

EASTERN BAND OF CHEROKEE INDIANS
CHEROKEE COURT
CHEROKEE, NORTH CAROLINA



IN THE MATTER OF THE GUARDIANSHIP OF:

Name of Respondent (*Person alleged to be in need of a guardian*)

Respondent (*Check One*): ☐ Is Indigent ☐ Is Not Indigent

Name of Petitioner (*Person/Agency Filing Petition*)

Petitioner (*Check One*): ☐ Is an Agency ☐ Is a person

**PETITION FOR ADJUDICATION OF
PROTECTED ☐ ADULT ☐ CHILD
AND APPOINTMENT OF GUARDIAN**

Cherokee Code Chapter 35A

IMPORTANT: This Petition must be verified before a notary. After you file this Petition in the Clerk's Office, you must serve of a copy of the Petition and Summons (which will be given to you by the Clerk's Office) on the Respondent and any persons you identify in Part III as having an interest in the Petition, pursuant to Rule 4 of the North Carolina Rules of Civil Procedure.

The undersigned Petitioner, being duly sworn, requests the Court, after notice and hearing, adjudicate the Respondent named above to be a (*check one*: ☐ protected adult, as defined in Cherokee Code 35A-1101(r), ☐ protected child, as defined in Cherokee Code 35A-1101(s)), and also to appoint the Petitioner's proposed guardian to serve in the capacity indicated. In support of this Petition, the undersigned affirms the following:

Part I. Information About Petitioner

(The Person Filing the Petition)

1. **Full Name of Petitioner** (*or name of personal representative of Agency*): _____
2. **Date of Birth** (mm/dd/year): _____
3. **Address of Residence:** _____
_____ **Current Mailing Address:** _____
☐ Same as residence ☐ Other: _____
4. **Physical Location:** ☐ Same as residence ☐ Same as current mailing address ☐ Other: _____
5. **Relationship to Respondent:** _____ **Interest in proceeding** (*why are you bringing this petition*): _____

Part II. Information about Respondent

(Person alleged to be in need of guardian)

6. **Full Name of Respondent:** _____
 7. **Date of Birth** (mm/dd/year): _____ **Age:** _____
 8. **Residence:** _____ **Current Mailing Address:** _____
_____ ☐ Same as residence ☐ Other: _____
- Physical Location** (*include the name and address of any treatment, hospital inpatient, or residential facility/institution*): ☐ Same as residence ☐ Same as current mailing address ☐ Other: _____

Respondent has resided at the physical location since (date: _____), and this residence (*check one*) ☐ is on Cherokee Trust Lands. ☐ is not on Cherokee Trust Lands.

(*Check one*) ☐ Respondent is not currently residing on Cherokee Trust Lands but has resided on Trust Lands in the past 6 months.
☐ Respondent is currently residing on Cherokee Trust Lands.

Part III. Other Interested Parties

9. List the names and addresses of any other persons known to have an interest in the Petition, including the Respondent's spouse, caregiver, adult children, and if none, the Respondent's parents and adult brothers and sisters, and if none, at least one adult nearest in

kinship to the Respondent who can be found with reasonably diligent efforts (*Continue on an additional sheet if necessary – you must list all interested persons*):

Name and Address of Interested Party 1	Name and Address of Interested Party 2
Relationship to Respondent or Interest in Petition	Relationship to Respondent or Interest in Petition
Name and Address of Interested Party 3	Name and Address of Interested Party 4
Relationship to Respondent or Interest in Petition	Relationship to Respondent or Interest in Petition

Provide any additional information about the other interested parties that you believe the Court should know (*e.g., are they aware that the Petition is being filed, do they support a guardianship*): _____

	Part IV. Existing Legal Instruments or Orders	
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10. There (*check one*): ☐ is a power of attorney (POA) in place. ☐ is not a power of attorney (POA) in place.
 - a. The POA is (*check one*): ☐ a general/durable POA. ☐ a healthcare POA. ☐ other/unknown.
 - b. The name of the person who has the POA is: _____
 - c. The POA: ☐ is recorded (*give name of county(ies)/state of record*: _____). ☐ is not recorded.
11. There (*check one*): ☐ is a special needs or other trust in place. ☐ is not a special needs or other trust in place.
 - a. The name of the trustee is _____ and the location of the trust is _____.
12. There (*check one*): ☐ is another court proceeding involving Respondent. ☐ is not another court proceeding involving Respondent.
 - a. The court proceeding is located in (*name of court and the county and state where the court is located*): _____
 - b. The type of proceeding is: _____
 - c. The file number for the proceeding is: _____
 - d. The date of the most recent filing is: _____
 - e. The date of the most recent order is: _____
13. There (*check one*): ☐ are other legal or medical or financial instruments or orders in place. ☐ are no other legal or medical or financial instruments or orders in place.
 - a. If yes, list all: _____
 - _____
 - _____
 - b. If no or unknown, explain any effort you have made to locate any instrument or order; list the name(s) of any individual(s) who would knowledge of any instrument or order; and list the location (name of court; county; or state) where any instrument or order would have been created, filed, or ordered: _____
 - _____
 - _____
 - _____
 - _____

