

Do-It-Yourself Divorce Packet For the Cherokee Court

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 state to state, so that some information in this packet may not be correct for where you live. The information contained in this packet is not guaranteed and the information contained in this packet cannot replace the advice of a competent attorney licensed in your state.

(Revised January 2019)

About This Packet

This packet is for people who want to get a divorce **without** the help of a lawyer. If you only want a simple divorce, this packet gives you certain forms and information that you will need. It is important that you read through this entire packet **BEFORE** beginning the Divorce Process.

This packet **CANNOT** help you with:

- Child Custody
- Visitation
- Legal Separation
- Support (Child Support or Alimony)
- Division of Pensions, Joint Savings Accounts, and Retirement Plans
- Equitable Distribution or Division of Marital Property (dividing things which both you and your spouse own together such as vehicles, homes, or home items; and dividing debts which you and your spouse owe)

If you want these rights, this packet is not for you and you should talk to an attorney.

If you get a divorce without settling these matters, you may lose your rights!

NOTE: If you get confused during the Divorce Process, call our office or hire an attorney. The personnel within the Clerk's Office of the Cherokee Court **cannot** and **will not** give you legal advice.

Use this packet at your own risk. These forms may or may not be right for your particular case. There is no way to predict or guarantee the success of your case. In no event will the Legal Assistance Office of the Eastern Band of Cherokee Indians or anyone contributing to the production of these forms and instructions be held responsible for any indirect or consequential damages resulting from the use of the forms or information provided in this packet.

YOU ALONE ARE RESPONSIBLE FOR YOUR CASE.

Requirements for Divorce

1. At least one of the parties must have lived within the territory of the Eastern Band of Cherokee Indians for at least 30 days prior to the filing of the complaint.
2. The parties have lived separately from each other for a period of at least 30 days prior to the filing of the complaint.
3. The party seeking the divorce believes the bonds of marriage are irretrievably broken.

Filling out the Forms

1. Complaint

- Fill in your name as the "Plaintiff" and your spouse's name as the "Defendant."
- Fill in your name in #1 and check the box "is" or "is not" to indicate whether you reside on the Eastern Band of Cherokee Indians Reservation. Fill in your full address on the line provided at the end of #1.
- Fill in your spouse's name in #2 and check the box "is" or "is not" to indicate whether your spouse resides on the Eastern Band of Cherokee Reservation. Fill in your spouse's full address on the line provided at the end of #2.
- In # 3, fill in the date of marriage on the first blank space and the date of separation on the second blank space.
- In #5, check one of the boxes indicating whether there were children that born during the time of marriage. If so, list how many and their names and date of births.
- In #6, if there were children born during the marriage and those children are currently minors, check the box and fill in the information on the lines of who the children live with and at what address.
- In # 7, if you or your spouse wishes to change their name back their maiden name, check the box, circle Plaintiff or Defendant to indicate the Party that wishes to change their name, and fill in the desired last name in the blank.
- Date and Sign the Complaint.

2. Verification

- THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY.
- Fill in your name on the first blank space.
- Sign and Date in front of a Notary.

3. Civil Summons

- Fill in your name and address under "*Name of Plaintiff, "Address" and "City, State, Zip."*"
- Fill in your spouse's name under "*Name(s) of Defendant(s)."*"
- Fill in your spouse's name and address under "*Name and Address of Defendant 1."*"
- Fill in your name address in the box on the bottom right under, "*Name and Address of Plaintiff's Attorney (If None, Address of Plaintiff)."*"

4. Service Members Civil Relief Act

- **THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY.**
- Go to <https://scra.dmdc.osd.mil/scra/#/home> and click “single record request”, enter your spouses date of birth or social security number and name in the indicated fields and hit submit. Print out the results.
- On the form provided, fill in your name and address under the Plaintiff section.
- Fill in your spouse’s name under the Defendant section.
- Check the appropriate box under #1.
- Check the box beside #2a, check the box that you have used the website and check the box that the results are attached.
- If you do not have internet access, check the box beside #2b and state how you know the defendant is not in the military.
- Sign and date in front of a Notary.

5. Petition to Sue as a Pauper

- This form is not required, but you may fill it out to potentially have your filing fee waived if you are determined to be eligible.

6. Judgment of Absolute Divorce

- Only fill in yours and your spouse’s name under Plaintiff and Defendant. The Judge will fill in the rest of the form on the day of the hearing.

7. Affidavit of Service of Process by Certified Mail

- This form is if you choose to serve your spouse by Certified Mail instead of by the Police Department. You must request the return service if you choose to serve with this method.
- You will fill this out after the initial documents have been filed, mailed, and the return receipt has been received by you.
- Fill in yours and your spouse’s name under Plaintiff and Defendant.
- In #2, fill in the date that you mailed the documents and the address that you mailed them to.
- In #3, fill in the documents that you mailed to your spouse (Civil Summons, Complaint, etc.).
- In #4, fill in the date that your spouse signed for the Certified Mail as indicated on the green return receipt.
- Sign and date the form.
- You must attach the return receipt to a separate sheet of blank paper and include it with the filing of the Affidavit of Service of Process by Certified Mail.

