

**Oneida Nation
Legislative Reference Office**

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Memorandum

TO: Legislative Operating Committee
FROM: Douglass A. McIntyre, Staff Attorney
DATE: April 6, 2016
RE: Marriage Law Amendments: Public Meeting Comment Review

On March 17, 2016, a public meeting was held regarding a proposal to amend an existing law: the Marriage Law. These amendments would:

- Clarify the process in which a fee schedule is to be adopted;
- Provide for a way to waive the standard waiting period between applying for a license and solemnizing the marriage; and
- Provide for an administrative fee for amendments to an application.

This memorandum is submitted as a review of the comments received during the public comment process including at the public meeting and those comments received before the comment period ended on March 24, 2016. The public meeting draft with comments, as well as the transcripts and written comments received, have been attached for your review.

Comment 1. Definitions.

Judge Robert Collins (written):

- i. "Judiciary" should be addressed in the Definitions section.

Response.

The commenter suggests adding a definition for "judiciary" into the definitions section. It is recommended that the standard definition of "judiciary" be added:

(d) "Judiciary" means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

Comments 2 & 3. Delivery of the Marriage Document.

Comment 2. Judge Robert Collins (written):

1. OCL 71.5-4(f) states that the officiating person(s) shall deliver the original completed marriage document to the Department within three (3) business days after the ceremony. Since OCL 71.5-4(b) allows certain parties to have a marriage ceremony off of the Reservation, should the parties also be able to deliver the original marriage document to the Department? Officials

who are located a great distance from the Reservation may have a difficult time delivering the document to the Department within three (3) business days.

a. Suggested edit: The officiating person(s) or one of the parties shall deliver the original completed marriage document to the Department within three (3) business days after the ceremony.

i. When I did a wedding for parties that obtained marriage documents from Brown County, the parties took the documents back to the county after the ceremony.

Response

Section 71.5-4 provides:

(b) If neither applicant resides on the Reservation, the marriage ceremony shall be held on the Reservation. If one (1) or both of the applicants reside on the Reservation, the marriage ceremony shall be held within the State of Wisconsin. The applicants shall be notified of this requirement when applying for a marriage license.

...

(f) The officiating person(s) shall deliver the original completed marriage document to the Department within three (3) business days after the ceremony. The Department shall deliver the original marriage document to the Wisconsin Vital Statistics Department within ten (10) business days after it is filed. The Department shall retain a file stamped copy and provide a file stamped copy to the married couple.

The commenter points out that Section 71.5-4(f) requires the officiating person to deliver the completed document to the Licensing Department. He cites distance as a concern since a marriage could occur anywhere in the State of Wisconsin.

A review of Wisconsin law indicates a similar obligation on an officiating person under 765.19 however this statute allows the parties to register the document where there is no officiating person. Similar to the suggested language from the commenter, the Ho-Chunk Nation uses language that allows either the officiating person or a party to deliver the document. Any change based on this comment is a policy decision for the LOC. A recommended change would be:

(f) The officiating person(s) or one of the parties shall deliver the original completed marriage document to the Department within three (3) business days after the ceremony. The Department shall deliver the original marriage document to the Wisconsin Vital Statistics Department within ten (10) business days after it is filed. The Department shall retain a file stamped copy and provide a file stamped copy to the married couple.

Comment 3. Judge Robert Collins (written):

b. Another question: Is the delivery requirement satisfied by the officiating person(s) and the Department if the document is sent by first class US mail within the prescribed time periods?

Response

Section 71.5-4 (f) reads:

(f) The officiating person(s) shall deliver the original completed marriage document to the Department within three (3) business days after the ceremony. The Department shall

deliver the original marriage document to the Wisconsin Vital Statistics Department within ten (10) business days after it is filed.

The commenter asks if using first class US mail would satisfy the delivery requirement. As “deliver” is not a defined term, it should be read in ordinary and everyday sense. The Merriam-Webster definition of deliver is “to take (something) to a person or place”. As this definition does not answer the commenter’s question, it is recommended that the two incidences of “deliver” be changed to “return.” Return is defined as “to bring, give, send, or take (something) to the place that it came from or the place where it should go.” This would be consistent with Wisconsin law and of other Wisconsin Tribes who use “return” in this instance.

Comment 4. Docket.

Judge Robert Collins (written):

2. OCL 71.5-4(g) – A docket is “a calendar or list of cases for trial or people having cases pending.” Maybe this provision should state that the Department shall maintain a “file” for each marriage license and shall enter therein...

Response

Section 71.5-4 (g) reads:

The Department shall keep a marriage license docket and shall enter therein a complete record of the marriage applications and issuance of marriage licenses which shall be available for public inspection during regular business hours.

