

## CHAPTER ONE

### RULES OF CIVIL PROCEDURE

#### 1. GENERAL PROVISIONS

##### Rule 1. GENERAL PROVISIONS

- a. Scope. Except as otherwise provided by law, these rules shall govern the procedure in the Trial and Appellate courts of the Oneida Indian Nation, in all actions, suits and proceedings of a civil nature and in any other special proceedings established by Nation law.
- b. Jurisdiction. The jurisdiction of the court shall be as set forth in the Establishment of the Oneida Nation Court, Ordinance Number O-97-02.
- c. Construction. These rules shall be liberally construed to secure a just, speedy, and inexpensive determination of every action.

#### 2. COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS.

##### Rule 2. COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS.

- a. One Form of Action. There shall be one form of action known, as a "civil action" in which the party complaining shall be designated "Plaintiff" and the adverse party "Defendant".
- b. Commencement of Action. A civil action is commenced by filing a complaint with the Clerk of the Court, and payment of the filing fee in the amount of fifty (\$50.00) dollars.
- c. Service of Process. Service of process shall consist of delivering to the party served a copy of the complaint along with a summons, issued by the Clerk, which advises the party that he is required to answer the complaint within 20 days or a default judgment will be entered against him.
  1. The return of service shall be endorsed with the name of the person serving and the date, time and place of service and shall be filed with the Clerk.
  2. Service may be made on a party by delivering the required papers to the party himself or upon some person of suitable age and discretion over 18 years old at the party's home or principal place of business, or on an officer, managing agent or employee, or partner of a non-individual party.
  3. Service by publication may be made upon order of the court for good cause shown by publishing the contents of the summons in a local newspaper of general circulation at least once per week for four weeks.
  4. Service may be made by any law enforcement officer or other person, not a party, 18 years of age or older.
  5. Service upon a person otherwise subject to the jurisdiction of the Oneida Nation Court may be made anywhere in the United States; otherwise, service shall be made within the exterior

boundaries of the territorial jurisdiction of the Oneida Indian Nation.

6. If a person personally refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.
- d. Service of all papers required to be filed, except the complaint, may be made by mail, first class postage prepaid and properly addressed, by facsimile, or hand-delivery.

### **3. TIME**

#### **Rule 3. TIME**

- a. Computation. In computing any period of time, the day from which the period is to commence shall not be counted and the last day of the period shall be counted; provided, however, that any time period under seven (7) days will not include intermediate Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday, or legal holiday will be deemed to end on the next day which is not a Saturday, Sunday or legal holiday.
- b. Enlargement. The court for good cause shown may enlarge the prescribed period of time within which any required act may be done.
- c. Notice of Motions. Written motions and notice of hearing thereon, other than ones which may be heard ex parte, shall be served not later than five (5) days prior to the time specified for the hearing.
- d. Service by Mail. Whenever service is accomplished by mail, three days shall be added to the prescribed period of time, but such addition shall not cause Saturdays, Sundays, or legal holidays to be counted in the time period if they would not otherwise have been counted.

### **4. PLEADINGS, MOTIONS AND ORDERS.**

#### **Rule 4. PLEADINGS, MOTIONS AND ORDERS.**

- a. Pleadings. There shall be a complaint and an answer. A responsive pleading shall be allowed whenever, by cross claim, counterclaim or otherwise, a party is first claimed against unless the court shall otherwise order. The court may grant additional leave to plead in the interest of narrowing and defining issues or as justice may require.
- b. Motions and Orders.
  1. Motions. An application to the court for an order shall be by motion and shall be in writing, unless made orally during a hearing or trial, and shall set forth the relief or order sought and the grounds therefore stated with particularity. A motion and notice of motion may be set forth together.
  2. Orders. An order includes every direction of the court whether included in a judgment or not.
  3. Hearings on Motions and Orders. A hearing on motion may be continued for good cause.

**5. GENERAL RULES OF PLEADING.**

**Rule 5. GENERAL RULES OF PLEADING.**

- a. Claims for Relief. A pleading which sets forth a claim for affirmative relief shall contain:
1. a short, plain statement of the grounds of the court's jurisdiction;
  2. a short, plain statement of the claim showing that the pleader is entitled to relief; and
  3. a demand for judgment for the relief to which the pleader considers himself entitled. Such claim for relief can be in the alternative or for several types of relief.
- b. Defenses and Denials. A party shall state in plain, concise terms the grounds upon which he bases his defense to claims pleaded against him, and shall admit or deny the claims and statements upon which the adverse party relies. If he is without information or knowledge regarding a statement or claim, he shall so state and such shall be deemed to be a denial. Denials shall fairly meet the substance of the claims or statements denied. A general denial shall not be made unless the party could in good faith deny each and every claim covered thereby. A claim to which a responsive pleading is required, except for amount of damages, shall be deemed admitted unless denied; if no responsive pleading is allowed the claims of the adverse party shall be deemed denied.
- c. General Content of Claim and Defenses. Claims and defenses shall be simply, concisely, and directly stated, but may be in alternative or hypothetical form, on one or several counts or defenses, need not be consistent with one another, and may be based on legal or equitable grounds or both.
- d. Affirmative Defenses. Matters constituting an affirmative defense or avoidance shall be affirmatively set forth. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court may treat the pleading as if it had been properly designated if justice so requires.
- e. Construction of Pleadings. All pleadings shall be construed so as to do substantial justice.

**6. FORM OF PLEADINGS.**

**Rule 6. FORM OF PLEADINGS.**

- a. Caption. Every pleading shall contain a caption heading, the name of the court, the title of the action, the court file number (if known) and a designation as to what kind of pleading it is. All pleadings shall contain the names of the parties.
- b. Paragraphs. Claims or defenses shall be set forth in separate numbered paragraphs. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses.
- c. Exhibits; Adoption by Reference. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of a written instrument which is an exhibit to a pleading is a part thereof for all purposes.
- d. Paper Used in Pleadings. Pleadings and other papers filed in any action shall be on 8 1/2" x 11"

paper, double spaced, except for matters customarily single spaced, and contain the court file number on the first page thereof. Substantial compliance with this rule will be sufficient.

**7. DEFENSES AND OBJECTIONS.**

**Rule 7. DEFENSES AND OBJECTIONS.**

- a. When Presented. A defendant or other party against whom a claim has been made for affirmative relief shall have twenty (20) days from the date of service upon him to answer or respond to the claim.
- b. Motions. Motion(s) to dismiss for (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party or to make the opposing parties' pleadings more definite may be made prior to answering a claim and an answer will not be due until ten (10) days after the disposition of the motion(s) by the Court.

**8. COUNTERCLAIM OR CROSSCLAIM.**

**Rule 8. COUNTERCLAIM OR CROSSCLAIM.**

- a. Counterclaim. A party against whom a claim is made may assert in his answer any claims he has against the party claiming against him.
- b. Crossclaim. A party against whom a claim is made may assert any claim he has against a co-party.
- c. Third Party Claim. A party against whom a claim is made may complain against a third party who is or may be liable for payment or performance of the claim of the opposing party.

**9. AMENDMENT OF PLEADINGS.**

**Rule 9. AMENDMENT OF PLEADINGS.**

- a. Amendment before trial. A party may amend his pleadings once before the opposing party has answered or if no answer is required, not less than twenty (20) days before the case is scheduled for trial. The opposing party may respond, if appropriate. Other amendments shall be allowed only upon motion and order of the Court.
- b. At Trial. When issues or evidence not raised in the pleadings are heard at trial, the judgment may conform to such issues or evidence without the necessity of amending the pleadings.