8. Notice of Hearing and Certificate of Service

- Once Service has happened, take this form to the Clerk’s Office and ask them for a court date and fill in the dates that are provided to you.
- On the Certificate of Service portion, check the box that you are depositing a copy in the mail.

- Sign the form on both sections and have it file stamped and mail a copy to your spouse.

Filing Forms with the Clerk's Office

Once you have filled out and notarized all of the forms, take them to Clerk's Office to file. The filing fee is \$150 unless you have it garnished from your percap (additional \$35 fee) or are eligible to have your filing fee waived with the Petition to Sue as a Pauper.

The Clerk's Office will keep the original and you should get two copies, one for yourself and one to serve on your spouse.

Serving Your Spouse

If your spouse resides on the Cherokee Reservation, the Cherokee Police Department will serve the documents at no charge. At the time of filing, tell the Clerk's Office that you wish for the police department to serve your spouse and they will deliver the documents to them to do so.

If your spouse lives off the Cherokee Reservation and you wish for them to be served by the police department, you must take the documents to the county that he or she resides in. There will be a fee associated with this.

If you choose to have your spouse served by the police department, check back with the Tribal Clerk's Office or the County Sheriff's Department a few days after you have dropped the papers off with them to see if service has happened. If your spouse has not been served, keep checking back every few days. Once service has happened, take the Notice of Hearing to the Clerk's Office and ask for a Court date and fill out the form as directed previously. Mail a copy of the Notice of Hearing and Certificate of Service to your spouse.

You may also choose to serve via Certified Mail. You must get the return receipt service when completing service with this method. Once you receive the return receipt, attach it to a separate sheet of blank paper and file it with the Affidavit of Service of Process by Certified Mail.

NOTE: If your spouse answers in writing to your request for a divorce, you need to seek the advice of an attorney.

Hearing

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

The court is a very traditional and polite place. How you act is very important. Be respectful of everyone in court, this includes the other party (your spouse), 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?"

At the hearing you will be required to be sworn in and will have to go to the witness stand to testify to the judge. All the judge wants to know is:

1. You have followed the laws in getting a divorce:
 - a. You or your spouse has resided within the territory of the Eastern Band of Cherokee for at least 30 days prior to the filing of the Complaint; and
 - b. You and your spouse have lived separately from each other for a period of at least 30 days prior to the filing of the complaint unless they mutually voluntarily consent to the divorce; and
 - c. The party seeking the divorce believes the bonds of marriage are irretrievably broken.
2. You have followed the steps in the Divorce Process:
 - a. The Complaint was delivered to your spouse.
 - b. Your spouse was notified of the court date.
3. You have settled all your legal and financial matters with your spouse:
 - a. You and your spouse have made arrangements for child custody and support.
 - b. You and your spouse have divided all property and debts.

If the Judge is satisfied that you have met the requirements for divorce, he or she will sign a judgment granting your divorce.

Conclusion

A divorce trial can be complicated if not properly prepared. There is a lot of necessary paperwork that has to be filled out completely and correctly. The Judge cannot help you if something is missing or incorrect. You are always advised to seek legal counsel if possible.

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



File No: _____

Name of Plaintiff(s)

VERSUS

Name of Defendant(s)

**PETITION TO SUE
AS A PAUPER**

AFFIDAVIT

Petition to Sue – As the individual plaintiff in the above entitled action, I affirm that I am financially unable to advance the required costs for the prosecution of this action. Therefore, I now petition the Court for an Order allowing me to bring suit in this action as an indigent. (Check one or more boxes as applicable).

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

Employer Name: _____ Employer Phone Number: _____

Address: _____

Do you have money owed to you, held for you or otherwise expected? Yes No

Are you married? Yes No Spouse's Income: _____

How many children live in your home? _____ Children's income? _____

Kind of car you own: _____

Is it paid for? Yes No Amount of Payments: _____

List all property you own, include cash, bank accounts, stocks and bonds, specify its location and value: _____

State all property you and your spouse own jointly, specify its location and value:

How much money do you owe? _____

I hereby declare under the penalties of perjury that the following answers are true, correct and complete and that I am financially unable to pay the costs of this action.

SWORN AND SUBSCRIBED TO BEFORE ME	SIGNATURE OF PETITIONER
Date	Date
Signature:	Signature of Petitioner:
<input type="checkbox"/> Clerk of Court <input type="checkbox"/> Assistant Clerk <input type="checkbox"/> Magistrate <input type="checkbox"/> Judge <input type="checkbox"/> Notary Public	Address of Petitioner: EBCI Tribal Roll Number: _____

ORDER

Based on the Affidavit appearing above, it is **ORDERED** that:
 The petitioner is authorized to bring suit in this action as an indigent.
 The petition is denied.

