

GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS TRIBAL COURT

MEMO

To: All applicants for Minor Trust Funds
From: Hon. Wilson D. Brott, Chief Judge
Date: January 25, 2008
Re: Petitions to Access Minor Trust Funds

The Tribal Court is required to apply standard of review stated in the Revenue Allocation Ordinance (RAO), which is the law adopted by the Tribe creating per capita distributions and the minor trust accounts. The Revenue Allocation Ordinance can be found in Chapter 6 of Title 18 of the Grand Traverse Band Code (GTBC). Minor trust accounts are created and governed by 18GTBC§1605(e). 18GTBC§1605(e)(3)(B) states that the standard which the Court is to use when considering requests to access minor trust accounts:

Upon the petition of the parents or legal guardian of the minor beneficiary, trust assets may be distributed to the parents or legal guardians of such minor or minors in such amounts as from time to time the trustee or trustees or the Tribal Court, in their sole discretion, deem necessary for the minor's health, education, or welfare. The Tribal Court may require that the petitioning parent or legal guardian submit receipts of expenditures made on behalf of the minor before any disbursements are made and shall require that the petitioning parent or guardian account to the trustees or the Tribal Court to establish a regular monthly distribution from the trust of the minor.

The RAO further states in 18GTBC§1605(e)(4) that:

For further purposes of establishing standards for access to the minors' trust funds, the trustee, trustees, or the Tribal Court shall follow standards that, to the extent permissible, preserve the child's estate consistent with Federal and Tribal Law.

The Court has long held that any requests for funds from a minor trust must be for the necessary expenses related to the health, education, and welfare of the minor. This standard comes right from the language of the Revenue Allocation Ordinance above. However, as a practical matter, it has proven to be a difficult standard to apply. The standard itself lends little guidance to the Court as to what the Court should find to be "necessary" and as to how closely an expense should relate to the health, education, and welfare of the minor.

The Court has been entirely consistent over the years in applying the standard set forth in the RAO, and at various times has issued various informal rules in an attempt to "flesh out" and clarify the standard. For example, former Chief Judge Katherine Scotta issued a Private Letter Opinion dated October 28, 2005, and later issued an order applying new policies with regards to future minor trust applications. A written opinion was issued by Judge Scotta in the matter of Jason Wilson, File no. 2006-323-CV-MT which attempts to further set forth standards. Yet, the Tribal Judiciary has never incorporated these standards into any formal court rules. As the writing of this memo, the Tribal Judiciary has adopted a new Court Rule which adopts a formal standard to be applied in all minor trust cases which will create consistency in how minor trust applications are reviewed by the Court.

As outlined above, the Court has broad discretion as to whether or not approve minor trust account requests. The Court also has a duty to preserve the trust assets as well. Therefore, **the Court will not approve loans from the minor trust account to pay for items which are a parent's responsibility to provide for their child, such as food, clothing, transportation, and shelter.** For example, the Court will no longer allow minor trust funds to be used to pay rent, or to purchase a vehicle for the parent. **Any requests for minor trust funds must be expenses that are necessary and must directly benefit the minor child.** Medical and dental expenses not covered by insurance would be an example of expenses which would directly benefit the minor child.

As there is not language in the Revenue Allocation Ordinance authorizing the Court or the trustee to use minor trust funds to loan money to parents for various items, **the Court is no longer going to allow parents or guardians to borrow from a child's minor trust funds.** This is consistent with the court's insistence that any requests to access minor trust funds be for the direct benefit of the minor.

When a distribution is allowed by the Court, the Court will treat any funds authorized to be paid from the minor's trust account as a loan from the minor's trust account to the minor. This loan shall be ordered to be repaid from the minor's trust account to the minor. This loan shall be ordered to be repaid from the minor's next regular trust distribution(s) at age 19, 20, and/or 21. This is so that the minor will not be required to pay taxes to the amount approved in the year it is approved. Further, if the distribution is considered a loan, monies will not be withheld for income tax purposes (until the time of trust distribution, when such withholding will occur in any event). Attached is the new Court rule which has been adopted by the Tribal Judiciary which incorporates these standards, and which will be applied to all requests for distributions from minor trust accounts (including those requests which are currently pending).

