



Instructions On Seized Item Returns

Prepared By:

The Clerk of Court's Office and The Office of the Tribal Prosecutor

Physical Location:

EBCI Anthony Edward Lossiah Justice Center

137 Seven Clans Lane

Cherokee, NC 28719

I. Application To Return Property Held By The CIPD

This section only covers non-firearms. If you are looking for the process on how to request a firearm, go to Part III.

CIPD safely keeps items seized or confiscated pursuant to lawful authority for as long as necessary to assure that the item will be produced at and may be used as evidence at trial. A Tribal Prosecutor may consent to return the property to the lawful owner, or a person, firm or corporation entitled to possession. For a Tribal Prosecutor to consider releasing your property, you must submit the following:

1. A completed *Application To Return Property Held By The CIPD*.
 - a. A blank application is attached to this guide. Copies of all forms are available in the Clerk of Court's Office.
2. Evidence of ownership, attached to the completed application.
 - a. Evidence includes any proof that you are the lawful owner or are a person, firm, or corporation entitled to possession. Examples of ownership may include purchase receipts, credit card statements, or a title.

Completed applications may be returned to the drop-box located outside of the Tribal Prosecutor's Victim and Witness Coordinator's Office located in the EBCI Justice Center. *Appendix A* provides instructions on how to find the drop-box. When you drop off your application, you must complete the Application Drop-Off Log and write your name along with the date and time.

DO NOT submit your application to the Clerk of Court's Office.

A Tribal Prosecutor has 30 days to review your application. The Tribal Prosecutor will either consent to return the property (grant the application) or refuse to return the property (deny the application). The Tribal Prosecutor may consent to return the property if they determine that the article is no longer useful or necessary as evidence in a criminal trial and you have submitted satisfactory evidence of ownership. Once the Tribal Prosecutor has granted or denied the application, you will be contacted by someone in the Office of the Tribal Prosecutor. You **MUST** provide updated contact information on the application.

If the application is approved, you will receive instructions on how to schedule an appointment to pick up your property from the CIPD.

IF YOUR APPLICATION WAS APPROVED, STOP HERE.

If the application is denied, you will be contacted from someone in the Office of the Tribal Prosecutor to make an appointment to pick up the denied application. You have the right to file a *Motion And Notice To Return Property* in the Cherokee Court. There is no filing fee and forms are available in the Clerk of Court's Office. You **MUST** bring your denied application with you to the Clerk of Court's Office.

IF YOUR APPLICATION WAS DENIED, GO TO PART II.

Once you have filled out the *Motion And Notice To Return Property*, return the completed motion to the Clerk of Court's Office. Bring your denied *Application To Return Property Held By The CIPD* with you to the Clerk of Court's Office. **If you are certain that there are no interested parties**, you may tell the Clerk you are ready to file an *Affidavit Of No Interested Parties* at this time. Interested parties are explained in Step Two. Instructions on how to complete the *Affidavit Of No Interested Parties* are found in Step Three.

A Clerk will make a copy of the denied *Application To Return Property Held By The CIPD* and file stamp the application and the *Motion And Notice To Return Property*. The Clerk will add a hearing date and a file number to the *Motion And Notice To Return Property* and will make a copy of the *Motion And Notice To Return Property* that you may keep for your records. If you are serving notice through registered or certified mail, you must have a copy of the *Motion And Notice To Return Property* for each interested party. You may kindly ask the Clerks to make additional copies of your *Motion And Notice To Return Property* at the time of filing, after which time you will be responsible for making any copies you may need to serve notice on an interested party.

➔ Step Two: Serving Notice on All Interested Parties

Notice means informing all interested parties that the Court will hear your *Motion And Notice To Return Property* and that the Court may order the CIPD to return your property. **YOU MUST** serve notice. Notice must be given at least 30 days before the hearing and must be given to all parties, including defendants. A defendant is a person in a criminal proceeding who has been accused or convicted of committing a criminal offense. Whether or not someone is an interested party depends on the facts of each case. The Clerk of Court's Office cannot help you determine whether someone is an interested party.

If you know who any interested parties are, you may serve notice by mailing a copy of your file-stamped *Motion And Notice To Return Property* through registered or certified mail. You must use a properly addressed, pre-paid envelope and request signature confirmation. Notice is complete on the day that the envelope is delivered as shown on the delivery receipt.

If a person other than the interested party signs, delivery may still be sufficient if the person who signed is: (1) of a suitable

age and discretion, and (2) a resident at the same address. If the delivery is unsuccessful or if you don't know whether the person who signed meets both requirements, you must also serve notice by publication.

The delivery receipt is an electronic or facsimile receipt provided by the United States Postal Service. You **MUST** include a copy of the delivery receipt with your *Affidavit Of Notice By Registered Or Certified Mail*. The *Affidavit Of Notice By Registered Or Certified Mail* is explained in Step Three.

If you have no knowledge regarding the identity or location of any interested party, or if the notice by registered or certified mail is incomplete and there is still at least 30 days before the

If you are certain that there are no parties which may have an interest in the property and/or in the hearing, you may complete the *Affidavit Of No Interested Parties*. By completing this form, you are swearing to the Court that there are no interested parties for you to serve notice. Remember, whether or not a person should receive notice depends on the facts of each case and defendants must always receive notice. You must complete the *Affidavit Of No Interested Parties* before a notary and file the completed form with the Clerk of Court's Office. A Clerk will file stamp the *Affidavit Of No Interested Parties*, add the form to the court file, and send a copy of the form to both the CIPD and the Tribal Prosecutor.

