

## TITLE 5. SPECIAL PROCEEDINGS

### Chapter 5.11

#### ANTI - HARASSMENT PROTECTION ORDERS

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**5.11.1. Purpose.** The Suquamish Tribe finds that the prevention of harassment is important to the health, safety, and general welfare of the tribal community. This chapter is intended to provide victims with a speedy and inexpensive method of obtaining a civil anti-harassment protection order preventing all further unwanted contact between the victim and the perpetrator. (Res. 2019-184, passed Oct. 15, 2019)

**5.11.2. Definitions.** As used in this chapter, the following terms have the following meanings:

(a) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, showing a continuity of purpose. Course of conduct includes, in addition to any other form of communication, contact, or conduct, the sending of electronic communication, but does not include constitutionally-protected free speech.

(b) "Court" means the Suquamish Tribal Court.

(c) "Credible threat of violence" means a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety or the safety of his or her immediate family, and that serves no legitimate purpose.

(d) “Employee” means every person or agent giving actual service in any business for an employer, whether unpaid or for wages or pay, whether the wages or pay are measured by the standard of time, piece, task, commission, or other method of calculation, and whether the service is given on a commission, concessionaire, or other basis.

(e) “Employer” means every person engaged in any business or enterprise within the boundaries of the Port Madison Indian Reservation that has one or more persons in service under any appointment, contract of hire, or apprenticeship, express or implied, verbal or written, regardless of whether the person is the owner of the business or is operating on a concessionaire or other basis.

(f) “Harassment” means a credible threat of violence or a knowing and willful course of conduct directed at a specific person that seriously alarms or knowingly and willfully annoys the person on a repeated basis, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress and that actually causes the petitioner to suffer substantial emotional distress or when the course of conduct would cause a reasonable parent to fear for the well-being of his or her child.

(g) “Judicial days” means calendar days except weekends, tribal holidays, and tribal office closure days.

(h) “Petitioner” means the person who seeks the anti-harassment protection order and, if the petition is granted, the protected person.

(i) “Respondent” means the person against whom the anti-harassment protection order is sought and, if the petition is granted, the restrained person.

(j) “Unlawful violence” means any assault or battery or stalking, but does not include lawful acts of self-defense or defense of others. (Res. 2019-184, passed Oct. 15, 2019)

**5.11.3. Determination of Course of Conduct.** In determining whether the respondent’s course of conduct serves any legitimate or lawful purpose, the Court should consider whether:

(a) Any current contact between the parties was initiated by the respondent only or was initiated by both parties;

(b) The respondent has been given clear notice that all further contact with the petitioner is unwanted;

(c) The respondent’s course of conduct appears designed to alarm, annoy, or harass the petitioner;

(d) The respondent is acting according to any statutory authority, including but not limited to acts that are reasonably necessary to:

- (1) Protect property or liberty interests;
- (2) Enforce the law; or
- (3) Meet specific statutory duties or requirements;

(e) The respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy, or of creating an intimidating, hostile, or offensive living and/or work environment for the petitioner; and/or

(f) Contact by the respondent with the petitioner or the petitioner's family has been limited in any way by any previous court order. (Res. 2019-184, passed Oct. 15, 2019)

**5.11.4. Who May Seek a Protection Order.** (a) A person who alleges to have suffered harassment as defined in §5.11.2(e) may seek an anti-harassment protection order prohibiting harassment as provided in this chapter.

(b) A parent or legal guardian of a minor under the age of eighteen (18), or a Tribal Child Welfare caseworker if the child is a Youth in Need of Care, may seek an anti-harassment protection order on behalf of the child.

(c) Any employer whose employee alleges to have suffered harassment as defined in §5.11.2(e), unlawful violence as defined in §5.11.2(j), or a credible threat of violence from any individual that can reasonably be understood to potentially be carried out or to have been carried out at the workplace may file a petition for an anti-harassment protection order on the employee's behalf and, at the Court's discretion, on behalf of any number of other employees at the workplace, and, if appropriate, other employees at the employer's other workplaces. (Res. 2019-184, passed Oct. 15, 2019)

**5.11.5. Ex Parte Temporary Protection Order.** (a) Upon filing a petition for an anti-harassment protection order, 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 to the respondent upon the filing of an affidavit which, to the Court's satisfaction, shows reasonable proof that the respondent has unlawfully harassed the petitioner and that great or irreparable harm will result to the petitioner if the temporary anti-harassment protection order is not granted.

(b) If the Court declines to issue an ex parte temporary anti-harassment protection order, the Court must state the particular reasons for its denial.