**10. PARTIES.**

**Rule 10. PARTIES.**

- a. Real Party in Interest. Every action shall be prosecuted in the name of the real party interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the Nation so provides, an action for the use or benefit of another shall be brought in the name of the Nation.
- b. Guardian Ad Litem. When an infant, or incompetent person, who has not had a guardian appointed, is a party the Court shall appoint a guardian ad litem to represent such person in the suit or action.
- c. Joinder of Parties. To the greatest extent possible all person or parties interested in a particular action may be joined in the action, but failure to join a party over whom the Court has no jurisdiction will not require dismissal of the action unless it would be impossible to reach a just result without such party.
- d. Indispensable Parties.
- (a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if:
- (1) in the person's absence complete relief cannot be accorded among those already parties; or
- (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may:
- (i) as a practical matter impair or impede the person's ability to protect that interest or
- (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.
- (b) Determination by Court Whenever Joinder not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, if the court finds the absent person indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; forth, whether the plaintiff will have an

adequate remedy if the action is dismissed for nonjoinder.

- (c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined and the reasons why they are not joined.

## **11. INTERVENTION.**

### **Rule 11. INTERVENTION.**

- a. A person may intervene and be treated in all respects as a party to an action in cases in which the applicant claims an interest relating to the property or transaction which is the subject of the action, unless the applicant's interest is adequately represented by existing parties.
- b. In any action, suit, or proceeding to which the Nation or any agency, officer, or employee thereof is a party in a non-official capacity, wherein the legality or enforceability or legality of any statute of the Nation affecting the public interest is drawn in question, the Court shall certify such fact to the Nation Representative, and the Court shall permit the Nation to intervene for presentation of evidence, if the evidence is otherwise admissible in the case, and for argument on the question of legality or enforceability. The Nation shall have all the rights of a party.

## **12. SUBSTITUTION OF PARTIES.**

### **Rule 12. SUBSTITUTION OF PARTIES.**

A party may be joined or substituted if a party dies, becomes incompetent, transfers his interest or is sued in his official capacity, and is no longer functioning in that capacity.

## **13. DISCOVERY.**

### **Rule 13. DISCOVERY.**

- a. Time. The parties may obtain discovery upon the filing of the complaint.
- b. Interrogatories. A party may submit written interrogatories to any other party and that party shall answer them in writing, under oath, within thirty (30) days of receipt of such.
- c. Depositions. A party may take the oral deposition of an adverse party or non-party witness under oath upon thirty (30) days notice, specifying the time and place where the deposition will take place.
- d. Production, Entry, or Inspection. A party may request another party to produce any documents or things in his custody or possession for inspection or copying or request permission to enter and inspect property of another party that is reasonably related to the case, and the opposing party shall within thirty (30) days reply as to whether or not such will be allowed and if not, why not.
- e. Scope of Discovery. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, whether or not such would be admissible at trial, if such appears reasonably calculated to lead to the discovery of admissible evidence; except that discovery may not be had of the work product of a party's attorney.

- f. Protective Order. A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense, and the court may order that the discovery cease or proceed only upon specified conditions.
- g. Failure to Make Discovery. If a party fails to respond or appear for discovery as provided in this Rule, the opposing party may move for an order to compel the defaulting party to perform and the court may award costs to the non-defaulting party. If a party fails to perform after being ordered to do so by the Court, the Court may, upon motion, order that a certain fact, claim, or defense be deemed established or strike part of a claim or defense, or dismiss or render a judgment by default against the non-complying party.
- h. Use of Discovery. Answers to interrogatories and depositions may be used in a motion, hearing or at trial for any purpose, by any party.
- i. Expedited Discovery. Discovery may be expedited by any party upon a showing of need.

**14. TRIAL.**

**Rule 14. TRIAL.**

The Court shall hear and decide all cases.

**15. ASSIGNING CASES FOR TRIAL.**

**Rule 15. ASSIGNING CASES FOR TRIAL.**

- a. Assignment of Judge and Date. The Chief Trial Judge shall determine which judge shall hear a case, and shall provide by rule for the placing of cases on the court calendar.
- b. Postponement. Upon motion of a party, the court may in its discretion, and upon such terms as it deems just, including the payment of any cost occasioned by such postponement, postpone a trial or proceeding upon good cause shown.

**16. DISMISSAL OF ACTIONS.**

**Rule 16. DISMISSAL OF ACTIONS.**

- a. Voluntary Dismissal. Prior to the responsive pleading of a party against whom a claim has been made or motion to dismiss or for summary judgment on such claim, the party making the claim may file a notice of dismissal and his claim shall be deemed dismissed without prejudice. In all other circumstances a party may move the court to dismiss his own claim and the court shall do so either with or without prejudice as is just and proper; provided, however, if a crossclaim or counterclaim has been filed against the moving party, the judge shall dismiss the claim only with the consent of the adverse party or only if it appears that the other party can prosecute his claim independently without undue additional hardship.
- b. Involuntary Dismissal. A party against whom a claim has been made may move the court to dismiss the claim of the adverse party upon any of the following grounds:

1. failure of the adverse party to pursue prosecution of his claim; or
2. failure of the adverse party to comply substantially with these Rules; or
3. failure of the adverse party to comply with an order of the court; or
4. at the close of the presentation of the other party's evidence and without prejudicing his own right to present evidence, failure of the opposing party to establish a right to relief based on the facts and law presented;
5. whenever dismissal appears proper based upon a failure to prove a claim.

Such dismissal shall be deemed an adjudication of the merits of the issue dismissed unless the court shall, for good cause shown, order otherwise. The Court may postpone ruling on a motion to dismiss for failure to establish a right to any relief until the close of all the evidence.

- c. The court may order a party moving to dismiss his own claim to pay the costs of the adverse party if the proceeding has progressed beyond the pleading stage, and may order payment of costs in other circumstances where such is deemed appropriate.

## **17. CONSOLIDATION.**

### **Rule 17. CONSOLIDATION.**

Consolidation. The court may, upon motion of any party or its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating the actions or if such will tend to avoid unnecessary cost or delay.

## **18. EVIDENCE.**

### **Rule 18. EVIDENCE.**

Form and Admissibility. At all hearings and trials, the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules. All evidence admissible under the Oneida Indian Nation Rules of Evidence shall be admissible and the competency of witnesses to testify shall be similarly determined.

## **19. SUBPOENAS.**

### **Rule 19. SUBPOENAS.**

- a. Issuance. Subpoenas for attendance of witnesses or production of documents or things shall be issued and served as provided elsewhere in these Rules.
- b. Failure to Appear. A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of court and the court may order sanctions against the person or the party.
- c. Subpoena Unnecessary. A person present in court may be required to testify in the same manner as if



he were in attendance upon a subpoena.

**20. FINDINGS BY THE COURT.**

**Rule 20. FINDINGS BY THE COURT.**

In all cases except, where a party defaults or fails to appear, findings of fact and conclusions of law shall be made by the court in support of all final judgments. Upon its own motion or the motion of any party within ten days of the entry of judgment, findings may be amended or added to and the judgment may be amended accordingly.

**21. JUDGMENT; COSTS.**

**Rule 21. JUDGMENT; COSTS.**

- a. Definition. A judgment includes any final order from which an appeal is available and no special form of judgment is required.
- b. Judgment on Multiple Claims. When more than one claim for relief is presented in an action, however designated, a final judgment may be entered on less than all of such claims only upon the Court's specifically finding that such is justified. Absent such a finding, an order or decision will not terminate the action as to any of the claims until all claims are finally decided, nor will the appeal period commence to run.
- c. Demand for Judgment.
  1. Generally. Except in the case of a default judgment, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if such relief is not demanded in the pleadings. It may be given for or against one or more of several claimants; and it may, if justice so requires, determine the ultimate rights of the parties on each side as between or among themselves.
  2. Judgment by Default. A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the demand for judgment.
- d. Costs. Unless the court shall otherwise direct, the court shall allow necessary costs and disbursements to the prevailing party or parties as a matter of course. Such prevailing party shall file with the court a verified memorandum of his costs and necessary disbursements within five (5) days of the entry of judgment and serve a copy of such on the opposing party, and if such are not objected to within ten (10) days, they shall be deemed to be a part of and included in the judgment rendered. The appellate court may award costs in a like manner.
- e. Attorney's fees. The court shall not award attorney's fees unless a contract or agreement of the parties specifically so provides, or unless it reasonably appears that the case had been prosecuted for purposes of harassment only, or that there was no reasonable expectation of success on the part of the claiming party.

