

INSTRUCTIONS FOR PETITION FOR ORDER FOR PROTECTION

These instructions are only intended to provide information on how to fill out this form. It is not intended to substitute legal advice. There may be additional documents and procedures for your particular type of civil action. If you have any legal questions regarding the specific facts of your case, please consult with an attorney.

For other questions, you may contact the Trial Court at (715) 284-2722. In addition, copies of the applicable law can be found on the Nation's website located at www.ho-chunknation.com/HCNLaws.aspx or by contacting the Ho-Chunk Nation Legislature at (715) 284-9343 or (800) 294-9343.

Do not include these instruction sheets when you file the completed form.

Petition:

A petition is an initial pleading that starts an action and states the basis for the court's jurisdiction, the basis for the petitioner's claim, and the demand for relief.

The petitioner is the party who brings the action to court i.e. the person who fills out the petition.

The respondent is the party being sued in the action i.e. the person who the petition is brought against.

Instructions:

- **Page 1, Lines 1-8:** Enter your full, legal name on the petitioner line. There can be more than one petitioner. Enter the respondent's full, legal name on the respondent line. There can be more than one respondent. You do not need to write a case number. A case number will be assigned by the Court.
- **Page 1, Line 9:** A cause of action is a factual situation that entitles one person to obtain a remedy in court from another person.
- **Page 1, Number 1:** Enter your name and the respondent's name and address on the lines provided.
- **Page 1, Number 2:** Check the corresponding box that identifies which law supports this action.
- **Page 1, Number 3:** Provide a summary of the incident and circumstances resulting in this action.
- **Page 1, Lines 24-26:** Jurisdiction is the court's power to exercise authority over all persons and things within its territory and to hear and decide a case or issue in

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dispute. The petitioner must show that the Ho-Chunk Nation Trial Court has jurisdiction over the action and the parties in the action.

- **Page 1, Number 1(a):** Check the box if the incident occurred on tribal land.
- **Page 1, Number 1(b):** Check the box if the petitioner lives on tribal trust land of the Ho-Chunk Nation.
- **Page 1, Number 1(c):** Check the box if the respondent lives on tribal trust land of the Ho-Chunk Nation AND the petitioner and respondent are family or household members.
- **Page 2, Number 2(a):** Check the box if the petitioner is a member of the Ho-Chunk Nation.
- **Page 2, Number 2(b):** Check the box if the petitioner lives on tribal trust land of the Ho-Chunk Nation.
- **Page 2, Number 3(a):** Check the box if the respondent is a member of the Ho-Chunk Nation.
- **Page 2, Number 3(b):** Check the box if the respondent lives on tribal trust land of the Ho-Chunk Nation.
- **Page 2, Number 3(c):** Check the box if the court has personal jurisdiction over the respondent for other reasons. If you checked the box, state why the court has personal jurisdiction.
- **Page 2, Lines 17-21:** Read the statement set forth in this section.
- **Page 2, Lines 25-28:** A request for relief is a request for a determination of the rights and liabilities of one or more parties in an action that a legal authority allows the court to decide by a judgment. In simpler terms, a request for relief is what you are asking the court to do with your case i.e. what do you want to occur in your case.
- **Page 3, Number 1(a):** Check the box if you want the Court to issue an order stopping the respondent from threatening to commit or committing acts of domestic abuse against yourself and any family or household members. List the names of the family members or household members on the lines provided, if any.

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- **Page 3, Number 1(b):** Check the box if you want the court to issue an order prohibiting the respondent from harassing, menacing, annoying, telephoning, contacting, or otherwise interfering or communicating with you.
- **Page 3, Number 1(c):** Check the box if you want the court to issue an order requiring the respondent to stay away from your residence, school, place of employment, or any other place you or your family or household members visit. If requesting an order requiring the respondent to stay away from your school, state the name of your school on the line provided. If requesting an order requiring the respondent to stay away from places you or your family or household members visit, state the name of the places on the line provided.
- **Page 3, Number 1(d):** Check the box if you want the court to issue an order prohibiting the respondent from using or possessing a firearm or other weapon. List the weapons on the line provided.
- **Page 3, Number 1(e):** Check the box if you want the court to issue an order prohibiting the respondent from removing a minor child from the jurisdiction of the Court.
- **Page 3, Number 1(f):** Check the box if you want the court to issue any other relief that you deem necessary.
- **Page 3, Number 1(g):** Check the box if you want the court to issue an order granting you possession of any essential personal effects.
- **Page 3, Number 1(h):** Check the box if you want the court to issue an order granting you possession and use of an automobile.
- **Page 3, Number 1(i):** Check the box if you want the court to issue an order removing or excluding the respondent from your residence. State how far away the court should require the defendant to stay from your residence.
- **Page 4, Number 1(j):** Check the box if you want the court to issue an order granting you temporary custody of the parties minor child(ren). For each child, state their name and date of birth.
- **Page 4, Number 2:** Read the statement set forth in this section.
- **Page 4, Number 3(a):** Check the box if you want the court to issue an order specifying arrangements for visitation with any minor child by the respondent.

