

Leech Lake Band of Ojibwe Judicial Code

amendments through November, 2014

TITLE XX CIVIL HARASSMENT & STALKING

1. TITLE, PURPOSE, AUTHORITY, DEFINITIONS

101. Short Title.

102. Policy and Intent.

103. Authority of the Leech Lake Band of Ojibwe.

104. Definitions.

2. HARASSMENT/RESTRAINING ORDERS

201. Jurisdiction.

202. Civil Remedy –Harassment/Restraining Order.

203. Procedures.

204. Harassment/Restraining Orders and Temporary Restraining Orders.

205. Relief Available and Content of Harassment/Restraining Orders and Temporary Restraining Orders.

206. Court Duties.

3. VIOLATIONS

301. Civil Penalties.

302. Criminal Penalties.

4. SEVERABILITY

401. Severability.

5. APPEALS

501. Who Can Appeal.

502. Appeal Procedure.

Chapter 1

TITLE, PURPOSE, AUTHORITY, DEFINITIONS

101. Short Title.

102. Policy and Intent.

103. Authority of the Leech Lake Band of Ojibwe.

104. Definitions.

§ 101. Short Title.

Title XX shall be entitled “The Civil Harassment & Stalking Code.”

§ 102. Policy and Intent.

It shall be and is hereby established as the policy and intent of the Leech Lake Band of Ojibwe to prohibit Harassment and Stalking, without regard to whether the persons involved are family members, were or are married, cohabitating, or involved in a relationship. It also is intended to provide protection for those who have suffered threats of harm and to impose legal interventions and penalties to violators of this law. This Title applies to matters that do not have a cause of action under Title XIX of the Leech Lake Band of Ojibwe Judicial Code.

§ 103. Authority of the Leech Lake Band of Ojibwe

- A. The Leech Lake Band of Ojibwe has the inherent authority to protect its political integrity and to provide for the welfare of its members and others who choose to live within its territory.
- B. The purpose of this Code is to establish laws prohibiting harassment and stalking by or against any person within the jurisdiction of the Leech Lake Band of Ojibwe Reservation and to delegate to the Leech Lake Tribal Court the power to create and implement the administrative rules and procedures needed to enforce this Code.

§ 104. Definitions.

- A. Credible Threat. "Credible Threat" means a threat made with the intent and the apparent ability to carry out the threat. A credible threat need not be expressed verbally.
- B. Course of Conduct. "Course of Conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.
- C. Court. "Court" means the Leech Lake Tribal Court.
- D. Dwelling. "Dwelling" means the building or part of a building used by an individual as a place of residence on either a full-time or a part-time basis. A dwelling may be part of a multi-dwelling or a multipurpose building, or a manufactured home.
- E. Harassment. "Harassment" means:
 - (1) A knowing and willful course of conduct directed at a specific person which seriously alarms, annoys or constitutes a credible threat to another person and which serves no legitimate purpose;
 - (2) A knowing and willful course of conduct which would cause a reasonable person under the circumstances to feel oppressed, persecuted, or intimidated;

- (3) Repeated, intrusive, or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another, regardless of the relationship between the act and the intended target;
 - (4) Targeted residential picketing; or
 - (5) A pattern of showing up where the victim is known to be without lawful purpose.
- F. Officer. "Officer" means the Leech Lake Tribal Police or other law enforcement officer.
 - G. Petitioner/Victim. "Petitioner/Victim" means persons alleging harassment and/or stalking in a Harassment/Restraining Order petition and throughout the proceedings described in this Code.
 - H. Premises. "Premises" means real property and any appurtenant building or structure.
 - I. Responder/Abuser. "Respondent/Abuser" means any individual alleged to have engaged in harassment and/or stalking or organization alleged to have sponsored or promoted harassment and/or stalking in a Harassment/Restraining Order petition and throughout subsequent Court proceedings described in this Chapter.
 - J. Stalking. "Stalking" means any person who willfully, maliciously, and repeatedly follows or harasses another person, or who makes a credible threat to another person with the intent to place that person in reasonable fear of death or great bodily injury.
 - K. Targeted Residential Picketing. "Targeted Residential Picketing" means the following acts when committed on more than one occasion: marching, standing, or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.

Chapter 2 HARASSMENT/RESTRAINING ORDERS

- 201. Jurisdiction.
- 202. Civil Remedy –Harassment/Restraining Order.
- 203. Procedures.
- 204. Harassment/Restraining Orders and Temporary Restraining Orders.
- 205. Relief Available and Content of Harassment/Restraining Orders and Temporary Restraining Orders.
- 206. Court Duties.

§ 201. Jurisdiction.

The Leech Lake Tribal Court has the jurisdiction to hear a cause of action for a Harassment/Restraining Order and issue such an order if either the petitioner or the respondent

resides within the territorial jurisdiction of the Tribal Court or if the actions constituting the basis of the petition occurred within the territorial jurisdiction of the Tribal Court.