GRAND TRAVERSE BAND TRIBAL COURT RULES

RULE 4.300 MINOR TRUST ACCOUNTS

Rule 4.301 Standard for Consideration of Petitions for Distributions from Minor Trust Accounts

- (A) **Standards to be applied by the Tribal Court.** Pursuant to the Court's discretion in considering whether to authorize minor trust petitions under 18 GTBC§1605(e)(3)(B), and consistent with the Court's duty under 18GTBC§1605(e)(4) to preserve the minor's estate to the greatest extent possible, the Court adopts the following standards to be applied to the petitions for distributions from minor trust accounts, to apply to all pending and future minor.
- (B) **Trust petitions.** The Court shall only approve requests for funds from a minor trust account that are necessary expenses directly related to the health, education, and welfare of the minor, and that also directly benefit the minor.
- (C) **Prohibitions.**
1. The Court shall not approve distributions from the minor trust account to pay for items which are a parent's basic responsibility to provide for their child, such as food, clothing, transportation, or shelter.
 2. The Court shall not allow minor trust funds to be loaned to parents' guardians or other relatives of the minor.
 3. The Court shall not allow distributions which only indirectly benefit the minor.
- (D) **Distributions.** When a distribution from a minor trust account is ordered by the Court, the Court shall order that any funds distributed shall be considered a loan repaid from the minor's next regular distribution or distributions from their minor trust account (at age 19,20, and/or 21).

[Adopted January 21, 2008].

GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS TRIBAL COURT
Minor Trust Checklist

All applications must include the following for the subject of the minor trust which is being petitioned for access.

- Copy of birth certificate
- Copy of Tribal Identification
- Supporting documentation (see below)

Supporting documentation examples:

1. Orthodontics:
 - Quote for Dental Work.
2. School Event/Activity:
 - Copy of quote for the cost of the event/activity.
 - Copy of quote for the items seeking to purchase for the event/activity.
3. Automobile:
 - Copy of purchase agreement/bill of sale from seller of the automobile.
 - Copy of insurance quote for one year or car insurance.
 - Copy of Kelly Blue Book Value for automobile petitioner is requesting to purchase.
 - Copy of Minor's driver's license.
 - Letter from the minor on the reason they need to purchase an automobile.
4. Home:
 - Copy of Home purchase agreement from seller/builder.
 - Copy of insurance quote for home petitioner wishes to purchase. (If home is requested from trust fund).
 - Copy of Appraisal which specifies the value of the home the petitioner is seeking to purchase.
5. Rent:
 - Copy of lease with subject of minor trusts name on it.
6. Bills:
 - Copy of the bill with the subject of the minor trusts name on it, which the petitioner is seeking to pay.
7. Special Needs Trust:
 - If over 18, the subject needs to fill out or sign the Petition.
 - Copy of Tribal Identification for both subject and Guardian/Conservator.
 - Copy of Birth Certificate for both subject and Guardian/Conservator.
 - Copy of Driver's License for both subject and Guardian/Conservator.
 - Letters or Orders Appointing Guardian/Conservator.
 - Order Appointing Guardian/Conservator.

PLEASE NOTE, you may be required to submit further documentation when seeking access to a minor's trust fund.

Receipts are required within 30 days after the request is granted by the Tribal Court.

THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS TRIBAL COURT	PETITION FOR ACCESS TO MINOR'S TRUST ACCOUNT	CASE No.
2605 N. West Bay Shore Drive, Peshawbestown, MI 49682 (231)534-7050 TribalCourt@gtb-nsn.gov (231)534-7051 fax		
In the matter of:		

1. I am making this petition as:

- Self
- Legal Guardian
- Parent
- Custodian
- Other: _____

2. Petitioner(s) address:

a. Phone No. _____

b. Email _____

3. Minor's full name _____

4. Minor's date of birth _____ Minor's Tribal ID# _____

5. Minor's address _____

a. Minor's phone number _____

b. Minor's email address _____

6. Legal mother's name _____

- a. Address _____
- b. Phone number _____

7. Legal father's name _____

- a. Address _____
- b. Phone Number _____

8. (If applicable)

- Legal Guardian
 - Custodian
- Name: _____
- Phone Number: _____

9. I am requesting a total of \$ _____ from the minor's trust account.

10. I am requesting the amount above to be used for the following expenses for the direct benefit of the minor:

_____ (attach additional sheets if necessary).

11. Attached is all the available documentation which supports my request (i.e., copies of any bills, invoices, etc., requested to be paid.) Also attach copies of the minor's Tribal ID and birth certificate. I understand that the Court may require additional documentation concerning my request prior to my request being considered.

12. At the present time, the minor's trust account balance is approximately \$ _____.

13. Have you previously accessed this minor's trust account?

- Yes
- No

If yes, please state what the loan/amount was for, and how much is still owed on said loan(s)?

