



# Order for Protection Q & A

## *What is an Order for Protection?*

### *How to Petition for an Order for Protection?*

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#### ***Domestic Abuse and Harassment Order for Protection***

There are two kinds of Order for Protection (OFP) granted by this Court:

1. Harassment; and
2. Domestic Abuse

Besides petitioning the tribal court, either type of OFP can also be requested at county courts. A party asking for protection is not required to have an attorney to file for an OFP – but it is helpful.

If a person seeking an OFP does not meet the legal criteria, he or she may still pursue the matter using other means, such as talking to the local law enforcement authorities to see if a complaint can be filed against the harassing or abusing party.

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#### ***What is the difference between harassment and domestic abuse?***

Domestic abuse is a situation of “immediate and present danger of domestic abuse.” The petitioner must allege specific facts of abuse or fear of abuse by a household member, including a description of what happened and specific dates.

Domestic abuse is defined in 8MLBSA§401 as “physical harm, bodily injury, assault or the infliction of fear or imminent physical harm, bodily injury or assault, between family or household members.” If this situation does not exist, an Order will not be granted.

The person restrained is the abusive person who has household ties to the applicant. If the person is not part of the household or was not previously part of household, then the court will not grant a domestic abuse OFP. In that case, a harassment OFP may be appropriate.

***Legal Authority for Domestic Abuse OFP is base on 8 Mille Lacs Band Statutes Annotated § 401 – 415.***

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## ***What is harassment?***

Harassment is “a single act of physical or sexual assault; or repeated, intrusive, or unwanted acts, words or gestures that are intended to adversely affect the safety, security, or privacy of another...” M.S.A. 609.748 Subd. 1(a)(1).

Harassment also includes picketing a residence, and a pattern of attending public events after the party has been informed it is considered harassment to another person. M.S.A. 609.748 Subd. 1(a)

The key to a harassment OFP is that the behavior is a repeated pattern. If this is a one-time event, a petitioner is urged to talk to law enforcement about filing a complaint of the alleged behavior. This Court cannot grant an OFP for a one-time conflict between parties, unless there is a physical attack involved. A single act or incident is not harassment.

*Legal Authority for Harassment Order for Protection is based on Minnesota Statutes Annotated 609.748.*

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## ***Who can file?***

An order for protection filed under the domestic abuse statute only applies to people living (or previously living) in the same household. This can be spouses, boyfriend, girlfriend, parent, child, other blood relatives, or roommates. The person filing the OFP petition must be doing so on behalf of her/himself or on behalf of a minor family or household member. Other than for a minor, a person cannot file for an OFP for someone else, unless they are acting as a lay advocate and have the person’s permission

Harassment OFPs do not require the parties to be related or share a household.

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## ***Steps to getting an OFP***

1. File petition for OFP – a temporary OFP may be granted.
2. Notice of the OFP and hearing must be personally served on the party to be restrained.
3. Hearing to determine whether an OFP of up to one year is needed.
4. Permanent (One year) OFP is granted or denied.
5. Personal service to other party makes the OFP effective.
6. There are no emergency hearings because the Court will issue a temporary order, if needed.

### ***What is a temporary order and hearing?***

*The Court can issue an ex parte (without the other party being present) temporary order, but a hearing must still be held within 14 days to make the order effective for a year.*

### ***Personal service is required.***

*The other party must have personal service (order delivered to the party in person) for the order to be effective.*

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## ***What kind of relief is available?***

The Court's OFP can give the following types of relief after the other party is given notice and a hearing.

- Restrain any party from committing acts of domestic abuse
- Exclude the abusing party from the dwelling they share of residence of the petitioner
- Award temporary custody or visitation of minor children of the parties
- Establish temporary support for minor children or spouse
- Provide counseling or other social services
- Any other relief that is suitable in the discretion of the court

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## ***How long is an OFP effective?***

A domestic abuse OFP issued by this Court cannot exceed one year.

A harassment OFP issued by this Court is limited to a maximum of two years, except under certain circumstances which allow an order to be in effect for up to 50 years.

## ***What must be explained in the petition?***

- Describe the situation – as in what happened, where, when, who witnessed, what was the injury caused, is there any documentation of the injury, basis for fear of immediate harm, etc. Be specific.
- For a domestic abuse OFP, there must be an explanation that the abuser was or is a household member.

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## ***How soon does the OFP go into effect?***

The OFP goes into effect as soon as it is personally served upon the party you are seeking protection from. Be sure to keep a copy of the OFP papers to show law enforcement officers in case there is ever an incident.

## ***What happens if the OFP is violated by the abuser?***

The party who is restrained by an OFP will be charged with a misdemeanor. Mille Lacs Band Statutes do not have any provision for arrest or removal of the violator.

### **NOTE:**

- The Court will provide a simple form for harassment or domestic type petition. Along with this form are instructions to assist you.
- A person filing the petition is not required to have an attorney – but it is helpful.
- There is no filing fee or service of process fee to file a petition for OFP.
- It is the Petitioner's responsibility to provide a current address of the Respondent. The court cannot serve the initial petition if the Respondent's address is not provided.