

# **TRIBAL DOMESTIC VIOLENCE ORDERS: A JUDGE'S GUIDE**

## **What is an Order of Protection?**

Under the Violence Against Women Act (18 U.S.C. § 2266), a protection order is an order issued for the purpose of preventing violent or threatening acts of harassment against, or contact or communication with or physical proximity to, another person.

## **Who are the Parties in a Domestic Violence Case?**

The person who files the petition is the “**petitioner**.” It may be the victim himself or herself, of someone filing on behalf of the victim. The person accused of domestic violence who is responding to the petition is the “**respondent**.”

## **What Domestic Violence Law Applies in Tribal Court?**

In tribal court, tribal law defines what domestic violence is. It is very helpful to have written laws, but not necessary.

## **Do Tribal Orders Have to Look Like State Orders?**

No. Tribal orders do not have to copy state orders. However, there must be basic information on the order to help people understand the order and to assist law enforcement.

- Explain what tribal law gives the court authority to issue domestic violence protection orders.
- Explain how the court has authority over the parties (see chart below).
- Describe how the court notified the respondent of the petition and hearing and provided an opportunity to be heard.
- It is good practice to have the respondent, if present, sign an acknowledgment of service on the face of the order.
- Be clear about what act of domestic violence the court believes the respondent committed.
- Be very clear about the restrictions being imposed on the person who committed domestic violence. This is important for protecting the victim and prosecuting the respondent if he or she violates the order.
- For mutual protection orders, indicate that a petition was filed by each party, and make a written finding that each party is entitled to protection.
- Avoid vague and unenforceable terms such as "reasonable."
- State the duration of the order and its expiration date, if any.
- Provide the court clerk's telephone number.

## Does Full Faith and Credit Apply to Tribal Orders?

Yes. The full faith and credit provision applies to orders issued by tribal courts. State courts are required to recognize and enforce valid tribal court orders of protection.

## How Does a Tribal Order Get Full Faith and Credit Recognition?

Orders do not have to be registered with the state court if local law enforcement is available to enforce them. However, if state law enforcement is needed, it would be extremely helpful to meet with the state court clerk *before orders are issued* to arrange a system for the clerk to stamp tribal court orders with a state court case number. There should be no need for review by a state court judge or magistrate. Getting the state court number will speed up enforcement services with the troopers and police.

## What are the Requirements to Get Full Faith and Credit?

- (1) There must be jurisdiction over the parties and matter under the law of the Tribe; and
- (2) The tribal court must give reasonable notice and opportunity to be heard to the person against whom the order is sought so that the person's due process rights are protected.

*Ex parte* orders are emergency orders issued without the respondent present, if there is not enough time for notice. For *ex parte* orders, notice and opportunity to be heard in a follow-up hearing must be provided in the time required by tribal law. A follow up hearing should be held as immediately as possible so that the court can hear both sides of the story.

## Who Falls Under A Tribal Court's Domestic Violence Jurisdiction?

	Respondent is a Member	Respondent is a non-Member
Petitioner is a Member	Tribe will generally have jurisdiction	Tribe will have jurisdiction if: - the respondent consents; <i>or</i> - there is a consensual relationship between respondent and the Tribe; <i>or</i> - the violence threatens the Tribe's integrity, economic security, or health and welfare
Petitioner is a Non-member	Tribe will generally have jurisdiction. Filing a petition gives consent to jurisdiction.	Tribe will only have jurisdiction in exceptional cases, where the dispute has a strong tribal connection (i.e., violence involving a tribal child)

## What Else Can the Court Do to Provide More Protection?

- Inform the parties orally and in writing that the order is enforceable in all 50 states, U.S. territories, tribal lands and the District of Columbia.
- Provide the protected parties certified copies of the order and advise them to keep one with them.
- Provide a copy of the order to local police and the school (if kids are involved).
- Be sure the respondent understands that contact is not ok, even if the petitioner tries to make contact with him or her.
- State that violation of the order, in addition to any state or tribal sanctions, may subject the respondent to prosecution for such federal crimes as firearms possession