The commenter recommends substituting “file” for “docket” at line 127 to avoid using the wrong term. The LRO recommends the removal of the following unneeded language:

(g) The Department shall keep ~~a marriage license docket and shall enter therein~~ a complete record of the marriage applications and issuance of marriage licenses which shall be available for public inspection during regular business hours.

Comments 5, 6 & 7. Officiating Person.

Comment 5. Wesley Martin:

What constitutes a traditional tribal practitioner or spiritual or religious leader in Section 71.5-5(a)?

(a) a traditional tribal practitioner or spiritual or religious leader who is commonly recognized as such by the Oneida community or other Indian community and has registered with the Court; or

Response.

The commenter questions what is a “traditional tribal practitioner and a spiritual or religious leader who is commonly recognized as such by the Oneida community or other Indian community”. At this time, no one is registered with the Court under this provision and the head clerk knows of no inquires on it.

This sentence appears in the previous drafts of the Marriage Law dating back to at least to April 28, 2010 with no definition provided. As written it is unclear and could be open to multiple interpretations. This is a policy decision for the LOC. Potential fixes include:

1) include a definition for “traditional tribal practitioner”

2) change to read:

(a) a traditional tribal practitioner or spiritual or religious leader who ~~is commonly recognized as such by the Oneida community or other Indian community and~~ has registered with the Court;

Comment 6. Judge Robert Collins (written):

3. OCL 71.5-5(b) states that a Judge from the Court is authorized to be an officiating person. “Court” is defined by OCL 71.3-1 as the Family Court. While this provision does state that a tribal judge may officiate if authorized by tribal law, OCL 71.5-5(b) as proposed would only allow the Family Court Judge from the Oneida tribal court to officiate.

a. Suggested edit: A Judge from the [Judiciary] or [any branch of the Judiciary] or a tribal, federal, or state judge or commissioner authorized to solemnize marriages under tribal, federal or state law; ...

i. “Judiciary” should be addressed in the Definitions section.

ii. I discussed this comment with the Chief Judges of the Appellate and Trial Courts and they both agreed.

Response

The commenter suggests changing Section 71.5-5(b) to include the Judiciary as a whole. This change would be consistent with the current law. It is recommended that this be changed to read:

(b) a Judge from ~~the Court~~ any branch of the Judiciary or a tribal, federal, or state judge or commissioner authorized to solemnize marriages under tribal, federal or state law,

Comment 7. Wesley Martin:

I would like to see the inclusion of former Judges and Appeals Commissioners into Section 71.5-5 as persons able to serve as an officiating person.

Response.

The commenter requests the inclusion of more officiating persons including former Judges and Appeals Commissioners. Any change based on the comment is a policy decision for the LOC. The following person(s) are able to officiate a wedding under this law:

(a) a traditional tribal practitioner or spiritual or religious leader who is commonly recognized as such by the Oneida community or other Indian community and has registered with the Court; or

(b) a Judge from the Court or a tribal, federal, or state judge or commissioner authorized to solemnize marriages under tribal, federal or state law; or

(c) the Tribal Chairperson or a person designated by the Tribal Chairperson at the request of the persons being married; or

- (d) any ordained clergy person of any religious denomination, society, or sect; or
- (e) any person licensed by a religious body or appointed by a high-ranking clergy member, if the religious denomination, society, or sect allows the person to solemnize marriages; or
- (f) the parties themselves, by mutual declarations that they take each other as spouses, in accordance with the customs, rules, and regulations of any religious denomination, society, or sect to which either of the parties belongs.

Comment 8. Appeals.

Judge Robert Collins (written):

4. OCL 71.7-2 provides that the Department is responsible for issuing the penalties available under OCL 71.7-1. The fine may be contested by filing an appeal with the Court, which under the current draft means the Family Court. Do we want the appeal going to the Family Court or the Court of Appeals? If the appeal goes to the Family Court, then pursuant to OCL 151.6 the Family Court decision could be further appealed to the Court of Appeals.

Response

71.7-2. The Department shall be the responsible entity for the enforcement of this section. All fines issued shall be paid within thirty (30) days of the issuance of the fine. Any person issued a fine under this Law may contest the fine by filing an appeal with the Court prior to the deadline to pay the fine. The filing of an appeal shall stay the requirement to pay the fine. The notice of penalty issued shall inform the person penalized of the process to file his or her appeal.

The commenter points out that under the appeal process found in Section 71.7-2, a person issued a fine would have two layers of appeal: first to the Family Court and then to the Court of Appeals. Any change based on this comment is a policy decision for the LOC.

Conclusion

There were no comments provided at the public meeting and multiple comments provided in writing which the LOC should consider and incorporate as appropriate. It is recommended that these comments be reviewed at a LOC meeting. An invitation was provided to the interested parties to review the comments and provide direction to any changes necessary based on the comments.