

**OUTLINE**  
**NATIVE JUSTICE SYSTEM PANEL**  
**ONEIDA NATION COURT**

April 27, 2006

**I. Background:**

Prior to May 5, 1997, no Court system;

All governmental powers – legislative, executive and judicial – vested in Men’s Council, Clan Mothers and Oneida Nation Representative

**II. Court Establishment Ordinance enacted May 5, 1997**

Establishes Oneida Nation Court – the Trial Court, a Peace-makers division and the Court of Appeals;

Provides for the qualifications and appointment of a Chief Trial Judge who acts as Chief Judge, a Chief Appellate Judge, a Court Clerk and, as needed, Peacemakers

**III. Jurisdiction – Oneida Nation Court**

Territorial – extends to all lands possessed, occupied or held by the Nation in its sovereign capacity;

Criminal – extends to crimes or offenses by Nation members other Indian members committed within territorial jurisdiction – by Act of Congress limited to what would be a misdemeanor in State law – give examples;

Civil – all claims arising out of or pertaining to conduct, activities or undertakings within territorial jurisdiction;

Specific exceptions to Court’s Jurisdiction –

suits or claims against the Nation or any of its employees or representatives;

political questions;

membership in Nation – good standing in Nation community;

domestic relations including juvenile and child neglect (but see Juvenile

Justice Code enacted in November, 2000);

Appellate Jurisdiction

appeals from Trial Court go to Chief Appellate Judge – appeals from

Claims Commission go to Chief Trial Judge and decision on such appeal is final – no further appeal

**IV. Tort Claims Commission**

Established by Tort Claims Resolution Ordinance;

Purpose – Compensate injured persons with damages if fault is established;

Procedures – established by Ordinance – Claims Commissioner usually decides on affidavits and exhibits – may have hearing – written decision required

Appeals go to Chief Trial Judge

Sovereign immunity not affected – establishment of Commission does not waive immunity or create right of action against Nation

## V. Rules of Civil Procedure

Generally tracks scheme of New York CPLR – much shortened;

Prescribes: rules for pleadings, service of process, motions, discovery, orders of attachment, injunctions, enforcement of foreign judgments, comity and more; very comprehensive

## VI. Rules of Criminal Procedure

Very comprehensive – generally similar to New York Criminal Procedure Law;

Rules for Commencement of Criminal Proceeding; criminal complaint; arrest and arraignment;

Rules for trial –

trial is by Court without a jury – unless defendant makes written request for jury within two days after arraignment, pays \$100 fee;

jury is six members, one alternate;

trial jurors be from eligible list prepared by Clerk of Court – list composed exclusively of Nation members

Maximum Sentences –

felonies – not to exceed one year imprisonment and/or fine not to exceed \$5,000;

misdemeanors not to exceed six months imprisonment and/or a fine not to exceed \$2500;

violations – not to exceed three months and/or a fine not to exceed \$1,000;

Alternative Sentences – Court has wide discretion – house arrest – alcohol or drug education training program – restitution – probation;

Sentencing Policies – unique to Oneida Nation Rules of Criminal Procedure – emphasis on restitution – reconciliation of offender, victim and the Nation – restore offender to harmony with community by requiring him to right his wrongdoing

## **VII. Rules of Evidence**

Detailed, comprehensive – codifies many rules established by New York case law;

Rules cover, for example, relevancy, judicial notice, presumptions, character evidence, habit and routine practice, opinions, expert testimony; hearsay; admissibility of writings, recordings and photographs

## **VIII. Juvenile Justice Code (November 2, 2000)**

Jurisdiction – Nation Trial Court given exclusive jurisdiction over proceedings where a “child” residing within territorial jurisdiction of the Nation is alleged to be “juvenile defender”

“Child” – any person under sixteen – not emancipated;

“Juvenile Offender” – a child adjudged by “Court” to have engaged in ungovernable behavior; have been habitually truant from school; have refused to obey reasonable rules of household;

Proceedings – non criminal – do not result in conviction or criminal record

Adjudication Proceedings – verified petition and summons served on “child” alleged to be “juvenile offender” and parent/guardian or custodian

Hearings – public excluded - only persons having an interest in case admitted

Court’s Determination –

if petition supported by clear and convincing evidence, Court orders pre-disposition report and sets matter for disposition hearing;

if Court finds allegation is not supported, petition dismissed – “child” discharged

Pre-Disposition Report – prepared by Probation Officer; contains specific plan for resolving problems presented in petition

Disposition Proceedings – purpose to determine how to resolve matter after “child” has been adjudicated a “juvenile offender”.

Disposition Alternatives – permit “child” to remain with parent/guardian, custodian; place “child” in legal custody of a relative or other suitable person; or in an

institution approved by the Nation; order “child” and, in Court’s discretion,  
parent/guardian or custodian to pay restitution and place “child” on probation

\* Oneida Nation Law & Codes can be found at  
<http://www.oneida-nation.net/codesandordinances/>