

**Title 8. Judiciary - Chapter 807**  
**ONEIDA FAMILY COURT RULES**

**Rule 1        Scope of Rules; Applicability**

- (A) These Rules shall be known as the Oneida Family Court Rules and may be cited as follows: OFCR \_\_\_\_\_.
- (B) These Rules shall supplement the Rules of Civil Procedure. The Rules of Civil Procedure and Family Court Rules shall be read together and both apply to Family Court cases.
- (C) In the event of a conflict between the Rules of Civil Procedure and the Family Court Rules, the Family Court Rules shall be followed. If the Rules of Civil Procedure have been codified as part of the Oneida Code of Laws, then the Rules of Civil Procedure shall be followed.

**Rule 2        Appearances**

- (A) When at all possible, the parties should appear in person.
- (B) Phone appearances are permitted and will be arranged by the Family Court Clerk or court staff.
  - a. The parties are responsible for providing the court with a phone number where a party can be reached for phone appearances.

**Rule 3        Rules of Decorum**

- (A) Witnesses shall be examined from the counsel table, except when handling exhibits, unless a lectern is provided by the court, in which case the examination shall be either from the counsel table or lectern. 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.
- (B) Witnesses shall be examined with courtesy and respect, and their good faith presumed until the contrary appears.
- (C) The swearing of witnesses shall be an impressive ceremony and not a mere formality.

**Rule 4            Divorce Proceedings**

- (A) After the divorce paperwork has been picked up, a pre-trial hearing will be scheduled. The petitioner is responsible for completing the paperwork, paying any applicable filing fees, having opposing parties served in a timely manner (*See* OCL 702.5), and filing proof of service with the Family Court Clerk.
  
- (B) At the pre-trial hearing, the Family Court shall address the following topics:
  - i. Jurisdiction;
  - ii. Notice;
  - iii. Whether the marriage is irretrievably broken;
  - iv. Peacemaking options;
  - v. Temporary orders, if necessary;
  - vi. Appointment of a guardian ad litem, if necessary; and
  - vii. Scheduling the next court date.
  
- (C) At the pre-trial hearing, the Family Court Clerk shall distribute the following forms:
  - i. Financial Disclosure;
  - ii. Marital Settlement Agreement; and
  - iii. Original Certificate of Divorce or Annulment.
  
- (D) At the pre-trial hearing, the Family Court shall schedule the divorce for a final hearing. The date of the final hearing shall be at least 120 days after the date of filing.
  
- (E) At the final hearing, the parties shall either inform the Family Court of the terms of the settlement agreement or proceed to a contested hearing. It is possible for the parties to agree on some issues and ask the Family Court to resolve the others.
  
- (F) Within 30 days of the completion of the final hearing, longer for good cause, the Family Court shall issue a ruling on the petition.

**Rule 5            Paternity Procedure**

- (A) After a paternity petition has been filed and the Family Court Clerk has received confirmation of service on the respondent, a pre-trial hearing shall be held.
- (B) The pre-trial hearing is an opportunity for the court and parties to address any pre-trial issues. If there are no pre-trial issues, then the Family Court may proceed immediately to a final paternity hearing.
- (C) The Family Court may order genetic testing at the pre-trial hearing.
- (D) If the genetic testing results establish the alleged father as the biological father, the Family Court may address the following issues at the final paternity hearing:
  - i. Child support;
  - ii. Legal custody;
  - iii. Physical placement;
  - iv. Health care expenses for the child(ren);
  - v. Tax exemption for the child(ren); or
  - vi. Other issues as warranted.
- (E) If the genetic testing results do not establish the identity of the biological father, the Family Court shall dismiss the petition.

**Rule 6            Motion to Modify Legal Custody and/or Physical Placement**

- (A) A Motion to Modify Legal Custody and/or Physical Placement may be filed by a party to a case. The filing party shall pay the applicable filing fee, have the other parties served, and file proof of service with the Family Court Clerk.
- (B) When a Motion to Modify Legal Custody and/or Physical Placement is filed and service on the other parties is confirmed, the Family Court Clerk shall place the matter on the calendar for a hearing.
- (C) Modifications to a legal custody order or physical placement order shall be made in accordance with OCL 705.12, unless the modifications are being requested by a parent who is proposing to move or remove a child, in which case OCL 705.14 shall apply.