§ 202. Civil Remedy – Harassment/Restraining Order.

- A. Availability of Petition. A petition to obtain a Harassment/Restraining Order for Protection under this Section may be filed by the victim of the harassment. In the case of a minor or otherwise incompetent victim, the petition may be filed by a parent, guardian, or legal or physical custodian of the victim or such other person who by law, resolution or tribal custom is authorized to act on behalf of said minor or otherwise incompetent victim.
- B. Contents of Petition. A petition shall allege the harassment or stalking and shall be supported by an affidavit made under oath stating the specific facts and circumstances justifying the requested order.
- C. Court shall provide simplified forms and inform petitioner of the ability and requirements for filing *in forma pauperis*.
- D. Service of Process. Court administration and law enforcement shall perform their duties relating to service of process without charge to petitioner.

§ 203. Procedures.

- A. Filing of Application. Upon the filing of a petition for a Harassment/Restraining Order, the Court shall first determine whether a Temporary Restraining Order will be issued pursuant to section 204 herein.
- B. Hearing.
 - (1) If a Temporary Restraining Order is issued, the Court shall not schedule a hearing unless one is requested by Respondent.
 - i. Respondent must request a hearing within 30 days from the date of service of the Temporary Restraining Order.
 - ii. If a hearing is requested by Respondent, the hearing shall be held within 15 business days of that request. Service of the Notice of hearing must be made upon the Petitioner not less than 5 days prior to the hearing.
 - (2) If a Temporary Restraining Order is not issued, the Court shall schedule a hearing to be held upon the merits of the application. The hearing shall be scheduled no later than ten (10) business days from the date of the Order for Hearing.
- C. Notice. The respondent and the petitioner shall each be served with written notice of the time, date and place of the hearing if scheduled.
- D. Service on Respondent.

- (1) Personal. Service of the Petition, and any Temporary Restraining Order and Notice of Hearing under this section shall be served on the respondent personally. If the hearing has been scheduled based upon Respondent's request, Respondent may be served the Notice of Hearing by mail.
- (2) When any Harassment/Restraining Order or Temporary Restraining Order is issued under this Title and upon request of the petitioner, the court shall order the Tribal Police Department to assist in execution or service of the Order. If the respondent is present within the territorial jurisdiction of the Leech Lake Band, the officer shall forward the pleading necessary for service upon the respondent to the sheriff or other law enforcement officer in the county or territory in which the respondent is present. This transmittal must be expedited to allow for timely service.
- (3) If a Temporary Restraining Order has been issued, personal service of the order may be made upon respondent any time up to 24 hours prior to the time set for the hearing, if any. If the respondent is served less than 5 days prior to the hearing, the respondent may request a continuance. If the respondent requests a continuance under these circumstances, the Court shall grant that continuance unless there are compelling reasons not to. If a continuance is granted, the Court shall extend the Temporary Restraining Order until the next continued hearing.
- (4) If personal service cannot be made, the Court may order service by alternative means, including service by certified mail or service by publication. The petitioner must file with the Court an affidavit stating that an attempt at personal service was made but was unsuccessful because the respondent is avoiding service. Service by publication is complete seven days after publication.
- (5) In the event service cannot be completed in time to give the respondent the minimum notice required under this section, the court may set a new hearing date no more than 10 days later than the originally scheduled date.

- E. Service on Petitioner. The petitioner may be served personally or by mail.
- F. Informal Hearing. The hearing shall be conducted in an informal manner and factual findings shall be made by the court acting without a jury.
- G. Burden of Proof. The burden of proof shall be upon the petitioner to prove the petition by a preponderance of evidence.
- H. Right to Counsel. The respondent and petitioner shall have the right to be represented by counsel of his or her choice and at his or her own expense.
- I. Continuances. The court may order the hearing to be continued upon the request of the respondent for the purpose of allowing the respondent to obtain counsel or prepare his or her own defense or for good cause shown by either party. In such an event, the court shall extend the time period of any order it has previously issued and may issue such additional

order(s) modifying, enlarging, or altering the existing order as facts and circumstances may justify.