**22. DEFAULT.**

**Rule 22. DEFAULT.**

- a. Entry of Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, his default may be entered by the clerk and judgment by default granted. Once the default is entered no further notice to the defaulting party of any action taken or to be taken need be given.
- b. Judgment by Default. Judgment by default may be entered by the clerk if a party's claim against the opposing party is for a sum of money which is or can by computation be made certain, and if the opposing party has been personally served. Otherwise, judgment by default can be entered only by the court upon receipt of whatever evidence the court deems necessary to establish the claim. No judgment by default shall be entered against the Oneida Indian Nation.
- c. Setting Aside Default. The court may, for good cause shown, set aside either an entry of default or a default judgment. The motion to set aside shall be made within one year from the entry of the default judgment.

**23. SUMMARY JUDGMENT.**

**Rule 23. SUMMARY JUDGMENT.**

At any time after twenty (20) days after commencement of an action, any party may move the court for summary judgment as to any or all of the issues presented in the case and such shall be granted by the court if it appears that there is not genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Such motions, which shall be served not less than ten (10) days prior to the hearing on said motion, shall be supported by affidavits, discovery or memoranda.

**24. ENTRY OF JUDGMENT.**

**Rule 24. ENTRY OF JUDGMENT.**

- a. Judgment. Judgments shall be signed by the judge and filed with the clerk.
- b. Effectiveness; Recordation. A judgment is complete and shall be deemed entered for all purposes when it is signed and filed with the Clerk.
- c. Satisfaction of Judgment. A judgment may be satisfied, in whole or in part, by the judgment creditor executing under oath, and filing an acknowledgment of satisfaction of judgment specifying the amount paid and whether such is a full or partial satisfaction. A judge may order the entry of satisfaction of judgment upon proof of payment and failure of the judgment creditor to file a satisfaction. The clerk shall file all satisfactions of judgment.
- d. Effect of Satisfaction; Limitation.
  - (1) A judgment satisfied in whole shall cease to operate as such.
  - (2) A partially satisfied judgment or unsatisfied judgment shall continue in effect for five years or

until satisfied. An action to review the judgment remaining unsatisfied may be maintained anytime prior to the expiration of five years and will extend the period of limitations an additional five years.

**25. RELIEF FROM JUDGMENT OR ORDER.**

**Rule 25. RELIEF FROM JUDGMENT OR ORDER.**

- a. Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice as the court may direct.
- b. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud. On motion and upon such terms as are just, the court may, in the furtherance of justice, relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
  - (1) mistake, inadvertence, surprise, or excusable neglect;
  - (2) newly discovered evidence which by due diligence could not have been discovered;
  - (3) fraud, misrepresentations or other misconduct of an adverse party;
  - (4) when, for any cause, the summons in an action has not been personally served upon the defendant and the defendant has failed to appear in the action;
  - (5) the judgment is void;
  - (6) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
  - (7) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

**26. HARMLESS ERROR.**

**Rule 26. HARMLESS ERROR.**

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties, is grounds for granting a new trial or otherwise disturbing a judgment order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding shall disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

**27. STAY OR PROCEEDINGS TO ENFORCE A JUDGMENT.**

**Rule 27. STAY OR PROCEEDINGS TO ENFORCE A JUDGMENT.**

- a. Stay upon Entry of Judgment. Proceedings to enforce a judgment may issue immediately upon the entry of the judgment, unless the court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.
- b. Stay of Judgment Upon Multiple Claims. When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 25, the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.
- c. Waiver of Undertaking. In all cases, the parties may, by written stipulation, waive the requirements of this rule with respect to the filing of a bond or undertaking. In all cases where an undertaking is required by these rules a deposit in court in the amount of such undertaking, or such lesser amount as the court may order, is equivalent to the filing of the undertaking.

**28. DISABILITY OR DISQUALIFICATION OF A JUDGE.**

**Rule 28. DISABILITY OR DISQUALIFICATION OF A JUDGE.**

- a. Disability. If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court may, following review of the records and transcripts, perform those duties.
- b. Disqualification. Whenever a party to any action or proceeding, or his attorney shall make and file an affidavit that the judge before whom such action or proceeding is to be tried or heard has a bias or prejudice, either against such party or his attorney or in favor of any opposite party to the suit, such judge shall proceed no further therein, except to call in another judge to hear and determine the matter.

Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be filed as soon as practicable after the case has been assigned or such bias or prejudice is known. If the judge against whom the affidavit is directed questions the sufficiency of the affidavit, he shall enter an order directing that a copy thereof be forthwith certified to another judge (naming him), which judge shall then pass upon the legal sufficiency of the affidavit. If the judge against whom the affidavit is directed does not question the legal sufficiency of the affidavit, or if the judge to whom the affidavit is certified finds that it is legally sufficient, another judge must be called in to try the case or determine the matter in question. No party shall be entitled in any case to file more than one affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.

## 29. INJUNCTIONS.

### Rule 29. INJUNCTIONS.

- a. Preliminary Injunction; Notice. No preliminary injunction shall be issued without notice to the adverse party.
- b. Temporary Restraining Order; Notice; Rehearing; Duration.
  - (1) No temporary order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon.
  - (2) Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; and shall be filed forthwith in the clerk's office and entered of record;
  - (3) The order shall define the injury and state why it is irreparable and why the order was granted without notice;
  - (4) The order shall expire by its terms within such time after entry, not to exceed ten (10) days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record;
  - (5) In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matter of the same character;
  - (6) when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require;
  - (7) A temporary restraining order cannot be issued against the Oneida Indian Nation unless it has prior notice of the action and an opportunity to appear and defend.
- c. Security. Except as otherwise provided by law, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the Oneida Indian Nation or of an officer or agency of the Nation.

A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court

prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

- d. Form and Scope of Injunction or Restraining Order; Service. Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.
- e. Grounds for Injunction. An injunction may be granted:
  - 1. When it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act complained of, either for a limited period or perpetually;
  - 2. When it appears from the pleadings or by affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the party seeking injunctive relief;
  - 3. When it appears during the litigation that either party is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual; or
  - 4. In all other cases where an injunction would be proper in equity.

### **30. HABEAS CORPUS.**

#### **Rule 30. HABEAS CORPUS.**

- a. Habeas Corpus. Appropriate relief by habeas corpus proceedings shall be granted whenever it appears to the court that any person is unjustly imprisoned or otherwise restrained of his liberty. Upon the filing of the complaint the court shall, unless it appears from such complaint or the showing of the petitioner that he is not entitled to any relief, issue a writ directed to the defendant commanding him to bring the person alleged to be restrained before the court at a time and place therein specified, at which time the court shall proceed in a summary manner to hear the matter and render judgment accordingly. If the writ is not issued, the court shall state its reasons therefore in writing and file the same with the complaint, and shall deliver a copy thereof to the plaintiff. If the defendant cannot be found, or if he does not have such person in custody, the writ (and any other process issued) may be served upon any one having such person in custody, in the manner and with the same effect as if he had been made a defendant in the action.

The defendant shall appear at the proper time and place with the petitioner designated or show good cause for not doing so and must answer the complaint within the time allowed. The answer must state plainly and unequivocally whether he then has, or at any time has had the person designated under his control and restraint, and if so, the cause thereof. If such person has been transferred, the defendant must state that fact, and to whom, and when, the transfer was made, and the reason or authority therefore. The writ shall not be disobeyed for any defect of form or misdescription of the person restrained or defendant, if enough is stated to show the meaning and intent thereof.

The person restrained may waive his right to be present at the hearing, in which case the writ shall be modified accordingly. Pending a determination of the matter the court may place such person in the custody of such individual or individuals as may be deemed proper.

