

ONEIDA COUNTY – Circuit Court Rules

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RULE 1: FILE REMOVAL AND REVIEW

Effective date: July 19, 2011, originally promulgated in different format on January 7, 2011; reviewed January 15, 2013; reviewed January 3, 2017; reviewed January 18, 2019

No one except authorized personnel shall be in the areas where official court files are kept. No files are to be removed from the Clerk of Court's office unless authorized by the Circuit Judge.

Access to court files is limited to the Clerk of Court's office only. The clerk shall provide at a reasonable fee, copies of any portion of the file upon request, with the exception of sealed documents. All sealed documents in any court file shall not be released with the file unless the court specifically orders. All sealed documents shall be removed from the file, prior to review, as provided herein without such special authorization.

RULE 2: FACSIMILE/E-MAIL TRANSMISSION

Effective date: July 19, 2011, originally promulgated in different format on July 1, 2011; reviewed January 15, 2013; reviewed January 3, 2017; reviewed January 18, 2019

Filing of papers by facsimile or e-mail transmission will not be accepted by the Clerk of Circuit Court.

Fax transmissions to the judiciary shall be by express permission only and directed to the particular judicial official's fax number. The Clerk of Circuit Court will not accept faxes directed to the judiciary.

Any deviation from this rule will only be permitted upon receipt of express consent of the judge and only upon good cause shown.

RULE 3: JURY FEES

Effective date: July 19, 2011 (referencing Ninth Judicial District Rule #1, revised 6/1/10); reviewed January 15, 2013; reviewed January 3, 2017; reviewed January 18, 2019

When a civil or criminal case scheduled for jury trial settles within two business days of the start of trial, the court shall impose actual costs in his/her discretion, in accordance with Wis. Stats. section 814.51.

Specifically for criminal, traffic or ordinance trials by jury, it is the responsibility of the defense attorney to notify the Clerk of Court's Office at 715-369-6120 at least 48 hours in advance if the trial settles to avoid the imposition of actual jury costs.

RULE 4: FORECLOSURE MEDIATION PROGRAM

Effective date: October 1, 2011; reviewed January 15, 2013; reviewed January 3, 2017; reviewed January 18, 2019

Alternative Dispute Resolution:

- A. Unless otherwise directed by the court, ADR will be used pursuant to section 802.12 Wis. Stats. (*Alternative Dispute Resolution*) in all areas where appropriate.
- B. In foreclosure actions, the Court shall require the plaintiff to inform the defendant in writing, using the forms adopted by the court, at the time of service, that ADR procedures (Sec. 802.12 Wis. Stats.) may be requested by either party. This rule shall apply only to homestead property that is owner occupied.

RULE 5: WHEN RECORD IS SILENT; CLERK'S AUTHORITY

Effective date: March 1, 2013; revised July 10, 2015; reviewed January 3, 2017; reviewed January 18, 2019

In those cases where the record is silent, any of the following that are statutorily mandated for the offense for which the defendant has been convicted, the clerk of court shall have the authority to do the following:

- Revoke or suspend driving privileges including, if there is a range of time, the minimum revocation or suspension;
- Assess any domestic abuse surcharge, if the judge has made the necessary finding;
- Assess any DNA surcharge or sample; if applicable; and,
- Assess all other mandatory costs, fees, assessments, or surcharges, or require an alcohol assessment

Upon exercising such authority, the clerk shall make an appropriate notation on the minute sheet and initial the same.

RULE 6: SMALL CLAIMS PROCEDURES

Effective date: March 1, 2013; revised July 10, 2015; revised January 3, 2017; reviewed January 18, 2019

A) SERVICE IN SMALL CLAIMS

- (1) **Service by Mail Authorized:** Except in eviction, replevin or contempt proceedings, service of any small claims pleadings may be made by first class or certified mail, return receipt requested, if the party lives in Oneida County. The service of summons in eviction actions may be served by certified mail, pursuant to 2013 Wisconsin Act 76, provided the party resides in Oneida County.
- (2) **Personal Service:** All small claims pleadings must be personally served on parties residing outside of Oneida County. In all replevin and contempt proceedings, personal service is required. Proof of service shall be filed with the Clerk of Court's Office prior to or at the return date or contempt hearing date.

