

**ONEIDA INDIAN NATION
RULES FOR DEBT COLLECTION**

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**ONEIDA INDIAN NATION
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101. TITLE

Rule 101. TITLE

These Rules shall be known as the Oneida Indian Nation Rules for Debt Collection.

102. DEFINITIONS

Rule 102. DEFINITIONS

Unless otherwise required by the context, the following words and phrases shall be defined accordingly:

"Clerk" means the Oneida Nation Court Clerk.

"Credit" means the right granted by the Oneida Indian Nation to a debtor-patron to incur debt and/or to defer payment of a debt.

"Credit Instrument" means any writing which evidences a debt owed to the Oneida Indian Nation at the time the debt is created, and includes counter checks, markers, personal checks, cash equivalents, and any writing taken in consolidation, redemption or payment of a prior credit instrument, which are cashed in conformity with procedures governing the issuance of credit at the Gaming Enterprise.

"Gaming Enterprise" means Turning Stone Casino, an enterprise of the Oneida Indian Nation.

"Nation" means the Oneida Indian Nation.

"Nation Court" means the Oneida Indian Nation Court.

"Person" means any individual, firm, partnership, corporation, association, or any other entity.

103. SCOPE OF RULES AND JURISDICTION OF NATION COURT

Rule 103. SCOPE OF RULES AND JURISDICTION OF NATION COURT

- a. These rules govern the procedure in the Nation Court in all actions involving credit instruments relating to the Gaming Enterprise. These rules shall be construed and administered to secure the just, speedy, and inexpensive determination of such actions.
- b. Any person who has received credit from the Gaming Enterprise is deemed to have submitted to the jurisdiction of the Nation Court.
- c. The Nation Court shall have jurisdiction over these causes of actions. The Court's jurisdiction shall be civil in nature and shall include the power to impose fines and sanctions for contempt, and such other orders as may be appropriate.

104. COMMENCEMENT OF AN ACTION

Rule 104. COMMENCEMENT OF ACTION

An action for collection of a debt is commenced by filing a complaint with the Nation Court.

105. SUMMONS

Rule 105. SUMMONS

- a. Form. The Summons shall be signed by the Clerk, identify the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney. The Summons shall also state the times within which the defendant must appear and file an answer to the Complaint, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the Complaint.
- b. Issuance. Upon or after filing the Complaint, the plaintiff shall present a summons to the Clerk for signature. If the Summons is in proper form, the Clerk shall sign and issue it to the plaintiff for service on the defendant. A Summons, or a copy of the Summons if addressed to more than one defendant, shall be issued for each defendant to be served.
- c. Service with Complaint and by Whom Made.
 - (1) A Summons, together with a copy of the Complaint, shall be served upon the defendant.

- (2) Service may be effected by any person who is not a party and who is at least 18 years of age.
- d. **Manner of Service.** A person domiciled within the territorial jurisdiction of the Oneida Indian Nation or subject to the jurisdiction of the Nation Court may be served with process within or outside the territorial jurisdiction of the Oneida Indian Nation in any of the following manners:
- (1) personally delivering a copy of the Summons and Complaint to the defendant;
 - (2) leaving a copy of the Summons and Complaint at the defendant's dwelling house or usual place of abode; or
 - (3) mailing a copy of the Summons and Complaint addressed to the defendant's dwelling house, usual place of abode, or last-known address by registered or certified mail, return receipt requested, postage pre-paid.
- e. **Proof of Service.** The person effecting service shall make proof thereof by an affidavit attesting that service was made, the person on whom and the manner in which service was made, including the date and time of the service, and the fees of such service, if any. The Affidavit of Service, as well as any return receipt on mail delivery, shall be returned to plaintiff's attorney, who shall then file the service documents promptly with the Clerk as evidence of proof of service.

106. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

Rule 106. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

- a. **Service.** Except as otherwise provided in these procedures, every order required by its terms to be served, every pleading subsequent to the original complaint, every paper, motion, notice, and appearance shall be served upon each of the parties.
- b. **How made.** Service upon a party shall be made by delivering a copy of the pleading or other paper to the attorney or the party or by mailing it to the attorney or party at the attorney's or party's last known address. Service is complete upon mailing.
- c. **Certificate of Service.** All pleadings and papers required to be served upon a party, other than the Complaint, shall include a certificate of service and be filed with the Court.
- d. **Filing with the Court Defined.** The filing of papers with the Court as required by these procedures shall be made by filing them with the Clerk. The Court may permit papers to be filed by facsimile if such means are authorized by the Court. The Clerk shall not refuse to accept for filing any paper presented for that purpose solely

because it is not presented in proper form as required by these procedures.

107. TIME

Rule 107. TIME

- a. Answer. The defendant shall file an Answer to the Complaint within 20 days from the date of service of the Summons and Complaint.
- b. Reply. The plaintiff shall file a Reply within 20 days from the date the Answer is filed.
- c. Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper and the notice or paper is served by mail, three days shall be added to the prescribed period.