Part V. Facts Showing the Need for a Guardianship

14. **Need for Guardianship.** Explain or describe the facts showing that Respondent is a protected adult (a person who is unable to understand, make, communicate or act on decisions about their person or property, as a result of mental illness, mental deficiency, physical illness or disability, advanced, chronic use of drugs, chronic intoxication, or other cause) or a protected child (a minor who is at least 17 ½ years old, who other than by reason of minority, lacks sufficient capacity to make or communicate important decisions concerning his/her person, family, or property as a result of mental illness, mental deficiency, physical illness or disability) and facts showing why a guardianship is needed, including supporting evidence, date of examination, examples of behaviors: _____

15. For the following section select yes or no based on whether you agree with the statement. Attach additional sheets if extra space is needed.

☐ Respondent is in a coma, persistent vegetative state, or is non-responsive. (If yes, you may move on to 16.)

Communication and Cognition.

- | | |
|---|---|
| <p>A. Respondent understands and participates in conversations. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>B. Respondent is able to understand and respond to verbal communications. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>C. Respondent is able to read and write. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>D. Respondent understands their care needs. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> | <p>E. Respondent is able to read and understand various signs (e.g., keep out, stop, danger). <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>F. Respondent has been diagnosed with a neurocognitive disorder (e.g., dementia, Alzheimer's). <input type="checkbox"/> Yes. <input type="checkbox"/> No. <u>Diagnosis:</u> _____ <u>Date of Diagnosis:</u> _____</p> <p>G. Respondent is able to make or communicate decisions concerning family. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> |
|---|---|

Personal Hygiene

- | | |
|--|---|
| <p>A. Respondent is able to bathe independently. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>B. Respondent is able to maintain personal hygiene. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>C. Respondent is able to brush teeth daily and maintain adequate dental care. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> | <p>D. Respondent is able to use the restroom without assistance. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>E. When toileting, Respondent uses proper hygiene. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>F. Respondent is able to fully and properly dress and undress themselves. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> |
|--|---|

Health Care

- | | |
|--|---|
| <p>A. Respondent is able to make and communicate choices in regard to medical treatment. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>B. Respondent is able to make and communicate choices in regard to caregivers and/or assistants. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> | <p>C. Respondent knows who to notify of symptoms of illness. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> <p>D. Respondent is able to take care of minor health problems such as colds, cuts, etc. <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Comments:</p> |
|--|---|

E. Respondent is able to follow proper instructions in taking prescribed medicine. ☐Yes. ☐No. ☐Comments:

F. Respondent is able to communicate medication problems or needs. ☐Yes. ☐No. ☐Comments:

G. Respondent is able to understand the consequences of not accepting medical treatment. ☐Yes. ☐No. ☐Comments:

Personal Safety and Civil

A. Respondent is able to identify abuse and neglect and protect themselves from harm. ☐Yes. ☐No. ☐Comments:

B. Respondent is able to recognize potential danger and respond to emergencies. ☐Yes. ☐No. ☐Comments:

C. Respondent knows who to contact if they are being exploited (e.g., police, PHHS/Family Safety/DSS). ☐Yes. ☐No. ☐Comments:

D. Respondent is susceptible to exploitation/undue influence. ☐Yes. ☐No. ☐Comments:

E. Respondent has previously been mistreated. ☐Yes. ☐No. ☐Comments:

F. Respondent is able to avoid common environmental dangers (e.g., oncoming traffic, sharp objects, poisonous products). ☐Yes. ☐No. ☐Comments:

G. Respondent is able to use a telephone to contact help in an emergency. ☐Yes. ☐No. ☐Comments:

H. Respondent is able to communicate wishes regarding legal documents or services ☐Yes. ☐No. ☐Comments:

Employment

A. Respondent is currently employed or has a job. ☐Yes. ☐No. ☐Comments:

B. Respondent is able to interact appropriately with co-workers and authority figures in the workplace. ☐Yes. ☐No. ☐Comments:

C. Respondent is able to make and communicate choices in regard to employment. ☐Yes. ☐No. ☐Comments:

D. Respondent is able to express knowledge of or demonstrate vocational skills. ☐Yes. ☐No. ☐Comments:

E. Respondent is able to use different approaches to find employment (e.g., going to a job fair, responding to ads). ☐Yes. ☐No. ☐Comments:

Independent Living and Nutrition

A. Respondent is currently assisted by a hired or family caregiver or is receiving home/community-based services. ☐Yes. ☐No. ☐Comments:

B. There are concerns about Respondent's mobility. ☐Yes. ☐No. ☐Comments:

C. Respondent is able to arrange transportation. ☐Yes. ☐No. ☐Comments:

D. Respondent is able to safely operate a car. ☐Yes. ☐No. ☐Comments:

E. Respondent is able to make independent decisions regarding eating (e.g., when, where, and what to eat). ☐Yes. ☐No. ☐Comments:

F. Respondent is able to maintain adequate nutrition. ☐Yes. ☐No. ☐Comments:

G. Respondent is able to avoid common dangers when traveling in the community. ☐Yes. ☐No. ☐Comments:

H. Respondent is able to identify their address and return home or seek assistance if lost or stranded. ☐Yes. ☐No. ☐Comments:

I. Respondent is able to independently use community resources, such as the bank, grocery store, post office. ☐Yes. ☐No. ☐Comments:

J. Respondent is able to exercise reasonably good judgement most of the time. ☐Yes. ☐No. ☐Comments:

K. Respondent is able to eat and drink independently. ☐Yes. ☐No. ☐Comments:

L. Respondent is able to prepare and/or follow a prescribed diet based on a health condition, such as diabetes. ☐ Yes. ☐ No. ☐ Comments:

M. Respondent is able to make and communicate choices in regard to their residence. ☐ Yes. ☐ No. ☐ Comments:

N. Respondent is able to maintain shelter that is safe, adequately heated, and adequately ventilated. ☐ Yes. ☐ No. ☐ Comments:

Financial

A. Respondent is able to make and communicate decisions about paying bills and spending discretionary money. ☐ Yes. ☐ No. ☐ Comments:

B. Respondent knows the source and amounts of monetary benefits they receive or are eligible to receive on a weekly, monthly, or annual basis. ☐ Yes. ☐ No. ☐ Comments:

C. Respondent is able to make change for \$1, \$5, or \$10. ☐ Yes. ☐ No. ☐ Comments:

D. Respondent is able to make and communicate decisions regarding management of personal bank

account, savings, investments, real estate, or other substantial assets. ☐ Yes. ☐ No. ☐ Comments:

E. Respondent is able to understand the concept of debt, and understand their own debt. ☐ Yes. ☐ No. ☐ Comments:

F. Respondent is able to identify situations of possible financial exploitation. ☐ Yes. ☐ No. ☐ Comments:

G. Respondent is able to adequately protect themselves from attempts of financial exploitation. ☐ Yes. ☐ No. ☐ Comments:

16. Petitioner is attaching as an exhibit a medical record, incident report, or affidavit from family, friends, medical professionals, social workers, or mental health workers. (check one) ☐ Yes. ☐ No. (If yes, and you have more than one exhibit to submit, label each exhibit in the upper-right corner as: Petition Exhibit # _____)

Part VI. Estimate of Respondent's Property, Assets, and Liabilities

(Complete if you are seeking a guardianship of the estate or a general guardianship)

Assets

Real Property: \$ _____
Vehicles: \$ _____
Tangible personal property: \$ _____
Other personal property: \$ _____

Source and amount of anticipated income or receipts:

Wages/salaries: \$ _____
Rental income: \$ _____
Pensions: \$ _____
Allowances: \$ _____
Insurance: \$ _____
Other (including SSI/SSDI): \$ _____

Liabilities

Mortgage loans: \$ _____
Residential costs/rent: \$ _____
Car payment: \$ _____
Student loans: \$ _____
Other secured loans: \$ _____
Unsecured loans: \$ _____

17. Respondent (check one): ☐ is eligible to receive per capita payments. ☐ is not eligible to receive per capita payments.

18. (Check one): ☐ The value of Respondent's personal property is equal to or greater than \$ 50,000.
☐ The value of Respondent's personal property is less than \$ 50,000.

19. (Check one): ☐ There is a representative payee for government benefits. (Name of payee: _____).
☐ There is not a representative payee for government benefits.
☐ It is unknown at this time whether there is a representative payee.

Part VII. Proposed Guardian

20. Petitioner is requesting that the Court appoint a (check one): ☐ Limited guardian of the person.
☐ Limited guardian of the estate.
☐ Guardian of the person.
☐ Guardian of the estate.
☐ General Guardian (guardian of the person and estate).

21. Petitioner recommends or seeks to have the following person appointed as guardian: _____

22. The prospective guardian (*check one*): ☐ has been convicted of a felony. ☐ has never been convicted of a felony.
23. The prospective guardian (*check one*): ☐ has never been convicted of any crime. ☐ has been convicted of a crime.
24. The prospective guardian (*check one*): ☐ owns an institution where a protected person resides. ☐ does not own an institution where a protected person resides.
25. The prospective guardian (*check one*): ☐ is employed at an institution where a protected person resides. ☐ is not employed at an institution where a protected person resides.
26. The prospective guardian (*check one only if Petitioner is the prospective guardian*): ☐ consents to a criminal background check at this time.
☐ does not consent to a criminal background check at this time.

	VERIFICATION	
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I, the undersigned Petitioner, have read and verified this Petition and state that its contents are true to my own knowledge, except those matters stated on information and belief, which I believe to be true. (*Only sign if you are before a notary*)

Date: _____ Name of Petitioner: _____ Signature of Petitioner: _____

SWORN TO AND SUBSCRIBED BEFORE ME		
Date	<input type="checkbox"/> Deputy Clerk <input type="checkbox"/> Assistant Clerk <input type="checkbox"/> Notary	Commission Expiration Date
SEAL	Name of Official	Signature