(c) An ex parte temporary anti-harassment protection order will be effective for a fixed period not to exceed twenty-one (21) calendar days, unless extended by the

Court, as set forth in S.T.C. §5.11.5(e). A full hearing, as provided in this chapter, will be set no later than twenty-one (21) calendar days from the issuance of the temporary order, unless the Court orders a continuance, as set forth in S.T.C. §5.11.5(e).

(d) The respondent must be personally served with a copy of the ex parte temporary anti-harassment protection order along with a copy of the petition and notice of the date set for the hearing. The court clerk will provide a copy of the ex parte temporary anti-harassment protection order along with a copy of the petition and notice of the date set for the hearing to the Suquamish Police Department (SPD), which will personally serve the respondent. If personal service is not possible, the Court may authorize service according to S.T.C. chapter 4.2 or its successor code. Any ex parte temporary anti-harassment protection order issued under this section must contain the date and time it was issued and the date the conditions of the order expire, and will be transmitted to the SPD within one (1) judicial day after issuance.

(e) Either party may request a continuance of the hearing, which the Court will grant on a showing of good cause. The request may be made in writing before or at the hearing, or orally at the hearing. The Court may also grant a continuance on its own motion. If the Court grants the continuance, the ex parte temporary anti-harassment protection order will remain in full force and effect during the time of any continuance ordered according to this section. In granting the continuance the Court may modify the terms of the temporary anti-harassment order.

(f) A petitioner may not obtain an ex parte temporary anti-harassment protection order against a respondent if the petitioner has obtained two (2) such ex parte orders against the same respondent within two (2) years, but has failed to obtain issuance of a final anti-harassment protection order, unless good cause for such failure can be shown. (Res. 2019-184, passed Oct. 15, 2019)

**5.11.6. Hearing on Petition.** (a) Within twenty-one (21) calendar days from the date that a petition for a temporary order is granted or denied, a hearing will be held on the petition. Personal service must be made upon the respondent not less than seven (7) calendar days before the hearing. If timely service cannot be made, the Court will set a new hearing date.

(b) If the temporary order restrains the respondent from having contact with his or her child(ren), or similar restrictions that may intrude on the respondent's constitutional rights, then the hearing on the petition must be held within fourteen (14) calendar days from the date the temporary order was issued.

(c) The respondent may file a response that explains, excuses, justifies, or denies the alleged harassment.

(d) At the hearing and at the Court's discretion or upon motion of either party, the hearing may be closed to all except the parties.

(e) At the hearing, the Court will hear evidence from both parties if present. If the Court finds by a preponderance of the evidence that unlawful harassment exists, a final order will issue prohibiting the harassment. (Res. 2019-184, passed Oct. 15, 2019)

**5.11.7. Relief Provided.** (a) The Court, in granting an ex parte temporary anti-harassment protection order or a final anti-harassment protection order, has broad discretion to grant such relief as the Court deems proper, including an order:

(1) Restraining the respondent from making any attempts to contact the petitioner and his or her family or household members as is necessary for their safety and welfare; and

(2) Restraining the respondent from making any attempts to keep the petitioner under surveillance; and

(3) Requiring the respondent to stay a stated distance from the petitioner's residence and workplace; and

(4) Specifying the penalty if the respondent fails to follow the terms of the order.

(b) The Court, in granting an ex parte temporary anti-harassment protection order or a final anti-harassment protection order, will not:

(1) Prohibit the respondent from exercising constitutionally-protected free speech, except that nothing in this section prohibits the petitioner from using other civil or criminal remedies to restrain conduct or communications not otherwise constitutionally protected; or

(2) Prohibit the respondent from the use or enjoyment of real property to which the respondent has a recognizable claim, unless that order is issued under S.T.C. chapter 9.1 or under a separate action begun with a summons and complaint to determine title or possession of real property. (Res. 2019-184, passed Oct. 15, 2019)

**5.11.8. Duration.** (a) In the Court's discretion, a final anti-harassment protection order issued after notice and hearing under this chapter may have a duration of no more than one (1) year, unless the Court finds that the respondent is likely to resume unlawful harassment of the petitioner when the order expires. If the Court so finds, the Court may enter an order to a fixed time greater than one (1) year or may enter a permanent anti-harassment protection order.

(b) At any time within three (3) months before the expiration of the order, the petitioner may apply for the order's renewal. The petition will state the reasons for the renewal. Upon receiving the petition for renewal, the Court will set a hearing not later than thirty (30) days from the filing date. Service will be made upon the respondent at least seven (7) days before the hearing. If timely service cannot be made, a new

hearing date will be set. If the underlying order expires because timely service cannot be made, the Court may enter an ex parte protection order extending the terms of the underlying protection order. The Court will 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 one (1) year, another fixed time period, or may enter a permanent order.