**Rule 7            Default Judgment**

- (A) If a party fails to appear at any Family Court matter, the court shall confirm and be satisfied that proper notice was provided.
- (B) If the Family Court finds that proper notice was not provided, the matter shall be rescheduled. The court may make orders or give instructions on further service or notice efforts to occur before the rescheduled hearing.
- (C) If the Family Court finds that proper notice was provided, the court may enter judgment against the party that failed to appear. The court, in its discretion, may require a party to produce sufficient evidence to support a judgment against the other party.

**Rule 8            Continuance**

- (A) A continuance means a hearing or other scheduled event is postponed to a later date.
- (B) Continuances shall only be granted by the Family Court by stipulation of the parties or for good cause.
- (C) Examples of good cause include, but are not limited to, the following:
  - i. Failure of a party to receive proper notice;
  - ii. Emergency of a party;
  - iii. Emergency for the judge or court staff;
  - iv. Unavailability of the courtroom; or
  - v. Office closure.

**Rule 9            Written Decision**

- (A) Upon completion of a hearing, the Family Court shall complete a written decision within 30 days.
- (B) The Family Court may, upon written notice to the parties, extend this time period to not more than an additional 30 days from the original due date for the decision.
- (C) Upon completion of the written decision, parties shall be served with said decision by first class U.S. mail within 10 days.

**Rule 10 Children in the Courtroom; Children as Witnesses**

- (A) Subject to the exceptions listed below, children should not be present in the courtroom during court proceedings nor should they participate in proceedings as a witness.
- (B) Children may participate in proceedings upon a finding by the Family Court that it will not be harmful to the child or disruptive to the court for the child to participate.
- (C) While the Family Court always retains the discretion on the competency of a witness, the following guidelines are established for child witnesses:
  - i. Eight years of age or younger – strongly discouraged.
  - ii. Nine to twelve years of age – possible but only when all other methods of obtaining evidence have failed.
  - iii. Thirteen years of age or older – permitted but with caution.

**Rule 11 Ex Parte Communication**

- (A) Ex parte communication is communication, either verbally or in writing, between a judge and a party about a pending case. Communication includes, but is not limited to, the following: pleadings, letters, email, phone calls, or in-person conversations whether in or out of court.
- (B) Ex parte communication is forbidden subject to the following exceptions:
  - i. When a party fails to appear at a court hearing where both parties have been properly noticed, the Family Court may speak on the record with the party who appears.
  - ii. When a party believes that sharing the communication with the other party would place the party or children in danger of physical harm.

**Rule 12 Foreign Child Support Orders**

- (A) Any request, motion, or petition seeking recognition and enforcement of a foreign child support order shall be governed by this Rule whether filed under Chapter 204, Chapter 704, or another law.
- (B) When the Family Court Clerk receives a request, motion, or petition for recognition, a notice of such filing shall be sent to the payer.

- (C) The notice shall include a copy of the filing and state that the payer has 10 calendar days from the receipt to object to the enforcement of the order and request a hearing (the Family Court Clerk is authorized to develop a form for this purpose).
- (D) If the payer timely objects and requests a hearing, a hearing shall be scheduled as soon as practical, but no later than 15 calendar days after the Family Court Clerk receives the objection unless the court makes a finding of good cause to schedule the matter out further.
- (E) If the payer does not object, a hearing is not required and the Family Court may sign the appropriate order.
- (F) Pursuant to OCL 704.11, a foreign child support order shall be recognized and modified in accordance with 28 U.S.C. 1738B.
- (G) The Family Court shall authenticate the foreign order by reasonable proof tendered to the court. Sufficient evidence of authentication includes:
  - i. An authentication stamp issued by the clerk of court or custodian of records in the originating jurisdiction; or
  - ii. A court seal.
- (H) If a payer objects, he or she carries the burden of showing the order is not valid or otherwise should not be enforced.

**Rule 13 Peacemaking and Mediation**

- (A) Peacemaking and Mediation are available as described in OCL Chapter 702, OCL Chapter 705, and Chapter 801 of the Oneida Judicial Code.