- (3) **Refused Mail:** Shall constitute a presumption of service upon the defendant since it indicates that he/she was presented with the envelope but refused to accept it under circumstances indicating that he/she had reason to know that it involved legal proceedings against him/her.
- (4) **Unclaimed Mail:** Shall not constitute service since there is no presumption that the defendant has reason to know that legal proceedings involving him/her have been commenced. In such cases, the Clerk shall advise the plaintiff of the failure of service and direct plaintiff to obtain personal service or service by publication within 30 days of the date of notice or have the action dismissed for failure of service.

B) APPEARANCES BY PARTIES

(1) Plaintiff Appearance

- (a) Plaintiff does not need to appear at the initial return date as set forth on the summons; see sub. (1)(b) for exception;
- (b) Plaintiff must appear in person in the following instances:
- Eviction action – initial return date
 - Replevin action – initial return date
 - Mediation/settlement conference unless other arrangements are made with the Court
 - Court trial
 - Contempt proceedings

(2) Defendant Appearance

- (a) Defendant may answer the summons and complaint either by filing a written answer before the initial return date with the Clerk, or by appearing in person.
- (b) Defendant must appear in person in the following instances:
- Eviction action – initial return date
 - Mediation/settlement conference unless other arrangements are made with the Court
 - Court trial
 - Contempt proceedings

(3) Unless adjourned for cause, the failure of any party to appear as stated above may result in the following dispositions

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|--------------------------|-----------------------------|
| (a) Of Plaintiff: | Dismissal with Prejudice |
| (b) Of Defendant: | Default Judgment |
| (c) Both Parties: | Dismissal without Prejudice |

C) SMALL CLAIMS EVICTION ACTIONS

- (1) In all residential eviction actions, a court or jury trial shall be held on the issue of possession of the premises within 30 days of the initial return date as set forth on the summons, or any adjourned return date authorized by the court, unless the parties stipulate otherwise or the action is subject to immediate dismissal.

- (2) At the conclusion of the trial conducted pursuant to subsection (1), all residential eviction actions will proceed as follows:
- (a) If no judgment of eviction is granted, any claim for money damages in the plaintiff's complaint will be referred for mediation with the designated circuit court commissioner and the court will mail notice of a scheduled date and time for mediation to all parties.
 - (b) If no judgment of eviction is granted, and the plaintiff's complaint does not state a claim for money damages, the case shall be closed.
 - (c) If a judgment of eviction is granted, the court shall designate a date certain by which the defendant(s) shall vacate the subject premises.
 1. Following the granting of a judgment of eviction, if the plaintiff's complaint does not state a claim for money damages, the case shall be closed, subject to the plaintiff's right to seek a writ of restitution if the defendant fails to vacate the subject premises as ordered.
 2. Following the granting of a judgment of eviction, if the plaintiff's complaint does state a claim for money damages, the plaintiff or the plaintiff's representative shall indicate on the record whether the plaintiff wishes an opportunity to examine the subject premises following the defendant's departure therefrom to determine whether the plaintiff wishes to file an amended complaint seeking damages above and beyond those stated in the original complaint. If the plaintiff does not wish an opportunity to file an amended complaint, the plaintiff's original claim will be referred for mediation with the designated circuit court commissioner and the court will mail notice of a scheduled date and time for mediation to all parties. If the plaintiff requests an opportunity to file an amended complaint seeking damages above and beyond those stated in the original complaint, the plaintiff shall file an amended complaint setting forth an itemized listing of the requested damages within 30 days of being restored to the subject premises. Unless the court is notified in writing otherwise, the plaintiff is presumed to have been restored to the subject premises on the date the court ordered the defendant to have vacated the subject premises. Upon the filing of an amended complaint by the plaintiff, the plaintiff's amended claim will be referred for mediation with the designated circuit court commissioner and the court will mail notice of a scheduled date and time for mediation, along with the amended complaint, to all parties.
 3. If, within 30 days of being restored to the subject premises, the plaintiff has not filed an amended complaint seeking damages beyond those stated in the original complaint, the court will mail notice of a scheduled date and time for mediation on the claim in the plaintiff's original complaint to all parties.
 - (d) Any counterclaim filed by the defendant for abatement of rent or other relief will be referred for mediation with the designated circuit court commissioner along with any claim by the plaintiff for money damages. If a defendant has a counterclaim for abatement of rent or other relief and the plaintiff has not made a claim for money damages, the defendant's counterclaim will be referred for mediation with the designated circuit court commissioner at the conclusion of the trial conducted pursuant to subsection (1).
 - (e) If, following a referral to mediation under any of the circumstances described in this subsection, the designated circuit court commissioner advises the court that the subject claim or claims cannot be resolved by mediation, a trial on the subject claim or claims will be scheduled as soon as the court's calendar permits.

