

## TRIAL

### CHAPTER 3

#### 301. TRIAL BY JURY OR BY THE COURT

##### Rule 301 TRIAL BY JURY OR BY THE COURT

- a. All trials of offenses shall be by the Court without a jury unless the defendant files a written request for a jury trial and a one hundred dollar (\$100.00) jury fee not less than two days after arraignment. The judge may in his discretion waive the jury fee if the defendant shows that he is without sufficient funds to pay the jury fee.
- b. Juries shall be composed of six (6) members with one (1) alternate if an alternate juror is deemed advisable by the Court.
- c. In a case tried without a jury, the judge shall make a general finding of guilt or innocence and shall, upon request of any party, make specific findings which shall be embodied in a written decision.

#### 302. TRIAL JURORS

##### Rule 302 TRIAL JURORS

- a. A jury shall consist of six members.
- b. Jurors shall be drawn from the list of eligible jurors, prepared by the Clerk of the Court in conformance with the Rules of the Court.
- c. The court shall permit the defendant or his counsel and the prosecutor to examine the jurors and the court itself may make such an examination.
- d. Challenges for Cause.
  1. Each party may challenge any prospective juror for cause. Challenges for cause shall be tried by the court.
  2. A juror may be challenged for cause on any of the following grounds:
    - a. He is related to the defendant, or a person alleged to have been injured by the crime charged or the person on whose complaint the prosecution was begun, by consanguinity within the sixth degree, or is the spouse of any person so related.

- b. He is attorney, client, employer, employee, landlord, tenant, debtor, creditor or a member of the household of the defendant or a person alleged to have been injured by the crime charged or the person on whose complaint the prosecution was instituted.
  - c. He is or has been a party adverse to the defendant in a civil action, or has complained against or been accused by him in a criminal prosecution.
  - d. He was a juror at a former trial of the same cause.
  - e. He was a juror in a civil action against the defendant arising out of the act charged as a crime.
  - f. He was a witness to the act or acts alleged to constitute the crime.
  - g. He occupies a fiduciary relationship to the defendant or a person alleged to have been injured by the crime or the person on whose complaint the prosecution was instituted.
  - h. His state of mind with reference to the case or any of the parties is such that the court determines there is doubt that he can act impartially and without prejudice to the substantial rights of any party.
3. All challenges for cause must be made before the jury is sworn to try the case.
- e. Challenges regarding jury members may be taken as follows:
    - 1. Each side shall be entitled to three (3) preemptory challenges;
    - 2. Either side may challenge any juror for cause;
    - 3. An alternate juror shall be treated as a regular juror for purpose of challenges.
  - d. The alternate juror may be dismissed prior to the jury's retiring to deliberation if he has not first been called to replace on original juror who has become, for any reason, unable or disqualified to serve.

### 303. ORDER OF TRIAL

#### Rule 303 ORDER OF TRIAL

1. The trial of all criminal offenses shall be conducted in the following manner:
  - a. The Court shall call the case name and number and ask the parties if they are ready to proceed. If the parties are not ready, the Court may continue the case or direct the case to proceed in its discretion.
  - b. If the parties are ready to proceed, and if the case is to be tried by jury, the Judge should require all prospective jurors to swear to decide the case in a fair and impartial manner if selected for jury duty.
  - c. If the case is to a jury, the Court should select a potential jury panel as selected under the Rules of Civil Procedure by random and question them to determine if they have any interest in the case.
  - d. When the Court is satisfied that no juror should be dismissed for statutory cause, the prosecution and then the defendant shall be allowed to question the prospective jurors. The Court may delay any examination it wishes to make until after the parties have examined the jury panel.
  - e. If it appears that a prospective juror is related to a party in the case or is biased for or against a party, or if the outcome would significantly affect the property, family, or other important interest of the prospective juror, the Court shall dismiss him for cause and select another person from the jury panel.
  - f. Both the prosecutor and the defendant may alternatively request the Court to dismiss any juror by preemptory challenge. Each party shall have three (3) preemptory challenges and the Court may not refuse to grant them. No reasons need be given for the challenges and alternate jurors shall be examined and selected as the original panel was selected. The final jury panel should then be sworn.
  - g. The Court shall request the prosecutor to read the criminal complaint and to make his opening statement. Prior to reading the complaint, the court should explain to the jury that the complaint is not evidence, but is being read for the sole purpose of informing the defendant and the jury of the offense charged against the defendant. The court shall also inform the jury that the statements of counsel are not evidence but are presented so that the jury will have an opportunity to hear what counsel for each party expects the evidence to show.