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- **Page 4, Number 3(b):** Check the box if you want the court to issue an order prohibiting the respondent from transferring, encumbering or otherwise disposing of specified property. List the property on the line provided.
- **Page 4, Number 3(c):** Check the box if you want the court to issue an order requiring the respondent to pay your attorney's fees.
- **Page 4, Number 3(d):** Check the box if you want the court to issue an order requiring the respondent pay/reimburse you for any of the following:
 1. Rent, Mortgage, child and spousal support.
 2. Expenses associated with the domestic abuse.
 3. Costs and fees incurred in bring this action.
 4. Emergency monetary relief.
- **Page 4, Number 3(e):** Check the box if you want the court to issue any other relief that you deem necessary.
- **Page 5, Lines 7-19:** A witness is someone who sees, knows, or can vouch for something. List any people that you intend to call to provide testimony about the domestic abuse. For each person listed, provide their name, address, and phone number.
- **Page 5, Lines 20-25:** Provide the names of any other non-tribal law enforcement agency that should be notified, if any, if this court issues a protective order.
- **Page 6, Lines 1-28:** If you are self-represented, you must date and sign the document. If you are represented by a lawyer, the lawyer must date and sign the document.

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**IN THE
HO-CHUNK NATION TRIAL COURT**

**PETITION FOR ELDER PROTECTION
ORDER**

_____,
Petitioner,

v.

_____,
Respondent.

Case No.: EP _____
[assigned by the Court]

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I. CAUSE OF ACTION

1. Pursuant to the ELDER PROTECTION ACT, 4 HCC § 1, the petitioner, a/the: *(Check only one)*

HCN Tribal Elder

HCN Children and Family Services, on behalf of a HCN Tribal Elder

files this action requesting an *Elder Protection Order* against the
respondent,_____.

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2. The Elder allegedly subject to abuse, neglect or exploitation is:

Full name: _____;

Enrollment number: 439A00 _____.

DOB: _____.

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--IMPORTANT--

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For the protection of the parties, please do not include within this *Petition* the mailing or physical address, telephone number, e-mail address, or other contact information of the affected Elder. Such information must be included within the attached *Confidential Supplement*, which will not be disclosed to the respondent or general public.

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3. The following information relates to the **RESPONDENT** alleged to have caused or

1 threatened to cause abuse, neglect or exploitation of the Elder:

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RESPONDENT'S INFORMATION

1. Name: _____

2. Maiden name (if applicable): _____

3. Date of Birth: _____

4. Physical Address (last known): _____

City State Zip Code

5. Mailing Address (last known): _____

City State Zip Code

5. Phone: (_____) _____ (_____) _____
Home Work

6. The respondent is a member of the Ho-Chunk Nation: Yes or No.

Respondent's enrollment number (if known) is: 439A00 _____.
(four numbers)

7. Respondent's relationship to Elder: _____.

4. The respondent has subjected or threatened to subject a Ho-Chunk Nation Elder to the following: (check all that apply)

Physical Abuse: Intentional or reckless infliction of bodily harm, or attempting to cause physical harm, bodily injury, or assault on an Elder or the Elder's family or caretaker;

Sexual Abuse: Any non-consensual sexual contact, including unwanted touching, sexual assault, and battery. This also includes unreasonable behavior toward an Elder of a sexual nature that causes physical, emotional, or mental injury to an Elder;

Emotional Abuse: Language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, and that does or reasonably could intimidate, humiliate, threaten

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frighten, or otherwise harass the individual to whom the conduct or language is directed;

Verbal Abuse: Deliberate oral statements made toward an Elder which are meant to insult, frighten, humiliate, threaten, and/or to demean an Elder;

Exploitation: Taking unjust advantage of an elder, financially or otherwise, for one's own benefit;

Neglect: (1) Failure of a caregiver, as evidence by an act, omission, or course of conduct, to endeavor to secure or maintain adequate care, services, or supervision for an individual including food, clothing, shelter, or physical or mental health care, and creating significant risk or danger to the individual physical or mental health; or (2) The interference with the delivery of necessary services or resources; or (3) The failure to report abuse, neglect, self-neglect or exploitation of an Elder; or (4) The failure to provide services or resources essential to the Elder's practice of his or her customs, traditions, or religion; or (5) The abandonment of an Elder by his or her family, guardian, or caretaker.

