

Title 8. Judiciary - Chapter 807
KayanlÁsla OlÍ-wa?
Laws of issues/matters
CITATIONS

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807.1. Purpose and Policy

807.1-1. *Purpose.* The purpose of this law is to provide a process that governs all citations that fall under the jurisdiction of the Oneida Nation.

807.1-2. *Policy.* It is the policy of the Nation to provide a consistent process for handling citations of the Nation in order to ensure equal and fair treatment to all persons who come before the Judiciary to have their citations resolved.

807.2. Adoption, Amendment, Repeal

807.2-1. This law was adopted by the Oneida Business Committee by resolution BC-02-12-20-A.

807.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

807.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

807.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

807.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

807.3. Definitions

807.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Authorized attorney” means an attorney of the Nation who represents the department or entity of the officer who issued the citation.

(b) “Citation” means a legal document that serves as a notice or summons to appear in a court of the Nation in response to a charge against an individual of a violation of law.

(c) “Court” means the Nation’s Trial Court, Family Court, or any other specific courts or divisions of the Nation’s Judiciary created by a law of the Nation which have been granted jurisdiction to hear matters of citations.

(d) “Court of Appeals” means the branch of the Nation’s Judiciary delegated the authority of final appeals within the Nation’s Judiciary, as authorized by Oneida General Tribal Council resolution GTC-03-19-17-A.

(e) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

(f) “Nation” means the Oneida Nation.

- (g) “No contest” means a plea by which a defendant will accept the charged violation of law but does not plead or admit guilt.
- (h) “Officer” means an individual authorized by a law of the Nation to issue a citation for a violation of said law.
- (i) “Person” means a natural person, sole proprietorship, partnership, corporation, limited liability company, or any other form of a legal entity.

807.4. Commencement of a Citation Action

807.4-1. *Action.* The issuance of a citation shall commence a civil action in the Judiciary for a violation of a law of the Nation for the purpose of collecting a fine or penalty imposed by the law in the name of the Nation.

807.4-2. *Authority to Issue.* An officer may issue a citation to any person he or she has reasonable grounds to believe has committed a violation of a law of the Nation that expressly permits the issuance of a citation.

807.4-3. *Form of Citation.* A citation shall contain the following information:

- (a) The name of the officer who issued the citation.
- (b) The name, address, and date of birth of the defendant.
- (c) The enrollment number and/or license number of the defendant, if applicable.
- (d) Information about the alleged violation including:
 - (1) the violation alleged;
 - (2) the law violated;
 - (3) the time and place of the occurrence of the violation; and
 - (4) a description of the violation.
- (e) A notice to appear at a date, time and place for the citation pre-hearing, and a statement as to whether the appearance at the pre-hearing is mandatory.
- (f) Provisions for payment of citation and stipulation in lieu of an appearance in Court, if applicable.
- (g) Notice that if the defendant does not pay the citation or stipulate to an agreement prior to the pre-hearing and fails to appear in Court at the time fixed in the citation or provide written notice to the Court that he or she is contesting the citation, the Court may issue a default judgment which may include any fine amount due, restitution and/or suspension of any rights, privileges, or licensures, or any other penalty authorized by law.
- (h) Notice that failure to satisfy a fine, restitution, or any other part of the judgment, may result in per capita attachment, wage garnishment, revocation, suspension of any rights, privileges, licensures, and/or any other action authorized by law and/or other collection processes available to the Court.
- (i) Any other relevant information.

807.4-4. *Service of a Citation.* The defendant is served with a citation when one of the following occurs:

- (a) *Personal Service.* The citation is provided to the defendant directly by the officer, or a copy of the citation is left at the defendant’s home or usual place of abode by the officer:
 - (1) in the presence of a competent family member at least fourteen (14) years of age who shall be informed of the contents of the citation; or
 - (2) in the presence of a competent adult who resides in the home or usual place of abode of the defendant, who shall be informed of the contents of the citation.
- (b) *Mail Service.* If personal service is not possible, and the defendant’s address is known or with reasonable diligence can be ascertained, then mail service may be used. For service

by mail, a copy of the citation may be delivered to the defendant's last known address by certified mail with return receipt. The certified mail return receipt shall be signed by the defendant or a competent family member at least fourteen (14) years of age or an adult who resides in the home of the defendant.

(1) The certified mail return receipt shall be filed with the Court as proof of service.

(c) *Service by Publication.* If after a showing of due diligence personal service and mail service were not possible, then service may be completed by publication as a last resort. The publication shall be in the Nation's newspaper and shall be designated as "Legal Notice." The department of the officer and/or authorized attorney shall publish this notice at least two (2) times within a thirty (30) day period. The two (2) notices shall be published a minimum of ten (10) days before the citation pre-hearing.

(1) Copies of the two (2) published notices and written report stating the facts surrounding the failure of personal and mail service shall be filed with the Court as proof of service.

(2) If service by publication is required and there is insufficient time for proper service before the pre-hearing, the Court may, on its own, order different time limits for service by publication and/or re-schedule the pre-hearing appropriately in order to provide for fair notice and opportunity for the defendant to respond.

(3) The Court may order the defendant to reimburse the department of the officer and/or the authorized attorney for any costs incurred from service by publication.

807.4-5. *Filing of a Citation.* Absent exigent circumstances, the department of the officer who issued the citation shall file the citation with the Court along with any applicable proof of service at least thirty (30) days prior to the date of the pre-hearing.

(a) Citations may be filed in person or electronically transmitted to the Court. Citations that are electronically transmitted to the Court are deemed filed upon confirmation of receipt by the Clerk of Court assigned to the branch of the Judiciary that will hear the citation.

