

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

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

vs.

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

**NOTICE OF HEARING AND  
MOTION FOR LEAVE TO  
SERVE BY PUBLICATION**

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**NOTICE OF HEARING**

PLEASE TAKE NOTICE that a hearing on Plaintiff's Motion for Leave to Serve by Publication is scheduled to be heard on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at The Cherokee Court, Cherokee, North Carolina, at 9:30 a.m., or as soon thereafter as the matter may be heard.

**MOTION FOR LEAVE TO SERVE BY PUBLICATION**

COMES NOW, \_\_\_\_\_ (*Plaintiff's name*), and moves this Honorable Court for Leave to Serve, the Defendant, \_\_\_\_\_ (*Defendant's name*), in the above-captioned matter by Publication in a newspaper that is qualified for legal advertising in accordance with N.C. Gen. Stat. §1-597 and N.C. Gen. Stat. §1-598, as adopted by the Cherokee Code, and circulated in the area where the party to be served is believed by the serving party to be located and, in support thereof, SHOW the Court as follows:

1. That the Plaintiff resides in: (*check one*)

- Swain County, North Carolina.
- Jackson County, North Carolina.
- The Territories of the EBCI.
- Other: \_\_\_\_\_. (*please specify*)

2. That Pursuant to North Carolina Rules of Civil Procedure Rule 4(j1), as adopted by the Cherokee Code, the Plaintiff has exercised due diligence and made great

efforts to effectuate service on the Defendant and to locate the whereabouts of the Defendant consisting of: *(please list efforts)*

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3. That based upon the Plaintiff's due diligence, it is believed the Defendant's last known location was in: *(check one)*

- Swain County, North Carolina.
- Jackson County, North Carolina.
- The Territories of the EBCL.
- Other: \_\_\_\_\_ . *(please specify)*

4. The Plaintiff believes the Defendant is in the above location because: *(list reasons)*

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5. That despite such efforts, the exact whereabouts of the Defendant are still unknown. As a result, circumstances warrant the use of Service by Publication.

WHEREFORE, the Plaintiff respectfully prays this Honorable Court for the following relief:

1. That this Court grant leave for the Plaintiff to serve the Defendant by Publication as the Court may direct.
2. For such other and further relief as the Court deems just and proper.

Respectfully submitted this the \_\_ day of \_\_\_\_\_, 20\_\_.

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*(Plaintiff's signature)*

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*(Plaintiff's name)*

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*(Plaintiff's phone number)*

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

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

vs.

**ORDER GRANTING  
MOTION TO PUBLISH**

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

THIS CAUSE came on for hearing before the Honorable \_\_\_\_\_,  
Cherokee Court Judge, on the Plaintiff's Motion for Leave to Serve by Publication  
during the \_\_\_\_\_ Civil Session of the Cherokee Tribal Court; and the  
Court, having reviewed the court file, and hearing testimony from the Plaintiff, finds  
that:

1. The Plaintiff has made due diligence to serve the Defendant by:

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2. The Plaintiff's attempts to locate and serve the Defendant indicate service by publication is a necessity to properly serve the Defendant.

3. Publication in a newspaper that has a publication area of \_\_\_\_\_ would be appropriate to effectuate service on the Defendant.

IT IS THEREFORE ORDERED as follows:

1. That a copy of the Complaint and Summons shall be served by publication in a newspaper of general circulation that encompasses the

\_\_\_\_\_ areas, in accordance with the publication requirements of N.C. Gen. Stat. § 1A-1, Rule 4, and that the notice contain the information required by N.C. Gen. Stat. § 7B-1105(d), as adopted by the Cherokee Code.

2. Once publication is complete, the publisher's affidavit showing proof of publication shall be attached to and filed with an affidavit of service of process by publication by the Plaintiff.

3. The case is retained for the entry of further orders.

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

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Honorable Cherokee Court Judge

**Note to Publisher: Please do not include any identifying language included in  
parentheticals.**

NOTICE OF SERVICE OF PROCESS BY PUBLICATION  
EBCI THE CHEROKEE COURT  
CHEROKEE, NC  
FILE NO.: \_\_\_\_ - \_\_\_\_

\_\_\_\_\_ (*plaintiff's name*)

v.

\_\_\_\_\_ (*defendant's name*)

TO: \_\_\_\_\_ (*defendant's name*)

TAKE NOTICE that a pleading seeking relief against you has been filed in the above-entitled action. The nature of the relief being sought is \_\_\_\_\_. (*type of case*) You are required to make defense to this pleading not later than \_\_\_\_\_, 20\_\_\_\_, said date being 40 days from the first date of this publication, and upon your failure to do so, the party seeking service against you will apply to the Court for the relief sought.

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

\_\_\_\_\_  
(*plaintiff's name*)

\_\_\_\_\_  
(*plaintiff's address*)

\_\_\_\_\_  
(*plaintiff's address*)

\_\_\_\_\_  
(*plaintiff's address*)

\_\_\_\_\_  
(*plaintiff's phone number*)

N.C.G.S. \_1A-1, Rule 4(j1).

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

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

vs.

**AFFIDAVIT OF  
SERVICE BY PUBLICATION**

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

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NOW COMES \_\_\_\_\_ (*Plaintiff's name*) first being duly sworn, and shows unto the Court the following matters and things:

1. That I reside in: (*check one*)

- Swain County, North Carolina.
- Jackson County, North Carolina.
- The Territories of the EBCI.
- Other: \_\_\_\_\_. (*please specify*)

2. This affidavit is filed pursuant to the requirements of N.C. Gen. Stat. § 1A-1, Rule 4(j1) and 4(j2)(3), as adopted by the Cherokee Code.

3. Plaintiff caused a legal advertisement to run in the \_\_\_\_\_ (*name of newspaper*) newspaper on \_\_\_\_\_; \_\_\_\_\_; and \_\_\_\_\_; copies of which are attached as Plaintiff's Exhibit 1.

4. Publication of notice of service of process was done pursuant to the requirements of N.C. Gen. Stat. § 1-75.10(2), as adopted by the Cherokee Code, as shown by the attached publisher's affidavit.

5. The serving party has no information regarding the location of the party served.

Further your affiant sayeth not.

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

\_\_\_\_\_  
*(plaintiff's name)*

\_\_\_\_\_  
*(plaintiff's address)*

\_\_\_\_\_  
*(plaintiff's address)*

\_\_\_\_\_  
*(plaintiff's address)*

\_\_\_\_\_  
*(plaintiff's phone number)*

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

\_\_\_\_\_  
Notary Public (Printed Name)

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