- b. Habeas Corpus; Decision. In each case, the court, upon determining the case, shall enter specific findings of fact and conclusions of law and judgment, in writing, and the same shall be made a part of the record in the case. If the court finds in favor of the complainant, it shall enter an appropriate order with respect to judgment or sentence in the former proceedings and such further orders with respect to re-arraignment, retrial, custody, bail, or discharge as the court may deem just and proper in the case.
- c. Habeas Corpus Availability. Except in cases of extraordinary injustice, habeas corpus relief shall not be available to a person incarcerated as a result of a criminal conviction where the alleged grounds for relief have been or could have been raised by an appeal following the conviction.

### **31. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS.**

#### **Rule 31. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS.**

1. Seizure of Person or Property. At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by Nation law, existing at the time the remedy is sought.
2. Receivers Appointment by the Nation Court. An action where a receiver has been appointed shall not be dismissed except by order of the Court. The practice in the administration of estates by receivers or by other similar officers appointed by the Court shall be in accordance with Nation probate law. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by this Code.
3. Deposit in Court. In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of Court, may deposit with the Court all or any part of such sum or thing.
4. Process in Behalf of and Against Persons not Parties. When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.
5. Security - Proceedings Against Sureties. Whenever this Code or other Nation law requires or permits the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the Court and irrevocably appoints the Clerk of the Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of the Court, who shall forthwith mail copies to the sureties.

Any surety authorized to give a bond or other undertaking in either the Federal courts or the State

courts and any individual approved by the Court shall be eligible to give such bond or undertaking in the Court under this Code of other Nation law unless otherwise prohibited by Nation law.

6. Execution. Process to enforce a judgment for the payment of money shall be a writ of execution, unless the Court directs otherwise. In aid of the judgment or execution, the judgment creditor or his successor in interest, when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in this Code.

**31a. ORDER OF DELIVERY - PROCEDURE**

**Rule 31a. ORDER OF DELIVERY - PROCEDURE**

- a. The plaintiff in an action to recover the possession of specific personal property may claim the delivery of the property at the commencement of suit, as provided here.
1. The complaint must allege facts which show:
    - (i) a description of the property claimed,
    - (ii) that the plaintiff is the owner of the property or has a special ownership or interest in the property, stating the supporting facts and that he is entitled to the immediate possession of the property,
    - (iii) that the property is wrongfully held by the defendant,
    - (iv) the actual value of the property, provided that when several articles are claimed, the value of each shall be stated as nearly as practicable,
    - (v) that the property was not taken in execution on any order or judgment against the plaintiff, or for the payment of any tax or fine assessed against him, or by virtue of an order of delivery issued under this Code, or any other final process issued against said plaintiff; or, if taken in execution or on any order or judgment against the plaintiff, that it is exempt by law from being so taken, and,
    - (vi) the prayer for relief requests that the Court issue an order for the immediate delivery of the property.
  2. The allegations are verified by the party or, when the facts are within the personal knowledge of his agent or attorney, this is shown in the verification by the agent or attorney.
  3. A notice shall be issued by the Clerk and served on the defendant with the summons which shall notify the defendant that an order of delivery of the property described in the complaint is sought and that the defendant may object to the issuance of such an order by a written objection which is filed with the Clerk and delivered or mailed to the plaintiff within five (5) days of the service of the summons. In the event that no written objection is filed within the five (5) day period, no hearing is necessary and the Court shall issue the order of delivery. Should a written objection be filed within



the five (5) day period the Court shall, at the request of either party, set the matter for prompt hearing. At such hearing the Court shall proceed to determine whether the order for prejudgment delivery of the property should issue according to the probable merits of the plaintiff's complaint. No order of delivery may be issued until an undertaking has been executed pursuant to subdivision 4(c) of this section.

4. Nothing in this Code shall prohibit a party from waiving his right to a hearing or from voluntarily delivering the goods to the party seeking them before the commencement of the proceedings or at any time after institution of the proceedings.
  5. Where the notice that is required by subsection (a) of this section cannot be served on the defendant but the Judge finds that a reasonable effort to serve him was made and at the hearing the plaintiff has shown the probable truth of the allegations in his complaint, the Court may issue an order for the prejudgment delivery of the property. If an order of the prejudgment delivery of the property is issued without actual notice being given the defendant, the defendant may move to have said order dissolved and if he does not have possession of the property, for a return of the property. Notice of the right to move for return of said property shall be contained in the order for seizure and delivery of such property which shall be served upon the defendant or left in a conspicuous place where the property was seized, and the Chief of the Nation Police shall hold said property in such cases for three (3) working days prior to delivery to the plaintiff in order to give the defendant a reasonable opportunity to move for the return of such property. Notice of the motion with the date of the hearing shall be served upon the plaintiff in the action. The motion shall be heard promptly, and in any case within ten (10) days after the date is filed. The Court must grant the motion unless at the hearing on defendant's motion, the plaintiff proves the probable truth of the allegations contained in his complaint. If the motion and notice is filed before the Chief of the Nation Police turns the property over to the plaintiff, the Chief of the Nation Police shall retain control of the property pending a hearing on the motion.
  6. The Court may, on request of the plaintiff, order the defendant not to conceal, damage or destroy the property or any part and not to remove the property or a part from the Court's jurisdiction pending the hearing on plaintiff's request for an order for the prejudgment delivery of the property, and the order may be served with the summons.
- b. Penalty for Damage of Property Subject to Order of Delivery. Any person who willfully and knowingly damages property in which there exists a valid right to the issuance of an order of delivery, or on which such order has been sought under the provisions of this Code, or who conceals it, with the intent to interfere with enforcement of the order, or who removes it from the jurisdiction of the Court with the intention of defeating enforcement of an order of delivery, or who willfully refuses to disclose its location to an officer charged with executing an order for its delivery, or, if such property is in his possession, willfully interferes with the officer charged with executing such writ, may be held in civil contempt of Court and may be assessed a fine of not more than Five Hundred Dollars (\$500.00). In addition, the person shall be liable to the plaintiff for double the amount of damage done to the property together with a reasonable attorney's fee to be fixed by the Court, which damages and fee shall be deemed based on tortious conduct and enforced accordingly.

- c. Undertaking in Replevin. The order shall not be issued until there have been executed by one or more sufficient sureties of the plaintiff, to be approved by the Court, an undertaking in not less than double the value of the property as stated in the complaint to the effect that the plaintiff shall duly prosecute the action, and pay all costs and damages which may be awarded against him, including attorney's fees and, if the property be delivered to him, that he will return the same to the defendant if a return be adjudged.
- d. Replevin Bond - Value. On application of either party which is made at the time of executing the replevin bond or the redelivery bond, or at a later date, with notice to the adverse party, the Court may hold a hearing to determine the value of the property which the plaintiff seeks to replevy. If the value as determined by the Court is different from that stated in the complaint, the value as determined by the Court shall control for the purposes of Section (c) and (h) of this Rule.
- e. Order of Delivery. The order for the delivery of the property to the plaintiffs shall be addressed and delivered to the Chief of the Nation Police. It shall state the names of the parties and command the Chief of the Nation Police to take the property and deliver it to the plaintiff as prescribed in this Rule and to make return of the order on a day to be named by the Court.
- f. Order Returnable. The return day of the order of delivery, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be ten days after it is due.
- g. Execution of Order. The Chief of the Nation Police shall execute the order by taking the property mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detainer of the property, or leave such copy at his usual place of residence, or at the place where the property was seized.
- h. Re-delivery on Bond. If, within three working days after service of the copy of the order, there is executed by one or more sufficient sureties of the defendant, to be approved by the Court, an undertaking to the plaintiff, in not less than double the amount of the value of the property as stated in the affidavit of the plaintiff, to the effect that the defendant will deliver the property to the plaintiff, if such delivery be adjudged, and will pay all costs and damages that may be awarded against him, the Chief of the Nation Police shall return the property to the defendant. If such undertaking is not given within three working days after service of the order, the Chief of the Nation Police shall deliver the property to the plaintiff.
- i. Exception to Sureties. Any party for whose benefit an undertaking is made may except at any time to the sufficiency of the sureties on such undertaking. Such exception shall be made in writing and filed with the Clerk. Upon hearing, the Court shall make such order as is just to safeguard the rights of the parties.
- j. Proceedings on Failure to Prosecute Action. If the property has been delivered to the plaintiff and judgment rendered against him, or his action be dismissed, or if he otherwise fail to prosecute his action to final judgment, the Court shall, on application of the defendant, proceed to inquire into the right of property, and right of possession of the defendant to the property taken.

