

Title 8. Judiciary - Chapter 806
FAMILY COURT

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806.1. Purpose and Policy

806.1-1. The purpose of this law is to establish a Family Court, and to provide for the administration of law, justice, judicial procedures and practices by the Oneida Tribe as a sovereign nation by exercising the inherent power to make, execute, apply and enforce its own law, and to apply its own customs and traditions in matters affecting the Oneida people as it pertains to the family and/or to our children.

806.1-2. It is the policy of the Tribe to provide a knowledgeable, fair, and impartial forum for the resolution of all family law matters that come before it pursuant to a grant of authorization by law.

806.2. Adoption, Amendment, Repeal

806.2-1. This law is adopted by BC resolution BC-05-08-13-A as directed by the Oneida General Tribal Council at its annual meeting on January 7, 2013.

806.2-2. This law may be amended by the Oneida Business Committee or the Oneida General Tribal Council in accordance with Tribal law.

806.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

806.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control, except as provided in 806.4-4(c).

806.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

806.3 Definitions

806.3-1. The definitions below shall govern the words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense:

- (a) "Background investigation" shall mean the process utilized by the Tribe's Background Investigations Department.
- (b) "Constitution" shall mean the Constitution and By-laws of the Oneida Tribe of Indians of Wisconsin as amended.
- (c) "Court" shall mean the Family Court.
- (d) "Indian" shall mean any person who is an enrolled member of any federally recognized Indian Tribe.
- (e) "Judge" shall mean the person(s) appointed by the Oneida Business Committee to hear and decide legal matters in the Family Court.
- (f) "Judiciary" shall mean the judicial system that was established by the Oneida General Tribal Council resolution GTC #1-07-13-B to administer the judicial authorities and responsibilities of the Tribe.
- (g) "Peacemaker" shall mean an individual appointed by a Family Court Judge who

works with parties in a court matter to attempt to resolve a dispute in a peaceful manner and in accordance with the customs of the Tribe.

(h) “Pro Tem Judge” shall mean a decision maker that is not currently a Family Court Judge that is appointed on a temporary (*pro tempore*) case-by-case basis to hear and decide matters in the Family Court, and meet the minimum education and experience requirements in section 806.7-1.

(i) “Reservation” shall mean all land within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

(j) “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.

(k) “Tribal law” shall mean a code, act, statute, rule, regulation, policy or ordinance enacted by the Oneida General Tribal Council or the Oneida Business Committee.

806.4. General Provisions

806.4-1. *Establishment.* There is hereby established a Family Court, which shall administer the judicial authorities and responsibilities of the Tribe over all matters pertaining to the family, children and elders, except for probate matters. The Family Court shall support a separation of Tribal governmental powers.

806.4-2. *Seal of the Court.* The Court shall adopt a seal to be used to authenticate its respective judgments and other documents.

806.4-3. *Court Generally Closed to the Public.* The proceedings of the Court shall be closed to the public, except that divorce, child support and post-divorce matters may be attended by members of the general public. However, in any case where the presiding Judge determines that there are safety or confidentiality concerns, the Judge may exclude from the proceedings all individuals not necessarily present as parties or witnesses.

806.4-4. *Civil Contempt.*

(a) Any person who willfully disrupts, obstructs, or otherwise interferes with the conduct of any proceeding by the Court, or who obstructs or interferes with the administration of justice by the Court, or who disobeys or resists or interferes with any lawful summons, subpoena, process, order, rule, decree or command of the Court shall be subject to punishment for contempt of court.

(b) Any person found in contempt of court may be fined in an amount not to exceed one thousand dollars (\$1,000) per act of contempt, and not to exceed five thousand dollars (\$5,000) per instance of continuing contempt. In instances of continuing contempt, each day shall constitute a separate act of contempt.

(c) Where the specific laws that fall under this Court’s jurisdiction provide for more specific contempt remedies, those laws shall supersede this section.

806.4-5. *Court Personnel.* Court personnel shall serve and shall be governed in accordance with the Tribe’s employment laws; this includes, but is not limited to, the Clerk of the Court.

806.5. Jurisdiction

806.5-1. *General.* This section generally outlines the jurisdiction of the Family Court. To the extent that another more specific provision of law is provided for in any Oneida law that applies to family matters, the more specific provision shall govern with respect to the jurisdiction of the Family Court.

806.5-2. *Subject Matter Jurisdiction.* The Tribe is a sovereign nation and reserves all sovereign

rights, authority and jurisdiction consistent with being a sovereign nation. The Court shall have subject matter jurisdiction over cases and controversies arising under the following:

- (a) Tribal laws which specifically authorize the Court to exercise jurisdiction.
- (b) the Constitution.

