

File it yourself:  
**CHILD CUSTODY PACKET**  
in the Cherokee Court

**Packet for Parents**

**Legal Assistance Office of the Eastern Band of Cherokee Indians**

Physically located in the Ginger Lynn Welch building

P.O. Box 2280

Cherokee, NC 28719

1-828-359-7400

**DISCLAIMER:** This packet has been prepared for general information purposes only. This information is not legal advice. Legal advice is dependent upon the specific circumstances of each situation. Also, the law may vary from jurisdiction to jurisdiction, so some information in this packet may not be correct for where you live. The information contained in this packet is not guaranteed and cannot replace the advice of a competent attorney licensed in your area.

Rev. April 2024



**These materials are not for everyone!**

**CONSULT WITH AN ATTORNEY IF ONE OF THESE  
SITUATIONS  
APPLIES TO YOU:**

- If you are not the biological parent of the children; OR
- If the other parent or party is represented by an attorney; OR
- The children have lived on the Trust Lands of the Eastern Band of Cherokee Indians less than 6 months; OR
- There has been, or is currently, another custody case involving these children; OR
- There has been a Department of Social Services (DSS) or Family Safety Court action involving these children; OR
- Child Protective Services with either DSS or Family Safety has placed these children with someone else; OR
- One parent is in the military.

If you or the children are victims of domestic violence, contact the Ernestine Walkingstick Shelter 24/7 hotline immediately at 828-359-6830.

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## I. Definitions and Process Overview

The law of the Eastern Band of Cherokee Indians allows parties to bring actions in the Cherokee Court for custody of minor children who reside within the territory of the EBCI. Based on the law and the facts in each case, a judge will make the decision about where the child lives and who will get to make decisions for the child.

The judge, in making decisions about custody and/or any visitation, will try to decide what is in the **“best interest of the child.”** It is important to remember that in determining the best interests of a child, the Cherokee Court is required to look first at the Cherokee Code and established Cherokee customs and traditions.

The judge will look at all the information affecting the child's life to make certain their decision is based on the best interest of the child. It is important that you raise all relevant facts that will assist the judge in making their decision.

There are two main types of custody: “Legal Custody” and “Physical Custody”

### What is “Legal Custody”?

The parent(s) or person(s) who make the major decisions in the child's life, (such as decisions about health/healthcare, education, and religious upbringing) have “legal custody.” The child does not have to live with the parent or person who has legal custody. Two people can have legal custody jointly (“Joint Legal Custody”), or one person may be given the primary responsibility to make major decisions for the child (“Primary Legal Custody”).

### What is “Physical Custody”?

The parent or person who has actual, physical care of the child has “physical custody.” Two people can have physical custody jointly (“Joint Physical Custody”) which means that they are allowed to share time with the child so that each one has regular contact with the child. This does not mean that the child must live half the time with one parent and the other half with the other parent. The Court decides how much time the child spends with each parent.

Instead of joint physical custody, one person can have “primary physical custody.” In this situation, one person has the child in his or her care for a large majority of the time. Another parent or qualified third party may still have regular contact and overnight visitation with the child.

It is possible for the Court to order “*joint legal and physical custody,*” so that both parents have equal decision-making power and share physical custody.

### **What is "Visitation?"**

"Visitation" is the time that a person who does not have primary physical custody spends with the child. The judge will attempt to set a visitation schedule that is in the "best interest of the child." The amount and type of visitation granted by the Court depends on things such as the living arrangements of the person asking for visitation, the ages of the children, how far apart the parents live, the desires of older children, and whether there has been domestic violence or child abuse.

Visitation schedules may include: overnights during the week, weekend visits, telephone calls, sharing of holidays, and school vacations. You cannot deny visitation just because the other parent does not pay child support and you cannot withhold child support just because the other parent (or custodian) denies visitation.

Visitation can be unsupervised or supervised by a third party. Typically, visitations are unsupervised. However, if you believe that the other party is not a safe person to have the child alone, then you could ask the court for visitation to be supervised by a third party. It is important to note, that if granted supervised visitation then you will need to have a person you can recommend who is willing and able to supervise each visit. There are no programs or entities that provide this service at this time.

### **Who is the "Plaintiff"?**

The "Plaintiff" is the person filing for custody. If you are starting this custody case, you are the plaintiff. You will remain the plaintiff, regardless of whether the opposing party files additional documents.