- k. Judgment - Damages - Attorneys Fees. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or for the recovery of possession, or the value in case a delivery cannot be had, and of damages for the detention. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the same. The judgment rendered in favor of the prevailing party in such action may include reasonable attorney's fees to be set by the Court, and collected as costs.
- l. Compelling Delivery by Attachment. In an action to recover the possession of specific personal property, the Court may for good cause shown, before or after judgment, compel the delivery of the property to the officer or party entitled thereto by attachment, and may examine either party as to the possession or control of the property. Such authority shall only be exercised in aid of the foregoing provisions of this Rule.
- m. Improper Issue of Order of Delivery. Any order for the delivery of property issued under this Rule without the affidavit and undertaking required, shall be set aside and the plaintiff shall be liable in damages to the party injured.
- n. Joinder of Cause of Action for Debt - Stay of Judgment. In any action for replevin in the Court, it shall be permissible for the plaintiff to join with the claim in replevin a claim founded on debt claimed to be owing to the plaintiff if the debt shall be secured by a lien upon the property sought to be recovered in the claim in replevin. In such cases, the execution of the judgment for debt shall be stayed pending the sale of the property and the determination of the amount of debt remaining unpaid after the application of the proceeds of the sale.

**31b. GROUNDS FOR ATTACHMENT.**

**Rule 31b. GROUNDS FOR ATTACHMENT.**

- 1. The plaintiff in a civil action for the recovery of money may, at or after the commencement of the action, have an attachment against the property of the defendant upon proof of any of the following grounds:
  - a. When the defendant, or one of several defendants, has absconded with intention to defraud his creditors, or
  - b. Has left the jurisdiction of the Court to avoid the service of summons, or
  - c. So conceals himself that a summons cannot be served upon him, or
  - d. Is about to remove his property, or a part of the property, out of the jurisdiction of the Court with the intent to defraud his creditors, or
  - e. Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors, or
  - f. Has property or rights in action, which he conceals, or

- g. Has assigned, removed or disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud, hinder or delay his creditors, or
- h. Fraudulently contracted the debt, or fraudulently incurred the liability or obligations for which the suit has been brought, or
- i. Where the damages for which the action is brought are for injuries arising from the commission of a crime, or
- j. When the debtor has failed to pay the price or value of any article or thing delivered, which by contract he was bound to pay upon delivery, or
- k. When the action is brought by the Nation, or its officers, agents, or political agencies or subdivisions for the purpose of collection of any Nation tax, levy, charge, fee, assessment, rental, or debt arising in contract or by statute and owed to the Nation.

2. Attachment Affidavit. An order of attachment may be issued by the Court when:

- a. There is filed in the office of the court clerk a civil complaint stating a claim for relief and an application that the Court issue an order of attachment which states facts which show:
  - 1. The nature of the plaintiff's claim,
  - 2. That it is just,
  - 3. The amount which the affiant believes the plaintiff ought to recover, and,
  - 4. The existence of some one of the grounds for an attachment enumerated in Section 1 of this Rule.
- b. The application must be verified by the plaintiff, or, where his agent or attorney has personal knowledge of the facts, by the agent or attorney.
- c. The defendant has been served with a notice, issued by the Clerk, which shall notify the defendant that an order of attachment of property is requested and that he may object to the issuance of such an order by a written objection which is filed with the Court Clerk and mailed or delivered to the plaintiff's attorney within five (5) days of the receipt of the notice. A copy of plaintiff's application shall be attached to and served with the notice, and the notice and application may be served with the summons in the action.
- d. If no written objection is filed within the five day period, no hearing is necessary and the Court may issue the order of attachment. If a written objection is filed within the five day period, the Court shall, at the request of either party, set the matter for a prompt hearing with notice to the adverse party. If the plaintiff proves the probable merit of his cause and the truth of the matters asserted in his application for an order of attachment, the Court may issue the order of attachment. Provided, however, before an order of attachment is issued by either the Court or the Clerk, the Plaintiff has executed an undertaking pursuant to Section 3 of this Rule. The Nation and its agents shall not be required to execute an undertaking.

- e. If the Court finds that the defendant cannot be given notice as provided herein, although a reasonable effort was made to notify him, but at the hearing the plaintiff proves the probable merit of his claim and the truth of the matters asserted in his application, the Court may issue the order of attachment. The defendant may subsequently move to have the attachment vacated.
3. Attachment Bonds. The attachment bond for the benefit of the party whose property is attached shall be in such form and in such amount, not less than double the amount of the plaintiff claim, as the Court shall direct, and shall guarantee payment of all damages, costs, and reasonable attorney fee's incurred as a result of a wrongful attachment. No bond shall be required of the Nation.
4. Order of Attachment. The order of attachment shall be directed and delivered to the Chief of the Nation Police. It shall require him to attach the lands, tenements, goods, chattels, stocks, rights, credits, moneys and effects of the defendant within the territorial jurisdiction of the Court not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim.
5. When Returnable. The return day of the order of attachment when issued at the commencement of the action, shall be the same as that of the summons, and otherwise within twenty days of the date of issuance.
6. Order of Execution. Where there are several orders of attachment against the defendant, they shall be executed in the order in which they are received by the Chief of the Nation Police.
7. Execution of Attachment Order. The order of attachment shall be executed by the Chief of the Nation Police without delay. He shall go to the place within the Nation jurisdiction where the defendant's property may be found, and declare that, by virtue of said order, he attaches said property at the suit of the plaintiff; and the officer shall make a true inventory and appraisal of all the property attached, which shall be signed by the officer and returned with the order, leaving a copy of said inventory with the person or in the place from which the property was seized.
8. Service of Order.
  - a. When the property attached is real property, the officer shall leave a copy of the order with the occupant, or, if there be no occupant, then a copy of the order shall be posted in a conspicuous place on the real property. Where it is personal property, and he can get possession, he shall take such into his custody, and hold it subject to the order of the Court.
9. Re-delivery on Bond. The Chief of the Nation Police shall re-deliver the property to the person in whose possession it was found, upon the execution by such person, in the presence of the Chief of the Nation Police, an undertaking to the plaintiff, with one or more sufficient sureties, to the effect that the parties to the same are bound, in double the appraised value thereof, that the property, or its appraised value in money, shall be forthcoming to answer the judgment of the Court in the action.

### **31c. APPOINTMENT OF RECEIVER**

#### **Rule 31c. APPOINTMENT OF RECEIVER**

1. A receiver may be appointed by the Court:

- a. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or other jointly owning or interest in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.
  - b. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt.
  - c. After judgment, to carry the judgment to effect.
  - d. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceeding in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.
  - e. In the cases provided in this Code, and by special statutes, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.
  - f. In all other cases where receivers should be appointed to protect the property and rights of the parties thereto in dispute by the usages of the Court in equity.
2. Persons Ineligible. No party, or attorney, or person interested in an action, shall be appointed receiver in the action except by consent of all parties to the action.
  3. Oath and Bond. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties, approved by the Court, execute an undertaking to such person and in such sum as the Court shall direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the Court.
  4. Powers of Receiver. The receiver has, under the control of the Court, power to bring an defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, to collect debts, to compound for an compromise the same, to make transfers, and generally to do such act respecting the property as the Courts may authorize.
  5. Investment of Funds. Funds in the hands of a receiver may be invested upon interest, by order of the Court; but no such order shall be made, except upon the consent of all the parties to the action or except by order of the Court.
  6. Disposition of Property Litigated.
    - a. When it is admitted, by the pleadings or oral or written examination of a person, that he has in his possession or under his control any non-exempt money or other thing capable of delivery, which, is held by him as trustee for a party, or which belongs or is due to a party, the Court may order the same to be deposited in Court or delivered to such party, with or without

security, subject to the further direction of the Court.

