



Title 8. Judicial System – Chapter 801  
Judiciary  
Rule #1 – ONEIDA TRIAL COURT RULES

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### **1.1 Purpose**

1.1-1. *Purpose.* The purpose of these rules is to supplement the Oneida Judiciary Rules of Civil Procedure and other laws governing the Trial Court.

### **1.2 Adoption, Amendment Repeal**

1.2-1. These rules were created by the Trial Court and approved by the Oneida Business Committee in accordance with 8 O.C. 801.10-1 and 1 O.C. Chapter 106.

1.2-2. These rules may be amended or repealed pursuant to the procedures set out in the Judiciary and Administrative Rulemaking laws.

1.2-3. Should a provision of these rules or the application thereof to any person or circumstance be held as invalid, such invalidity shall not affect other provisions of these rules which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of these rules and a provision of another rule, the provisions of these rules shall control.

### **1.3 Appearances**

1.3-1. When at all possible, the parties should appear in person.

1.3-2. In circumstances where it is difficult or impossible for a party to appear in person, the party may contact the Court Clerk to request an appearance by telephone or videoconference.

(a) It is the responsibility of the party to provide the Trial Court with a contact number where the party may be reached for the telephone or videoconference appearance.

(b) It is the responsibility of the party appearing by telephone or videoconference to be available at the scheduled time of the hearing.

## **1.4 Rules of Decorum**

1.4-1. This section shall apply to all persons entering the courtroom.

- (a) All electronic devices shall be turned off or silenced as to not disrupt court proceedings.
  - (1) If any electronic devices are heard or seen, that person will be identified and may be removed from the courtroom by the Security Officer or Oneida Police Officer.
  - (2) Removal may be for the remainder of the hearing.
- (b) All persons are prohibited from using an electronic device to take pictures, take videos, text, or make sound recordings without permission from the Judge.
- (c) Unless otherwise approved by the Judge, all persons shall remove their sunglasses, hats or headwear, except those worn for religious or medical purposes.
- (d) No food or drink shall be permitted in the courtroom without permission from the Judge.
- (e) All persons shall identify themselves when asked by court security officers, law enforcement officers, and Oneida Judiciary staff.
- (f) Except for on-duty law enforcement officers and court security officers, no weapon of any type shall be taken, carried, or introduced into the Judiciary. All persons entering the Judiciary may be searched and examined by electronic detection equipment.
- (g) Court security officers, law enforcement officers, and Oneida Judiciary staff are authorized to open and inspect any item carried into the Judiciary.
- (h) Courtroom Capacity is limited to seating availability; standing during hearings is not allowed.
- (i) Disruptive children shall remain in the lobby and shall be accompanied by an adult.
  - (1) Court staff, including security, will not provide care for children during court proceedings.
- (j) No contact or communication is allowed between those in the gallery and the parties.
- (k) Those in the gallery shall not talk or whisper while court is in session. Absolute silence is required; any noise violation will result in removal from the courtroom.
- (l) Case related photos or expressions on clothing or any other items the Trial Court deems as a distraction to court proceedings will not be allowed.
- (m) No signs or banners are allowed in the courtroom. There shall be no demonstrations of any kind in the courtroom while court is in session.
- (n) Any other distracting or disorderly conduct not specifically addressed herein, may result in removal from the courtroom by security officers or law enforcement officers.
  - (1) Individuals may also be removed from the courthouse for attempting to listen in or eavesdrop on a closed Court proceeding.
- (o) All persons shall rise when the judge enters and leaves the courtroom.

1.4-2. This section shall apply to all parties, counsel and witnesses.

- (a) Parties, counsel and witnesses shall refer to the judge as “Your Honor.”
- (b) All parties, counsel, and witnesses shall refrain from interrupting or talking over one another.
- (c) Parties and/or counsel shall direct all concerns and remarks to the Court, not to the opposing party.

### **1.5 Default Judgment**

1.5-1. If a party fails to appear at any Trial Court matter, the Court shall confirm and be satisfied that proper notice was provided.

1.5-2. If the Trial Court finds that proper notice was not provided, the matter shall be rescheduled. The Trial Court may make orders or give instructions on further service or notice efforts to occur before the rescheduled hearing.

