

SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 29

RESTRAINING ORDER PROCEDURES ACT

S.W.S.T. CODE

Amendment

New Adoption

Judicial Approved

10-07-78

Council Adopted

10-07-78

- 29-01-01 **TITLE**
This law shall be known as the Sisseton-Wahpeton Sioux Tribe Restraining Order Procedures Act.
- 29-02-01 **RESTRAINING ORDER PROCEEDING**
- 29-02-02 **Commencement of Proceeding**
A restraining order proceeding shall be commenced by filing a verified statement of complaint with the Clerk.
- 29-02-03 **Temporary Restraining Order**
A restraining order may be granted when it shall appear by the complaint and the testimony presented to a Judge of the Tribal Court that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of some act, the commission or continuance of which would produce irreparable injury to the plaintiff.
- 29-02-04 **Notice**
A restraining order may be granted without written or oral notice to the adverse party only if:
1. It clearly appears from specific facts shown by affidavit or by the verified complaint or other sworn statement presented to a Judge of the Court that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard in opposition to the restraining order; and
 2. An effort is made by the Tribal Police to make personal service on the defendant of the complaint and notice of the time and place of hearing. The police officer shall file an affidavit with the Court stating whether service was made, and in the event that service was not made, the affidavit shall state the reasons making it impossible to make service.
- 29-02-05 **Judge to Issue Restraining Order**
Only a Judge of the Tribal Court may issue a restraining order.

29-02-06 Provisions of Restraining Order

Every restraining order granted without notice having been served on the adverse party shall state the date and hour of issuance; shall be immediately filed with the Clerk of Court; shall define the injury to the plaintiff and why it is irreparable and why the order was granted without notice; and, shall state the period of time that the restraining order shall be in effect, not to exceed five (5) days, as the Court fixes.

29-03-01 SECURITY FOR DAMAGES

No restraining order shall be issued unless the plaintiff deposits with the Clerk of Courts, security in such sum and with or without sureties as the Court deems proper, for the payment to the defendant of such costs and damages to be determined by the Court to have been incurred or suffered by any defendant who is found by the Court to have been wrongfully restrained.

29-04-01 HEARING WHEN NOTICE NOT SERVED

29-04-02 Hearing

When a restraining order is granted without notice having been served on the defendant, a copy of the complaint and the order shall be served on the defendant at the earliest possible time after the issuance of the order, together with a notice stating a time and place for a hearing for the purpose of giving the defendant an opportunity to show cause why the restraining order should be vacated and for the purpose of giving the plaintiff an opportunity to show cause why the restraining order should be extended for a specified time or indefinitely subject to further order of the Court upon request by either the plaintiff or the defendant for a modification of the order.

29-04-03 Disposition of Complaint

At the hearing, if the plaintiff does not proceed to show cause as provided in 29-04-02 of this Section, the Court shall vacate the restraining order and dismiss the complaint.

29-04-04 Vacating or Modifying Restraining Order

If the restraining order is granted by a Judge of the Court without notice having been served on the defendant; the defendant at any time prior to the hearing provided for in 29-04-02 of this Section, may apply, upon notice to the plaintiff, to a Judge of the Court to vacate or modify the restraining order. The application shall be made in an affidavit of the defendant. At the earliest possible time, the Court shall hold a hearing on the defendant's application. If the plaintiff does not appear at the hearing or offer evidence in support of the restraining order, the Court shall vacate the order and dismiss the complaint.

29-05-01 HEARING WHEN NOTICE SERVED

At any hearing where the plaintiff presents evidence in support of the complaint and the defendant has received notice of the hearing and offers or does not offer evidence, the Court shall enter an order based on the evidence. The order shall grant, deny, modify, or vacate a restraining order as required by the type and state of the proceedings.

29-06-01 NO RESTRAINING ORDER INSTEAD OF MONEY DAMAGES

No restraining order shall be issued in any circumstances where money damages would provide the plaintiff with adequate relief. In such circumstances, relief shall be sought in a civil action under the procedures in this Code applicable to all civil actions.

29-07-01 SEVERABILITY

If any clause, sentence, paragraph, section or part of this code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgement shall have been rendered.

S.W.S.T. CODE

Amendment

New Adoption

Judicial Approved

02-24-88

Council Adopted

03-01-88

Hist: Approved by Council 10/07/78.