

# ONEIDA INDIAN NATION

## ESTABLISHMENT OF THE ONEIDA NATION COURT

Ordinance No. O-97-02

Pursuant to the authority vested in the Oneida Indian Nation by virtue of its sovereignty and inherent powers of self-government, the Nation hereby establishes the Oneida Nation Court. The Oneida Nation Court includes both a Trial Court with a Peacemakers division and a Court of Appeals.

### ARTICLE 1 - DEFINITIONS

1. "Chief Judge" means the Judge appointed as the administrative supervisor of the Oneida Nation Court.
2. "Chief Appellate Judge" means the Chief Appellate Judge of the Court of Appeals.
3. "Chief Trial Judge" means the Chief Trial Judge of the Trial Court.
4. "Claims Commission" means the Oneida Indian Nation Claims Commission established by Oneida Indian Nation Ordinance No. O-94-02A.
5. "Court Clerk" means the Clerk of the Oneida Nation Court.
6. "Court of Appeals" means the Court of Appeals of the Oneida Nation Court.
7. "Judge" or "Judges" means the duly appointed and commissioned trial and appellate judges of the Oneida Nation Court.
8. "Nation" means the Oneida Indian Nation.
9. "Nation Representative(s)" means the Nation Representative(s) lawfully selected by the Nation.
10. "Ordinance" means this Ordinance establishing the Oneida Nation Court.
11. "Trial Court" means the Trial Court of the Oneida Nation Court.

## ARTICLE 2 - TERRITORIAL JURISDICTION

The territorial jurisdiction of the Oneida Nation Court shall extend to all lands possessed, occupied or held by or for the Nation in its sovereign capacity.

## ARTICLE 3 - CIVIL JURISDICTION

The Oneida Nation Court shall have civil subject matter jurisdiction over all civil suits, claims and causes of action arising out of or pertaining to conduct, activities or undertakings within the territorial jurisdiction of the Nation, except:

- (1) Sovereign Immunity. The Oneida Nation Court shall not have subject matter jurisdiction over any suits, claims or causes of action as described in Article 10 of this Ordinance.
- (2) Domestic Relations. The Oneida Nation Court shall not have subject matter jurisdiction over domestic relations, including juvenile and child neglect and abuse cases.
- (3) Political Questions. The Oneida Nation Court shall not have subject matter jurisdiction over political questions relating to the Nation's government or its relations with other sovereigns.
- (4) Membership and Good Standing in Nation. The Oneida Nation Court shall not have subject matter jurisdiction to determine the requirements of eligibility for membership in the Nation or the membership status or good standing of any individual. The written statement of the Clerk of the Nation, provided by a party or requested by the Court, shall be conclusive and incontrovertible evidence as to membership in the Nation, eligibility therefore or good standing thereof.

## ARTICLE 4 - CRIMINAL JURISDICTION

The Oneida Nation Court shall have criminal jurisdiction over crimes or offenses committed by members of the Nation or members of other Indian nations within the territorial jurisdiction of the Nation.

## ARTICLE 5 - APPELLATE JURISDICTION

All appeals shall be heard by an appellate Judge, except for appeals from the Claims Commission, which shall be heard by the Trial Court. The Court of Appeals shall not have jurisdiction to hear or decide any case except cases timely appealed from the Trial Court and over which the Trial Court properly exercised subject matter jurisdiction pursuant to this Ordinance. The Court of Appeals shall have jurisdiction to decide whether any case appealed

from the Trial Court was within that court's subject matter jurisdiction under this Ordinance. The Court of Appeals shall not have jurisdiction to hear or decide cases originating in the Claims Commission.

#### ARTICLE 6 - PERSONAL JURISDICTION

In matters over which it has civil subject matter jurisdiction, the Oneida Nation Court may exercise personal jurisdiction over persons properly served with process or consenting to jurisdiction.

#### ARTICLE 7 - JURY TRIALS

Jury trials shall be permitted only in criminal cases.

#### ARTICLE 8 - PEACEMAKING

Peacemaking shall be encouraged in all cases before the Oneida Nation Court and shall be governed by the Peacemaking Rules as are in effect from time to time.

#### ARTICLE 9 - SEPARATION OF POWERS

There shall be no encroachment on or interference with the judicial powers of the Oneida Nation Court by the Nation government.