### **Who is the "Defendant"?**

The "Defendant" is the person (or persons) you are suing for custody. That person may be a parent or grandparent. If you are a non-parent, you MUST include the parents, if living, as defendants. The person you sue will remain the defendant, regardless of whether you file additional documents.

### **How can I expect this process to go?**

Generally, most child custody cases follow the same path. The Plaintiff files the Complaint and serves it upon the Defendant. The Defendant then has thirty (30) days to file a response called an Answer. During that time the Court will most likely send both parties to mediation to see if you can agree on a custody schedule and ground rules for co-parenting. If you are able to settle the matter in mediation, then the mediator will take the parenting agreement to the judge for signature and it will become an order of the Court.

If you are not able to settle in mediation, then your case will need to be set for a hearing before one of the judges during a Civil Session of the Cherokee Court. At the hearing, the judge will hear the evidence presented by the parties and will then determine a custody schedule and other rules to foster the best interests of the child. Remember, that during the hearing you will be held to the same standard as an attorney and be expected to know what evidence to submit to the judge and how. This is why we encourage you to hire an attorney if your case gets to this stage. In all likelihood the judge will draft the order after the hearing and the clerk will mail you a copy. Be sure to keep copies of all orders for your records.

### **What is Mandatory Mediation?**

Cherokee Code §50-14 requires that unless it is not in the *minor child's* best interest, all child custody cases will go through the child custody mediation program. The purpose of the child custody mediation program is to seek a resolution prior to having a trial before a judge. Upon filing for custody, the Court will send your matter to mediation. The mediator will then reach out to you and the other party to schedule a time to meet and see if you can agree on a parenting schedule.

## **II. Can I file my custody case in the Cherokee Court?**

This is an important question because if you do not file in the right court, the judge might refuse to hear the case. Some of the most important questions you should ask as you plan to file for custody or visitation are:

### **Has a case already been filed, and if so, then where?**

The first question to ask is always whether there has ever been a custody case in court about the child. If yes, then obtain a copy of the custody papers and have them reviewed by an attorney before you try to file a new case.

Most of the time, you must file requests to change prior custody orders in the same place that the case first started.

### **Where has the child lived the past six months?**

If there has never been any type of court case about the child, then you can start to ask whether you can file the action in the Cherokee Court. The general rule is that for the case to be properly heard in the Cherokee Court the child must have lived on the Trust Lands of the Eastern Band of Cherokee Indians for six months immediately prior to filing the case. This makes the Trust Lands of the Eastern Band of Cherokee Indians the child's "home state." If the child is less than six months old, you can file in the Cherokee Court if they are here or have been here for most of their life.

It is important to remember that a judge will only look at where the child has lived, NOT necessarily where the parents or other guardians have lived!

**Once you decide that filing in the Cherokee Court is appropriate you will need several documents.**

## III. Beginning Your Child Custody Action

### Forms you will need for this part:

- Custody Information Sheet
- Complaint
- Civil Summons
- Affidavit as to Status of the Minor Child (one per child)
- Servicemembers Civil Relief Act (SCRA) Affidavit

**\*Note: each form is included in this packet in the Appendix\***

### Instructions for filling out each form:

#### 1. Custody Information Sheet

It is very important that you provide accurate contact information on this sheet. This is how the Court will communicate with you regarding court dates and other information regarding your case. You should always update your information with the clerk any time it changes, even after you receive an order in case motions are filed in the future.

#### 2. Complaint for Custody

The Complaint for Custody is the form that tells the Court that you are seeking a custody order regarding your children and what you would like the Court to do. Each part in the Complaint is important because there are several things the Court needs to know to ensure that the Court has the ability to hear the case. Therefore, if there is a check box, make sure that you select an option. If there is a blank line, make sure you fill it in. Submitting this form without it completely filled out means the Court could dismiss your case. You will also need to sign this Complaint in front of a notary.

#### 3. Civil Summons

This is the form that will tell the Court that the Defendant has been served with the Complaint. You will only have to fill out the top part with the names of each party. It is important that you put the Defendant's physical address on the Summons, especially when law enforcement is going to serve the Defendant with the paperwork, as this is the address at which law enforcement will serve the Defendant. The Summons must be served within 90 days after it's issued. If the Summons is not served within this time, you can extend this period by asking the clerk to issue an "endorsement" or an "alias and pluries" summons.