**Rule 14 Guardian ad litem**

- (A) This rule governs the appointment, conduct, duties, and powers of a guardian ad litem in cases where it is appropriate and authorized under Oneida Tribal law.
- (B) The guardian ad litem shall be an attorney or lay advocate. Before being recognized as certified by the Family Court, a guardian ad litem must demonstrate an understanding of the role of the guardian ad litem. Such understanding may be

demonstrated by completing guardian ad litem training provided by the Family Court, another Indian Tribe, or a state; being recognized as a certified guardian ad litem by another jurisdiction; or such other means determined to be appropriate by the Family Court.

- i. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party, or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding.
- ii. A guardian ad litem that is recognized as certified by the Family Court does not need to go through the process to be admitted to practice before the court.
- iii. The Family Court shall have the duty of administering the guardian ad litem list for Family Court cases.

(C) A guardian ad litem shall represent the best interests of the person for whom he or she is appointed. The guardian ad litem shall consider the wishes of the person for whom he or she is appointed; however, representation of best interests may be inconsistent with those wishes.

- i. A guardian ad litem shall communicate to the Family Court the wishes of the person for whom he or she is appointed, unless that person asks the guardian ad litem to do otherwise.

(D) A guardian ad litem shall maintain independence, objectivity, and the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom.

- i. The guardian ad litem shall not advocate on behalf of or advise any party so as to create in the mind of a reasonable person the appearance of representing that party as an attorney or lay advocate.

(E) A guardian ad litem shall maintain the ethical principles of the rules of conduct set forth in these rules and is subject to discipline by the Family Court.

- i. If the Family Court receives a written complaint regarding the conduct of a guardian ad litem, the court shall do one of the following:
  1. The Family Court may hold a hearing and issue a decision regarding the complaint against the guardian ad litem after all parties have been given an opportunity to be heard; or
  2. The Family Court may, in its discretion or at the request of the parties, resolve the complaint against the guardian ad litem through receipt of briefs and issuance of a written decision rather than holding a hearing; or
  3. The Family Court may screen out and take no action on complaints that are frivolous or repetitive. The Family Court shall communicate in writing any such decision with the parties.
- ii. The Family Court may issue an order for discipline which may include, but is not limited to: additional training requirements, private

reprimand, public reprimand, removal from a case, or removal from the guardian ad litem list.

- (F) A guardian ad litem shall avoid any actual or apparent conflict of interest or impropriety in the performance of guardian ad litem responsibilities. A guardian ad litem shall avoid self-dealing or association from which a guardian ad litem might directly or indirectly benefit in cases they are appointed, other than for compensation as guardian ad litem. A guardian ad litem shall take action immediately to resolve any potential conflict or impropriety. A guardian ad litem shall advise the Family Court and the parties of the action taken, resign from the case, or seek court direction as may be necessary to resolve the conflict or impropriety. A guardian ad litem shall not accept or maintain appointment if the performance of the duties of guardian ad litem may be materially limited by the guardian ad litem's responsibilities to another client or a third person, or by the guardian ad litem's own interests.
- (G) A guardian ad litem is an officer of the court and as such shall at all times treat the parties with respect, courtesy, fairness, and good faith.
- (H) A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. A guardian ad litem shall examine material information and sources of information, taking into account the positions of the parties.
- (I) A guardian ad litem shall not require any evaluations or tests of the parties except as authorized by ordinance or court order issued following notice and opportunity to be heard.
- (J) Unless otherwise approved by the Family Court, a guardian ad litem shall file a written report with the court and the parties as required by law or court order no later than 5 business days prior to a hearing for which a report is required. The report shall be accompanied by a written list of documents considered or called to the attention of the guardian ad litem and persons interviewed during the course of the investigation.
- (K) A guardian ad litem shall comply with the Family Court's instructions as set out in the order appointing the guardian ad litem, and shall not provide or require services beyond the scope of the court's instruction unless by motion and on adequate notice to the parties.
- (L) A guardian ad litem shall identify himself or herself as a guardian ad litem when contacting individuals in the course of a particular case and inform individuals contacted in a particular case about the role of the guardian ad litem at the earliest practicable time. A guardian ad litem shall advise information sources that the documents and information obtained may become part of the record in the Family Court proceeding.



