Cherokee Nation Code Annotated
Title 12: Civil Procedure
Chapter 5: Civil Protective Order
§ 515. Content of a protective order in general
Cite as: 12 CNCA § 515

A. A petition shall briefly describe the incident(s) of domestic violence and shall be a verified petition or supported by an affidavit made under oath stating the facts and circumstances justifying the requested order.

B. In addition to any other required information, the petition for a protective order must contain a statement listing each civil or criminal action involving both parties.

C. Protective orders shall include provisions:

1. Restraining the respondent from committing any acts of domestic violence;

2. Restraining the respondent from harassing, stalking, threatening telephoning or otherwise contacting the petitioner directly or indirectly, personally or through another person, or engaging in any other conduct that would place any named family or household members in reasonable fear of bodily injury;

3. Prohibiting the use, attempted use or threatened use of physical force that would reasonably be expected to cause bodily injury;

4. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon in the respondent's immediate possession or control or subject to the respondent's immediate control, so that the Respondent will not use, display or threaten to use the firearm or other dangerous weapon in any acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to law enforcement;

5. Requiring that an accounting be made to the Court for all authorized transfers, encumbrances, dispositions and expenditures; and

6. Notifying the parties involved that the knowing violation of any provision of the order may constitute contempt of court punishable by fines, imprisonment or both.

D. Where the Court in its protective order makes findings of any of the following behaviors, it shall order counseling, which shall include the development of behavior-specific relationship skills.

1. Using coercion and threats, such as:

a. making and/or carrying out threats to do something to hurt another person;

b. threatening to leave a spouse, to commit suicide, to report a spouse to welfare;

c. threatening to file false domestic violence, restraining order or child sexual abuse charges;

d. making a spouse to drop charges;

e. making a spouse do illegal things;

f. denying or refusing access to needed medical care or refusing to take prescribed medications.

2. Counseling should include development in skills of negotiation and fairness:

a. seeking mutually satisfying resolutions to conflict;

b. accepting change;

c. being willing to compromise.

3. Using intimidation, such as:

a. making a spouse afraid by using looks, actions, gestures;

b. smashing things;

c. destroying the property belonging to a spouse, relative or family member;

d. displaying weapons (such as knives).

4. Counseling should include developing skills in non-threatening behavior, such as:

a. talking and acting so that family members feel safe and comfortable expressing themselves and doing things.

5. Using economic abuse, such as:

a. refusing to contribute income to basic expenses;

b. making a spouse or family member ask for money;

c. giving the victim(s) an allowance to limit their economic participation;

d. taking a spouse's money;

e. not letting a spouse or family member know about or have access to family income;

f. forcing a spouse to take higher-paying, more hazardous, less satisfying job;

g. preventing a spouse from getting or keeping a job.

6. Counseling should include developing skills in economic partnership:

a. making money decisions together;

b. making sure both partners benefit from financial arrangements;

c. expecting all family members to contribute in good faith to the financial success of the family.

7. Using emotional abuse, such as:

a. putting someone down;

b. making someone feel bad about herself or himself;

c. using sex as a weapon;

d. calling someone names;

e.making someone think they are crazy;

f. playing mind-games;

g. humiliating someone;

h. making someone feel guilty.

8. Counseling should include building skill in respect:

a. listening to others non-judgmentally;

b. being emotionally affirming and understanding;

c. sharing responsibility for mutually-satisfying intimacy;

d. valuing opinions.

9.Using gender privilege, such as:

a. treating someone like a servant;

b. treating someone as just a wallet;

c. making all the big decisions;

d. acting like the "master or mistress of the house";

e. being the only one who defines the male and female roles.

10. Counseling should include the development of skills in shared responsibility:

a. mutually agreeing on a fair distribution of work;

b. making family decisions together.

11. Using isolation, such as:

a. controlling what someone does, who that person sees and talks to, what that person reads, where someone goes;

b. limiting a spouse's or family member's outside involvement;

c. using jealousy to justify actions.

12. Counseling should include the development of skills in trust and support:

a. supporting your partner's goals in life;

b. respecting your partner's right to his own feelings, friends, activities and opinions.

13. Using children, such as:

a. making a spouse feel guilty about the children;

b. using the children to relay messages;

c. alienating children from a parent;

d. using visitation to harass a parent;

e. threatening to take the children away;

14. Counseling should include developing skills in responsible parenting:

a. sharing parental responsibilities;

b. being a positive non-violent role model for the children;

15. Minimizing, denying and blaming, such as:

a. making light of the abuse and not taking the other person's concerns about it seriously;

b. saying the abuse didn't happen;

c. shifting responsibility for abusive behavior;

d. saying that the victim deserved it;

e. saying that the victim caused it;

f. saying it was the only way the victim would pay attention.

16. Counseling should include developing skills in honesty and accountability:

a. accepting responsibility for self;

b. acknowledging past use of violence;

c. admitting being wrong;

d. communicating openly and truthfully.

E. A protective order may include any other relief the Court deems appropriate, including but not limited to:

1. Excluding the respondent from the residence of the victim (whether or not the respondent and the victim share the residence), school, place of employment or a specified place frequented by the petitioner and/or any named family or household member;

2. Awarding temporary child custody and/or establishing temporary visitation rights or restrictions with regard to the minor children of the parties;

3. If visitation is granted there shall be set rules for the exchange of the children for visitation. These rules may include, but are not limited to times, places and persons allowed to visit;

4. Ordering temporary use and possession of personal property, including motor vehicles, to either party;

5. Ordering the respondent to make timely payments on existing debts of the respondent or of the parties, including but not limited to mortgage or rental payments and necessary utilities in order to maintain the petitioner in their residence;

6. Ordering the respondent to pay child support in accordance with Cherokee Nation child support laws and guidelines;

7. Ordering the respondent to pay such support as may be necessary for the support of a party and any minor children of the parties and/or reasonable attorney fees and costs.

8. Ordering the respondent to surrender all firearms and weapons to the custody of law enforcement while the protective order is in effect;

9. When appropriate, restraining one or both parties from transferring, removing, encumbering, mortgaging, concealing, disposing or altering property except as authorized by the Court; and

10. Ordering other lawful relief as the Court deems necessary for the protection of the victim of domestic violence, including orders or directives to law enforcement or other appropriate departments and programs; and

F. No order or agreement under this section affects title to any real property in any manner.

Historical Data

LA 33–05, eff. November 12, 2005.