



Title 8. Judiciary – Chapter 806 FAMILY COURT Rule #1 – Family Court Rules

1.1 Purpose	1.11 Children in the Courtroom
1.2 Adoption and Authority	1.12 Witnesses
1.3 Definitions	1.13 Evidence on an Electronic Device
1.4 Rules of Decorum	1.14 Ex Parte Communication
1.5 Appearances	1.15 Written Decisions
1.6 Counsel	1.16 Filing Fees
1.7 Notice of Appearance	1.17 Divorce Proceedings
1.8 Notice by Publication	1.18 Paternity Proceedings
1.9 Continuances	1.19 Child Support Proceedings
1.10 Default Judgment	1.20 Guardian ad Litem

1.1. Purpose

1.1-1. The purpose of these rules is to supplement the Oneida Judiciary Rules of Civil Procedure and other laws governing the Family Court.

1.2. Adoption and Authority

1.2-1. These rules were created by the Family Court and approved by the Oneida Business Committee in accordance with 8 O.C. 806.9-2 and 1 O.C. Chapter 106.

1.2-2. These rules may be amended or repealed pursuant to the procedures set out in the Family Court and Administrative Rulemaking laws.

1.2-3. Should a provision of these rules or the application thereof to any person or circumstance be held as invalid, such invalidity shall not affect other provisions of these rules which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of these rules and a provision of another law, the provisions of the other law shall control. In the event of a conflict between a provision of these rules and a provision of another rule, the provisions of these rules shall control.

1.2-5. These rules shall supersede all prior rules of pleading, practice, and procedure relating to the Family Court law.

1.3. Definitions

1.3-1. This section shall govern the definitions of words and phrases used within these rules. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Continuance” means the postponement of a hearing, court trial, or other scheduled court proceeding at the request of either or both parties in the matter, or by the Judge.

(b) “Counsel” means an attorney or lay advocate that is admitted to practice before the Judiciary.

(c) “Court” means the Family Court.

(d) “Ex parte communication” means any contact with the Judge regarding a pending case where the opposing party has not received notice, is not present, and has not consented to the communication.

(e) “Guardian ad litem” means a person appointed by the Court to appear at any peacemaking, mediation, or hearing and tasked with representing the best interest of the person appointed for.

(f) “Judge” means the Family Court Judge.

(g) “Relative” means husband, wife, mother, father, son, daughter, brother, sister,

grandparent, grandchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, first or second cousin, step-parent, or someone who is recognized by the Oneida General Tribal Council and/or its delegate as a member of an interested party's extended family.

1.4. Rules of Decorum

1.4-1. All electronic devices shall be turned off or silenced as to not disrupt the court proceedings.

1.4-2. All persons are prohibited from using an electronic device or any other means to take pictures, take videos, or make audio recordings during the court proceedings without permission from the Judge.

1.4-3. Unless otherwise approved by the Judge, all persons shall remove their hats or headwear during the court proceedings, except those worn for religious or medical purposes.

1.4-4. No chewing gum, food, or drink shall be permitted in the courtroom without permission from the Judge.

1.4-5. All parties, counsel, and witnesses shall refrain from interrupting or talking over one another during the court proceedings.

1.4-6. With the exception of on-duty security and law enforcement officers, no weapon of any type shall be taken, carried, or introduced into the courthouse. All persons entering the courthouse may be searched and examined by electronic detection equipment.

1.4-7. Security officers, law enforcement officers, and Oneida Judiciary staff are authorized to open and inspect any item carried into the courthouse.

1.4-8. All persons shall identify themselves when asked by security officers, law enforcement officers, and Oneida Judiciary staff.

1.4-9. Distracting or disorderly conduct may result in removal from the courthouse by security officers or law enforcement officers.

(a) Individuals may be removed from the courthouse for attempting to listen in or eavesdrop on a closed Court proceeding.

1.5. Appearances

1.5-1. The parties shall appear in person for all hearings.

1.5-2. In circumstances where it is difficult or impossible for a party to appear in person, the party may contact the Court Clerk to request an appearance by telephone or videoconference.

(a) It is the responsibility of the party to provide the Court with a contact number where the party may be reached for the telephone or videoconference appearance.