- (M) The guardian ad litem shall be given notice of all hearings and proceedings. A guardian ad litem shall appear at any hearing for which the duties of a guardian ad litem or any issues substantially within a guardian ad litem's duties and scope of appointment are to be addressed.
  - i. While appearing in person is preferred, a guardian ad litem may seek permission from the Family Court to appear by telephone.
- (N) A guardian ad litem shall not have ex parte communications concerning the case with the Family Court except as permitted by court rule or ordinance.
- (O) As an officer of the court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the Family Court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall keep confidential the address information of the parties where there are allegations of domestic violence or a safety risk to a party or child. The guardian ad litem may recommend that the court seal the report or a portion of the report of the guardian ad litem to preserve the privacy, confidentiality, or safety of the parties or the person for whom the guardian ad litem was appointed.
- (P) A guardian ad litem shall perform responsibilities in a prompt and timely manner, and, if necessary, request timely Family Court reviews and judicial intervention in writing with notice to parties or affected agencies.
- (Q) A guardian ad litem shall maintain documentation to substantiate recommendations and conclusions and shall keep records of actions taken by the guardian ad litem.
- (R) A guardian ad litem shall keep accurate records of the time spent, services rendered, and expenses incurred in each case and file an itemized statement and accounting with the Family Court and provide a copy to each party or other entity responsible for payment. The Family Court may make provisions for fees and expenses pursuant to ordinance or court rule in the Order Appointing Guardian ad Litem or in any subsequent order.
- (S) At contested hearings, and at other times when appropriate, the guardian ad litem shall provide a written report to the Family Court with his or her recommendations. While the Family Court is not bound to follow the recommendations of the guardian ad litem, it must consider them. Therefore, the recommendations shall be based upon a full and independent investigation of the facts. The report shall include:
  - i. The sources of the information used by the guardian ad litem;
  - ii. What home visits were done by the guardian ad litem and the results of the visits;
  - iii. Who the guardian ad litem interviewed including parents, relatives, and professionals;

- iv. Whether the guardian ad litem had contact with the child or children;
  - v. Relevant provisions of the law; and
  - vi. The guardian ad litem's recommendation on the contested issues.
- (T) As an officer of the court, a guardian ad litem has only such authority conferred by the order of appointment or by law. A guardian ad litem shall also have the following authority:
- i. Unless circumstances warrant otherwise, a guardian ad litem shall have access to the persons for whom a guardian ad litem is appointed and to all information relevant to the issues for which a guardian ad litem was appointed. The access of a guardian ad litem to the person for whom he or she is appointed shall not be unduly restricted by any person or agency. When the guardian ad litem seeks contact with a party who is represented by an attorney or lay advocate, the guardian ad litem shall notify the attorney or lay advocate of such contact. The guardian ad litem's contact with the represented party shall be as permitted by the party's attorney or lay advocate, unless otherwise ordered by the court.
  - ii. Until discharged by a court order, a guardian ad litem shall be timely furnished copies of all relevant pleadings, documents, and reports by the party which served or submitted them.
  - iii. A guardian ad litem shall be timely notified of all court hearings and other proceedings concerning the case by the person or agency scheduling the proceeding.
  - iv. A guardian ad litem shall be given notice of, and an opportunity to indicate his or her agreement or objection to any proposed agreement of the parties governing issues substantially related to the duties of a guardian ad litem.
  - v. Within the scope of the appointment, a guardian ad litem shall have access to all relevant court files. Access to sealed or confidential files shall be by separate order. A guardian ad litem's report shall inform the Family Court and parties if the report contains information from sealed or confidential files. The clerk shall provide a certified copy of the order of appointment to the guardian ad litem upon request and without charge.
- (U) In every case in which a guardian ad litem is appointed, a guardian ad litem shall have the rights and powers set forth below. These rights and powers are subject to all applicable ordinances and court rules.
- i. A guardian ad litem shall have the right to file pleadings, motions, notices, briefs, and other documents, and may, subject to the Family Court's discretion, engage in the discovery process.
  - ii. A guardian ad litem shall have the right to make motions and request hearings before the Family Court as appropriate to the best interests of the person for whom he or she is appointed.

- iii. A guardian ad litem shall have the right, subject to the Family Court's discretion, to introduce exhibits, subpoena witnesses, and conduct direct and cross examination of witnesses.
  - iv. A guardian ad litem shall have the right to fully participate in the proceedings through submission of written reports and may, subject to the Family Court's discretion, present oral argument.
- (V) For good cause shown, a guardian ad litem may petition the Family Court for additional authority.
- (W) Unless otherwise ordered by the Family Court, the appointment of a guardian ad litem terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates.

*End.*

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