- b. Any person abiding by an order of the Court in such cases and paying or delivering the money or other property subject to said order into Court, shall not thereafter be liable to the party for whom he held as trustee, or to whom the money or property belonged or was due, in any civil action for the collection or return of the property or money delivered or paid into Court.
  - c. Such order may be made by ordering the party to procure the deposit or payment into Court of the property, which order may be enforced by contempt, or the Court, upon proper application, may order the person holding said property to be served with summons and brought into the action as a special defendant for the sole purpose of determining the nature and amount of property in his possession subject to payment into Court under this Section, and ordering said person to pay or deliver such non-exempt property into Court. After such payment has been made, the person shall be dismissed from the action.
  - d. In cases where judgment has been obtained against the party whose property or money is to be paid into Court, it is not necessary to formally appoint a receiver for the money or property paid into Court under this Section, but the Court Clerk shall act as receiver as an aid to the enforcement of a judgment, and shall pay such money or deliver such property over to the person entitled thereto in conformity with the order of the Court.
7. Punishment for Disobedience of Court. Whenever, in the exercise of its authority, the Court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the Court, besides punishing the disobedience as for contempt, may make an order requiring the Chief of the Nation Police to take the money, or thing, and deposit or deliver it, in conformity with the direction of the Court.
8. Vacation of Appointment by Appellate Court. In all cases in the Trial Court in which a receiver has been appointed, or refused, the party aggrieved may, within ten (10) days thereafter have the right to file a motion to vacate the order refusing or appointing such receiver, and hearing on such motion may be had before the Appellate Court, and pending the final determination of the cause, if the order was one of the appointment of a receiver, the moving party shall have the right to give bond with good and sufficient sureties, and in such amount as may be fixed by order of the Court, conditioned for the due prosecution of such case, and the payment of all costs and damages that may accrue to the nation, or any officer, or person by reason thereof, and the authority of any such receiver shall be suspended pending a final determination of such cause, and if such receiver shall have taken possession of any property in controversy in said action, the same shall be surrendered to the rightful owner thereof, upon the filing and approval of said bond.

## 31d. EXEMPTIONS

### Rule 31d. EXEMPTIONS

#### 1. Homestead; Extent of Exemption

a. A homestead to the extent of 160 acres of farming land, or of one acre within the limits of a town or city, or a manufactured home or mobile home, occupied as a residence by the owner or by the family of the owner, or by both the owner and family thereof, together with all the improvements on the same, shall be exempted from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists. No property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon. The provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife, when that relation exists.

#### b. Designation of Homestead

Whenever any levy shall be made upon the lands or tenements of a householder whose homestead has not been selected and set apart, such householder, the householder or householder's spouse, when the marriage relationship exists, or an agent or attorney of the householder may notify the officer in writing at the time of making such levy, or at any time before the sale, of what the householder regards as the homestead, with a description thereof, and the remainder alone shall be subject to sale under such levy.

#### c. Contract for conveyance of Homestead.

No action for the specific performance of a contract for the sale or exchange of real estate or for damages by reason of the violation of any contract to sell or exchange lands occupied as a homestead by the owner and his or her family, shall be maintained unless the contract of sale is signed by both the husband and wife, or by an agent or broker duly authorized in writing by both the husband and wife to make such sale or exchange.

#### 2. Personal Property; Articles Exempt

Every person residing within the territorial jurisdiction of the Nation shall have exempt from seizure and sale upon any attachment, execution or other process issued from the Court, the following articles of personal property:

- (a) The furnishings, equipment and supplies, including food, fuel and clothing, for the person which is in the person's present possession and is reasonably necessary at the residence of the person for a period of one year.
- (b) Ornaments of the debtor's person, including jewelry, having a value not exceeding \$1,000.
- (c) Such person's interest, not to exceed \$5,000 in value, one means of conveyance regularly used for the transportation of the person or for transportation to and from the person's regular place of work, except that the value limitation specified in this subsection shall not apply when the means of conveyance is a vehicle designed or equipped, or both, for handicapped persons.



- (d) A burial plot or crypt or any cemetery lot.
- (e) The books, documents, furniture, instruments, tools, implements and equipment, the breeding stock, seed grain or growing plants stock, or the other tangible means of production regularly and reasonably necessary in carrying on the person's profession, trade, business or occupation in an aggregate value not to exceed \$7,500.

3. Not Exempt from Wages.

None of the personal property mentioned in this Rule shall be exempt from attachment or execution for the payment of wages of any employee of the debtor.

4. Pension and Retirement Money Exempt, Exception; Support Money Held Exempt

- (a) Money received by the debtor as pensioner of the United States within three months next preceding the issuing of an execution, or attachment, or garnishment process, cannot be applied to the payment of the debts of such pensioner when it is made to appear by the affidavit of the debtor or otherwise that such pension money is necessary for the maintenance of the debtor's support or a family support wholly or in part by the pension money. The filing of the affidavit by the debtor, or making proof as above provided, shall be prima facie evidence, and it shall be the duty of the court to release all moneys held by such attachment or garnishment process, immediately upon the filing of such affidavit, or the making of such proof.
- (b) Except as provided in subsection (c), any money or other assets payable to a participant or beneficiary from, or any interest of any participant or beneficiary in, a retirement plan which is qualified under sections 401(a), 403(a), 403(b), 408 or 409 of the Federal Internal Revenue Code of 1954, as amended, shall be exempt from any and all claims of creditors of the beneficiary or participant. Any such plan shall be conclusively presumed to be a spendthrift trust under the laws of the Oneida Indian Nation.
- (c) Any plan or arrangement described in subsection (b) shall not be exempt from the claims of an alternate payee under a qualified domestic relations order. However, the interest of any and all alternate payees under a qualified domestic relations order shall be exempt from any and all claims of any creditor, other than a department of social services, of the alternate payee. As used in this subsection, the terms "alternate payee" and "qualified domestic relations order" have the meaning ascribed to them in section 414(p) of the Federal Internal Revenue Code of 1954, as amended.
- (d) Money held by the Court Clerk in connection with a court order for the support of any person, whether it be identified as child support, spousal support, alimony or maintenance, shall be exempt from execution, attachment or garnishment.

5. Exemptions From Legal Process; Nation Property.

The Nation shall be exempt from seizure and sale upon any attachment, execution or other process issued from the court.

## 32. GARNISHMENT.

### Rule 32. GARNISHMENT

As an aid to the enforcement of the judgment, an order of garnishment may be obtained and shall be issued by the Clerk. No bond is required for an order of garnishment issued after judgment.

- a. Service and Return. The order of garnishment shall be served on the garnishee, together with two copies of the form for the garnishee's answer and returned by the officer making service.
- b. Effect. An order of garnishment shall have the effect of attaching the nonexempt portion of the defendant's earnings for any pay period or periods which end during the 30 day period beginning the date the order is served. Nonexempt earnings are earnings which are not exempt from wage garnishment pursuant to this Rule, and computation thereof for any pay period or periods which end during the 30 day period beginning the date the order is served shall be made in accordance with the directions accompanying the garnishee's answer form served with the order of garnishment.
- c. Wage Garnishment; Definitions; Restrictions, Exceptions; Sickness Preventing Work; Assignment of Account; Prohibition on Courts.
  - (1) Definitions.
    - (a) "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise;
    - (b) "disposable earnings" means that part of the earnings of any individual remaining after the deduction from such earnings of any amounts required by law to be withheld;
    - (c) "wage garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt; and
    - (d) "federal minimum hourly wage" means that wage prescribed by subsection (a)(1) of section 6 of the Federal Fair Labor Standards Act of 1938, and any amendments thereto.