#### 4. Affidavit as to Status of the Minor Child

You will need to list the addresses for where the minor child resided for the last five years. You will also need one Affidavit per each child for which you are seeking custody. After listing the addresses in the space provided, you may leave the rest of the form blank if none of the options apply to you. You will need to sign this form in front of a notary.

#### 5. Servicemembers Civil Relief Act (SCRA) Affidavit

This form is required to ensure that Defendants are not deployed on active military service. You can either explain how you know the individual is not in the military or currently deployed, or you can use a website the link for which will be included in the resources section later in this packet.

#### 6. Standing Order for Custody Mediation



The Standing Order will need to be served on the defendant with the Summons and Complaint. You will only need to fill in your name and the defendant's name at the top of the form and file it with the rest of the documents.

**7. Petition to Waive Costs and Fees (Optional)**

If you believe you are unable to afford the costs of the filing fee, then you will need to fill out this form in its entirety. The clerk's office will then review the form and will let you know if you qualify to have your filing fee waived.

**8. Custody Acceptance of Service and Waiver (Optional)**

This is for the defendant to fill out and return to the clerk's office should the defendant desire to not respond to your complaint.

## IV. Filing Papers with the Court

A custody action begins once the Complaint and Summons are "filed" with the court. A legal document is filed when you or your attorney formally submit your papers to the Clerk of Court's Office and a clerk file-stamps the documents. The forms within this packet are meant to be filed with the Clerk of Court's Office for the Cherokee Court located in the EBCI Anthony Edward Lossiah Justice Center at 137 Seven Clans Lane, Cherokee, North Carolina 28719.

**What to bring to the Clerk's Office:** Take the originals to the Clerk's Office along with the filing fee (\$150.00 as of January 2024 but subject to increase). Ask the clerk politely for a copy of the file-stamped forms.

### **Tips for Successful Filing:**

**Payment of fees:** To pay any court costs, bring exact cash, card, or personal check with you to the Clerk's Office. You may be allowed to garnish the costs, but you will have to ask for it. You may also file a Petition to Waive Costs and Fees and Financial Affidavit and ask the Court to waive the costs and fees based on your financial status.

**Notarizing:** At the time of filing, you should have all forms notarized which state this requirement. There is no guarantee that a notary will be available in the Clerk's Office. If a notary is available, you will need to have a form of identification with you.

**Courtesy:** Always be courteous to the staff at the Clerk's Office.

**Contacting the Clerk's Office after filing:** If you need to contact the Clerk's Office about your case, have the docket number and the case name available. The case name consists of the names of the plaintiff and the defendant. The file number can be found at the top of your documents, and typically begins with "CV" for child custody matters.

**Please note:** The Clerks cannot and will not review your paperwork to ensure that it is correct or that you have the correct documents. If you have questions or concerns about whether you have the correct documentation you must consult with an attorney. You may contact the Legal Assistance Office to see if an attorney is available to help you at (828) 359-7400.

**After filing:** Once the documents are filed, the clerk will provide you with one of the copies that has been stamped by the clerk. The next step is "serving" the defendant, in other words, getting the defendant a copy in such a way that the Court knows the defendant received it. The Cherokee Code has adopted specific rules to ensure that the defendant has notice of the proceedings. As such, simply giving the defendant a copy of the documents yourself will not be enough to show the court that the defendant has been served. Remember, service is your responsibility as the filing party.

## V. Instructions for “Serving” the Defendant

The words “service” or “servicing” are legal terms that mean delivering the court papers to the Defendant. You CANNOT hand deliver the papers. You must serve the Defendant as required by the Cherokee law and have legal proof that the Complaint and Civil Summons were delivered to the Defendant.

Ways to serve the court papers on the Defendant include:

**By Cherokee Police:** The easiest method is to have the Cherokee Police serve the Defendant for you, if the Defendant lives on the Trust Lands of the Eastern Band of Cherokee Indians. The filing fee in the Cherokee Court includes this type of service and you do not have pay an extra fee.

**By Certified Mail:** To serve the Defendant by mail, you need to mail the Complaint and Civil Summons to the Defendant’s mailing address by Certified or Registered Mail, Return Receipt Requested. Once the green receipt is returned to you, you must complete and file with the court an “Affidavit of Return of Service by Certified Mail.” (A sample form follows this section).

**By Acceptance of Service:** The Defendant may present him or herself to the Court and accept service. The defendant will need to go to the Clerk’s Office and let the clerk know that he or she would like to accept service of the matter. It is helpful if the defendant has the file number to reference when talking to the clerk about accepting service.