(b) It is the responsibility of the party appearing by telephone or videoconference to be available for the hearing.

1.6. Counsel

1.6-1. Parties have a right to retain an attorney or lay advocate at their own expense.

1.6-2. A party may bring a domestic violence advocate to Court with them; however, the domestic violence advocate shall not speak on behalf of the party unless the advocate is admitted to practice in the Oneida Judiciary. The Court shall not assume the existence of any facts based on the presence of the domestic violence advocate.

1.7. Notice of Appearance

1.7-1. The attorney or lay advocate whose name, address, and telephone number appears on a document presented for filing is considered counsel of record, and a separate notice of appearance need not be filed.

(a) If the name of more than one (1) attorney or lay advocate is shown on the document, the attorney or lay advocate who is counsel of record shall be clearly identified.

1.7-2. An attorney or lay advocate representing a party who will not be filing a document shall enter a separate notice of appearance as counsel of record indicating the name of the party represented and the case number, if known.

1.7-3. Counsel may not withdraw from a case where a motion is pending or a hearing has been scheduled except upon motion and order of the Court.

1.7-4. A separate notice of appearance shall also be entered whenever an attorney or lay advocate is substituted as counsel of record in a case. Court approval is not required for substitution of counsel.

1.8. Notice by Publication

1.8-1. The Court Clerk may assist parties with obtaining a quote regarding a Court-approved notice by publication.

(a) Parties shall submit payment to the Court Clerk prior to the notice being submitted for publication.

(1) The Court shall not be responsible for any fees associated with the notice by publication.

(2) Fee waivers are not available from the Court for notice by publication.

1.9. Continuances

1.9-1. Continuances shall only be granted by the Court based on a written request or motion of a party, a stipulation of the parties, or on the Court's own motion.

1.9-2. A request for a continuance shall be decided on a case-by-case basis in light of the circumstances present at the time of the request. Examples of acceptable reasons for a continuance may include, but are not limited to, the following:

(a) Failure of a party to receive proper or sufficient notice;

(b) Emergency involving the Judge, Court staff, and/or parties;

(c) Unavailability of the courtroom;

(d) A one-time request to obtain counsel;

(e) To allow more time for settlement negotiations or peacemaking; and

(f) Absence or unavailability of a material witness.

1.9-3. The Court may impose conditions upon the granting of a continuance, such as requiring a party to provide documentation regarding a medical emergency.

1.10. Default Judgment

1.10-1. If a party fails to appear at any Court hearing, the Court shall verify that proper notice was provided prior to finding the party in default.

1.10-2. If the Court finds that proper notice was not provided, the matter may be dismissed or rescheduled. If the matter is rescheduled, the Court may make orders or give instructions regarding notice that shall occur prior to the rescheduled hearing.

1.11. Children in the Courtroom

1.11-1. Subject to the exceptions listed below, children shall not be present in the courtroom during court proceedings or participate in proceedings as a witness.

1.11-2. A child may participate in a proceeding upon a finding by the Court that it will not be harmful to the child or disruptive to the Court for the child to participate.

- (a) Disruptive children shall remain in the lobby and shall be accompanied by an adult. Court staff, including security officers, will not care for children during court proceedings.
- 1.11-3. The Judge shall retain the discretion on the competency of a witness and a determination whether testifying is in the best interest of a child.

1.12. Witnesses

- 1.12-1. Witnesses shall be examined from the counsel table, except when handling exhibits. 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.
- 1.12-2. Witnesses shall be examined with courtesy and respect, and their good faith presumed until the contrary appears.
- 1.12-3. The fees of witnesses shall be as follows:
- (a) Lay witnesses appearing in response to a subpoena shall not be paid by the party calling them.
 - (b) Expert witnesses who testify may be paid by the party calling them at a rate agreed upon by the expert witness and the party.

1.13. Evidence on an Electronic Device

- 1.13-1. Parties shall print out a copy of all emails, texts, social media messages, photographs, and other contents of their electronic device that they wish to offer as evidence. Audio and video recordings shall be duplicated onto media that is compatible with the Court's equipment and that can be provided to and retained by the Court (e.g. USB flash drive).

