

Disinterment – Frequently Asked Questions

Oneida Code of Laws (OCL) 127.6-7 permits certain family members and the guardian of the person of the deceased to file a request to have a body disinterred from a Tribal cemetery. Disinterment is an extraordinary remedy that shall only be ordered when all other reasonable means for obtaining the requestor's objective have been exhausted and when substantial cause exists to order disinterment. To obtain the request forms, it is necessary to contact the Clerk of the Trial Court for the Oneida Judiciary.

Who may request disinterment pursuant to OCL 127.6-7?

A request to the Tribe's judicial system to issue an order for disinterment from a Tribal cemetery may be made by the following persons, in the following order of priority:

1. The surviving spouse of the deceased.
2. An adult child of the deceased.
3. A parent of the deceased.
4. An adult sibling of the deceased.
5. A guardian of the person of the deceased at the time of the deceased's death.

What notice is required?

The requester shall notify the Oneida Enrollment Department and all individuals of the same or higher priority above of his or her intent to request the Tribe's judicial system to issue an order of disinterment. The requester shall serve all those entitled to notice pursuant to OCL 803.5-6.

If any member of the same or a higher priority cannot be located, this, along with the efforts taken to locate the individual, shall be reported to the court.

Is a hearing required?

Yes. The court will hold a hearing and the individuals who were provided notice may be present at the hearing. The court will consider:

1. The manner in which the deceased died;
2. Whether disinterment would create a public health risk (i.e. decedent died from a contagious or infectious disease);
3. The decedent's wishes, if known;
4. Any objections filed with the Tribe's judicial system or presented at the hearing;
5. Whether an order of disinterment from a court other than the Tribe's judicial system has been issued; and
6. Whether any required permits regarding reinterment have been obtained.

How long does the court have to issue an Order for Disinterment?

The court shall issue an order within ten (10) calendar days after the hearing. The court may, for good cause shown, extend the time for an order to be issued for an additional ten (10) days.

Can the Order for Disinterment be appealed?

Yes. An appeal of an Order for Disinterment may be filed with the Clerk of the Appellate Court within five (5) business days after the order is issued. All appeals shall be heard in accordance with OCL Chapter 805.

What are the timelines for the disinterment process once an order has been issued?

If no appeal of an order issued is filed, disinterment shall take place within sixty (60) days after the deadline for filing an appeal has passed. The requester should contact the Clerk of Appellate Court at (920) 496-7200 to determine whether an appeal was filed within five (5) business days after the order was issued.

If an appeal is filed, disinterment may not occur during the pendency of the appeal. If the Appellate Court affirms the order, then disinterment shall take place within sixty (60) days after the final judgment has been issued.

How long does the requester have to reinter or cremate the decedent?

Following disinterment, the remains of the decedent shall be reinterred or cremated within forty-eight (48) hours of disinterment.

Who shall be present at the disinterment?

The Oneida Enrollment Department shall be present at each disinterment and reinterment that occurs in the Tribal cemetery and shall have the authority to restrict who may be present during a disinterment or reinterment.

Who is responsible for making all arrangements associated with disinterment?

The requester is responsible for making all arrangement associated with disinterment and is encouraged to have everything arranged prior to filing a request with the Oneida Judiciary. The requester is required to work with the Oneida Enrollment Department regarding disinterment plans. A local funeral home is likely to have information and be able to assist you with all of the requirements and details involved when exhuming and then reburying or cremating the decedent.

Who pays for the expenses of disinterment?

The requester is responsible for paying all of the costs and expenses of the disinterment process including, but not limited to, the following:

1. Filing fees.
2. Service of process fees.
3. Vault costs.
4. Marking fees.
5. Opening and closing fees.
6. Reinterment or cremation fees.
7. Transportation fees.
8. Law enforcement fees.
9. Monument Removal & Reinstallation Fees.