Step Four: Hearing on the Motion to Return Property

A hearing on your *Motion And Notice To Return Property* is necessary for the Court to make a judgement in the case. A Cherokee Court Judge will look to see that all parties have been given notice and an opportunity to participate in the hearing. If notice is incomplete at the time of the hearing, a Cherokee Court Judge may dismiss the *Motion And Notice To Return Property*. If a Judge dismisses the motion, this does not mean that the Court has decided that the property may not be returned. You may file another *Motion And Notice To Return Property* and resend notice with a new hearing date.

You must be on time for the hearing and be respectful in the courtroom at all times. Bring any evidence of ownership with you to the hearing.

IF YOU DO NOT APPEAR AT THE HEARING, a Cherokee Court Judge may dismiss your motion. This means that you would have to start the process over and file a new *Motion And Notice To Return Property* and deliver notice on the new motion.

Based on the information presented in the hearing, a Cherokee Court Judge will decide whether or not to order the CIPD to return some or all of the property. If an item will be used as evidence at trial, a Judge may enter such an order as necessary to ensure that the item will be available as evidence at the time of trial and as otherwise necessary to protect the rights of all parties.

If a Cherokee Court Judge orders that the property be returned, the Judge will sign the Order and the Clerk will make a copy of the Order for you to keep. The Clerk will also give you instructions on how you can schedule an appointment with the CIPD to pick up your property. No appointments will be scheduled through the Clerk of Court's Office.

The Judge may order that the CIPD must return your property within a certain number of days. This means that if you do not make an appointment with the CIPD to pick up your property within that time or fail to appear for your appointment, the CIPD may be able to publish notice that the property remains unclaimed and that if you do not pick up your items within a certain amount of time, they will dispose of the property.

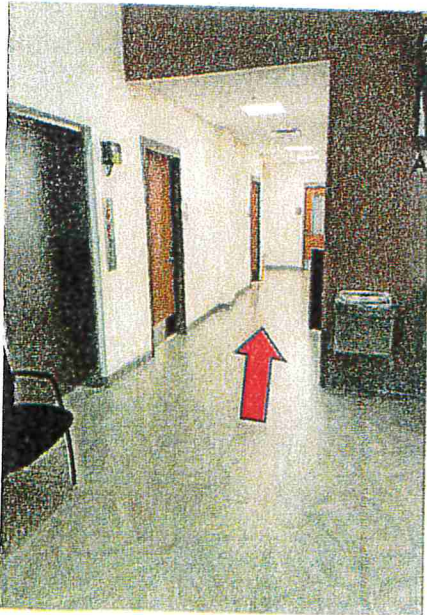
Appendix A: Locating the Office of the Tribal Prosecutor's Application Drop-Box



Start in the lobby of the EBCI Justice Center and walk through the metal detectors.



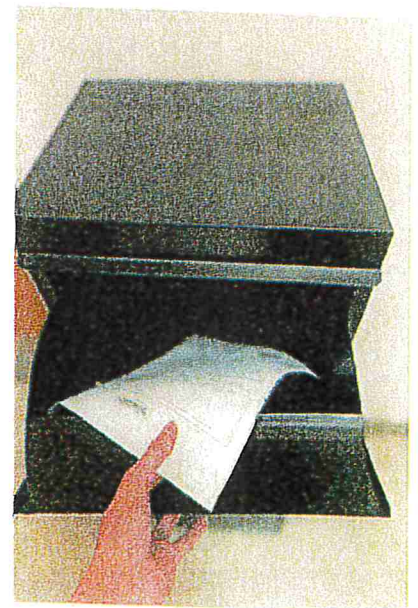
Turn right and walk down the first hallway.



Continue down hallway.



The drop-box is the large, black metal box.



Pull down to open the drop-box and place your application inside. Don't forget to complete the Application Drop-Off Log.

APPLICATION TO RETURN PROPERTY HELD BY THE CIPD

Name of Person Requesting Return

Signature of Person Requesting Return

Mailing Address (City, State, Zip)

Phone

Date

Office of the Tribal Prosecutor
Eastern Band of Cherokee Indians



Return the completed form to the drop-box located in the EBCI Justice Center located at 137 Seven Clans Ln, Cherokee, NC 28719

1. This form is being completed by: *(select all that apply)*

- The lawful owner of the property.
- A person, firm or corporation entitled to possession of the property.
- A victim of crime, as defined under C.C. § 15C-2(a)(7) of the Victim Rights Act.
- A Tribal Prosecutor.

Attach copies of any evidence showing that you are the lawful owner or are entitled to possession of the property.

2. List and describe the property to be returned: *(attach additional pages if extra space is needed)*

This application is for non-firearms only. If you are requesting the return of a firearm, you MUST complete the Application For Return Of Firearm.

3. Explain the circumstances surrounding when the property was seized/confiscated. If known, include the name(s) of the Cherokee Indian Police Department Officers who confiscated or seized the items, the date of the confiscation or seizure, and the location of the confiscation or seizure: *(attach additional pages if extra space is needed)*

STOP HERE.



CHEROKEE INDIAN POLICE DEPARTMENT
APPLICATION FOR RETURN OF FIREARM



FULL NAME: _____ DOB: _____
Last First Middle MM/DD/YYYY

ADDRESS: _____ CITY: _____ STATE: _____ ZIP: _____

PHONE NUMBER: _____ SSN: _____ - _____ - _____

DRIVER LICENSE #: _____ STATE: _____ SEX: Male Female

DESCRIBE THE FIREARM (Include the make, model, and serial number):

EXPLAIN THE CIRCUMSTANCES OF HOW THE FIREARM CAME INTO THE CUSTODY OF THE CIPD (If known, include the name(s) of the CIPD officers who seized or confiscated the firearm, the date of the seizure or confiscation, and the location of the seizure or confiscation):

Turn Over and Complete Page 2.