Date:	Signature:	Judge:
-------	------------	--------

EASTERN BAND OF CHEROKEE INDIANS
 CHEROKEE COURT
 CHEROKEE, NORTH CAROLINA
 FILE # CV _____ - _____

_____,)
)
 Plaintiff,)
)
 vs.)
)
 _____,)
)
 Defendant.)
 _____)

COMPLAINT FOR ABSOLUTE DIVORCE

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

1. The Plaintiff, _____, is is not a resident of the Territory of the Eastern Band of Cherokee Indians, and has lived there for a period of at least thirty (30) days next preceding the institution of this action. The Plaintiff currently resides at (*address*):

_____.

2. The Defendant, _____, is is not a resident of the Territory of the Eastern Band of Cherokee Indians, and has lived there for a period of at least thirty (30) days next preceding the institution of this action. The Defendant currently resides at (*address*):

_____.

3. The Plaintiff and Defendant were married on or about _____, and did live together as man and wife until on or about _____, at which time the Parties separated, and have since that time continued to live separate and apart, never having resumed the marital relationship which formerly existed between them.

4. The Plaintiff believes the bonds of marriage between the Parties are irretrievably broken.

5. That there were: No children born of the marriage.
 _____ children born to the marriage of the Parties,

Namely:

Name	DOB
_____	_____
_____	_____
_____	_____
_____	_____

6. () Check here if the child/children born of the marriage are minors. The minor child/children reside with:

(Name of person the minor child/children live with)

(Address of person the minor child/children live with)

7. (check if applicable) The Plaintiff/Defendant (circle one) desires to resume the use of her maiden name: _____.

WHEREFORE, THE PLAINTIFF PRAYS THE COURT FOR THE FOLLOWING RELIEF:

1. That the Plaintiff be granted an Absolute Divorce from the Defendant upon the grounds of thirty (30) days separation and the Plaintiff's belief that the bonds of marriage are irretrievably broken.

2. (check if applicable) The Plaintiff/Defendant (circle one) be allowed to resume the use of her maiden name: _____.

3. For such other and further relief as the Court deems just and proper.

This the _____ day of _____, 20____.

(Name of Plaintiff)

(Address of Plaintiff)

(City, State, Zip Code)

STATE OF NORTH CAROLINA

File No.

Cherokee Tribal Court County

In The General Court Of Justice

Name And Address Of Plaintiff

VERSUS

Name And Address Of Defendant

**SERVICEMEMBERS CIVIL RELIEF ACT
AFFIDAVIT**

G.S. Ch. 127B, Art. 4; 50 U.S.C. 3801 to 4043

NOTE: Though this form may be used in a Chapter 45 Foreclosure action, it is not a substitute for the certification that may be required by G.S. 45-21.12A.

AFFIDAVIT

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. I have personal knowledge that the defendant named above is in military service.*
- b. I have personal knowledge that 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. (check one of the following)

- a. I used the Servicemembers Civil Relief Act Website (<https://scra.dmdc.osd.mil/>) to determine the defendant's military status.
 - 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 Defense (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.)
- b. I have not used the Servicemembers Civil Relief Act Website and the following facts support my statement as to the defendant's military service: (State how you know the defendant is not in the military. Be specific.)

3. As of the current date: (check one of the following and explain below)

- a. I have personal knowledge that the defendant named above is a dependent of a servicemember in military service.*
- b. I have personal knowledge that the defendant named above is not a dependent of a servicemember in military service.*
- c. I am unable to determine whether the defendant named above is a dependent of a servicemember in military service.*

Explanation: _____

***NOTE: 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). The term "military service" also includes the following: State active duty as a member of the North Carolina National Guard under an order of the Governor pursuant to Chapter 127A of the General Statutes, for a period of more than 30 consecutive days; service as a member of the National Guard of another state under an order of the governor of that state that is similar to State active duty, for a period of more than 30 consecutive days. G.S. 127B-27(3).**

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME	Date
Date	Signature Of Affiant
Signature Of Person Authorized To Administer Oaths	Name Of Affiant (type or print)
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Magistrate	
SEAL <input type="checkbox"/> Notary Date My Commission Expires	

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 (whether on this form or not) has been filed, and if it appears that the defendant is in military service or is a dependent of a servicemember engaged in military service, do not proceed to enter judgment until such time that you have appointed an attorney to represent him or her.

(Over)

Information About Servicemembers Civil Relief Act Affidavits

1. Plaintiff to file affidavit

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—

- (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or
- (B) 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. 3931(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 and in consideration of G.S. 50B-2(a), 50C-2(b), and 50D-2(b), plaintiffs in Chapter 50B, Chapter 50C, and Chapter 50D 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. The allowance or disallowance of the ordering of costs will require a case-specific analysis.

3. Defendant's military status not ascertained by affidavit

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. 3931(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. 3931(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. 3931(b) (or a statement, declaration, verification, or certificate as authorized under 50 U.S.C. 3931(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).