

TABLED

Cherokee Council House
Cherokee North Carolina

Date: JUN 01 2021

ORDINANCE NO.: 472 (2021)

Short Title: An Ordinance to Clarify Cherokee Law Regarding Civil No-Contact Orders.

WHEREAS, the Eastern Band of Cherokee Indians, as a federally recognized Indian tribe, has the inherent sovereign authority to make its own laws to govern activities on Tribal lands; and

WHEREAS Chapter 50C regulating Civil No-Contact Orders has been in place since 2017; and

WHEREAS review of the law has found that there are a few modifications that will serve to provide further clarity to the law.

NOW THEREFORE BE IT ORDAINED by Tribal Council assembled, at which a quorum is present, that Chapter 50C of the Cherokee Code shall be modified as set forth in Exhibit 1, attached.

BE IT FINALLY ORDAINED, that all ordinances inconsistent with this ordinance are rescinded, and this ordinance shall become effective upon ratification by the Principal Chief.

Submitted by: Office of Attorney General

Exhibit 1

Sec. 50C-2. Definitions.

The following definitions apply in this Chapter:

- (a) *Abuse*. To physically or mentally harm, harass, intimidate, or interfere with the personal liberty of another.
- (b) ~~Civil no-contact order~~ *No-Contact Order*. An order granted under this Chapter, which includes a remedy authorized by Section 50C-6.
- (c) *Course of conduct*. The pattern of conduct composed of a series of acts over time, however short, evidencing a continuity of purpose.
- (d) *Harasses or harassment*. Knowing conduct, or engaging in a course of conduct, including written or printed communication or transmission, telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions directed at a specific person that torments, terrorizes, or terrifies that person, or causes substantial emotional distress in such person and that serves no legitimate purpose.
- (e) *Nonconsensual sexual contact*. ~~Where Sexual contact during which the touched person has not freely given consent to that contact or any is unable to consent given by the touched person was ineffectiveto such contact~~ due to incapacity or age.
- (f) *Sexual contact*. The intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person whether an adult or a minor with an intent to abuse, humiliate, harass, degrade or for the purpose of sexual gratification or arousal.
- (g) *Stalking*. Committing the crime of stalking as defined in § 14-5.5 of the Cherokee Code or:
 - (1) On more than one occasion, following, harassing, or being in the presence of another person without legal purpose with the intent to place the person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates; or;
 - (2) On more than one occasion, following, harassing, or being in the presence of another without legal purpose when there is a court order in effect prohibiting similar behavior; or;
 - (3) On more than one occasion, following, ~~harasses~~ harassing or ~~is being~~ in the presence of another person without legal purpose within five years of a prior conviction for stalking; or
 - (4) On more than one occasion, following, harassing, or being in the presence of another without legal purpose, when the other person is a minor under the age of 18.

(h) *Unlawful conduct.* The commission of one or more of the following acts by a person 18 years of age or older upon another person, ~~but does not include or~~ not including acts of self-defense or defense of others:-

(1) Nonconsensual sexual contact, including single incidences of nonconsensual sexual contact.

(2) Stalking.

(i) *Victim.* A person against whom an act of unlawful conduct has been committed by another person who is not an intimate partner of the person or would qualify for help under Chapter 50B.

Sec. 50C-3. Commencement of action; filing fees not permitted.

(a) An action is commenced under this Chapter by filing a complaint for a civil no-contact order in the Cherokee Court or by filing a motion in an existing civil action, ~~by either of the following:~~

(1) A person who is a victim of unlawful conduct; or that occurs in territory subject to the jurisdiction of the Tribe.

(2) A competent adult on behalf of a minor child or an incompetent adult; and

(3) When the who is a victim of unlawful conduct that occurs in territory subject to the jurisdiction of the Tribe or the victim of unlawful conduct resides in territory subject to the jurisdiction of the Tribe.

(b) No court costs or attorneys' fees shall be assessed for the filing or service of the complaint, or the service of any orders, except as provided in Rule 11 of the Rules of Civil Procedure.

(c) If the victim states that disclosure of the victim's address would place the victim or any member of the victim's family or household at risk for further unlawful conduct, the victim's address shall be omitted from all documents filed with the court before further dissemination. If the victim does not disclose an address under this subsection, the victim shall designate an alternative address to receive notice of any motions or pleadings from the opposing party.

(d) All documents filed, issued, registered, or served in an action under this Chapter relating to an ~~ex parte or permanent~~ civil no-contact order may be filed electronically.

Sec. 50C-4. Process for action for no-contact order.