1.5-3. If the Trial Court finds that proper notice was provided, the Trial Court may enter judgment against the party that failed to appear. The Trial Court, in its discretion, may require a party to produce sufficient evidence to support a judgment against the other party.

### **1.6 Continuance**

1.6-1. A continuance means a hearing or other scheduled event is postponed to a later date.

1.6-2. Continuances shall only be granted by the Trial Court based on a written request of a party, a stipulation of the parties, or on the Trial Court's own motion.

1.6-3. A request for a continuance shall be decided on a case-by-case basis considering the circumstances present at the time of the request. Examples of acceptable reasons for a continuance may include, but are not limited to, the following:

- (a) Failure of a party to receive proper or sufficient notice;
- (b) Emergency involving the Judge, Court staff, and/or parties;
- (c) Unavailability of the courtroom;
- (d) A one-time request to obtain counsel;
- (e) To allow more time for settlement negotiations or peacemaking; and
- (f) Absence or unavailability of a material witness.

1.6-4. The Trial Court may impose conditions upon the granting of a continuance, such as requiring a party to provide documentation regarding an illness.

### **1.7 Participation Accommodations**

1.7-1. In circumstances where a party would be restricted from participating in the court procedures, the person may request reasonable accommodations.

- (a) Requests for equipment shall be submitted at least two (2) weeks before a hearing.
- (b) All other reasonable accommodation requests shall be submitted at least one week before a hearing.

### **1.8 Scheduling a Hearing**

1.8-1. The Court Clerk may contact the parties by any of the following communication methods:

- (a) Phone
- (b) Electronic mail
  - (1) If one party does not have a valid email address, the Court Clerk will look to other communication options.

1.8-2. The hearing may be done telephonically with the parties.

### **1.9 Ex Parte Communication**

1.9-1. Ex parte communication is communication, either verbally or in writing, between a judge and a party about a pending case, without the other party present. Communication includes, but

is not limited to, the following: pleadings, letters, email, phone calls, or in-person conversations whether in or out of court.

1.9-2. Ex parte communication is forbidden, subject to the following exceptions:

- (a) When a party fails to appear at a court hearing where both parties have been properly noticed, the Trial Court may speak on the record with the party who appears.
- (b) When a party believes that sharing the communication with the other party would place the party or children in danger of physical harm.

### **1.10 Peacemaking and Mediation**

1.10-1. This section governs the application process for prospective peacemakers/mediators from outside of the Oneida Judiciary.

- (a) Applicants shall submit a completed application to serve as Peacemaker/Mediator to the Court Administrator.
- (b) A background check will be initiated through the Backgrounds Department at the Oneida Human Resources Department.
  - (1) Applicants that pass the background check may be scheduled an interview.
  - (2) Should a completed background check for an applicant fail to meet the minimum qualifications, a notice of denial of application is sent certified mail to the applicant.
- (c) The Judges involved with the interview will confer to discuss whether the applicant will be approved.
  - (1) If approved, the Court Administrator will process the applicant in the Purchasing Management system as an active vendor.
  - (2) If not approved, then Chief Trial Judge will send a letter stating the reasons for the denial.
- (d) Records.
  - (1) A complete record of all applications will be maintained by the Court Administrator.

1.10-2. This section governs the appointment of peacemakers/mediators.

- (a) Before being utilized by the Trial Court, a peacemaker/mediator must demonstrate an understanding of the role of the peacemaker/mediator.
  - (1) Such understanding may be demonstrated by completing peacemaking/mediation training, performing prior peacemaking/mediation work for the Trial Court, being recognized as a certified peacemaker/mediator by the Cultural Heritage Department and/or another jurisdiction, or such other means determined to be appropriate by the Trial Court.
- (b) The Trial Court may refer the parties to peacemaking or mediation in accordance with 8 O.C. chapter 801.6-2.
- (c) No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party, or is an immediate relative or representative of an interested party may be appointed peacemaker/mediator in that proceeding without the consent of the parties.
- (d) The Trial Court shall have the duty of administering the peacemaker/mediator list for Trial Court cases. The Trial Court shall select a peacemaker/mediator from the list.