806.5-3. *Personal Jurisdiction.*

(a) *Indians.* The Court shall have jurisdiction over all Indians.

(b) *Non-Indians.* The Court shall have jurisdiction over non-Indians who have consented to the jurisdiction of the Tribe or Court, or as otherwise consistent with federal law.

(1) *Consent to Jurisdiction.* For purposes of subsection 806.5-2(b), a person shall have consented to the jurisdiction of the Court by:

- (A) entering into a consensual relationship with the Tribe, Tribal members, including but not limited to contracts or other agreements; or
- (B) other facts which the Court determines manifest intent to consent to the authority of the Tribe or the jurisdiction of the Court, including failure to raise an objection of the exercise of personal jurisdiction in a timely manner.

(c) *Long-arm Jurisdiction.* Consistent with 806.5-2(a) and (b), in any case in which the Court has subject matter jurisdiction, the Court may exercise jurisdiction over any person who has sufficient contacts with the Reservation. Such sufficient contacts can be demonstrated where a person purposefully avails himself or herself of the Reservation such that he or she could reasonably anticipate being summoned into the forum for the resolution of a case or controversy.

806.5-4. *Full Faith and Credit or Comity.* The Court shall give full faith and credit to the orders and judgments of the courts of other tribes, states, and local governments unless:

- (a) The court in question does not recognize the orders and judgment of the Court;
- (b) The court in question did not have jurisdiction over the case or a party or parties to it;
- (c) The order or judgment was based on fraud;
- (d) To do so would violate the public policy of the Tribe or would be likely to harm the culture, traditions, or sovereignty of the Tribe; or
- (e) The order or judgment is on appeal or is being contested in another jurisdiction.

806.5-5. *Non-Oneida Orders.* A certified copy of any non-Oneida order may be filed with the Clerk of Court. Except as provided under 806.5-3, the Clerk of Court shall treat the non-Oneida order in the same manner as an order of the Court. An order so filed shall have the same effect and is subject to the same procedures and status as an order of the Court, and may be enforced or satisfied in like manner, except that the Court shall reserve the right to review and modify any non-Oneida order for the enforcement of that order.

806.5-6. *Prior Oneida Appeals Commission Orders.* All parties who have a previous order under Chapter 702, Chapter 703, Chapter 704, or Chapter 705 of the Oneida Code of Laws from the Oneida Appeals Commission shall have the right to request the Court review the last order handed down by the Oneida Appeals Commission. The review shall be a de novo review, which is a re-hearing, as if it had not been previously heard or decided. All requests for review shall be granted. All parties seeking a review shall have sixty (60) days from the day the Court goes into effect to request a review of their case, along with an explanation as to why they are seeking such a review. Parties will have the right to appeal the decision by the Court in accordance with 806.6.

806.6. Appeal of a Family Court Decision

806.6-1. All orders of the Court shall be appealable to the Court of Appeals established in Chapter 801 of the Oneida Code of Laws. Specifically, 801.8-2 (b) states that the Court of Appeals shall be the court of final appeal within the Tribe.

806.7. Judge

806.7-1. *Qualifications.* There shall be at least one full-time Judge of the Court. This position shall be an appointed position under an employment contract that will be subject to the Attorney Contract Policy, except provisions related to supervision shall not apply. The contract shall be approved by the Oneida Business Committee. The Judge(s) shall have the following qualifications:

- (a) a juris doctor (J.D.) degree from an accredited law school, and
- (b) have at least five (5) years of experience practicing in the area of family law; and
- (c) be licensed to practice law in the State of Wisconsin; or
- (d) be licensed to practice law in another State and able to gain admission to the State Bar of Wisconsin within one (1) year of his or her taking office.

806.7-2. *Background Check.* All candidates who may be hired for the position of Judge shall submit to a thorough background investigation which shall be completed prior to hire. No candidate is eligible for hire if he or she has been convicted of, or entered a plea of guilty or nolo contendere to, any offense involving fraud, misrepresentation, or any felony, unless a pardon has been granted in accordance with the Tribe's pardon law within the last ten (10) years, or the conviction has been removed from his or her record by executive pardon or state court order within the last ten (10) years.

806.7-3. *Certificate of Good Standing.* All candidates who may be hired for the position of Judge shall submit a Certificate of Good Standing from the State Bar(s) for which he or she is certified to practice law.

806.7-4. *Disclosure.* During the application process, candidates seeking to serve as a Judge shall disclose to the Human Resources Department and the Oneida Business Committee all previous convictions, including those for which a pardon has been granted, which may disqualify the candidate from serving as Judge.