(c) Upon a motion with notice to all parties and after a hearing, the Court may terminate or modify the terms of an existing anti-harassment protection order if the respondent proves by a preponderance of the evidence that the respondent will not resume harassment of the petitioner if the order is terminated or modified. The petitioner bears no burden of proving that he or she has a current reasonable fear of harm by the respondent.

(d) A respondent may file a motion to terminate or modify an anti-harassment protection order under this section no more than once in every twenty-four (24) month period that the order is in effect, starting from the date of the order and continuing through any renewal. The Court will review a motion to modify or terminate to see if the motion establishes adequate cause for a hearing and, if not, the judge may deny the motion without a hearing. (Res. 2019-184, passed Oct. 15, 2019)

**5.11.9. Request for Reconsideration or Modification.** Upon motion with notice to all parties and after a hearing, the Court may modify the terms of an existing anti-harassment protection order. In any situation where an order is terminated or modified before its expiration date, the court clerk will, on or before the next judicial day, forward a true copy of the modified order or the termination order to the appropriate law enforcement agency named in the modified or terminated order. Upon receiving the order, the law enforcement agency will promptly enter it in the law enforcement data base or, if the order is terminated, remove the order from the law enforcement data base. (Res. 2019-184, passed Oct. 15, 2019)

**5.11.10. Service of Order.** (a) An anti-harassment protection order issued under this chapter will be personally served upon the respondent by the law enforcement agency for the location where the respondent resides, except as provided in §5.11.10(d).

(b) If the law enforcement agency cannot complete service upon the respondent within ten (10) days, they will notify the Court.

(c) Returns of service under this chapter will be made according to the applicable court rules.

(d) If an order entered by the Court states that the respondent appeared in person before the Court, the need for further service and proof of service is waived.

(e) In the event personal service cannot be perfected, petitioner(s) may seek an order from the Court permitting service by publication according to S.T.C. §4.2.4.

(f) The Court's order, entered after a hearing, does not need to be served on a respondent who fails to appear before the Court, if material terms of the order have not changed from those contained in the temporary order, and it is shown to the Court's satisfaction that the respondent has previously been personally served with the temporary order. (Res. 2019-184, passed Oct. 15, 2019)

**5.11.11. Record of Order.** (a) On the judicial day after the order is issued, a copy of the anti-harassment protection order granted under this chapter will be forwarded by the court clerk to the SPD and/or any appropriate law enforcement agency specified in the order. Upon receiving the order, the SPD will enter the order into any computer-based criminal intelligence information system available to the agency. The SPD must remove expired orders from the computer system. Entry into the law enforcement information system constitutes notice to all law enforcement agencies that the order exists.

(b) If an SPD law enforcement officer investigates an alleged violation of an order issued according to this chapter and the restrained person was not served before that contact, the officer will provide service as described in this chapter, and on the next judicial day file proof of service with the Court. SPD will update the criminal information system to reflect that service has been effected. (Res. 2019-184, passed Oct. 15, 2019)

**5.11.12. Violation of Order.** (a) Whenever an anti-harassment protection order is granted under this chapter and the respondent or restrained person knows of the order, a violation of the order's provisions is a gross misdemeanor.

(b) A public safety officer will arrest without a warrant and take into custody a person whom the officer has probable cause to believe has violated an order granted under this chapter. (Res. 2019-184, passed Oct. 15, 2019)

**5.11.13. Proceeding Additional.** Any proceeding under this chapter is in addition to other civil or criminal remedies. (Res. 2019-184, passed Oct. 15, 2019)

**5.11.14. Reciprocity.** (a) Anti-harassment protection orders issued by the Suquamish Tribal Court may be enforceable throughout the State of Washington under the Washington State Superior Court Civil Rule 82.5.

(b) Notice of reciprocal enforcement according to this section will be printed on all anti-harassment protection orders the Court issues. (Res. 2019-184, passed Oct. 15, 2019)

**5.11.15. Severability, Construction.** If any phrase, clause, part, sentence, provision, or section of this chapter is found to be invalid by a court of competent jurisdiction, the remainder of this chapter will not be affected and will remain in full force and effect and

continue to be in effect as if the invalid provision(s) were not a part of this chapter. If the operation of any clause, part, or section of this chapter is held to impair the obligation of contract or deny any person any right secured to her or him by the Constitution of the Suquamish Tribe or the United States Constitution, it is hereby declared that the remainder of the chapter would nevertheless be enacted without such invalid clause, part, or section. (Res. 2019-184, passed Oct. 15, 2019)

**5.11.16. Effective Date.** This chapter is effective as of November 18, 2019. (Res. 2019-184, passed Oct. 15, 2019)