

## How do I file?

*There are three (3) things that need to be filed with the Trial Court.*

- *Petition for Release of Per Capita Distribution*
- \$50.00 Filing Fee
- Evidence and statements that indicate satisfaction of the 4-Part Test



## What is the 4-Part Test?

- (1) The request is for the benefit of a beneficiary's health, education or welfare.
- (2) The request is a necessity, not merely a want or a desire.
- (3) The parent(s) or guardian(s) must demonstrate a special financial need.
- (4) The petitioner must provide evidence of exhaustion of tribal funds and public entitlement programs.

### HCN TRIAL COURT

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## HCN TRIAL COURT

*Answering Your  
Questions About*

***Accessing  
Trust Fund  
Monies***

***(CTF & ITF)***

## **Petition**

A party seeking to access monies from a trust fund must file a written *Petition* with the Court. Parties may obtain a copy of the *Petition for Release of Per Capita Distribution* on the Court's website at <http://www.ho-chunknation.com/UserFiles/Petition%20for%20Release%20of%20Per%20Capita%2007.pdf>. Parties can also pick up a copy of the *Petition* at the Court or have a copy mailed to them by contacting the Court at the numbers listed on the back page. A party may petition the Court to access monies without using the *Petition* form, but must make sure that the self-generated petition includes the following information:

- A heading with the names, dates of birth, and tribal enrollment numbers of the minor child(ren) or ward(s)
- The name, address, telephone number, place of occupation (or stating that one is unemployed) of the petitioner (parent, legal guardian, or adult beneficiary)
- Jurisdictional statement (the law governing the *Petition for Release of Per Capita Distribution* is the HO-CHUNK NATION PER CAPITA DISTRIBUTION ORDINANCE, 2 HCC § 12 (2006))
- A statement of purpose (that the *Petition* is filed on behalf of the minor child(ren)/ ward(s) for the benefit of their health, education and welfare because the needs of such person are not met through other Tribal funds or other state or federal entitlement programs)
- Four descriptive sections must be included:
  - The request shall benefit the health education and/or welfare of the ward(s)/child(ren) in the following manner:
  - The ward(s)/minor child(ren) need(s) these funds because:
  - I am financially unable to provide, in whole or in part, for the identified needs of the ward(s)/minor child(ren) based upon the following:
  - Available tribal, state and federal resources and/or entitlements are not

sufficient to meet the current needs of the ward(s)/minor child(ren) because:

## **Filing Fee**

All *Petitions* must be accompanied by a \$50.00 filing fee. See *HCN R. Civ. P.*, Appendix. If you cannot afford to pay the filing fee, you can fill out an *Affidavit and Order to Waive Fees and Costs*. The *Petition* will not be considered filed until either the fee is paid or the Judge approves the *Affidavit* to waive the filing fee. The *Affidavit* is available on the Court's website at <http://www.ho-chunknation.com/UserFiles/Affidavit%20and%20Order%20to%20Waive%20Fees.pdf>.

## **Summons & Answer**

Once a *Petition* is filed and a *Summons* is issued to the respondent, the respondent has twenty (20) days to respond to the request. *HCN R. Civ. P.*, 5(A)(2). The respondent, the Office of Tribal Enrollment, is represented by the Department of Justice (hereinafter DOJ). If, at the end of the twenty (20) days, the DOJ has not responded in writing to the Court and the petitioner, the Court may proceed and enter an *Order*. *Id.* However, the DOJ may answer within the specified timeframe and request additional information, recommend that the Court grant or deny the *Petition*, and/or request a *Fact-Finding Hearing*.

## **Length of Process**

As aforementioned, the DOJ has twenty (20) days to respond to the request. *Id.* So, the process may take at least twenty-one (21) days (the day of filing does not count towards the twenty (20) days). After that, how long it will take depends on various factors such as the Court's caseload, whether a hearing is scheduled or if additional information is required. If additional information is required, the petitioner must serve the other parties to the case with all documents submitted to the Court and notify the Court of such by filing a *Certificate of Service*

available at <http://www.ho-chunknation.com/UserFiles/Certificate%20of%20Service%2005.pdf>. The Court has no control over what kinds of cases are filed, and juvenile and domestic violence/elder abuse cases will **always** take precedence over any other type of action. Incomplete *Petitions* and failure to pay the filing fee will also hold up the process. As a general rule of thumb, count the entire process taking anywhere from one to three months.

## **Four-Part Test**

The Court is restricted by Ho-Chunk Nation law on what types of requests it may grant. The Court uniformly applies a 4-part test to adhere to these restrictions. The request must demonstrate (1) a benefit to a beneficiary's health, education or welfare; (2) a necessity, not merely a want or a desire; (3) a special financial need on behalf of the parent(s) or guardian(s); and (4) verification of exhaustion of tribal funds and public entitlement programs. When you file your *Petition*, include evidence and statements that indicate you satisfy this test.

## **Accounting & Return of Unused Monies**

If the Court grants the Petitioner's request in full or in part, the Petitioner must "maintain records and account to the Trial Court in sufficient detail to demonstrate that the funds disbursed were expended as required by [the PER CAPITA ORDINANCE] and any other applicable federal law." PER CAPITA DISTRIBUTION ORDINANCE, § 12.8c(2). The Petitioner is required to file an accounting along with relevant documentation (*e.g.*, receipts and invoices) to the Court within three (3) months after receipt of the disbursement, confirming the specified use of the funds. Failure to do so may subject the petitioner to the contempt powers of the Court pursuant to the HO-CHUNK NATION CONTEMPT ORDINANCE and/or repayment of the amount advanced from the trust fund. The petitioner must submit any excess funds to the Court in the form of a check.