#### ARTICLE 10 - SOVEREIGN IMMUNITY

The Oneida Nation Court shall not have jurisdiction over any suit, claim, or cause of action brought against the Oneida Indian Nation or any of its Nation Representative(s), Men's Council Members, Clan Mothers, officers, employees, or agents, in their official capacities, nor over the Nation Representative(s), the Men's Council or the Clan Mothers collectively, nor over any instrumentality, corporation, agency, organization, business or other Nation entity without the consent of the Nation, which consent shall be in writing and must specifically waive the Nation's sovereign immunity to be effective. Nothing contained in this Ordinance or in the Nation treaties, compacts, codes, ordinances, rules or regulations shall be construed as consent by the Nation or any of its Nation Representative(s), the Men's Council, the Clan Mothers or any of the Nation's officers, employees, agents, instrumentalities, corporations, agencies, organizations, businesses or other entities, to be sued or to limit the Nation's sovereign immunity in anyway or the sovereign immunity of its agents or officers.

#### ARTICLE 11 - LAW TO BE APPLIED

1. (a) The Oneida Nation Court shall apply, in the appropriate case, the provisions of applicable Nation treaties, compacts, codes, ordinances, rules, regulations

and the common law entered into or adopted by the Nation.

- (b) In the absence of applicable law as provided in subsection (a), the Oneida Nation Court may apply, in the appropriate case, the written civil laws of other Indian nations, including written decisions of common or traditional law, which the Court finds to be compatible with the public policy and needs of the Nation.
  - (c) In the absence of applicable law as provided in subsection (b), the Oneida Nation Court may apply, in the appropriate case, the federal civil law of the United States, including federal common law, which the Court finds to be compatible with the public policy and needs of the Nation.
  - (d) In the absence of applicable law as provided in subsection (c), the Oneida Nation Court may apply, in the appropriate case, the civil laws of any state of the United States or other jurisdiction, including the common law thereof, which the Court finds to be compatible with the public policy and needs of the Nation.
- 2. No other Indian, federal, state or other law shall be applied pursuant to this section if such law is inconsistent with the treaties, compacts, codes, ordinances, rules, regulations or common law of the Nation or the public policy of the Nation.
  - 3. The Oneida Nation Court shall have the authority to further develop through its decisions the Nation common law for the Court on any question of law.
  - 4. In further developing the Nation's common law and in deciding the cases before it, the Oneida Nation Court shall strive to achieve stability, clarity, equity, commercial reasonableness and fidelity to any applicable Nation treaties, compacts, codes, ordinances, rules and regulations.

## ARTICLE 12 - THE COURT

- 1. Judges and Peacemakers of the Oneida Nation Court.
  - (a) Judges of the Trial Court and the Court of Appeals shall be individuals who meet the qualifications set forth in this Ordinance and who shall be duly appointed and commissioned by the Nation Representative(s).
  - (b) The Judges of the Trial Court shall be persons qualified to practice law in a state of the United States who shall from time to time agree to serve as Judges of the Trial Court at a rate of pay to be set in advance of their appointment. A list of trial Judges shall be maintained by the Court Clerk.

- (c) The Judges of the Court of Appeals shall be persons qualified to practice law in a state of the United States who shall from time to time agree to serve as Judges of the Court of Appeals at a rate of pay to be set in advance of their appointment. A list of appellate Judges shall be maintained by the Court Clerk.
- (d) As trial or appellate cases are filed with the Court Clerk, the Court Clerk shall serially assign the case to one of the Judges in the order set forth on the appropriate list of judicial appointees. In the event the assigned Judge shall for any reason decline the case or be disqualified, the next available Judge on the list shall be assigned to hear the case. If none of the Judges is available to serve as judge in a particular case, the Court Clerk shall notify the Nation Representative(s) of the need to supplement the list.
- (e) Subject to the limits of this Ordinance and the jurisdiction of the Oneida Nation Court, all Judges shall have, and are hereby granted, full judicial authority and independence and are empowered to exercise the full range of legal and equitable powers to decide the cases before them and shall enjoy the same range of immunities as those enjoyed by judges sitting in the courts of other sovereign governments.
- (f) Each Judge appointed under this Ordinance shall, upon first accepting his or her appointment as a trial or appellate Judge pursuant to this Ordinance, take an oath to be administered by the Nation Representative(s) to carry out his or her duties as a Judge of the Oneida Nation Court with impartiality, honesty and fidelity to the objective of achieving substantial justice under the laws applicable to the cases assigned to him or her under this Ordinance.
- (g) Peacemakers shall be persons with experience in peacemaking, arbitration or mediation. The Chief Judge of the Trial Court shall appoint a peacemaker in any matter deemed appropriate or where a party requests peacemaking.

## 2. Administration of Oneida Nation Court.

- (a) A Chief Judge shall be appointed by the Nation Representative(s) from among the Judges of the Oneida Nation Court to serve a term of one year at a salary to be determined by the Nation Representative(s). The Chief Judge shall serve as the administrative supervisor of the Oneida Nation Court.
- (b) A Chief Trial Judge shall be appointed by the Nation Representative(s) from among the Judges of the Trial Court. The Chief Trial Judge shall serve as administrative supervisor of the Trial Court.
- (c) A Chief Appellate Judge shall be appointed by the Nation Representative(s)

from among the Judges of the Court of Appeals. The Chief Appellate Judge shall serve as administrative supervisor of the Court of Appeals.