108. PLEADINGS

Rule 108. PLEADINGS

- a. Pleadings. There shall be a Complaint, and Answer and Reply. No other pleading shall be allowed. Every pleading shall contain a caption setting forth the name of the parties, the title of the action, and the file number. All pleadings and other papers must be signed.
- b. Motions and Other Papers. An application to the Court for an order shall be by motion, which shall state with particularity the grounds thereof and shall set forth the relief or order sought.
- c. Complaint. The Complaint shall contain the following:
 - (1) a short and concise statement of the grounds upon which the Court's jurisdiction depends;
 - (2) a short and concise statement of the claim and, where available, photocopies of the request for credit and the credit instrument showing that the plaintiff is entitled to relief; and
 - (3) a demand for judgment for the relief the plaintiff seeks.
- d. Answer. The defendant shall state in short and concise terms the party's response to the Complaint and the defenses to each claim asserted. No counter-claim shall be allowed.

- e. **Reply.** The plaintiff shall file a short and concise response to defendant's affirmative defenses.
- f. **Amendments.** A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served. Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party, and leave shall be freely given when justice so requires.

109. DEFENSES

Rule 109. DEFENSES

- a. **When Presented.** Every defense, in law or in fact, to a claim for relief shall be affirmatively set forth in particularity in the Answer.
- b. **Types Recognized.** The Court shall recognize only these affirmative defenses:
 - (1) accord and satisfaction;
 - (2) discharge in bankruptcy;
 - (3) fraud or duress;
 - (4) incapacity;
 - (5) lack of service of process;
 - (6) lack of *in personam* jurisdiction;
 - (7) lack of subject matter jurisdiction;
 - (8) payment or release;
 - (9) re judicata; and
 - (10) statute of limitations.
- c. **Waiver or Preservation of Certain Defenses.**
 - (1) A defense of lack of *in personam* jurisdiction or lack of service of process is waived if omitted from the Answer.
 - (2) Whenever it is determined that the Court lacks subject matter jurisdiction over the dispute, the Court shall dismiss the action.

110. PRE-HEARING CONFERENCE

Rule 110. PRE-HEARING CONFERENCE

- a. Purposes. In its discretion, the Court may direct the attorneys for the parties and any unrepresented party to appear before it for a conference before the Hearing for such purposes as to:
- (1) establish early and continuing control so that the case will not be protracted because of lack of management or wasteful activities;
 - (2) expedite the disposition of the action by identifying pertinent documents, authenticating such documents, and obtaining stipulations of the facts and evidence;
 - (3) encourage more thorough preparation by identifying and clarifying the issues, and eliminating frivolous claims or defenses;
 - (4) facilitate the settlement of the case; and
 - (5) consider such other matters as may facilitate the just, speedy and inexpensive disposition of the action.
- b. Attendance and Sanctions. The Pre-Hearing Conference shall be attended by the attorney for each of the parties and by any unrepresented party. If a party or party's attorney fails to attend the Pre-Hearing Conference or if a party or party's attorney is substantially unprepared to participate in the Pre-Hearing Conference, or if the party or party's attorney fails to participate in good faith, the judge, upon motion or upon the judge's initiative, may make such orders with regard thereto as are just, including requiring the party or the attorney representing the party or both to pay the reasonable expenses incurred because of noncompliance with these rules, including attorney's fees, or entering judgment against the appropriate party, unless the judge finds that the noncompliance was substantially justified or that other circumstances make the proposed sanction unjust.
- c. Briefs. Briefs generally are not required. Parties may submit a brief to the Court prior to the Pre-Hearing Conference on any issue raised in any pleading. The Court may request briefs from the parties on any issue.

111. EVIDENCE AND DISCOVERY

Rule 111. EVIDENCE AND DISCOVERY

- a. **Disclosure Required.** A party shall make its disclosure of all evidence as defined below based on information then reasonably available to it and the party is not excused from making disclosure because it challenges the sufficiency of another party's disclosure or because another party has not made its disclosure.
- b. **Manner of Disclosure.** As part of and at the time of filing the pleadings, a party shall make disclosure of and provide the following information to other parties:
 - (1) a copy of any and all documents in their possession or control that are relevant to disputed facts alleged with particularity in the pleadings; and
 - (2) a computation of damages claimed and a photocopy of all supporting or evidentiary documents or other material on which such computation is based.
- c. **Failure to Make Disclosure; Sanctions.** A party who fails or refuses to make a disclosure required by these rules, after a good faith effort has been made to secure the disclosure, may be subject to sanctions by the Court. The Court may make such sanctions as are just, including the following:
 - (1) an order that the matters pertinent to the disclosure, or any other designated facts, shall be taken to be established for the purposes of the action in accordance with the claim of the party to whom disclosure was not made;
 - (2) an order refusing to allow the uncooperative party to support or oppose designated claims or defenses;
 - (3) an order striking out pleadings or parts thereof, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the uncooperative party;
 - (4) an order requiring the uncooperative party or the advising attorney to pay the reasonable expenses, including attorney's fees, caused by the failure to disclose, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

112. HEARING

Rule 112. HEARING

- a. A Hearing shall be conducted by the Court without a jury. The Hearing shall take place within 10 days of either the filing of the Reply or the Pre-Hearing Conference if requested by the Court.
- b. The Hearing shall be limited to the pleadings, briefs, if any, and any evidence submitted by the parties.
- c. The Court shall find the facts specifically and state separately its conclusions of law thereon, and judgment shall be made according to Section 115.