1.14. Ex Parte Communication

- 1.14-1. Ex parte communication, unless otherwise permitted by law, is forbidden subject to the following exceptions:
- (a) When a party fails to appear at a court hearing where the parties have been properly noticed, the Court may speak on the record with the party or parties who appear.
 - (b) When a party believes that sharing the communication with the other party or parties would place a party, a child, or Oneida Judiciary staff in danger of physical harm.

1.15. Written Decisions

- 1.15-1. The Court shall send a copy of the written decision to the last known address of the parties upon completion of the decision.
- (a) Parties are responsible for providing their current mailing address to the Court Clerk.
 - (b) Parties may request that the Court Clerk provide a copy of the written decision by email. The party shall provide their current email address to the Court Clerk.

1.16. Filing Fees

- 1.16-1. The Court shall charge a filing fee consistent with the fee schedule maintained on the Judiciary's website.
- (a) No filing fees shall be charged for documents filed by the Oneida Nation Child Support Agency and the Oneida Indian Child Welfare Department.
- 1.16-2. If a party is unable to afford the filing fee, the party may file a fee waiver with the Court requesting the Court to waive the fee. It is at the Court's discretion to waive the fee or not.
- 1.16-3. Unless otherwise approved by the Judge, all filing fees shall be non-refundable.

1.17. Divorce Proceedings

1.17-1. After the petitioner completes the divorce paperwork and pays any applicable filing fees, a pre-trial hearing shall be scheduled.

1.17-2. At the pre-trial hearing, the Court may address the following topics:

- (a) Jurisdiction;
- (b) Notice;
- (c) Peacemaking;
- (d) Temporary orders;
- (e) Title Report;
- (f) Appointment of a guardian ad litem;
- (g) Distribution of the financial disclosure form, marital settlement agreement, and tribal divorce/annulment worksheet;
- (h) Scheduling the next court date; and/or
- (i) Other issues as warranted.

1.17-3. At the final hearing, the parties shall either inform the Court of the terms of the settlement agreement or proceed to a contested hearing. The parties may agree on some issues and request the Court to resolve disputed issues.

1.18. Paternity Proceedings

1.18-1. After a petition related to paternity has been filed, the Court shall schedule a pre-trial hearing.

1.18-2. The pre-trial hearing is an opportunity for the Court and the parties to address preliminary issues, including ordering genetic tests. If there are no preliminary issues, the Court may proceed immediately to a final paternity hearing.

1.18-3. The Court may address the following issues at the final paternity hearing:

- (a) Paternity;
- (b) Child support;
- (c) Legal custody;
- (d) Physical placement;
- (e) Health care expenses for the child(ren);
- (f) Claiming the child(ren) for tax purposes; and/or
- (g) Other issues as warranted.

1.19. Child Support Proceedings

1.19-1. If the Court receives a motion to modify child support from an incarcerated party or in a case where the other party's address is protected due to domestic abuse, the Court may serve a copy of the motion on the responding party by first class mail in accordance with 8 O.C. 803.5-6(b).

1.20. Guardian ad Litem

1.20-1. This rule governs the appointment, conduct, duties, and powers of a guardian ad litem in cases where it is appropriate and authorized under the Oneida Code of Laws.

1.20-2. A guardian ad litem shall be an attorney or certified advocate. Before being recognized as certified by the Court, a guardian ad litem shall 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 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 Court.

- (a) A guardian ad litem that is recognized as certified by the Court does not need to go through the process to be admitted to practice before the Court.
 - (b) The Court shall have the duty of administering the guardian ad litem list for family law and child welfare cases. Should the Court decide that a guardian ad litem assigned to a particular case has an actual, apparent, or potential conflict of interest or is not acting in the best interest of the child, the Court may remove the the guardian ad litem from the case.
- 1.20-3. A guardian ad litem shall represent the best interest 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.
- (a) A guardian ad litem shall communicate to the Court the wishes of the person for whom he or she is appointed, unless that person asks the guardian ad litem to do otherwise.
- 1.20-4. 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.
- (a) 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.
 - (b) 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 court proceeding.
- 1.20-5. A guardian ad litem shall maintain the ethical principles set forth in these rules and is subject to discipline by the Court for violating these rules and other laws applicable to a guardian ad litem.
- (a) If the Court receives a written complaint regarding the conduct of a guardian ad litem, the Court shall do one (1) of the following:
 - (1) The 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;
 - (2) The 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 Court may screen out and take no action on complaints that are frivolous or repetitive. The Court shall communicate in writing any such decision with the parties.
 - (b) The 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.
- 1.20-6. No person who has an interest in the outcome of the 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. A guardian ad litem shall:
- (a) Avoid any actual, apparent, or potential conflict of interest or impropriety in the performance of guardian ad litem responsibilities.
 - (b) 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.