(a) After the ~~petitioner~~ Plaintiff files a complaint or motion seeking a civil no-contact order, a hearing on that petition or motion shall be set by the court for a date within 14 days of filing. The clerk shall issue a notice of hearing and effect service of the summons, complaint, and other papers through the appropriate law enforcement agency where the defendant is to be served. If there is an immediate need for a protective order, then on motion of the ~~petitioner~~ Plaintiff or on its own motion, the court may issue a temporary civil no-contact order in accordance with § 50C-7.

(b) The summons issued pursuant to this Chapter shall require the ~~respondent~~ Defendant to answer within ten days of the date of service. Attachments to the summons shall include the

1 complaint for the civil no-contact order, and any temporary civil no-contact order that has
2 been issued, and any notice of hearing.

3 (c) Service of the summons and attachments shall be made by the chief of the Cherokee Indian
4 Police Department or by the chief's designee by personal delivery in accordance with Rule
5 4 of the Rules of Civil Procedure. If the ~~respondent~~ Defendant cannot with due diligence be
6 served by the chief by personal delivery, the ~~respondent~~ Defendant may be served by
7 publication by the ~~complainant~~ Plaintiff in accordance with Rule 4(j1) of the North Carolina
8 Rules of Civil Procedure.

9 (d) The court may enter a permanent civil no-contact order by default for the remedy sought in
10 the complaint if the ~~respondent~~ Defendant has been served in accordance with this section
11 and fails to answer as directed, or fails to appear on any subsequent appearance or hearing
12 date agreed to by the parties or set by the court.

13 **Sec. 50C-6. Civil no-contact order; remedies available.**

14 (a) Upon a finding that the victim has suffered unlawful conduct committed by the
15 ~~respondent~~ Defendant, the court may issue temporary or permanent civil no-contact orders
16 as authorized in this Chapter. In determining whether or not to issue a civil no-contact order,
17 the court shall not require physical injury to the victim.

18 (b) The court may grant one or more of the following forms of relief in its orders under this
19 Chapter:

20 (1) Order the ~~respondent~~ Defendant not to visit, assault, molest, or otherwise interfere with
21 the victim.

22 (2) Order the ~~respondent~~ Defendant to cease stalking the victim, including at the victim's
23 workplace.

24 (3) Order the ~~respondent~~ Defendant to cease harassment of the victim.

25 (4) Order the ~~respondent~~ Defendant not to abuse or injure the victim.

26 (5) Order the ~~respondent~~ Defendant not to directly or indirectly contact the victim by
27 telephone, written communication, or electronic means.

28 (6) Order the ~~respondent~~ Defendant to refrain from entering or remaining present at the
29 victim's residence, school, place of employment, or other specified places at times
30 when the victim is present.

31 (7) Order other relief deemed necessary and appropriate by the court, ~~including assessing~~
32 ~~attorneys' fees to either party.~~

33 (c) A civil no-contact order shall include the following notice, printed in conspicuous type: "A
34 knowing violation of a civil no-contact order shall be punishable as contempt of court which
35 may result in a fine or imprisonment."

36 **Sec. 50C-7. Temporary civil no-contact order.**

37 (a) A temporary civil no-contact order may be granted ex parte, without evidence of service of
38 process or notice, only if both of the following are shown:

(1) It clearly appears from specific facts shown by a verified complaint or affidavit that immediate injury, loss, or damage will likely result to the victim before the ~~respondent~~Defendant can be heard in opposition; and;

(2) Either one of the following:

a. The ~~complainant~~Plaintiff certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required, or;

b. The ~~complainant~~Plaintiff certified to the court that there is good cause to grant the remedy because the harm that the remedy is intended to prevent would likely occur if the ~~respondent~~Defendant were given any prior notice of the ~~complainant~~Plaintiff's efforts to obtain judicial relief.

(b) If the ~~respondent~~Defendant appears in court for a hearing on a temporary order, the ~~respondent~~Defendant may elect to file a general appearance and testify. Any resulting order may be a temporary order, governed by this section. Notwithstanding the requirements of this section, if all requirements of § 50C-9 have been met, the court may issue a permanent order.

(c) Every temporary civil no-contact order shall:

(1) Be endorsed with the date and hour of issuance.

(2) Be filed immediately in the clerk's office and entered of record.

(3) Define the injury, state why it is irreparable and why the order was granted without notice.

(4) Expire by its terms within 14 days after entry or upon entry or denial of a permanent order, whichever is sooner.

(5) Give notice of the date of hearing on the temporary order as provided in § 50C-10 of this chapter.