D) RETURN OF PROPERTY AND CONSUMER REPLEVIN ACTIONS

(1) Initial Return Date

- (a) Plaintiff must appear in person
- (b) At the initial return date, Plaintiff will inform the Court whether Plaintiff now has possession of the item(s) subject to the replevin. If Plaintiff has possession, Plaintiff will need to inform the Court how Plaintiff wishes to proceed.

(2) Defaults

- (a) Defendant(s) may be defaulted for failing to:
 - 1. Appear at the initial return date or filing an answer on or before the initial return date.
 - 2. Appear at any and all subsequent court activities including mediation and trial.
- (b) Consumer Replevins that include a request for a money judgment and/ or deficiency judgment
 - 1. Plaintiff will need to elect which remedy he or she seeks at the time default is to be entered.
 - 2. If Plaintiff seeks replevin of the property, this election does not prevent the Plaintiff from later seeking a money judgment to the extent permitted by law, please see sub. (5) regarding Post Judgment for Consumer Replevins.

(3) Mediation: All contested cases will be set for mediation prior to a trial being set.

(4) Trial

- (a) In General: At the conclusion of the trial, the court will determine who has the right to possess the property that is subject to this action and will determine any additional relief.
- (b) For Consumer Replevins: The Court will determine only the right to possession of the collateral or leases goods and enter the judgment accordingly. This judgment will not bar any subsequent proceedings for damages or deficiency to the extent permitted by the law.

(5) Post Judgment for Consumer Replevins under Wis. Stat. § 425.205: If the plaintiff is successful on Plaintiff's replevin claim, Plaintiff may:

- (a) File a subsequent action for money judgment for a deficiency.
- (b) If Plaintiff initially sought a deficiency judgment as part of the original replevin action, Plaintiff must file a motion pursuant to Wis. Stat. § 425.203(3) requesting that the Court enter a judgment confirming the sale or other disposition of the property and request that a monetary judgment be entered.

E) TRIAL

At the trial, the parties shall be prepared to proceed, and shall have their exhibits (documents and other papers) and witnesses ready and available in the courtroom.

RULE 7: FILING OF TRAFFIC CITATIONS

Effective date: March 1, 2013; revised May 15, 2013; reviewed January 3, 2017; reviewed January 18, 2019

- (1) **When Filed:** Unless sub. (2) applies, all Oneida County law enforcement agencies shall file all citations (including refusal paperwork) with the Oneida County Clerk of Court within 72 hours of issuance.
- (2) **Next Day Appearance:** Where citations are issued for an appearance on the next business day following issuance, the citation shall be filed with the Clerk of Court's Office (either electronically or by paper) no later than 11:00 a.m. on the hearing date.
- (3) **Failure to File:** Citations not filed within the time provided herein may not be accepted by the clerk and may be considered dismissed with prejudice by the Court. Any funds posted will be returned to the defendant.

RULE 8: DENOVO HEARING FOR FAMILY MATTERS

Effective date: May 15, 2013; reviewed January 3, 2017; reviewed January 18, 2019

If a party seeks to have the assigned circuit court judge conduct a hearing de novo under s. 757.69(8) of a determination, order, or ruling entered by the family court commissioner in an action affecting the family, a written motion requesting the hearing de novo shall be filed with the court within 30 days following entry of the family court commissioner's signed determination, order, or ruling.