



Notice of

# Public Meeting

to be held

February 18, 2016 at 12:15 p.m.

OBC Conference Room—2nd Floor, Norbert Hill Center



## *Topic: Garnishment (Law) Amendments*

The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal for amendments to the Garnishment (Law) that:

- ◆ Removes the specific amount of the garnishment action fee and the administrative fee from the Law and instead the Judiciary is authorized to determine the garnishment action fee amount, while the Accounting Department determines administrative fee amount [See 58.5-2 (a) (1) and 58.5-5 (a) (1)]. The current Law sets the garnishment action fee at \$25.00 and the administrative fee at \$5.00.
- ◆ Limits representation to an attorney or advocate [See 58.5-3 (d)]. The current Law allows the parties to be represented by someone to speak on their behalf.
- ◆ Requires post judgment interest be applied to the amount received beginning on the date of the judgment and ending on the date the garnishment order is satisfied [See 58.5-3 (d)]. The post judgment interest rate is a fixed rate and will be determined by 1) an agreement by both parties or 2) an annual post judgment rate equal to one percent plus the prime rate that was in effect on the date of the judgment [See 58.5-5 (d) (1) & (2)].

**All community members are invited to attend this meeting to learn more about this proposal and/or to submit comments concerning this proposal.**

**Public Comment Period—Open until February 25, 2016**

During the Public Comment Period, all interested persons may submit written comments regarding this legislative proposal; and/or a transcript of any testimony/spoken comments made during the Public Meeting. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person or by U.S. mail, interoffice mail, e-mail or fax.

For more information about the public meeting process, or to obtain copies of the Public Meeting documents for this proposal, please visit [www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings) or contact the Legislative Reference Office, which is located on the second floor of the Norbert Hill Center, Oneida WI.

Mail: **Legislative Reference Office**  
PO Box 365  
Oneida, WI 54155

Phone: **(920) 869-4376 or (800) 236-2214**  
E-Mail: **LOC@oneidanation.org**  
Fax: **(920) 869-4040**

**Chapter 58**  
**Garnishment**  
Lotihwistáhkwa Olihwá·ke  
the matter of taking money out

58.1. Purpose and Policy  
58.2. Adoption, Amendment, Repeal  
58.3. Definitions  
58.4. General

58.4-1. Jurisdiction. By filing a Petition, Creditors are submitting to the jurisdiction of the Tribe for the subject action.  
58.5. Garnishment Action Procedure  
58.6. Recognition of Child Support Orders  
58.7. Discharge from Employment

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**58.1. Purpose and Policy**

58.1-1. The purpose of this Law is to exercise the authority of the Oneida Tribe of Indians to provide an effective mechanism for creditors to access an employee’s income for reduction of personal debt.

58.1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin to afford all individuals due process.

**58.2. Adoption, Amendment, Repeal**

58.2-1. This Law is adopted by the Oneida Business Committee by resolution # BC-4-2-97-G and amended by resolution BC-06-25-14-B and \_\_\_\_\_.

58.2-2. This Law may be amended or repealed by the Oneida Business Committee or General Tribal Council pursuant to the procedures set out in the Oneida Legislative Procedures Act.

58.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity does not affect other provisions of this Law which are considered to have legal force without the invalid portions.

58.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provision of this Law controls.

58.2-5. This Law is adopted under the authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

**58.3. Definitions**

58.3-1. This Article governs the definitions of words or phrases as used herein. All words not defined herein are to be used in their ordinary and everyday sense.

- (a) “Accounting Department” means that department of the Tribe charged with managing the finances of the Tribe, specifically, the office charged with responsibility for the payroll of the Tribe.
- (b) “Administrative Fee” means the fee to cover the Accounting Department’s costs associated with enforcing Garnishment Orders.
- (c) “Creditor” means anyone who is awarded a money Judgment which may include a Tribal or a non-Tribal entity. Should the Tribe be the creditor, a designee from the Tribal entity shall represent the claim of indebtedness.
- (d) “Debtor” means the Employee whom the Judgment has been awarded against.
- (e) “Disposable Earnings” means the part of the Debtor’s gross Earnings for a pay period remaining after deductions required by state and federal law.
- (f) “Earnings” means compensation payable in exchange for personal services and includes, but is not limited to, wages, salaries, bonuses, commissions, expense

38 reimbursements, trade-back-for-cash benefits and/or final paychecks involving pay-out of  
39 benefits.

