

SISSETON-WAHPETON OYATE
OF THE LAKE TRAVERSE RESERVATION
CHAPTER 29
RESTRAINING ORDERS CODE PROCEDURES ACT

TABLE OF CONTENTS

TITLE 1	GENERAL PROVISIONS	X
TITLE II	DEFINITIONS	X
TITLE III	PROCEEDINGS	X

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**SISSETON-WAHPETON OYATE
OF THE LAKE TRAVERSE RESERVATION**

CHAPTER 29

RESTRAINING ORDERS CODE

**TITLE I
GENERAL PROVISIONS**

29-01-01 Title.

This ~~Code law~~ shall be known and cited as the Sisseton-Wahpeton Oyate Restraining Orders Code.

29-01-02 Constitutional and Inherent Authority.

This Code is enacted pursuant to the inherent sovereign powers of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, its treaties and the express powers delegated to Tribal Council in Article VII of the Revised Constitution and By-Laws of the Sisseton-Wahpeton Oyate.

29-01-03 Findings.

The Sisseton-Wahpeton Oyate Tribal Council recognizes the need to protect the members and community of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.

29-01-04 Purpose.

The purpose of this Ordinance is to provide clear procedures and standards applicable to members of the Sisseton-Wahpeton Oyate and the community of the Lake Traverse Reservation. This Code shall be construed to promote the following:

- A. The Sisseton-Wahpeton Oyate is a sovereign and federally recognized Treaty Tribe, pre-existing and dating the creation of the United States and exercising inherent jurisdiction. Our treaties with the United States guaranteed territorial integrity, and reserved a “permanent home” on the Lake Traverse Reservation.
- B. The jurisdiction of the Sisseton-Wahpeton Oyate “shall extend to the lands lying in the territory within the original confines of the Lake Traverse Reservation as described in Article III of the Treaty of February 19, 1867 and those lands subsequently acquired by the Sisseton-Wahpeton Oyate. Article I – Jurisdiction, Revised Constitution and By-Laws of the Sisseton-Wahpeton Oyate.
- C. Our most important resource is our people and the presence of crime and violence within our communities poses an imminent and serious threat to the health, safety, and welfare of our people and the Sisseton-Wahpeton Oyate as a whole. By treaty, the Sisseton-Wahpeton

Oyate has the right to adopt laws, including laws “for the security of life and property” of its members and as such shall take precedent over any general laws of applicability.

29-01-05 Applicability.

This Ordinance shall apply to individuals living and visiting the Lake Traverse Reservation.

29-01-06 Sovereign Immunity.

By adoption, and subsequent amendments, of this Code, the Tribe does not waive its sovereign immunity or consent to suit in any court, whether the court is federal, tribal, or state, and the adoption and amendment does not nor shall be construed to be a waiver of the sovereign immunity of the Tribe nor a consent to suit against the Tribe in any court.

29-01-07 Severability.

Should any provision set forth in this Ordinance, or application of this Ordinance to any person or circumstance, be held invalid by the Sisseton-Wahpeton Oyate Tribal Court, such a determination shall not affect, impair, or invalidate the remainder of the provisions, or the application of the remaining provisions to another person or circumstance.

29-01-08 Effective Date.

This Code shall be effective on the date of formal approval and adoption by the Tribal Council.

29-01-09 Computing Time.

The following rules in computing any time period specified in this Ordinance when the period is stated in days or a longer unit of time. Exclude the day of the event that triggers or starts the period, count every day, including intermediate Saturdays, Sundays, and legal holidays, and include the last day of the period. If the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

TITLE 2
DEFINITIONS

29-02-01 Definitions.

- A. “Clerk” shall mean a Clerk of Courts of the Sisseton-Wahpeton Oyate Tribal Court.
- B. “Restraining Order” shall mean a court order enjoining a person from taking a particular action in relation to another person.

TITLE 3
PROCEEDINGS

29-03-01 **Commencement of Proceedings**

A restraining order proceeding shall be commenced by filing a verified statement of complaint with the Clerk.

29-03-02 **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.

29-03-03 **Notice**

A restraining order may be granted without written or oral notice to the adverse party only if:

- A. 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 served by the Court or heard in opposition to the restraining order; ~~and~~
- B. ~~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.~~

29-03-04 **Judge to Issue Restraining Order**

Only a Judge of the Tribal Court may issue a restraining order.

29-03-05 **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)~~ twenty (20) days, ~~as the Court fixes.~~

29-03-06 **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.

29-03-07 Hearing when Notice not Served

A. 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.

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

C. 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.

D. 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.

E. 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 cause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgement shall have been rendered.~~