1.10-3. This section governs the conduct and duties of peacemakers/mediators.

- (a) A peacemaker/mediator shall maintain independence, objectivity, and the appearance of fairness in dealings with parties.
- (b) A peacemaker/mediator shall avoid any actual or apparent conflict of interest or impropriety in the performance of peacemaking/mediating responsibilities.
- (c) A peacemaker/mediator shall avoid self-dealing or association from which a peacemaker/mediator might directly or indirectly benefit in cases they are appointed, other than for compensation as peacemaker/mediator.
- (d) A peacemaker/mediator shall act immediately to resolve any potential conflict or impropriety. A peacemaker/mediator shall advise the Trial Court and the parties of the action taken, resign from the case, or seek Trial Court direction as may be necessary to resolve the conflict or impropriety.
- (e) A peacemaker/mediator shall not accept or maintain appointment if the performance of the duties of peacemaker/mediator may be materially limited by the peacemaker's/mediator's responsibilities to another client or a third person, or by the peacemaker's/mediator's own interests.
- (f) A peacemaker/mediator shall make no disclosures about the case except in documents to the Trial Court or as necessary to perform the duties of a peacemaker/mediator. A peacemaker/mediator shall keep confidential the contact information of the parties where there are allegations of domestic violence or a safety risk to a party or child.
- (g) A peacemaker/mediator may be provided copies of relevant pleadings, documents, and reports from the Trial Court file.
- (h) Unless otherwise approved by the Trial Court, a peacemaker/mediator shall provide the Trial Court with a written update within three (3) business days of the peacemaking session.

1.10-4. A peacemaker/mediator shall maintain the ethical principles of the rules of conduct set forth in these rules and is subject to discipline by the Trial Court.

- (a) If the Trial Court receives a complaint regarding the conduct of a peacemaker/mediator, the Trial Court shall do one of the following:
  - (1) The Trial Court may hold a hearing and issue a decision regarding the complaint against the peacemaker/mediator after all parties have been given an opportunity to be heard; or
  - (2) The Trial Court may, in its discretion or at the request of the parties, resolve the complaint against the peacemaker/mediator through receipt of briefs and issuance of a written decision rather than holding a hearing; or
  - (3) The Trial Court may screen out and take no action on complaints that are frivolous or repetitive. The Trial Court shall communicate in writing any such decision with the parties.
  - (4) Any other action that the Trial Court deems appropriate.
  - (5) The Trial Court may issue an order for discipline which may include, but is not limited to: additional training requirements, removal from a case, or removal from the peacemaker/mediator list.

1.10-5. A peacemaker/mediator shall be compensated at a rate that the Trial Court determines is reasonable.

- (a) A peacemaker/mediator shall keep accurate records of the time spent (to the tenth of an hour) and file an itemized statement and accounting with the Court Administrator.

- (b) There shall be no compensation paid for peacemaking/mediation done by a full-time Judge.
- (c) Private mediators may be used in accordance with 8 O.C. chapter 801.6-4(a).

## **1.11 Contempt**

### **1.11-1. Procedure for direct contempt:**

- (a) Depending on the severity of the contemptuous action or behavior, a warning of contempt which may include a fine up to \$1,000 for each individual act, may be given to a person before a finding of contempt.
- (b) Unless a warning is given, immediately after a contemptuous action or behavior, the Trial Court shall find such person in contempt and state the amount of the fine.
  - (1) Upon a finding of contempt, the Trial Court shall include the fine amount, up to \$1,000.00 per act of contempt, in accordance with Oneida Judiciary Rules of Civil Procedure section 803.26-2.
- (c) A recess may be taken after the finding of contempt.
- (d) A written order for direct contempt shall be written in accordance with 803.31-1 (f).