- (c) Take action immediately to resolve any potential conflict or impropriety.
 - (d) Advise the 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.
 - (e) 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.
- 1.20-7. 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.
- 1.20-8. 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.
- 1.20-9. A guardian ad litem shall not require any evaluations or tests of the parties except as authorized by law or court order issued following notice and opportunity to be heard.
- 1.20-10. Unless otherwise approved by the Judge, 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 five (5) business days prior to a hearing for which a report is required.
- 1.20-11. A guardian ad litem shall comply with the 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 or upon receipt of additional instruction from the Court.
- 1.20-12. 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.
- (a) A guardian ad litem shall not be called as a witness in any proceeding or hearing in which he or she is a guardian ad litem, except where, with the Court's permission, clarification is requested regarding the guardian ad litem report. In such case, testimony shall be restricted to that which is needed to clarify such report.
 - (b) While appearing in person is preferred, a guardian ad litem may seek permission from the Court to appear by telephone.
- 1.20-13. A guardian ad litem shall not have ex parte communications concerning the case with the Court except as permitted by court rule or law.
- (a) After completion of the case, the Court may provide a performance evaluation to the guardian ad litem and respond to any questions or concerns.
- 1.20-14. 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 Court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall not disclose the parties' address information when there are known 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.
- 1.20-15. A guardian ad litem shall perform responsibilities in a prompt and timely manner, and, if necessary, request timely court reviews and judicial interventions in writing with notice to parties or affected agencies.
- 1.20-16. A guardian ad litem shall maintain documentation to substantiate recommendations and conclusions and shall keep records of actions taken by the guardian ad litem.

1.20-17. 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 Court and provide a copy to each party or other entity responsible for payment. The Court may adopt internal operating procedures addressing guardian ad litem fees and expenses.

1.20-18. At contested hearings, and at other times when appropriate, the guardian ad litem shall provide a written report to the Court with his or her recommendations. While the Court is not bound to follow the recommendations of the guardian ad litem, the Court shall consider such recommendations. The recommendations shall be based upon a full and independent investigation of the facts. The report shall include:

- (a) The sources of the information used by the guardian ad litem;
- (b) What home visits were done by the guardian ad litem and the results of the visits;
- (c) Who the guardian ad litem interviewed including parents, relatives, and professionals;
- (d) Whether the guardian ad litem had contact with the child(ren);
- (e) Relevant standards and factors included in the law; and
- (f) The guardian ad litem's recommendation on the contested issues.

1.20-19. 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:

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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 Court and parties if the report contains information from sealed or confidential files. The Court Clerk shall provide a certified copy of the order of appointment to the guardian ad litem upon request and without charge.

1.20-20. 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.

- (a) A guardian ad litem shall have the right to file pleadings, motions, notices, briefs, and other documents, and may, subject to the Court's discretion, engage in the discovery process.
- (b) A guardian ad litem shall have the right to make motions and request hearings before the Court as appropriate to the best interest of the person for whom he or she is appointed.

(c) A guardian ad litem shall have the right, subject to the Court's discretion, to introduce exhibits, subpoena witnesses, and conduct direct and cross examination of witnesses.

(d) A guardian ad litem shall have the right to fully participate in the proceedings through submission of written reports and may, subject to the Court's discretion, present oral argument.

1.20-21. For good cause shown, a guardian ad litem may petition the Court for additional authority.

1.20-22. Unless otherwise ordered by the 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.

Adopted – BC-04-09-14-E

Amended – 09-11-2019