**If the defendant lives outside of the Trust Lands of the Eastern Band of Cherokee Indians:** If the Defendant lives outside of the Trust Lands of the Eastern Band of Cherokee Indians and you cannot complete service by certified mail, then you will need to contact the sheriff’s office for the county in which the defendant lives and ask what their process is and where you can send the defendant’s copy to be filed. You will ask to speak with the “Civil Service” department for that sheriff’s office.

**By Publication:** If you have made all possible efforts to find the Defendant, and still cannot locate his or her address, you may also consider serving the Defendant by publication in the newspaper. This type of service is not recommended, and additional forms will be necessary to file with the newspaper and the court. (It is up to you to get these forms from an attorney). Should you get to this point in your case, then it is highly recommended that you consider retaining an attorney or you may want to contact the Legal Assistance Office for more information.

### Once Service is Completed

Unless you send the documents by certified mail, you may not be immediately informed that the defendant has been served. You may contact the clerk’s office to see if service was completed by the Cherokee Indian Police Department or if the defendant has accepted service. In order for the clerk to check on this status, you should have your file number available.

The Defendant has thirty days to file an “Answer” or a “Motion for Extension of Time” once he/she is served your custody or visitation complaint. If the Defendant files an answer, he/she or his/her lawyer will send you a copy. If the Answer includes a Counterclaim or issues other than custody/visitation, then you have 30 days to file a Reply. You should consult an attorney to get some legal advice and make sure to file a response on time.

## **VI. Tips for Appearing in Court**

### **What To Bring**

When you go to court, do NOT take your children. Make sure to bring ALL your documents with you on your court date.

### **What to Wear**

Dress professionally. This means wearing clothing that is clean and neat. Avoid hats, shorts, sweatpants, or other revealing or tight clothing. Present yourself as clean and well groomed.

### **When To Arrive**

You MUST be on time for your court hearing or any other appointment related to your case. If you are late, your case may be cancelled. Many cases are set at the same time as your case. Expect to spend at least half a day waiting in court for your case.

### **How Best To Present Your Case**

How you act is very important. Be respectful of everyone in court, this includes the other party, the witnesses, the judge and the court staff. Getting overly emotional, yelling, cursing, or using threatening language will not help you in presenting your case to the Court.

If you want to speak to the judge, you should stand up UNLESS you are on the witness stand. You should always call the judge "your honor," and if you have to hand anything to the judge, you must first ask permission to come near his/her bench: "Your honor, may I approach?"

If the other party comes to the hearing, the other party may also be allowed to ask you questions while you are on the witness stand. You should never turn to the other party and talk to him or her unless they are on the witness stand and the judge allows you to question them. If the other party says something to the judge that you disagree with, do not interrupt. If the other party asks you a question, look at the judge and ask the judge if he or she would like you to respond.

### **Where To Seek Assistance**

When you represent yourself in court, it may be beneficial to get legal advice from a lawyer ahead of time to make sure that you are doing the right thing. Legal advice includes deciding what option(s) may be best for you.

The judge can NOT speak to you about your case except when the case is being heard in Court and/or the other party is present. The judge's staff will help you as much as possible with questions about scheduling or whether a judge has rendered a decision in your case. The staff CANNOT give you legal advice or recommend how to present your side of the case. Please remember always to be polite to the court staff and be prepared with any information that they may need. They are there to help you.

# APPENDIX

File No. \_\_\_\_\_ (Clerk will provide)

**CUSTODY INFORMATION SHEET**

**(Plaintiff must complete include all know information and provide to Clerk upon initial filing)**

**Plaintiff's Information**

Phone Number: \_\_\_\_\_

Mailing Address  
(where documents should be mailed)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

.....  
**Defendant's Information**

Phone Number: \_\_\_\_\_

Mailing Address  
(where documents should be mailed)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Physical Address (if Defendant to be served at physical address)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EASTERN BAND OF CHEROKEE INDIANS  
THE CHEROKEE COURT  
CHEROKEE, NORTH CAROLINA  
FILE No. CV \_\_\_\_\_**

\_\_\_\_\_  
(Name of Plaintiff)

Plaintiff,

vs.

\_\_\_\_\_  
(Name of Defendant)

Defendant.

**COMPLAINT FOR CHILD CUSTODY**

COMES NOW THE PLAINTIFF, complaining of the Defendant, and alleges and says:

1. The Plaintiff:

*(check either "a" or "b" as applicable)*

- a.  is an enrolled member of the Eastern Band of Cherokee Indians OR
- b.  is not an enrolled member of the Eastern Band of Cherokee Indians.