- h. The prosecutor shall then read the complaint and briefly present the facts which he intends to prove to show the offense. No argument of the facts or law shall be allowed.
- i. The defense may then make an opening statement or may reserve their opening statement until the beginning of the presentation of the defense evidence.
- j. The prosecutor shall then present his evidence followed by the defendant's presentation of his defense evidence. After the defendant has presented his evidence, the prosecutor may present evidence in rebuttal.
- k. The prosecutor shall then present his closing argument, the defendant his closing argument, and the prosecutor shall be allowed to present a rebuttal.
- l. If trial is to a jury the Judge should give the jury his instructions and the jury shall retire to decide their verdict. If trial is to the Judge, he shall then make his decision or announce the time at which he will present his decision.
- m. If the verdict is "not guilty", the defendant shall be discharged and bail exonerated.
- n. If the verdict is "guilty", the Judge shall order a pre-sentence investigative report and hold a hearing at a later time or date to decide on an appropriate sentence. The defendant may waive a pre-sentence investigation report and request to be immediately sentenced.

## 2. Mistrials.

- a. The court may terminate the trial and order a mistrial at any time that the judge finds termination is necessary because:
  - (1) It is physically impossible to proceed with the trial in conformity with law; or
  - (2) There is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law and the defendant requests or consents to the declaration of a mistrial; or
  - (3) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the prosecution; or
  - (4) The jury is unable to agree upon a verdict; or

- (5) False statements of a juror on voir dire prevent a fair trial.
- b. When a mistrial is ordered, the court shall direct that the case be retained on the docket for trial or such other proceedings as may be proper and that the defendant be held in custody pending such further proceedings, unless he is released pursuant to the terms of an appearance bond.

### **304. JUDGE DISABILITY**

#### **Rule 304 JUDGE DISABILITY**

- a. If by reason of death, sickness or other disability, the Judge before whom a jury trial has commenced is unable to proceed with the trial, another Judge will be appointed and upon certifying that he has familiarized himself with the record of the trial, the trial will proceed.
- b. If by reason of death, sickness or other disability, the Judge before whom the defendant has been tried is unable to perform the required duties of a Judge after the verdict or finding of guilt, another Judge will be appointed to perform those duties unless such Judge feels he cannot fairly perform those duties in which case a new trial may be granted. A new trial shall not be granted if all that remains to be done is the sentencing of a defendant.

### **305. EVIDENCE**

#### **Rule 305 EVIDENCE**

The admissibility of evidence and the competence and privileges of witnesses shall be governed by the Oneida Indian Nation Rules of Evidence, except as herein otherwise provided.

### **306. EXPERT WITNESSES AND INTERPRETERS**

#### **Rule 306 EXPERT WITNESSES AND INTERPRETERS**

- a. Either party may call expert witnesses of their own selection and each bear the cost of such.
- b. The court may appoint an interpreter of its own selection and each party may provide their own interpreters. An interpreter through whom testimony is received from a defendant or witness or communicated to a defendant or other witness shall be put under oath to faithfully and accurately translate and communicate as required by the Court.

### **307. MOTION FOR JUDGMENT OF ACQUITTAL**

#### **Rule 307 MOTION FOR JUDGMENT OF ACQUITTAL**

- a. The Court on motion from defendant or on its own motion, shall order the entry of a judgment of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as a matter of law to sustain a conviction of such offenses. A motion for acquittal by the defendant does not affect his right to present evidence.
- b. If a motion for judgment of acquittal is made at the close of all the evidence, the Court may reserve decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged.