### **1.11-2. Procedure for indirect contempt:**

- (a) The Trial Court may, in its discretion or on motion by a party, resolve issues of indirect contempt through receipt and deliberation of briefs rather than a hearing.
- (b) The Trial Court may schedule a hearing within thirty (30) days of an alleged contemptuous action or behavior.
  - (1) The hearing shall be called to order in accordance with 803.38-1(a)
  - (2) The party alleging contempt has occurred will present its argument for contempt.
  - (3) The party who allegedly committed contempt will present its argument against contempt or may admit to contempt.
  - (4) Both parties shall have the opportunity for a rebuttal.
  - (5) In the event the Trial Court is alleging indirect contempt against a party, the Trial Court shall schedule a hearing within thirty (30) days of the alleged contemptuous action or behavior.
    - (A) The hearing shall be called to order in accordance with 803.38-1(a).
    - (B) The Trial Court shall describe the alleged contemptuous action or behavior.
    - (C) The party who allegedly committed the contempt will present its argument against contempt or may admit to contempt.
      - i. The party may purge a contempt charge by complying with the Trial Court order in accordance with 803.26-2.
    - (D) The non-contemptuous party may present its argument, if any, for or against contempt.
    - (E) The party who allegedly committed the contempt may offer a rebuttal.
    - (F) After the parties have been heard, the Trial Court may allow a person to comply with the Trial Court order in accordance with 803.26-3(b)(1).

## **1.12 Cases with no action for 60 days**

1.12-1. Cases with no action for 60 days shall be scheduled for a status hearing.

## **1.13 Witnesses**

1.13-1. Witnesses shall be examined from the counsel table. Persons examining witnesses may either stand or remain seated while examining a witness from counsel table. In no case shall a witness be crowded during examination.

1.13-2. Witnesses shall be examined with courtesy and respect, and their good faith presumed until the contrary appears.

1.13-3. Witnesses shall refrain from interrupting or talking over others.

1.13-4. Subject to the exceptions listed below, children shall not be present in the courtroom during court proceedings or participate in proceedings as a witness.

1.13-5. A child may participate in a proceeding upon a finding by the Trial Court that it will not be harmful to the child or disruptive to the Trial Court for the child to participate.

1.13-6. The Judge shall retain the discretion on determining whether testifying is in the best interest of a child. In the Rules of Evidence 804.9 states that every person is competent to be a witness. However, the following guidelines are established for child witnesses, so long as participation is in the child's best interest:

- (a) Eight (8) years of age or younger = strongly discouraged.
- (b) Nine (9) to twelve (12) years of age = possible but only when all other methods of obtaining evidence have failed.
- (c) Thirteen (13) years of age or older = permitted but with caution after consultation with the guardian ad litem, if any.

## **1.14 Garnishments**

1.14-1. The Trial Court shall conduct the proceeding on the record informally, allowing each party time to address the Court.

1.14-2. Garnishment hearings will be held the second and fourth Wednesday of each month at the Oneida Judiciary.

1.14-3. The procedure for the garnishment hearing shall be as follows:

- (a) The Court Clerk will call the hearing to Order stating:
  - (1) The full name of the Court
  - (2) The name of the presiding Judge
  - (3) Case number
  - (4) A statement of authority and jurisdiction
  - (5) Creditor and Debtor state full name/ Debtor state current address
- (b) The Trial Court checks for proper notice
- (c) The Trial Court reads the purpose of the hearing
- (d) The Trial Court will read the following: judgment, amount, where the judgment was ordered, and case number.
- (e) The Trial Court will summarize the total judgment amount, consisting of judgment, post judgment interest, and filing fee.
- (f) The Trial Court will explain the garnishment rule; i.e. determination of maximum amount eligible to be garnished each week.

- (1) Debtor's gross income divided by 52 weeks = Gross weekly income (GWI).
- (2) Subtract 30% from GWI, taking into consideration of taxes & other mandated deductions = Disposable Wage.
- (3) The maximum amount subject to garnishment is twenty percent (20%) of debtor's disposable wage per pay period.
- (g) The Trial Court will hear how the creditor would like to proceed.
- (h) The Trial Court will hear how the debtor would like to proceed.
- (i) If the parties are unable to reach an agreed amount, the Judge will determine an amount, not exceeding the maximum amount identified by law.
- (j) The Judge will summarize the order for garnishment, default judgment or dismissal.
- (k) The Judiciary shall provide the Accounting Department with a copy of the garnishment order after the time frame for appeals have been exhausted.
- (l) A copy of the order will be mailed to all parties.

### **1.15 Closed Hearings/Records**

1.15-1. All hearings involving a juvenile shall be closed and the Records sealed.