14. Are there any loans borrowed against, or other amounts owed to/from this minor's trust account?

- Yes
- No

15. I understand that the Court will approve this request if the Court finds that these expenses are necessary expenses that directly benefit the minor.

a. Initial _____

16. I understand that payment of the \$100 filing fee does not guarantee this petition will be approved.

a. Initial _____

17. I have completed the attached Financial Statement fully and completely. I understand that my Petition will not be processed by the Court until the Financial Statement has been completed.

a. Initial _____

18. I understand that if approved, the Court will likely structure any funds released from the minor's trust account to be a loan from the minor's trust account to the minor, to be repaid from the minor's next available distribution(s), at age 19, 20, and/or 21, with a high school diploma/GED or age 21,22, and 23 without a high school diploma/GED so that the minor does not have to pay taxes on the funds until a distribution is made.

a. Initial _____

(Note: This petition must be signed before a Notary before it may be filed with the Tribal Court. The notary must be present to witness your signature.)

I declare that this petition and the attached Financial Statement have been examined by me and that its contents are true to the best of my information, knowledge, and belief. I further authorize the release of any information needed to verify this statement or any other information needed to verify my financial affairs.

Date

Applicant Signature

Subscribed and sworn to before me on this ____ day of _____, in the year _____ before me _____, a Notary Public in and for the County of _____, State of _____, personally appeared _____, who proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to this instrument and acknowledged he/she executed same.

Notary Public _____
In and For County _____ State of _____
Acting in County of _____
My Commission Expires on _____

(seal)

THE GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS TRIBAL COURT	PETITION FOR ACCESS TO MINOR'S TRUST ACCOUNT FINANCIAL STATEMENT	CASE No.
2605 N. West Bay Shore Drive, Peshawbestown, MI 49682 (231)534-7050 TribalCourt@gtb-nsn.gov (231)534-7051, fax		

TO BE COMPLETED BY PETITIONER(S)

Personal & Employment Information

1. Name _____
2. Date of birth _____
3. Last 4 Digits of Social Security Number:

X	X	X	-	X	X	-			
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4. Driver License No. _____
5. Employer's Name: _____
6. Employer's Address: _____
7. Gross Pay: \$ _____ Fed. Inc. Tax _____ State Inc. Tax _____ Local Inc. tax _____
8. Marital Status:
 - Single
 - Married
 - Separated
 - Divorced
9. Spouse's Name (if applicable) _____
10. Date of birth _____
11. Last 4 Digits of Social Security Number:

X	X	X	-	X	X	-			
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12. Driver License No. _____
13. Driver License No. _____
14. Employer's Name: _____
15. Employer's Address: _____
16. Gross Pay: \$ _____ Fed. Inc. Tax _____ State Inc. Tax _____ Local Inc. tax _____
17. Home Address: _____

18. Names & ages of Dependents Residing with Petitioner: _____

19. Names, ages & Relationships of all other people living in the home: _____

20. **MEDICAL/MEDICAID/DENTAL/OPTICAL INSURANCE** List company name & policy no. & whether group, co-deductible, etc.

21. **OTHER INCOME** List all other income below, including per capita, overtime, tips, public assistance, child support, unemployment, veteran's benefits, social security, pensions, workers compensation, disability, interest, dividends, rent, etc.

SOURCE OF INCOME

	\$	Per
PLEASE CONTINUE ON THE LAST PAGE IF NECESSARY		

22. **ASSETS** (Other than real estate and motor vehicles) List all other assets below, including checking and savings accounts, stocks, bonds, insurance cash value, IRA's, deferred compensation, retirement funds, bonds posted, etc.

	Balance	Institution Name
Checking/Draft		
Savings		
Credit Union		
		\$
		\$
		\$
		\$
		\$
PLEASE CONTINUE ON THE LAST PAGE IF NECESSARY		

PROPERTY: REAL ESTATE

Purchase Price & Current Value	Loan Balance	Payments
	\$	
	\$	
PLEASE CONTINUE ON THE LAST PAGE IF NECESSARY		

23. **OTHER PAYMENTS** Do not include payroll deduction, or property payments listed above. List all other payments including rent, utilities, support, loans, garnishments, mandatory union dues, mandatory retirement dues, etc.

Item	Payment	Balance
	\$ per	\$
PLEASE CONTINUE ON THE LAST PAGE IF NECESSARY		