*(check either "c" or "d" as applicable)*

- c.  is currently a resident of the Qualla Boundary, Trust Lands of the Eastern Band of Cherokee Indians, Cherokee, North Carolina (OR)
- d.  is currently a resident of \_\_\_\_\_ County in the State of \_\_\_\_\_.

2. The Defendant

*(check either "a" or "b" as applicable)*

- a.  is an enrolled member of the Eastern Band of Cherokee Indians OR
- b.  is not an enrolled member of the Eastern Band of Cherokee Indians.

*(check either "c" or "d" as applicable)*

- c.  is currently a resident of the Qualla Boundary, Trust Lands of the Eastern Band of Cherokee Indians, Cherokee, North Carolina (OR)
- d.  is currently a resident of \_\_\_\_\_ County in the State of \_\_\_\_\_.

3. The Parties *(check one option for this paragraph)* are  married but living separate and apart OR  are divorced. OR  have never been married and currently live separate and apart.

4. The Parties are the parents of the following child(ren) *(list each child's name and date of birth below)*:

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8. It is in the minor child(ren)'s best interest that the minor child(ren)'s custody be ordered as follows (*check one*):
- Joint custody of the minor child(ren) on a 50/50 basis *OR*
  - Plaintiff be awarded primary custody and Defendant be awarded visitation on a regular schedule *OR*
  - Defendant be awarded primary custody and Plaintiff be awarded visitation on a regular schedule *OR*
  - Plaintiff be awarded custody and Defendant be denied any visitation, or in the alternative, granted only supervised visitation for the reasons stated above in paragraph seven (7)

**WHEREFORE, THE PLAINTIFF PRAYS OF THE COURT:**

1. For an Order giving temporary and permanent custody of the children as requested above;
2. An Order finding that custody as requested in Paragraph Eight (8) above is in the best interests of the minor child(ren); and
3. For such other relief as may be proper, just, and lawful.

Respectfully submitted:

This the \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

---

Signature of Plaintiff

---

Print or Type Plaintiff's Name

---

Plaintiff's Physical Address

---

Plaintiff's Mailing Address

---

Plaintiff's Reliable Phone Number

**VERIFICATION**

I, \_\_\_\_\_ (*Plaintiff's name*), being duly sworn, depose and say:  
That I am the Plaintiff in the above-entitled action annexed hereto and that I have read the Complaint and same is true as to my own personal knowledge, except as to the matters and things as may be stated upon information and belief, and as to those matters, I believe them to be true.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Plaintiff

\_\_\_\_\_  
Print or Type Plaintiff's Name

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for \_\_\_\_\_ (county) and  
\_\_\_\_\_ (state), do hereby certify that \_\_\_\_\_  
\_\_\_\_\_ personally appeared before me this day and  
acknowledged the due execution of the foregoing instrument.

SWORN TO AND SUBSCRIBED before me this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Notary Public Name

My Commission Expires: \_\_\_\_\_

**Eastern Band of Cherokee Indians**  
**The Cherokee Court**  
 Cherokee, North Carolina

► File No. \_\_\_\_\_

**CIVIL SUMMONS**

G.S. 1A-1 Rules 3, 4; C.C. § 7-23(a)

*Name and address of Plaintiff's Attorney (If none, then Plaintiff)*

**VERSUS**

*Names(s) of Defendant(s):*

*Defendant 1:*

*Defendant 2:*

Alias and Pluries Summons

Date Last Summons Issued

**To Each of the Defendant(s) Named Below:**

*Name of Address of Defendant 1*

*Name and Address of Defendant 2*

**A Civil Action Has Been Commenced Against You!**

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the Plaintiff's last known address, and
2. File the original of the written answer with the Clerk of The Cherokee Court in-person at 137 Seven Clans Lane, Cherokee Qualla Boundary (North Carolina) or by mail to P.O. Box 1629, Cherokee, NC 28719.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Date Issued:	Time:	AM	PM	Assistant Clerk	Deputy Clerk	Clerk of Cherokee Court
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Name of Issuing Official	Signature
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**ENDORSEMENT**  
 This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the within this Summons must be served

Date of Endorsement	Time: AM PM
Name of Issuing Official	Signature

<b>RETURN OF SERVICE</b>	
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I certify that this Summons and a copy of the complaint and order for mediation were received and served as follows:

**DEFENDANT 1**

*Date Served*

*Name of Defendant*

By delivering to the defendant named above a copy of the summons, complaint, and order for mediation.