### **308. INSTRUCTIONS**

#### **Rule 308 INSTRUCTIONS**

At the close of evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the request. At the same time, copies of such requests shall be furnished to adverse parties. The Court shall inform counsel of its proposed action upon the requests prior to the arguments of counsel to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission unless he objects before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of the objection. Opportunity shall be given out of the hearing and out of the presence of the jury.

### **309. VERDICT**

#### **Rule 309 VERDICT**

- a. The verdict of a jury shall be unanimous and shall be returned by the jury to the judge in open court. If the jury is unable to agree, the jury may be discharged and the defendant tried again before a new jury.
- b. If there are multiple defendants or charges, the jury may at any time return its verdict as to any defendants or charges to which it has agreed and continue to deliberate on the others.
- c. If the evidence is found to support such verdict, the defendant may be found guilty of a lesser included offense or attempt to commit the crime charged or a lesser included offense without having been formally charged with the lesser included offense or attempt.

- d. Upon return of the verdict, the jury may be polled at the request of either party. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.
- e. After return of the verdict, the jury may, in the Judge's discretion, be requested to recommend the punishment to be imposed after a hearing at which both parties have the opportunity to present evidence in mitigation or aggravation of the sentence. The jury's recommendation in such cases shall not be binding on the Judge at sentencing.

### 310 APPEALS

#### Rule 310 APPEALS

Any appeal permitted to be taken from a final judgment of the court in a criminal case shall be taken to the Nation Appellate Court. Whenever an interlocutory appeal is permitted in a criminal case, such appeal shall be taken to the Nation Appellate Court.

#### 1. Appeals by defendant, when; Appeals by Prosecution; Transfers to Appellate Court.

- a. Except as otherwise provided, an appeal to the Appellate Court may be taken by the defendant as a matter of right from any judgment against the defendant in the trial court and upon appeal any decision of the trial court made in the progress of the case may be reviewed. No appeal shall be taken by the defendant from a judgment of conviction before the trial judge upon a plea of guilty or nolo contendere, except that jurisdictional or other grounds going to the legality of the proceedings may be raise by the defendant.
- b. Appeals to the Appellate Court may be taken by the prosecution from cases before the trial judge as a matter of right in the following cases, and no others:
  - 1. From an order dismissing a complaint;
  - 2. from an order arresting judgment;
  - 3. upon a question reserved by the prosecution; or
  - 4. upon an order granting a new trial.

#### 2. Interlocutory Appeals by the Nation. When the Nation trial judge prior to the commencement of trial of a criminal action, makes an order quashing a warrant or a search warrant, suppressing evidence or suppressing a confession or admission an appeal may be taken by the prosecution from such order if notice of appeal is filed within ten (10) days after entry of the order. Further proceedings in the trial court shall be stayed pending determination of the appeal.

3. Release of Defendant Pending Appeal by Prosecution.
  - a. A defendant shall not be held in jail nor subject to an appearance bond during the pendency of an appeal by the prosecution.
  - b. The time during which an appeal by the prosecution is pending shall not be counted for the purpose of determining whether a defendant is entitled to discharge under Rule 108 of these rules.
4. Decision and Disposition of Case on Appeal. The Appellate Court may reverse, affirm or modify the judgment order appealed from, or may order a new trial. In either case the cause must be remanded to the trial court with proper instruction, together with the decision of the Appellate Court.
5. Procedure on Appeal. Except as otherwise provided by statute, the statutes and rules governing procedure on appeals to the Appellate Court in civil cases shall apply to and govern appeals to the Appellate Court in criminal cases.
6. Disposition of Defendant When Judgment Reversed on Appeal. When a judgment of conviction or sentence is reversed, and it appears that no crime has been committed, the Appellate Court shall direct that the defendant be discharged. If it appears that the defendant is guilty of a crime, although improperly charged, the Appellate Court shall order the defendant to be held in custody, subject to the order of the court in which he or she was convicted.
7. Time for Appeal from Judgment of Trial court.
  - a. The defendant may appeal from the judgement of the Trial Court no later than ten (10) days after the judgement form is entered by the Clerk.