinances, has been committed or may be committed by respondent upon petitioner,

IT IS ORDERED that

- a. __ The respondent shall refrain from committing acts of domestic abuse against the petitioner
- b. __ The respondent shall avoid the petitioner's residence and/or any residence temporarily occupied by petitioner

Signed

How Should It Read

- This Court has jurisdiction to issue this protection order as the parties are married, reside within the jurisdiction of the Deer Nation and this Court and the Petitioner is a non-Indian and the Respondent is a member of the Deer Nation (DNTC 1-213). Petitioner is employed by the Deer Tribe. (DTNC 1-215). The acts of violence occurred within the jurisdictional boundaries of the Deer Nation (DTNC 1-218).

How Should it Read?

- Respondent was given notice of today's hearing by the Deer Nation Tribal Police Department. Proof of service is in the Court's file; or
- This is an ex parte Order. The final hearing is set for September 20, 2016 at 4:00 p.m. Respondent will be given notice of today's ex parte hearing and this Order prior to that hearing.

How Should it Read?

- Be specific as to who it covers. Don't say "petitioner and her children". State their full names and identifications (address, birth dates, etc).
- Be specific as to what relief is being given – not "no contact", but – Respondent shall not come within 300 feet of Respondent at any time and shall have no contact with Petitioner or her children.
- Respondent shall have no communication with Petitioner directly, through third parties, including family members, and no electronic, telephonic or social media communication.

Learning Points



Learning Points

- Make sure orders have all the requisite elements to be enforced under VAWA Full Faith and Credit provisions.
- Make orders as detailed as necessary to protect victims and hold batterers accountable.
- Protection orders that comply with the minimum requirements of VAWA are enforceable in every jurisdiction.
- Economic relief may be vitally important to the safety and security of the victim and children.

CRITICAL PROTECTION ORDER TIP

- Lay out the basis for tribal subject matter and personal jurisdiction in the Protection Order. Make findings of fact and conclusions of law on the record and put into the Protection Order itself.
- Box checking is most likely not enough.

CRITICAL CODE DRAFTING TIP

- If exercising civil jurisdiction over non-Indians to issue protection orders, consider placing language in the Tribal Code that reflects that the Montana test has been met. (See Tribalprotectionorder.org)

Resources

Full Faith and Credit Resources

- www.tribalprotectionorder.org issues relating to issuing and enforcing tribal protection orders
- www.tlpi.org information related to VAWA 2013
- <http://www.ncai.org/tribal-vaawa/resources/code-development> information related VAWA 2013
- <http://www.bwjp.org/our-work/projects/protection-orders.html> National Center on Full Faith and Credit

Full Faith and Credit Resources

- <http://www.ncjfcj.org/resource-library/publications/civil-protection-orders-guide-improving-practice> Civil Protection Orders: A Guide to Improving Practice (CPO Guide)
- <http://www.bwjp.org/resource-center/resource-results/engaging-in-a-best-practice-assessment-of-the-civil-protection-order-system.html> Tool to assess your Protection Order System and CPO Guide
- <http://www.ncjfcj.org/resource-library/publications/passport-safety> Passport to Safety: Full Faith and Credit – A Judge’s Bench Guide
- <http://www.ncjfcj.org/resource-library/publications/domestic-violence> National Council of Juvenile and Family Court Judges domestic violence publications

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Questions?

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