By leaving a copy of the summons, complaint, and order for mediation at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

Name of Person with whom copies were left:

Address:

Other Manner of service (specify):

Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

*Date Served*

*Name of Defendant*

By delivering to the defendant named above a copy of the summons, complaint, and order for mediation.

By leaving a copy of the summons, complaint, and order for mediation at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

Name of Person with whom copies were left:

Address:

Other Manner of service (specify):

Defendant WAS NOT served for the following reason:

Date Packet was Received by Officer:

Date of Return to Clerk:

Name of Officer:

Signature:

(Side Two of Two)

File No.

**EASTERN BAND OF CHEROKEE INDIANS**  
**The Cherokee Court**

Name and Address of Plaintiff

**AFFIDAVIT AS TO STATUS OF MINOR CHILD****VERSUS**

Name of the Minor Child:

Name and Address of Defendant

Date of Birth

Enrollment No.

Birthplace

I, the undersigned affiant, being first duly sworn, say that during the past five (5) years the above-named minor child has resided as follows:

Period of Residence		Address	Name of Person Lived With	Present Address of Person
From	To			
	Present			

I further say that: (check one):  I have not participated in litigation concerning the custody of the above-named child.  
 OR  I have participated in litigation concerning the custody of the above-named child. (fill out information on the litigation below)

Capacity as Participant

Date of Action

Name and Address of Court

Details

(check one)  I have information of a custody proceeding concerning the above-named child pending in this or another court.  
 OR  I do not have information of a custody proceeding concerning the above-named pending in this or another court.

Name and Address of Court

Details

(check one):  I know of a person who has physical custody or claims to have custody or visitation rights with respect to the above-named child (list the name and address of such individual below).  
 OR  I do not know of a person who has physical custody or claims to have custody or visitation rights with respect to the above-named child

Name and Address of Person

 Physical Custody Claimed Custody Visitation Rights**SWORN AND SUBSCRIBED TO BEFORE ME**

Date

Date

Signature of Person Authorized to Administer Oaths

Signature of Affiant

Name of Person Authorized to Administer Oaths

Name of Affiant (Type or Print)

 Deputy CSC  Assistant CSC  Clerk of Cherokee Court  Notary Public  Magistrate

Relationship to above-named child

**EASTERN BAND OF CHEROKEE INDIANS  
THE CHEROKEE COURT**

FILE NO.

Name and Address of Plaintiff

VERSUS

Name and Address of Defendant

**SERVICEMEMBERS CIVIL  
RELIEF ACT DECLARATION**

50 U.S.C. 2901 to 4043

**DECLARATION**

I, the undersigned Affiant, under penalty of perjury declare the following to be true:

1. As of the current date (check one of the following):
  - a.  The defendant named above is in the military service\*.
  - b.  The defendant named above is **not** in military service\*.
  - c.  I am unable to determine whether the defendant named above is in military service\*.
  
2. I  used  did not use the Servicemembers Civil Relief Act Website (<https://scra.dmdc.osd.mil/>) to determine the defendant's federal military service.
  - The results from my use of that website are attached.

**NOTE:** The Servicemembers Civil Relief Act Website is a website maintained by the Department of Defendant (DoD). If DoD security certificates are not installed on your computer, you may experience security alerts from your internet browser when you attempt to access the website. Members of the North Carolina National Guard under an order of the Governor of this State and members of the National Guard of another state under an order of the governor of that state will not appear in the SCRA Website database.

3. The following facts support my statement as to the defendant's military service (State how you know the defendant is or is not in the military. Be specific.)

\*The term "military service" includes the following: active duty service as a member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; service as a member of the National Guard under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency; active service as a commissioned officer of the Public Health Service or of the National Oceanic and Atmospheric Administration; any period of service during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. 50 U.S.C. 3911(2).

**I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.**

Date

Signature of Declarant

Name of Declarant (type or print)

**NOTE TO COURT:** Do not proceed to enter judgment in a non-criminal case in which the defendant has not made an appearance until a Servicemembers Civil Relief Act affidavit or declaration (whether on this form or not) has been filed, and if it appears that the defendant is in military service, do not proceed to enter judgment until such time that you have appointed an attorney to represent him or her.