1.15-2. At the request of any party or on its own motion, the Trial Court may close a hearing where the safety of a party, witness or other individual may be in jeopardy or for good cause in compelling circumstances. All Records from a closed hearing shall remain sealed.

### **1.16 Temporary Restraining Order**

1.16-1. When a Temporary Restraining Order (TRO) is issued without notice, a hearing shall be held within three (3) business days of such issuance.

- (a) The hearing shall be called to order in accordance with 803.38-1(a)
- (b) The Petitioner's case presentation
- (c) The Respondent's case presentation
- (d) Petitioner's rebuttal
- (e) Respondent's rebuttal

1.16-2. If a party has violated a TRO, the non-violating party may file a request with the Trial Court to find the other party in contempt.

### **1.17 Citation Hearings**

1.17-1. This section shall govern the procedures for citation hearings.

- (a) Citation pre-hearings will be held the third Thursday of each month at the Oneida Judiciary. The citation will include the scheduled pre-hearing date at least 30 days after the citation is issued.
- (b) If a Defendant does not contest the violation and appearance is not mandatory, the Defendant may pay the fine in full before the pre-hearing day and the Court cost/fees will be waived.
- (c) The procedure for the pre-hearing shall be as follows:
  - (1) Security or Court staff will give a copy of the Rights to the Defendant
  - (2) The Court Clerk will call the hearing to Order stating:
    - (A) The full name of the Court.
    - (B) The name of the presiding Judge.
    - (C) The Case number.

- (D) A statement of authority and jurisdiction.
- (E) Plaintiff and Defendant state full name/ Defendant state current address.
- (3) The Trial Court checks for proper notice.
- (4) The Trial Court reads the purpose of the hearing.
- (5) The Trial Court asks if Defendant understands the rights and if there are questions.
- (6) The Trial Court will read the relevant violation and possible fines and/or penalties to the Defendant.
- (7) The Trial Court explains the plea options: admit or contest
- (8) The Defendant will enter a plea of admit or contest to the violation unless the Defendant requests time to hire an attorney/advocate. The Defendant will be given a reasonable amount of time, not to exceed 14 calendar days, to hire an attorney/advocate. The attorney/advocate must be admitted to practice before the Oneida Judiciary.
- (9) If a contested plea is entered the Trial Court will schedule a trial 45 days out. A shorter time may be scheduled for the trial at the judge's discretion. A settlement conference may be scheduled with the Plaintiff's attorney any time before the contested hearing.
- (10) If an admission is entered, the Defendant may pay the fine or meet with the Plaintiff's attorney to stipulate to a payment agreement.
- (11) Citations issued to minor Defendants will be heard last. All hearings with minor Defendants shall be closed hearings.

### **1.18 Probate Hearings**

1.18-1. If the Trial Court Rules or other Laws of the Oneida Nation regarding probate lack definition, procedure, or legal precedent in a probate matter, the Trial Court shall use Wisconsin's Probate Code and its related chapters for guidance in accordance with 8 O.C. chapter 801.2-6.

- (a) This section, 1.18, will not take effect until probate administration rules are promulgated by Land Management and the Oneida Land Commission and adopted by the Oneida Business Committee in accordance with Resolution BC-05-09-18-A.

1.18-2. The Judiciary shall hear and administer disputed probate estates, probate estates requiring appointment of a guardian ad litem and probate estates in which Land Management seeks appointment as a personal representative.

1.18-3. The Trial Court shall conduct the proceeding on the record informally, allowing each person to present arguments and proofs and to examine witnesses to the extent reasonably required for full and true disclosure of the facts.

- (a) The Trial Court may admit any written, oral, documentary, or demonstrative evidence that is:
  - (1) Relevant, reliable, and probative;
  - (2) Not privileged under the Oneida Nation's Laws; and
  - (3) Not unduly repetitious or cumulative.
- (b) The Trial Court may exclude evidence if it overly confuses the issues or causes burdensome delay.