- (d) A Court Clerk shall be appointed by the Nation Representative(s) and will serve as the clerk of both the trial and appellate courts of the Oneida Nation Court.
- (e) The Nation shall allocate such funds as are necessary to provide for the proper and efficient administration of the Oneida Nation Court, pay the annual salaries of the Chief Judge and the Court Clerk, and to pay the Judges from time to time. The Nation shall also annually allocate such funds as are necessary to create a contingent fund for the purpose of case administration and adjudication. The compensation of the Judges shall not be diminished during their term of appointment.
- (f) The Chief Judge shall be authorized to propose Rules of the Oneida Nation Court and amendments thereto to the Nation as deemed necessary. The Chief Judge may also propose that codes and ordinances be adopted or amended by the Nation.

#### ARTICLE 13 - RECUSAL; REMOVAL

1. Recusal. A Judge shall recuse himself/herself from a case for any conflict of interest or appearance thereof.
2. Removal. A Judge may be removed from office by the Nation Representative(s) for cause. Cause is defined as:
  - (a) Failure to uphold the integrity of the Oneida Nation Court;
  - (b) Impropriety or the appearance thereof in his/her activities;
  - (c) Failure to perform the duties of his/her office impartially and diligently;
  - (d) Engaging in political activity inappropriate to his/her judicial office; or
  - (e) Breach of the Code of Judicial Conduct.

## ARTICLE 14 - RULES OF PROFESSIONAL CONDUCT AND CODE OF JUDICIAL CONDUCT

1. Professional Responsibility. The substantive rules of the American Bar Association Model Code of Professional Responsibility, as may be amended from time to time, are hereby adopted as and declared to be the Code of Professional Responsibility for attorneys appearing before the Oneida Nation Court to the extent applicable, except as such Code may be in conflict with Nation treaties, compacts, codes, ordinances, rules or regulations.
2. Amendment of Rules. The Chief Judge, with the approval of the Nation Representative(s), may amend the Code of Professional Responsibility.
3. Judicial Conduct. The American Bar Association Model Code of Judicial Conduct, as may be amended from time to time, is hereby adopted as and declared to be the Code of Judicial Conduct for the Oneida Nation Court, except as such Code may be in conflict with Nation treaties, compacts, codes, ordinances, rules or regulations, and provided, however, that Judges of the Oneida Nation Court, in the exercise of their judicial functions, shall not be prohibited from practicing law.
4. Amendment of Rules. The Chief Judge, with the approval of the Nation Representative(s), may amend the Code of Judicial Conduct.

## ARTICLE 15 - BUDGETS AND FISCAL ACCOUNTABILITY

The Chief Judge shall, at the direction of the Nation Representative(s), develop an annual budget and submit it to the Nation for action. The Chief Judge shall account for all monies expended by the Oneida Nation Court in a manner to be determined by the Chief Financial Officer of the Nation. The Chief Judge shall follow the budgetary processes and procedures required by the Budget Director of the Nation.

## ARTICLE 16 - ANNUAL REPORTS

The Chief Judge shall submit an annual report of the Oneida Nation Court to the Nation Representative(s) on a date to be specified by the Nation Representative(s).

## ARTICLE 17 - BAILIFF

The Nation shall provide the services of an Oneida Indian Nation Police Officer to ensure that order is maintained in each proceeding of the Oneida Nation Court unless waived in a particular case by a presiding Judge.

## ARTICLE 18 - 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 the treaty rights of Nation members, including matters related to taxation and hunting and fishing, nor may comity be extended to any final judgement, 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.

## ARTICLE 19 - INTERPRETATION

1. Sovereign Immunity. The Nation does not by enacting this Ordinance waive in any respect its sovereign immunity; or that of its agents or officers, in any manner, under any law, for any purpose, or in any place.

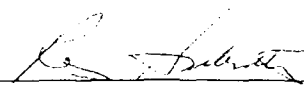
2. No Right of Action. This Ordinance does not create any right, cause of action or benefit enforceable at law or in equity by any person against the Nation, its agencies, its officers or employees, or any other person.

3. Not Subject to Review. This Ordinance is not subject to review or modification in any state or federal court or by any authority outside the Nation.

## ARTICLE 20 - EFFECTIVE DATE

This Ordinance is effective upon enactment.

Enacted this 5 day of May, 1997.

  
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Ray Halbritter  
Nation Representative(s)