

Cherokee Nation Code Annotated

Title 12: Civil Procedure

Chapter 10: Harassment

§ 1505. Anti-harassment protection orders--Ex parte temporary--Hearing--Longer term, renewal--Acts not prohibited

Cite as: 12 CNCA § 1505

1. Upon filing a petition for a civil anti-harassment protection order under this chapter, the petitioner may obtain an ex parte temporary anti-harassment protection order. An ex parte temporary anti-harassment protection order may be granted with or without notice upon the filing of an affidavit which, to the satisfaction of the court, shows reasonable proof of unlawful harassment of the petitioner by the respondent and that great or irreparable harm will result to the petitioner if the temporary anti-harassment protection order is not granted. If the court declines to issue an ex parte temporary anti-harassment protection order, the court shall state the particular reasons for the court's denial. The court's denial of a motion for an ex parte temporary order shall be filed with the court.

2. An ex parte temporary anti-harassment protection order shall be effective for a fixed period not to exceed fourteen days. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order. The respondent shall be personally served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing. The ex parte order and notice of hearing shall include at a minimum the date and time of the hearing set by the court to determine if the temporary order should be made effective for a term not to exceed one year, and notice that if the respondent should fail to appear or otherwise not respond, an order for protection will be issued against the respondent pursuant to the provisions of this chapter, for a maximum of one year from the date of the hearing. The notice shall also include a brief statement of the provisions of the ex parte order and notify the respondent that a copy of the ex parte order and notice of hearing has been filed with the clerk of the court.

3. At the hearing, if the court finds by a preponderance of the evidence that unlawful harassment exists, a civil anti-harassment protection order shall issue prohibiting such unlawful harassment.

4. An order issued under this chapter shall be effective for not more than one year.

5. At any time within the three months before the expiration of the order, the petitioner may apply for a renewal of the order by filing a petition for renewal. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of

the petition for renewal, the court shall order a hearing which shall be not later than fourteen days from the date of the order. Personal service shall be made upon the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall require additional attempts at obtaining personal service. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in this section. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when the order expires. The court may renew the protection order for another fixed time period, not to exceed one year.

6. The court, in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order, shall have broad discretion to grant such relief as the court deems proper, including an order:

- a. Restraining the respondent from making any attempts to contact the petitioner;
- b. Restraining the respondent from making any attempts to keep the petitioner under surveillance; and
- c. Requiring the respondent to stay a stated distance from the petitioner's residence and workplace.

7. In issuing the order, the court shall order the respondent to surrender, and prohibit the respondent from possessing, all firearms and any dangerous weapons.

8. The court in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order shall not prohibit the respondent from exercising constitutionally protected free speech. Nothing in this section prohibits the petitioner from utilizing other civil or criminal remedies to restrain conduct or communications not otherwise constitutionally protected.

9. The court in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order shall not prohibit the respondent from the use or enjoyment of real property to which the respondent has a cognizable claim unless that order is issued under a separate action commenced with a summons and complaint to determine title or possession of real property.

10. The court in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order shall not limit the respondent's right to care, control, or custody of the respondent's minor child.

11. A petitioner may not obtain an ex parte temporary anti-harassment protection order against a respondent if the petitioner has previously obtained two such ex parte orders against the same respondent but has failed to obtain the issuance of a civil anti-harassment protection order unless good cause for such failure can be shown.

12. The court order shall specify the date an order issued pursuant to subsections (4) and (5) of this section expires if any.

Historical Data

LA 28-21, eff. June 14, 2021.