113. WITHDRAWAL AND DISMISSAL OF ACTIONS: VOLUNTARY AND INVOLUNTARY

Rule 113. WITHDRAWAL AND DISMISSAL OF ACTIONS: VOLUNTARY AND INVOLUNTARY

- a. By Plaintiff. An action may be withdrawn by the plaintiff without order of the Court by:
 - (1) filing a notice of withdrawal; or
 - (2) filing a stipulation of withdrawal signed by all parties who have appeared in the action.

The withdrawal is without prejudice, except that a notice of withdrawal operates as an adjudication on the merits when filed by a plaintiff who has once before withdrawn the same action in the Court.

- b. Involuntary. A defendant may move for dismissal of an action or of any claim against the defendant for the failure of the plaintiff to prosecute or to comply with these rules or order of the court. A dismissal under this provision operates as an adjudication upon the merits.

114. JUDGMENT; DEFAULT

Rule 114. JUDGMENT; DEFAULT

- a. Definition. As used in these these Rules, a judgment includes a decree and any other order that disposes of all issues in the action and from which lies an appeal.

- b. **Entry of Default.** When a party against whom a judgment for affirmative relief is sought fails to file necessary pleadings or defend against the claim, and that fact is made by affidavit, the Clerk of the Court may enter the party's default. Judgment by default may be entered as follows:
- (1) **By the Clerk.** When the plaintiff's claim against a defendant who has defaulted for failure to appear is for a sum certain or for a sum which can be made certain by computation, the Clerk, upon application of the plaintiff and affidavit of the amount due, shall enter judgment for that amount and costs against the defendant.
 - (2) **By the Court.** In all other cases, the party entitled to a judgment after default shall apply to the Court. If the party against whom judgment after default is sought has appeared in the action, the party shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. The party making application for judgment after default shall submit an affidavit of the amount due or computation thereof to the Court and present such evidence as shall be necessary to establish the claim, and the Court shall enter judgment as called for by the evidence.
- c. **Setting Aside Default.** For good cause shown, the Court may set aside an entry of judgment after default within four months from the date of entry of judgment.

115. ENTRY OF JUDGMENT

Rule 115. ENTRY OF JUDGMENT

- a. **Manner of Entry.** Entry of judgment shall be made in the following manner:
- (1) Upon a decision by the Court or the Clerk that a party shall recover a sum certain or costs or that relief shall be denied, the Clerk, unless the Court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting further direction by the Court; or
 - (2) Upon a decision by the Court granting other relief.
- b. **Relief from Judgment or Order.** Relief from a judgment or order may be had in the following manner:
- (1) Clerical mistakes in judgments or order may be corrected by the Court at any time by its own initiative or on application of a party and after such notice as the Court may require.
 - (2) The Court, upon such terms as are just, may relieve a party from a final

judgment or order for the following reasons: (a) mistake of the Court or Clerk; (b) excusable neglect of the party seeking relief; (c) newly discovered evidence which by due diligence could not have been discovered in time; (d) fraud; or (e) subsequent satisfaction, release, or discharge of the judgment.

- (3) An application for relief shall be made within one year after the entry of judgment or order.

116. COMITY

Rule 116. COMITY

Comity may be given in the Oneida Nation Court to the judicial proceedings of any court of competent jurisdiction in which final judgments, orders or stays have been obtained, provided, however, that comity shall not be given to final judgments, orders and stays rendered by any court which declines or refuses to similarly recognize the final judgments, orders or stays of the Oneida Nation Court. Comity shall not be extended to any final judgment, order, stay, subpoena or compulsory process the enforcement of which would infringe upon the sovereignty of the Nation.

Upon the granting of comity by the Oneida Nation Court to the final judgment, order or stay of a foreign court, the Nation shall honor and fulfill such final judgment, order or stay. The Nation shall be given notice and an opportunity to be heard on any motion for the sovereign prerogatives of the Nation.

117. APPEAL

Rule 117. APPEAL

- a. A final judgment may be appealed to the Oneida Indian Nation Appellate Court.
- b. The Rules of Appellate Procedure shall govern any such appeals.

118. TIME LIMITATION FOR BRINGING ACTION

Rule 118. TIME LIMITATION FOR BRINGING ACTION

Any action brought pursuant to these Rules shall be instituted within six years from the date the cause of action arises.

119. SOVEREIGN IMMUNITY

Rule 119. SOVEREIGN IMMUNITY

The Nation does not by enacting these rules waive in any respect its sovereign immunity, or that of its agents, in any manner, under any law, for any purpose, nor in any place.