## Information About Servicemembers Civil Relief Act Affidavits and Declarations

### 1. Plaintiff to file affidavit/declaration

In any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit-stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service. 50 U.S.C. 3931(b)(1).

### 2. Appointment of attorney to represent defendant in military service

If in a civil action or proceeding in which the defendant does not make an appearance it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed to represent a service member cannot locate the service member, actions by the attorney in the case shall not waive any defense of the service member or otherwise bind the service member. 50 U.S.C. app. 521(b)(2).

State funds are not available to pay attorneys appointed pursuant to the Servicemembers Civil Relief Act. To comply with the federal Violence Against Women Act plaintiffs in proceedings should not be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. Plaintiffs in other types of actions and proceedings may be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act.

### 3. Defendant's military status not ascertained by affidavit/declaration

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act. 50 U.S.C. app. 521(b)(3).

### 4. Satisfaction of requirement for affidavit

The requirement for an affidavit above may be satisfied by a statement, declaration, verification, or certificate in writing, subscribed and certified or declared to be true under penalty of perjury. 50 U.S.C. app. 521(b)(4). The presiding judicial official will determine whether the submitted affidavit is sufficient.

### 5. Penalty for making or using false affidavit

A person who makes or uses an affidavit permitted under 50 U.S.C. app. 521(b) (or a statement, declaration, verification, or certificate as authorized under 50 U.S.C. app. 521(b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both. 50 U.S.C. 3931(c).





Name of Plaintiff(s)
<b>VERSUS</b>
Name of Defendant(s)

**Petition To Waive Costs and Fees and  
 Financial Affidavit**

**PETITION**

As a party in the above-titled action, I affirm that I am financially unable to pay the required fees and costs and therefore petition the Court to waive the cost of filing and court fees associated with the action for the reasons stated in my Affidavit below.

I hereby declare under the penalties of perjury that the declarations I have made in the Petition and Affidavit are true, correct, and complete and that I am financially unable to pay the cost of filing and court fees of this action.

**FINANCIAL AFFIDAVIT**

*Fill in all answers and check all boxes which apply to you.*

**Employment:** I am:  currently employed.  currently unemployed.  actively seeking employment.

My present income is: \_\_\_\_\_ I am paid on a:  weekly  bi-weekly  monthly basis.

Employer Name: \_\_\_\_\_ Employer Phone Number: \_\_\_\_\_

Employer's Address: \_\_\_\_\_

**Are you an EBCI Tribal Elder?**  Yes.  No. **Number of children under eighteen (18) years old living in your home:** \_\_\_\_\_

**Marital Status:** I am currently:  married  not married **Spouse's Income:** \_\_\_\_\_

**Government Assistance:** I am currently a recipient of:  Supplemental Nutrition Assistance Program (SNAP/food stamps)  Medicaid  
 Temporary Assistance for Needy Families (TANF)  Supplemental Security Income (SSI)  Other: \_\_\_\_\_

**Legal Aid Services (Your attorney must sign the certificate below):**  I am represented in this matter by the EBCI Legal Assistance Office (LAO), or I am represented by conflict counsel contracting with the EBCI Legal Assistance Office.  I am represented in this matter by a pro-bono attorney.

**Available assets:** Cash on hand: \_\_\_\_\_ Bank accounts: \_\_\_\_\_ Stocks and bonds: \_\_\_\_\_ Other: \_\_\_\_\_

Are you eligible to receive Per Capita or GenWell payments as a member of a federally recognized Indian tribe?  Yes  No

If yes, which tribe? \_\_\_\_\_ If yes, what is the amount received yearly: \_\_\_\_\_

**Other information you would like the Court to consider as to your ability to pay:** \_\_\_\_\_

SIGNATURE OF PETITIONER		SWORN AND SUBSCRIBED TO BEFORE ME		
Date	Signature	Date	Signature	<input type="checkbox"/> Clerk of Court <input type="checkbox"/> Assistant Clerk <input type="checkbox"/> Notary <input type="checkbox"/> Judge

**CERTIFICATE OF LEGAL AID SERVICES**

I certify that the moving party has qualified for services under the guidelines of the EBCI Legal Assistance Office or under the income-based guidelines of another legal aid organization which provides free legal services to indigent parties, and that the moving party is represented in this matter by an attorney in or contracting with said office or organization.

Date	Signature	Organization Name
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**ORDER**

Based upon the financial affidavit above, it is ORDERED that:

The petition is granted, and the cost of filing and court fees associated with this action are hereby waived.