- (2) Restriction on Wage Garnishment. Subject to the provisions of subsection (5), only the aggregate disposable earnings of an individual may be subjected to wage garnishment. The maximum part of such earnings of any wage earning individual which may be subjected to wage garnishment for any workweek or multiple thereto may not exceed the lesser of: (1) Twenty-five percent of the individual's aggregate disposable earnings for that workweek; (2) the amount by which the individual's aggregate disposable earnings for that workweek exceed an amount equal to 30 times the federal minimum hourly wage; or (3) the amount of the plaintiff's claim as found in the order for garnishment. No one creditor may issue more than one garnishment against the earnings of the same judgment debtor during any one 30-day period, but the court shall allow the creditor to file amendments or corrections of names or addresses of any party to the order of garnishment at any time. In answering such order the garnishee-employer shall withhold from all earnings of the judgment-debtor for any pay period or periods ending during such 30-day period an amount or amounts as are allowed and required by law. Nothing in this Rule shall be construed as charging the plaintiff in any garnishment action with the knowledge of the amount of any defendant's earnings prior to the commencement of such garnishment action.
- (3) Sickness Preventing Work. If any debtor is prevented from working at the debtor's regular trade, profession or calling for any period greater than two weeks because of illness of the debtor or any member of the family of the debtor, and this fact is shown by the affidavit of the debtor, the provisions of this section shall not be invoked against any such debtor until after the expiration of two months after recovery from such illness.
- (4) Assignment of Account. If any person, firm or corporation sells or assigns an account to any person or collecting agency, that person, firm or corporation or their assignees shall not have or be entitled to the benefits of wage garnishment. The provision of this subsection shall not apply to assignments of support rights made to a governmental agency.
- (5) Exceptions to Restrictions on Wage Garnishment. The restrictions on the amount of disposable earnings subject to wage garnishment as provided in subsection (2) shall not apply in the following instances:
  - (1) Any order of the Nation court for the support of any person, including any order for support in the form of alimony or maintenance, but the foregoing shall be subject to the restriction provided for in subsection (6);
  - (2) Any order of any court of bankruptcy under Chapter XIII of the Federal Bankruptcy Act.
  - (6) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed 25% of the individual's disposable earnings for that week.
- d. Answer of Garnishee; Reply; Judgment. Within 10 days after service upon a garnishee of an order of garnishment the garnishee shall file a verified answer thereto with the clerk of the court, stating the facts with respect to the demands of the order. The Clerk shall provide the answer form.
- e. The clerk shall cause a copy of the answer to be mailed promptly to the plaintiff and the defendant. Within 10 days after the filing of the answer the plaintiff or the defendant or both of them may reply,

controverting any statement in the answer. If the garnishee fails to answer within the time and manner specified, the court may grant judgment against the garnishee for the amount of the plaintiff's judgment or claim against the defendant. If the claim of the plaintiff has not been reduced to judgment, the liability of the garnishee shall be limited to the judgment ultimately rendered against the defendant. Such judgments may be taken only upon written motion and notice. If the garnishee answers as required herein and no reply is filed within 10 days, the allegations of the answer are deemed to be confessed. If a reply is filed as provided, the court shall try the issues joined, the burden being upon the party filing the reply to disprove the sworn statements of the answer, except that the garnishee shall have the burden of proving offsets or indebtedness claimed to be due from the defendant to the garnishee, or liens asserted by the garnishee against the property of the defendant.

f. Effect of Offsets Claims by Garnishee. When the garnishee claims that he or she is not indebted to the defendant for the reason that the defendant is indebted to the garnishee, or that the indebtedness due to the defendant is reduced thereby, the garnishee is not discharged unless and until he or she applies the amount of his or her indebtedness to the defendant to the liquidation of his or her claim against the defendant.

g. Trial.

1. Stay Pending Trial on Merits. The court may stay the trial of the issues joined in a garnishment proceeding until after the claim of the plaintiff has been adjudicated.

2. Right of Defendant to Contest Garnishment. The defendant may, in addition to controverting the statements in the answer of the garnishee, defend the proceedings against the garnishee, upon the ground that the indebtedness of the garnishee, or any property held by him or her, is except from execution against such defendant, or for any other reason is not liable to garnishment; and the defendant may participate in the trial of any issue between the plaintiff and the garnishee for the protection of his or her interests.

3. Right of Garnishee to Defend the Action. The garnishee in the answer may, on behalf of the defendant, state any claim of exemption from execution or attachment which the defendant may have, or any other objection known to the garnishee that the defendant might have or assert. The garnishee may at his or her option defend the principal action for a defendant who defaults, but is under no obligation to do so.

h. Judgment in Garnishment Proceedings.

1. Upon determination of the issues, either by admissions in the answer or reply, or by default, or by findings of the court on controverted issues, judgment shall be entered fixing the rights and liabilities of all parties in the garnishment proceedings (1) by determining the liability of garnishee upon default, or (2) discharging the garnishee, or (3) making available to the satisfaction of the claim of the plaintiff any indebtedness due from the garnishee to the defendant or any property in the hands of the garnishee belonging to the defendant, including ordering the payment of money by the garnishee into court, or the impoundment, preservation and sale of property as provided for the disposition of attached property, or (4) rendering judgment against the garnishee for the amount of his or her indebtedness to the defendant or for the value of any property of the defendant held by the garnishee, and (5) if the answer of a garnishee is controverted without good cause, the court may award the garnishee judgment against the party controverting such answer damages for his or her expenses, including

reasonable attorneys' fees, necessarily incurred in substantiating the same.

2. When judgment is entered in garnishment proceedings for the purpose of enforcing an order of any court for the support of any person and the court finds that a continuing order of garnishment is necessary to insure payment of a court order of support, the court may issue a continuing order of garnishment to allow any indebtedness that will become due from the garnishee to the defendant because of an employer-employee relationship to be made available to the plaintiff on a periodic and continuing basis for so long as the court issuing the order may determine or until otherwise ordered by such court in a further proceeding. No order may be made pursuant to this subsection (2) unless the court finds that the defendant is in arrearage of a court order for support in an amount equal to or greater than one year of support as ordered and the defendant receives compensation from his or her employer on a regular basis in substantially equal periodic payments. On motion of a defendant who is subject to a garnishment order pursuant to this subsection (2), the court for good cause shown may modify or revoke any such order.
- i. Bond of Defendant for payment of judgment. The defendant may at any time after the proceeding is commenced file with the clerk of the court a bond, to be approved by the judge of the court, in double the amount of the claim or such lesser amount as shall be approved by order of the judge to the effect that the defendant will pay to the plaintiff on demand the amount of the judgment and costs that may be assessed against such defendant, and thereupon the garnishee shall be discharged and any money or property paid or delivered to any officer shall be delivered to the person entitled thereto.
  - j. Exceptions. No judgment shall be rendered in garnishment by reason of the garnishee:
    - a. having drawn, accepted, made, endorsed, or guaranteed any negotiable bill, draft, note, or other security, or
    - b. holding moneys on a claim not arising out of contract and not liquidated as to amount, or
    - c. holding moneys or property exempt by law, or the proceeds therefrom.
  - k. Garnishment of funds held by financial institution.
    1. The written direction of a party seeking an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall state the amount to be withheld, which shall be 1 1/2 times the amount of the plaintiff's claim, in the case of prejudgment garnishment, or 1 1/2 times the amount of the judgment, in the case of post judgment garnishment. The garnishee may withhold and retain to defray the garnishee's costs, an administrative fee of \$10.00 for each order of garnishment that attaches funds, credits or indebtedness. Such administrative fee shall be in addition to the amount required to be withheld under the order for garnishment, except that if the amount required to be withheld under the order for garnishment is greater than the amount of the funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company, the fee shall be deducted from the amount withheld.
    2. All orders of garnishment issued by the Court for the purpose of attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall specify the amount of funds, credits or indebtedness to be withheld by the garnishee,

which shall be 1 1/2 times the amount of the plaintiff claim or 1 1/2 times the amount of the judgment, as stated in the written direction of the party seeking the order.