- J. Witnesses. Both the respondent and the petitioner shall have the right to subpoena witnesses to testify on their behalf.
- K. Response to Petition. The respondent may either admit or deny, in whole or in part, the allegations contained in the application. Should the respondent deny the allegation, the court may then and there proceed to hear testimony and accept evidence unless either party requests a further continuance and the court is satisfied under the circumstances that such a continuance is reasonable and necessary under the circumstances and is not solely for the purpose of delay.
- L. Findings and Conclusions. Upon the conclusion of the hearing the court shall make its findings and conclusions and enter its order either granting a permanent Harassment/Restraining Order or dismissing the proceedings. The permanent order will be valid for a period not to exceed two years. However, relief may be granted for a period of up to 50 years, if the court finds the respondent has violated a prior or existing Harassment/Restraining Order on two or more occasions or the petitioner has had two or more Harassment/Restraining Orders in effect against the same respondent.
- M. Order Granting Relief. When a Judge presides at the hearing on the petition, the order granting relief becomes effective upon the Judge's signature.
- N. Motions. Either party may subsequently move the court for an order dismissing, modifying, enlarging, extending, or otherwise altering the terms of the Harassment/Restraining Order previously issued. Service of such a motion shall be made in accordance with this Code. No such motion shall be granted or denied until a hearing has been held before the court to which all parties have been summoned or noticed to appear.
- O. Additional Relief. If the petitioner seeks relief under the Leech Lake Band of Ojibwe Judicial Code: Title XX: Civil Harassment & Stalking other than the relief described in section 204, the petitioner must request a hearing to obtain the additional relief.

§ 204. Temporary Restraining Orders.

Upon the filing of a petition for a Harassment/Restraining Order,

- A. The Court shall grant a Temporary Restraining Order if the application under this section alleges an immediate and present danger of harassment or stalking;
- B. A finding by the court that a basis for granting a Temporary Restraining Order constitutes a finding that sufficient reasons exist not to require notice under applicable court rules governing applications for ex parte relief;

- C. A Temporary Restraining Order, together with the petition and any notice of hearing, shall be served immediately on the respondent. Service shall be made as provided in this Title;
- D. A Temporary Restraining Order shall be effective for a fixed period set by the court or until modified or vacated by the court pursuant to a hearing; and
- E. When signed by a Judge, the Temporary Restraining Order becomes effective upon the Judge's signature.

§ 205. Relief Available and Content of Harassment/Restraining Orders and Temporary Restraining Orders.

A Temporary Restraining Order or a Harassment/Restraining Order entered after notice and hearing shall, when deemed appropriate by the Court, include provisions:

- A. Restraining the respondent from committing any acts of harassment and/or stalking. The Order must specify the conduct that will constitute a violation of the order;
- B. Excluding the respondent from the residence including the area around the residence of the petitioner;
- C. Enjoining the respondent from, or otherwise limiting access to, the petitioner's place of employment or education;
- D. Restraining the respondent from any contact with the petitioner whether in person, by telephone, mail, or electronic mail or messaging, through a third party, or by any other means;
- E. Notifying the parties that the willful violation of any provision of the order by the respondent constitutes contempt of court and/or a crime punishable by a fine or imprisonment or both in Leech Lake Tribal Court and other applicable foreign Court; and
- F. Ordering, in the Court's discretion, any other lawful relief as it deems necessary for the protection of any victim or potential victim of harassment and/or stalking, including orders or directives to the Leech Lake Tribal Police Department or any other appropriate law enforcement.

§ 206. Court Duties.

A Harassment/Restraining Order granted by the Court shall be forwarded to law enforcement within 24 hours. If the respondent is not present within the territorial jurisdiction of the Leech Lake Band of Ojibwe, law enforcement shall forward the orders necessary for service upon the respondent to the appropriate law enforcement agency.

**Chapter 3
VIOLATIONS**

301. Civil Penalties.

302. Criminal Penalties.

§ 301. Civil Penalties.

- A. Civil Contempt. The court may exercise its civil contempt powers prescribed in Title 1, Part VI of the Leech Lake Band of Ojibwe Judicial Code, if necessary, to enforce any orders which may be issued pursuant to this Code.
- B. Hearing. Upon the filing of an affidavit by the petitioner, law enforcement officer or other interested party alleging a violation of a Temporary Restraining Order or a Harassment/Restraining Order issued pursuant to this Code, the Court may issue an order to the respondent requiring the respondent to appear and show cause within fifteen (15) days why the respondent should not be held in contempt.
- C. Fine. A respondent who willfully violates the terms of a Temporary Restraining Order or a Harassment/Restraining Order issued by the Leech Lake Tribal Court and found in contempt may be fined a civil fine up to \$5,000.

§ 302. Criminal Penalties.

Criminal penalties will be referred to appropriate law enforcement for prosecution under Minnesota Statute 518B.01 subdivision 14 until such time as the Leech Lake Band of Ojibwe has the capacity to enforce criminal sanctions.

**Chapter 4
SEVERABILITY**

401. Severability.

§ 401. Severability.

If any provision of this Title, or the application thereof, to any person is held invalid, such invalidity shall not affect the provisions or applications of this Title which can be given effect without the invalid provisions, and to this end the provisions of this Title are declared severable.

**Chapter 5
APPEALS**

501. Who Can Appeal.

502. Appeals Procedure.

§ 501. Who Can Appeal.

Any party to a civil harassment & stalking proceeding pursuant to this Code may appeal a final court order.

§ 502. Appeals Procedure.

All appeals from proceedings under this Code shall be heard pursuant to the Leech Lake Band of Ojibwe Appellate Procedures.