5. The Elder is self-neglecting himself or herself and intervention is necessary to protect the Elder. *(check if applicable)*

6. Please describe in your own words the specific facts or circumstances of alleged Elder abuse, neglect or exploitation. *(Include dates of incidents, places where incidents occurred and injuries suffered, if any. List the most recent incident first and specify whether weapons or children were involved. Attach additional sheets if necessary.)*

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II. LIST OF WITNESSES THAT MAY BE CALLED IN THIS CASE:

I may call the following witnesses to testify about the alleged Elder abuse, neglect or exploitation: *(list as many as you would like)*

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

III. JURISDICTION

This Court has original jurisdiction over this case pursuant to the “cases and controversy” clause of the Ho-Chunk Nation Constitution, Art. VII, § 5(a), providing that the Trial Court shall have “original jurisdiction over all cases and controversies,” in law and equity arising under the Constitution, laws, customs, and traditions of the Ho-Chunk Nation. This Court is authorized under the ELDER PROTECTION ACT, 4 HCC § 1, and CLAIMS AGAINST PER CAPITA ORDINANCE, 2 HCC § 8, to protect the Nation’s Elders through injunctive relief and to require the respondent to pay restitution for damages resulting from his or her wrongdoing.

1 **IV. NOTICE & HEARING**

2 A hearing on the Petition shall be conducted with the purpose of protecting the Elder only
3 when necessary and only to the extent shown by the facts and using the least restrictive
4 alternatives. ELDER PROTECTION ACT, 4 HCC § 1.21(a). A hearing on the Petition shall be held
5 within forty-five (45) days of filing of the Petition. If emergency protection is necessary, an
6 *Elder Protective Restraining Order* may be sought.

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8 **IV. REQUEST FOR RELIEF**

9 I request that the Court grant the following relief in the *Elder Protection Order*: (Check all
10 that apply)

- 11 An order removing the individual(s) who abused, neglected, or exploited an Elder
12 from the Elder's home immediately;
- 13 An order having CFS facilitate a move for the Elder from the place where the abuse,
14 neglect, self-neglect, or exploitation has taken or is taking place;
- 15 An order restraining the individual(s) who abused, neglected, or exploited the Elder
16 from having any form of contact with the Elder;
- 17 An order restraining the individual(s) who has abused, neglected, or exploited the
18 Elder from continuing such acts;
- 19 An order requiring an Elder's family or caretaker or any other person with a fiduciary
20 duty to the Elder to account for the Elder's funds and property;
- 21 An order requiring any individual(s) who has abused, neglected, or exploited an Elder
22 to pay restitution to the Elder for damages resulting from that individual(s)'s wrongdoing;
- 23 An order appointing a representative or a guardian ad litem for the Elder;
- 24 An order recommending that a representative payee be named;
- 25 An order ordering compensation to be paid to the Elder. Said debt shall be garnished
26 from the individual(s)'s per capita pursuant to the Nation's Claims Against Per Capita
27 Ordinance, 2 HCC § 8, or through a general garnishment Order.
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1 **RESPECTFULLY SUBMITTED BY PETITIONER,**

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3 Signature: _____

4 Date: _____, 20 _____

5 Signature of counsel (if any): _____

6 Mailing address of counsel: _____

7 _____

8 E-mail address of counsel: _____

9 Telephone number of counsel: _____

10 Facsimile number of counsel: _____

11 Ho-Chunk Bar number of counsel: _____

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13 If not a member of the Ho-Chunk bar, a *Motion to Appear Pro Hac Vice* has been
14 attached in accordance with *Ho-Chunk Nation Rules of Civil Procedure*, Rule 16(B),¹ and/or I
15 have applied for membership in the Ho-Chunk Nation bar in accordance with the *Ho-Chunk
16 Nation Rules for Admission to Practice*.

16 **SUBSCRIBED AND SWORN TO** before me this _____ day of _____, 20 _____

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18 at _____
City State

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20 _____
Notary Public for _____
State

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22 My commission expires: _____

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**PLEASE INCLUDE ELDER'S CONTACT INFORMATION ON
ATTACHED CONFIDENTIAL SUPPLEMENT. FAILURE TO DO SO
WILL RESULT IN THE COURT'S INABLITY TO CONTACT THE
ELDER OR PROVIDE SERVICE OF SUBSEQUENT COURT ORDERS OR
NOTICES OF HEARING.**

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¹ Parties can obtain a copy of the *Ho-Chunk Nation Rules of Civil Procedure* by contacting the Ho-Chunk Nation
Judiciary at (715) 284-2722 or (800) 434-4070 or visiting the judicial website at [http://www.ho-
chunknation.com/media/35078/rules_of_civil_procedure.pdf](http://www.ho-chunknation.com/media/35078/rules_of_civil_procedure.pdf).

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Petition for Elder Protection Order

Confidential Supplement

The following information relates to the **ELDER** alleged to have been subjected to abuse, neglect, or exploitation:

ELDER'S INFORMATION

1. Name: _____
2. Maiden name (if applicable): _____
3. Physical Address (last known): _____

City State Zip Code
4. Mailing Address (last known): _____

City State Zip Code
5. Phone: (_____) _____ (_____) _____
Home Work