806.7-5. *Prohibitions.*

- (a) While under contract, no Judge may:
 - (1) Be elected or appointed to serve on any Tribal board, committee or commission, including a Tribally-chartered corporation board, committee or commission; or
 - (2) Be otherwise employed by the Tribe or be an independent contractor with the Tribe.
- (b) Candidates hired for the position of Judge shall resign from any applicable board committee or commission, or from any paid position with the Tribe, with such resignation to be effective prior to that candidate taking the Judicial oath of office.

806.7-6. *Oath of Office.* Every Judge shall take and file an oath to uphold the Constitution, abide by the Canons of Judicial Ethics, and impartially administer justice.

806.7-7. *Leave of Absence.* Where a Judge is unable to hear a matter due to an extended absence of less than one hundred twenty (120) days, or for any other reason deemed appropriate, the Clerk of Court shall draw, in order, from a pool of Judges who meet the qualifications of 806.7-1, to fill the office of Judge until the original Judge is able to return.

806.7-8. *Vacancies.* If a Judge dies, resigns, has his or her contract terminated, becomes incapacitated for a period in excess of one hundred twenty (120) days, is declared incompetent by a court of competent jurisdiction, or has his or her license to practice law suspended or revoked; the office of such Judge shall be declared vacant by the Oneida Business Committee and a new Judge may be hired under a new contract to fill that vacancy.

806.8 Powers of the Court and Duties of the Judge.

806.8-1. *Powers.* The Court shall have the power:

- (a) to issue process of subpoena, requiring the attendance of any witnesses who are under the jurisdiction of the Court to testify in any matter or cause pending in the Court;
- (b) to administer oaths to witnesses in any such matter or cause, and in all other cases where it may be necessary in the exercise of the powers and duties of the Court; and
- (c) to make all orders and judgments as may be necessary to carry into effect the powers and jurisdiction the Court possesses. All orders and judgments issued by the Court shall be in the name of the Tribe, shall bear the date and the day they are issued, the seal of the Court, and be attested to in the name of the Judge who issued it.

806.8-2. *Duties.* Judges shall represent the Court with professionalism and competence. In addition to all other duties imposed by this and other Tribal laws, Judges shall:

- (a) hear and adjudicate cases in accordance with Tribal law;
- (b) abide by all court rules, Tribal laws, and applicable state and federal laws;
- (c) represent the Court at functions and meetings where appropriate;
- (d) maintain the integrity of the system by upholding the Canons of Judicial Ethics, acting ethically and honestly both in private and in public, and recusing oneself when necessary; and
- (e) remain informed about changes to Tribal, state and federal laws, and state and federal court and administrative hearing body decisions that may impact Indian country.

806.8-3. *Administrative Duties.* In addition to his or her other judicial duties, the Judge shall have the following administrative duties:

- (a) ensure proper and impartial management of the Court's calendar and business;
- (b) submit an annual budget for consideration by the Oneida General Tribal Council;
- (c) supervise the Clerk of Court and other administrative court personnel;
- (d) meet the requirements to remain in good standing to maintain his or her license to practice law;
- (e) recruit and select individuals to serve as peacemakers and mediators to use in the Court; and
- (f) other duties as prescribed by Tribal law or internal Court rules.

806.9. Rules of Pleading, Practice and Procedure

806.9-1. The Court shall establish internal operating procedures governing the operation of the Court. The procedures shall not affect substantive rights and shall not conflict with existing law, the Rules of Procedure, or other rules enacted or approved by the Oneida Business Committee or Oneida General Tribal Council.

806.9-2. The Court shall create rules of pleading, practice and procedure to regulate all hearings conducted before it. Prior to the Oneida Business Committee approval to adopt, amend, or repeal a rule, the Court shall provide public notice and an opportunity of at least ten (10) business days to submit written comments on the rule. All submitted comments shall be

considered by the Court prior to forwarding the rule to the Oneida Business Committee for final action on the rule.

806.9-3. The Oneida Business Committee shall adopt, amend or repeal a rule by majority vote.

806.9-4. Rules of pleading, practice, and procedure shall be codified as part of the Oneida Code of Laws.

806.9-5. This section shall not abridge the right of the Oneida General Tribal Council or the Oneida Business Committee to adopt, amend, or repeal rules relating to pleading, practice, or procedure in accordance with the Tribe's lawmaking procedures.

806.10. Reprimand, Suspension and Termination of Judge

806.10-1. Each Judge shall be subject to reprimand, suspension without pay for a definite period of time, not to exceed six (6) months, or termination of his or her contract, in accordance with section 801.12 of the Judiciary Law or through the specific terms of the contract.

806.11. Retirement

806.11-1. A Judge may be retired for a physical or mental disability that seriously interferes with the performance of his or her duties if such disability is determined to be permanent or reasonably likely to become permanent in accordance with section 801.13 of the Judiciary Law.

End.

Adopted – BC-05-08-13-A