The petition is denied.

Date	Signature	Presiding Official
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THE CHEROKEE COURT  
EASTERN BAND OF CHEROKEE INDIANS  
CHEROKEE, NORTH CAROLINA  
CASE NO.: CV \_\_\_\_\_

\_\_\_\_\_,  
Plaintiff,

vs.

\_\_\_\_\_,  
Defendant.

**ORDER FOR CUSTODY MEDIATION**

**NOTICE TO ALL PARTIES**

This matter involves child custody or visitation. Cherokee Code § 50-14 requires the parties to participate in mediation with the Cherokee Tribal Court Mediation Program unless a party files a proper motion to dispense with mediation and the Court enters an Order to that effect.

It is therefore ORDERED, ADJUDGED, AND DECREED:

1. The parties shall attend mediation through the Cherokee Tribal Court Mediation Program.
2. If a Domestic Violence Protective Order (PO) is in place between the parties, all communications between the parties shall be through the mediator and the mediator shall keep the parties separated.
3. All discussions, representations, and statements made at the mediation conference shall be privileged, consistent with the NCGS§ 50-13.1(e), as adopted and applied by Cherokee Code.
4. The mediator shall schedule the mediation with the parties.
5. The parties shall participate in the mediation in good faith and with the goal of settlement.
6. If a settlement is reached, the mediator shall reduce the agreement to writing and provide copies to the respective attorneys/parties for consultation and review.
7. The mediator may terminate mediation under certain circumstances.
8. Failure to comply with this Order may be punished by the contempt powers of the Court.
9. If you have questions, you may call the mediation program at 828-359-6222 or ask your attorney.

Entered by: Monty C. Beck  
Chief Judge

EASTERN BAND OF CHEROKEE INDIANS  
THE CHEROKEE COURT  
CHEROKEE, NORTH CAROLINA  
FILE No. CV \_\_\_\_\_

\_\_\_\_\_  
(Name of Plaintiff)

Plaintiff,

vs.

\_\_\_\_\_  
(Name of Defendant)

Defendant.

AFFIDAVIT OF SERVICE OF PROCESS BY  
CERTIFIED MAIL

NOW COMES the undersigned, being duly sworn according to law and deposes and says as follows:

1. That I am the Plaintiff in the above-entitled action.
2. That on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I placed in the United States Mail, properly addressed, postage pre-paid, certified return receipt requested, a copy of the properly issued Summons and Complaint in this action addressed to:
3. That the Summons and Complaint were in fact received as follows: By *(name of person who signed the green card)*: \_\_\_\_\_ Date *(date on green card)*: \_\_\_\_\_
4. That as evidence of this delivery, the genuine receipts are attached hereto. *(Attach the returned green card to this form).*

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Plaintiff's Signature

\_\_\_\_\_  
Plaintiff's Name Printed or Typed

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, am a notary for  
\_\_\_\_\_ County, and I  
hereby certify that the above-named Plaintiff  
appeared before me this day acknowledging to  
me the foregoing Affidavit.

\_\_\_\_\_  
Notary Signature

\_\_\_\_\_  
Notary Name Printed or Typed

This the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

THE CHEROKEE COURT  
EASTERN BAND OF CHEROKEE INDIANS  
CHEROKEE, NORTH CAROLINA  
CASE NO.: CV \_\_\_\_\_

\_\_\_\_\_  
Plaintiff,

vs.

\_\_\_\_\_  
Defendant.

**ACCEPTANCE OF SERVICE, ANSWER**

The Defendant in this action certifies that:

I hereby accept service of process and acknowledge receipt of a copy of the Summons, Complaint and Order for Mediation in the above-entitled action. I hereby waive service by an officer or by other means. I hereby certify that I am not an infant, incompetent person or otherwise under any legal disability or restraint. I understand this Acceptance of Service is executed in accordance with Rule 4 (j5) of the Rules of Civil Procedure (as adopted by the Cherokee Code) and that this Acceptance shall have the same force and effect as if the process had been served upon me by delivery of a copy of the Summons and Complaint.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Defendant (must be signed by Defendant)

Defendant's Phone No. \_\_\_\_\_

Defendant's Mailing address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, a Notary Public of said County and State, do hereby certify that

\_\_\_\_\_  
personally appeared before me this day and acknowledged the due execution of the foregoing document.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

(SEAL)

\_\_\_\_\_  
Typed or printed name of Notary

My commission expires: \_\_\_\_\_