3. The forms provided by law for an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"If you hold any funds, credits or indebtedness belonging to or owing the defendant, the amount to be withheld by you pursuant to this order of garnishment is not to exceed \$ \_\_\_\_\_.(amount stated in direction)

4. The forms provided by law for the answer to an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company shall include the following statement:

"The amount of the funds, credits or indebtedness belonging to or owing the defendant which I shall hold shall not exceed \$ \_\_\_\_\_.(amount stated in order)

5. If an order of garnishment attaches funds, credits or indebtedness held by a bank, savings and loan association, credit union or finance company and the garnishee holds funds or credits or is indebted to the defendant in two or more accounts, the garnishee may withhold payment of the amount attached from any one or more of such accounts.

6. No party shall seek an order of garnishment attaching funds, credits or indebtedness held by a bank, savings and loan association, savings bank, credit union or finance company except on good faith belief of the party seeking garnishment that the party to be served with the garnishment order has, or will have, assets of the judgment debtor. Except as provided further, not more than two garnishments shall be issued by a party seeking an order of garnishment applicable to the same claim or claims and against the same judgment debtor in any 30-day period. A judge may order an exception to this subsection in any case in which the party seeking the garnishment shall in person or by attorney: (1) Certify that the garnishment is not for the purpose of harassment of the debtor, and (2) state facts demonstrating to the satisfaction of the judge that there is reason to believe that the garnishee has property or credits of the debtor which are not exempt from execution.

### **33. LIMITATION OF ACTIONS.**

#### **Rule 33. LIMITATION OF ACTIONS**

- a. Limitations Applicable. Civil actions can only be commenced within the periods prescribed in this Rule after the cause of action shall have accrued; but where, in special cases, a different limitation is prescribed by statute, the action shall be governed by such limitation.
- b. Limitation of Other Actions. Civil actions can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:
  1. Within seven (7) years: An action upon any contract, agreement or promise in writing.

2. Within five (5) years: an action upon a contract express or implied not in writing; an action upon a liability created by statute including a forfeiture or penalty except where the statute imposes a different limitation and an action on a foreign judgment.
  3. Within three (3) years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract except as otherwise provided in building construction tort claims, and not hereinafter enumerated; an action for relief on the ground of fraud, the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud.
  4. Within one (1) year: An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment.
  5. An action for relief, not hereinbefore provided for, can only be brought within five (5) years after the cause of action shall have accrued.
  6. Actions under the Amended Tort Claims Ordinance, and amendments thereto, shall be brought within one (1) year from the date of the incident.
- e. Persons Under Disability. If a person entitled to bring an action be, at the time the cause of action accrued, under any legal disability, every such person shall be entitled to bring such action within one year after such disability shall be removed.
- f. Absence or Flight of Defendant. When a cause of action accrues against a person and that person is out of the territorial jurisdiction of the Nation or has concealed himself, the period limited for the commencement of the action shall not begin to run until he comes into the Nation jurisdiction, or while he is concealed, and if after the cause of action occurs he or she departs from Nation jurisdiction, the time of his concealment shall not be computed as any part of the period within which the action must be brought. If, after a cause of action accrues against a person and that person leaves the Nation jurisdiction or conceals himself, the time of his absence or concealment shall not be computed as any part of the period within which the action must be brought. Provided, however, that if any statute which extends the exercise of personal jurisdiction of the Court over a person or corporation based upon service outside the territorial jurisdiction of the Nation, or based upon service by publication permits the Court of this Nation to acquire personal jurisdiction over the person, the period of his absence or concealment shall be computed as part of the period within which the action must be brought.
- g. Extension of Limitation. In any case founded on contract, when any part of the principal or interest shall have been paid, or an acknowledgment of an existing liability, debt or claim, or any promise to pay the same shall have been made, an action may be brought in such case within the period prescribed for the same, after such payment, acknowledgment or promise; but such acknowledgment or promise must be in writing, signed by the party to be charged thereby.
- h. Statutory Bar Absolute. When a right of action is barred by the provisions of any statute, it shall be unavailable either as a cause of action or ground of defense, except as otherwise provided with reference to a counterclaim, set-off, or cross-claim.
- i. Law Governing Foreign Claims. The period of limitation applicable to a claim accruing outside of the Nation jurisdiction shall be that prescribed either by the law of the place where the claim accrued or by

the law of this Nation whichever last bars the claim.

### **34. ENFORCEMENT OF FOREIGN JUDGMENTS**

#### **Rule 34. ENFORCEMENT OF FOREIGN JUDGMENTS**

- a. Foreign Judgments Defined. "Foreign judgment" means any judgment, decree, or order of a court of the United States, another Indian Nation or of any other court which is entitled to full faith and credit.
- b. Filing and Status of Foreign Judgments. A copy of an authenticated foreign judgment may be filed in the office of the clerk. The clerk of the Nation court shall treat the foreign judgment in the same manner as a judgment of the Nation court. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings as a judgment of the Nation court and may be enforced or satisfied in like manner.
- c. Filing and Status of Foreign Judgments -- Notice of Filing.
  - a. At the time of the filing of the foreign judgment, the judgment creditor or his or her lawyer shall make and file with the clerk an affidavit setting forth the name and last known post-office address of the judgment debtor and the judgment creditor.
  - b. Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.
- d. Filing and Status of Foreign Judgments -- Stay of Enforcement, When
  - a. If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the Indian Nation or state in which it was rendered.
  - b. If the judgment debtor shows the Nation court any ground upon which enforcement of a judgment of the Nation court would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required by the Nation court.
- e. Foreign Judgment; Filing; Court Fees. A person filing a foreign judgment shall pay to the clerk a docket fee in the amount of ten and 00/100 dollars (\$10.00). Any additional fees or charges not specifically covered by the docket fee shall be assessed as additional court costs in the same manner and to the same extent as if the action had been originally commenced in the Nation court.
- f. Filing and Status of Foreign Judgments -- Optional Procedure. The right of a judgment creditor to



bring an action to enforce his or her judgment instead of proceeding under this Rule remains unimpaired.

**35. COMITY**

**Rule 35. COMITY**

Comity may be given in the Oneida Nation Court to the judicial proceedings of any court of competent jurisdiction in which final judgments, orders or stays have been obtained, provided, however, that comity shall not be given to final judgments, orders and stays rendered by any court which declines or refuses to similarly recognize the final judgments, orders or stays of the Oneida Nation Court. Comity shall not be extended in any case which involves treaty rights of Nation members, including matters related to taxation and hunting and fishing, nor may comity be extended to any final judgment, order, stay, subpoena or compulsory process the enforcement of which would infringe upon the sovereignty of the Nation.

Upon the granting of comity by the Oneida Nation Court to the final judgment, order or stay of a foreign court, the Nation shall honor and fulfill such final judgment, order or stay. The Nation shall be given notice and an opportunity to be heard on any motion for the extension of comity, and due regard shall be had by the Oneida Nation Court for the sovereign prerogatives of the Nation.

**CHAPTER TWO  
SMALL CLAIMS**

**36. DEFINITIONS.**

**Rule 36. DEFINITIONS.**

The small claims process may be used for claims for money or the delivery of tangible property where the matter in dispute has a value of three thousand dollars (\$3,000.00) or less, exclusive of interest and costs.

**37. JURISDICTION; LIMITATIONS.**

**Rule 37. JURISDICTION; LIMITATIONS.**

Jurisdiction and limitations of actions in the small claims process proceedings shall be the same as in Rule 1 and Rule 32 of Chapter 1 of these Rules.

**38. INITIATION OF SMALL CLAIMS PROCESS**

**Rule 38. INITIATION OF SMALL CLAIMS PROCESS**

The small claims process is initiated by the claimant completing a form to be provided by the court clerk and paying the filing fee of five (\$5.00) dollars.