- (c) The Trial Court may consider the fact that evidence is hearsay when determining its probative value.
  - (d) The Trial Court will determine the weight given to any evidence admitted.
  - (e) Any party objecting to the admission or exclusion of evidence must concisely state the grounds. A ruling on every objection must appear in the record.
- 1.18-4. The procedure for the probate hearing shall be as follows:
- (a) All persons present for the hearing shall sign in on the sheet provided inside the courtroom. All persons signed in shall have an opportunity to address the Trial Court, as described below, in the order in which they signed in.
  - (b) The Court Clerk will call the hearing to Order stating:
    - (1) The full name of the Court
    - (2) The name of the presiding Judge
    - (3) The case number
    - (4) A statement of authority and jurisdiction
  - (c) The Trial Court reads the purpose of the hearing.
  - (d) If a personal representative has not been appointed, the Trial Court shall appoint a personal representative.
    - (1) If a personal representative has been appointed, the Trial Court shall hear objections to the appointment, if any, from any party who has an interest in the estate.
    - (2) The Trial Court shall either affirm the appointment or appoint another person.
    - (3) The Trial Court may require the personal representative to post a bond—a kind of insurance policy that protects the estate from losses the personal representative may cause it, up to a certain dollar amount depending on the size of the estate.
    - (4) The personal representative shall identify all the assets of the person who died, manage those assets throughout the probate process, pay any outstanding debts, taxes or estate expenses, make any distributions that are required by Tribal or state law, and distribute any remaining assets to the decedent’s heirs or designees.
      - A. The personal representative shall provide all the above information to the Trial Court.
    - (5) Funeral costs have priority in settling a probate case. Then come taxing authorities, secured creditors and unsecured creditors who have made a claim. Finally, any remaining assets are distributed to the beneficiaries.
  - (e) Legal Notices:
    - (1) The Trial Court shall ensure that a formal legal notice was sent to beneficiaries named in the will, if any, and to heirs under state law (the people who inherit if there is no valid will).
    - (2) The Trial Court shall ensure that notices were sent to known creditors, and a published legal notice in the Newspaper of the Oneida Nation as well as any other local newspaper in the area where the decedent resided or last known address or where the property is located to alert other creditors.
      - A. The first publication must be published within fifteen (15) days of filing with the Trial Court. This notice shall be published at least two

(2) times within a thirty (30) day period. The notice shall include the deadline for creditors to file a claim. The deadline shall be three (3) calendar months from the date of the first publication.

B. Creditors must file any claims against the estate within three (3) months of notification. Once the three (3) month period has passed, creditors are prohibited from making claims against the estate.

- (f) If there is a will, it must be proven valid. A will may be proven valid by the statement from one or more of the witnesses, in one of these forms:
  - (1) a notarized statement, which witnesses signed when they witnessed the will,
  - (2) a sworn statement signed by a witness now,
  - (3) court testimony from a witness, or
  - (4) any other method the Trial Court deems valid.
- (g) The persons signed in may address the Trial Court.
- (h) A copy of the order will be mailed to all parties and those with an interest in the estate.

### **1.19 Judge's Signature Defined**

1.19-1. A Trial Court Judge's signature shall mean:

- (a) The judge's name hand written by that judge,
- (b) The judge's name signed by electronic means, or
- (c) The judge's signature stamp if the following conditions are met:
  - (1) An emergency exists, or the Trial Court Judge is unavailable to personally sign his or her name.
  - (2) The use of the signature stamp has been pre-approved and authorized by the Trial Court Judge.
  - (3) Authorization date and time is noted below the signature line.

### **1.20 Notice of Appearance**

1.20-1. The attorney or advocate whose name, address, and telephone number appear on a document presented for filing is considered counsel of record, and a separate notice of appearance need not be filed.

- (a) If the name of more than one attorney or advocate is shown on the cover of the document, the attorney who is counsel of record shall be clearly identified.

1.20-2. An attorney or advocate representing a party who will not be filing a document shall enter a separate notice of appearance as counsel of record indicating the name of the party represented and the case number, if known.

1.20-3. A separate notice of appearance shall also be entered whenever an attorney or advocate is substituted as counsel of record in a case.

1.20-4. An attorney or advocate may not withdraw from a case where a motion is pending, or a hearing has been scheduled except upon a motion and order of the Trial Court.

*End.*

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Original effective date: 09-25-2019