~~(d) Relief granted pursuant to a temporary order shall expire at such time as a final protective order is entered or denied.~~

Sec. 50C-8. Temporary no-contact orders when court not in session.

~~The chief trial court judge may designate at least one judge to~~ A judge or magistrate may be reasonably available to issue temporary civil no-contact orders when the court is not in session. When the court is not in session, the complainant Plaintiff may file for a temporary order before any judge or magistratedesignated to grant relief under this Chapter. If the judge or magistrate finds that the requirements of Section 50C-7 have been met, the judge or magistrate may issue a temporary civil no-contact order. Hearings held to consider temporary civil no-contact order pursuant to this section may be held via video conference.

Sec. 50C-9. Permanent civil no-contact order.

Upon a finding that the victim has suffered an act of unlawful conduct committed by the ~~respondent~~Defendant, a permanent civil no-contact order may issue if the court additionally finds that process was properly served on the ~~respondent~~Defendant, the ~~respondent~~Defendant has

1 answered the complaint and notice of hearing was given, or the ~~respondent~~Defendant is in
2 default. No permanent civil no-contact order shall be issued without notice to the
3 ~~respondent~~Defendant. Hearings held to consider permanent relief pursuant to this section shall
4 not be held via video conference.

5 **Sec. 50C-10. Duration; extension of orders.**

6 (a) A temporary civil no-contact order shall be effective for not more than ~~ten~~fourteen days as
7 the court fixes, unless within the time so fixed the temporary civil no-contact order, for
8 good cause shown, is extended for a like period or a longer period if the
9 ~~respondent~~Defendant consents. The reasons for the extension shall be stated in the
10 temporary order. If a temporary ex parte civil no-contact order:

11 (1) Is granted without notice and a motion for a permanent civil no-contact order is made,
12 it shall be set down for hearing within ~~ten~~fourteen days from the date of the motion.

13 (2) Is denied, the trial on the plaintiff's motion for a civil no-contact order shall be set for
14 hearing within ~~30~~ten~~fourteen~~ days from the date of the denial.

15 (b) When the motion for a permanent civil no-contact order comes on for hearing, the
16 ~~complainant~~Plaintiff may proceed with a motion for a permanent civil no-contact order,
17 and, if the ~~complainant~~Plaintiff fails to do so, the judge shall dissolve the temporary civil
18 no-contact order. - On two days' notice to the ~~complainant~~Plaintiff or on such shorter notice
19 to that party as the judge may prescribe, the ~~respondent~~Defendant may appear and move its
20 dissolution or modification. In that event the judge shall proceed to hear and determine such
21 motion as expeditiously as the ends of justice require.

22 (1c) A permanent civil no-contact order shall be effective for a fixed period of time not to
23 exceed two years.

24 (2d) Any order may be extended one or more times, as required, provided that the requirements
25 of C.C. § 50C-7 or C.C. § 50C-9, as appropriate, are satisfied. The court may renew an
26 order, including an order that previously has been renewed, upon a motion by the
27 ~~complainant~~Plaintiff filed before the expiration of the current order. The court may renew
28 the order for good cause. The commission of an act of unlawful conduct by the ~~respondent~~
29 Defendant after entry of the current order is not required for an order to be renewed. If the
30 motion for extension is uncontested and the ~~complainant~~Plaintiff seeks no modification of
31 the order, the order may be extended if the ~~complainant~~Plaintiff's motion or affidavit states
32 that there has been no material change in relevant circumstances since entry of the order and
33 states the reason for the requested extension. Extensions may be granted only in open court
34 and not under the provisions of C.C. § 50C-8.

35 (3e) Any civil no-contact order expiring on a day the court is not open for business shall expire
36 at the close of the next court business day.

37 **Sec. 50C-11. Notice of orders.**

38 (a) The clerk of court shall deliver to the chief of the Cherokee Indian Police Department or the
39 chief's designee a certified copy of any civil no-contact order on the same day that it is
40 issued.

- ..
- 1 (b) If the ~~respondent~~Defendant was not present in court when the order was issued, the
2 ~~respondent~~Defendant ~~may shall~~ be served in the manner provided for service of process in
3 ~~civil proceedings~~with a copy of the order in accordance with Rule 4(j) of the North Carolina
4 Rules of Civil Procedure. If the summons has not yet been served upon the
5 ~~respondent~~Defendant, it shall be served with the order. Law enforcement agencies shall
6 accept receipt of copies of the order issued by the clerk of court by electronic or facsimile
7 transmission for service on defendants.
- 8 (c) A copy of ~~the order~~any order issued under this Chapter shall be issued promptly to and
9 retained by the Cherokee Indian Police Department.

10