(b) After filing the citation with the Court, the department of the officer who issued the citation shall forward the citation and all relevant accompanying information to the authorized attorney. Relevant information to accompany the citation may include, but is not limited to, a narrative by the officer and/or history of violations by the defendant.

807.4-6. *Amendments to the Citation.* A citation may be amended by an officer or the authorized attorney prior to the citation pre-hearing. A copy of the amended citation shall be provided to the defendant in accordance with section 807.4-4, and filed with the Court, at least five (5) days before the citation pre-hearing. After the hearing, the citation may only be amended at the discretion of the Court, upon notice to the parties and an opportunity to be heard.

807.5. Stipulations

807.5-1. *Authority for Stipulations and Case Settlement.* An authorized attorney of the Nation is granted the discretion to seek the settlement of a citation.

(a) When seeking to enter into a stipulation the authorized attorney shall explain to the defendant all provisions included in the stipulation as required by section 807.5-2(a)-(d).

807.5-2. *Form of Stipulation.* Any stipulation between an authorized attorney and the defendant shall be in writing and signed. The stipulation shall include the following:

(a) A summary of the citation violation information included on the citation;

(b) The details of the stipulation including any fine, penalty, condition, or payment plan the defendant shall comply with;

(c) A statement that by entering into the stipulation the defendant is admitting that he or she committed the act for which the citation was issued or is entering a plea of no contest and thereby waives his or her right to contest the citation with the Court; and

(d) A statement that all parties signed the agreement free of duress and coercion.

807.5-3. *Submission of the Stipulation to the Court.* If the authorized attorney and defendant reach an agreement through the stipulation, the stipulation shall be submitted to the Court for the Court's approval.

(a) If the Court enters an order approving the stipulation as written, a copy of the order shall be provided to the authorized attorney and defendant.

(b) If the Court does not enter an order approving the stipulation as written or requests clarification, the Court shall schedule the matter for a hearing. The Court shall provide the authorized attorney and defendant notice of the hearing date and written explanation as to why the Court did not approve the stipulation of the parties.

807.5-4. If the authorized attorney and defendant do not reach an agreement as to a stipulation, then the parties shall proceed with the citation hearing process.

807.5-5. Compliance with a stipulation shall be monitored by the authorized attorney. The authorized attorney may file a motion with the Court to enforce the terms of a stipulation or file a motion for contempt if the defendant is non-compliant with the terms of the stipulation.

807.6. Hearing Procedure

807.6-1. *Citation Pre-Hearing.* All citations shall include a pre-hearing date with the Court which shall be set at least thirty (30) days after the citation was issued, unless stated otherwise by a law of the Nation.

(a) Appearance at the pre-hearing shall be mandatory only when a law, policy, rule, or resolution of the Nation requires a mandatory appearance for that specific violation of law.

(b) If an appearance is not mandatory, and a person does not wish to contest the citation, a person may pay the fine and/or penalty as listed on the citation prior to the pre-hearing date.

(1) If the person pays the fine and/or penalty as listed on the citation prior to the pre-hearing date the citation shall be considered satisfied.

(c) If a person wishes to contest the citation, the person shall provide notice to the Court in one (1) of the following manners:

(1) appear at the pre-hearing to contest the citation; or

(2) if an appearance is not mandatory, send written notice to the Court, with a copy to the Oneida Law Office, prior to the pre-hearing notifying the Court that the defendant wishes to contest the citation.

(d) At the pre-hearing the Court shall accept pleas which either contest or admit committing the act for which the citation was issued, or a plea of no contest.

(1) If the defendant admits committing the act for which the citation was issued the Court shall provide a statement that by admitting that he or she committed the act for which the citation was issued the defendant thereby waives his or her right to contest the citation with the Court. The Court shall obtain an affirmative acknowledgment from the defendant of that waiver of rights.

(e) In addition to scheduling requested hearings, the Court may also make conditional orders at the pre-hearing which are effective until the matter is resolved.

(f) If a defendant does not appear at the pre-hearing or submit written notice that he or she is contesting the citation when there is a non-mandatory appearance, and the defendant has

not entered into a stipulation or paid the fine and/or penalty as listed on the citation, the Court may proceed to enter a default judgment.

(1) A default judgment may include any fine amount due, restitution, suspension of any rights, privileges, or licensures, and/or any other penalty authorized by law.

(2) Unless otherwise noted by the Court, a defendant shall have ninety (90) days to satisfy a default judgment by paying any fine and/or complying with any condition or penalty ordered.

807.6-2. Citation Hearing. For all persons entering a plea contesting the fact that he or she committed the act for which a citation was issued, the Court shall schedule a hearing as expeditiously as possible, provided that it shall be scheduled within ninety (90) days of the date of the pre-hearing when possible.

(a) The burden of proof at the citation hearing shall be by clear and convincing evidence.

(b) As a result of the citation hearing the Court may issue an order which includes a determination as to the underlying violation of law as well as any fine amount, restitution, suspension of any rights, privileges, or licensures, and/or any other penalty as authorized by law.

(c) A defendant who fails to satisfy a lawful order of the Court shall be subject to punishment for contempt of court which may include fines, revocation and/or suspension of any rights, privileges, licensures, or any other action authorized by law.

(d) The defendant's failure to satisfy a fine and/or restitution may result in per capita attachment, wage garnishment and/or other collection processes available to the Court.

807.6-3. Appeals of the Court's Determinations. Any person wishing to contest the determination of the Court may appeal to the Nation's Court of Appeals in accordance with the Rules of Appellate Procedure.

807.7. Exclusion

807.7-1. This law shall not apply to any law of the Nation which delegates hearing authority to a hearing body other than the Oneida Judiciary.

End.

Adopted – BC-02-12-20-A