40 (g) “Employee” means any individual hired by the Tribe and on the Tribe’s payroll and  
41 encompasses all forms of employment, including but not limited to, full-time, part-time,  
42 at-will, elected/appointed officials, political appointees and contracted persons.

43 (h) “Garnishment” means the legal process in which the Earnings of the Debtor is  
44 required to be withheld by the Tribe for a payment of a money judgement.

45 (i) “Garnishment Action Fee” means the fee paid to the Judiciary to cover the  
46 administrative costs incurred during the Garnishment proceedings.

47 (j) “Garnishment Hearing” means the time and location where the Judiciary hears  
48 relevant evidence, determines the validity of the Petition for Garnishment and identifies  
49 the amount of the Garnishment Order, if applicable.

50 (k) “Garnishment Order” means the order issued by the Judiciary which requires the  
51 Tribe to withhold an Employee’s Earnings in order to satisfy a Creditor’s unpaid money  
52 Judgment and must include any fees assessed against the Debtor.

53 (l) “Judge” means the member of the Judiciary assigned to hear the Petition for  
54 Garnishment.

55 (m) “Judgment” means any judgment, decree, or order from a court of competent  
56 jurisdiction, including, but not limited to, the Judiciary, which awards money to one or  
57 more parties.

58 (n) “Judiciary” means the judicial system that was established by Oneida General Tribal  
59 Council resolution GTC-01-07-13-B to administer the judicial authorities and  
60 responsibilities of the Tribe.

61 (o) “Petition” means a formal written request to the Judiciary to issue a Garnishment  
62 Order.

63 (p) “Judge” means the member of the Judiciary assigned to hear the Petition for  
64 Garnishment.

65 (q) “Tribal” or “Tribe” means the Oneida Tribe of Indians of Wisconsin.

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#### 67 **58.4. General**

68 58.4-1. Jurisdiction. By filing a Petition, Creditors are submitting to the jurisdiction of the Tribe  
69 for the subject action.

70 58.4-2. Consumer Protection Act. This Law may be interpreted to allow the fullest protections  
71 available to Debtors by the federal Consumer Protection Act, 16 U.S.C. §1671, et seq., state laws  
72 protecting Debtors in Child Support Orders, and other federal laws.

#### 73 **58.5. Garnishment Action Procedure**

74 58.5-1. Judgment Required. A Creditor must obtain a Judgment before filing a Petition.

75 58.5-2. Filing Action. In order to initiate a Garnishment, the Creditor must file a petition with  
76 the Judiciary. The Petition must identify the Creditor, the intended Debtor, any other interested  
77 parties, the reason for the claim, the name of the court that issued the Judgment and the amount  
78 awarded. The Creditor must include a copy of the Judgment when filing the Petition.

79 (a) The Creditor shall pay the Garnishment Action Fee before the Judiciary may consider  
80 the Petition complete.

81 (1) The Judiciary shall determine the amount of the Garnishment Action Fee and  
82 post notice of the fee amount at the Judiciary and on the Judiciary’s webpage.

83 58.5-3. Garnishment Hearing. The Judiciary shall hold a Garnishment Hearing within sixty (60)  
84 days of receiving the completed Petition.

85 (a) The Judiciary shall provide written notice of the garnishment hearing to the Creditor,  
86 Debtor and any other interested parties within ten (10) business days of receiving the  
87 completed petition.

88 (b) The Debtor may challenge the authenticity of the Judgment document at the  
89 Garnishment Hearing but he or she may not challenge the validity of the Judgment.

90 (c) A Garnishment Hearing may be used to resolve one (1) or more Petitions for one (1)  
91 or more Debtors; however, each Petition must be heard and determined separately.

92 (d) Throughout the Garnishment proceedings, the parties may choose to represent  
93 themselves or may be represented by an attorney or advocate. All parties shall have an  
94 equal opportunity to present evidence at the Garnishment Hearing.

95 58.5-4. Final Decision. The Judge shall make the final decision regarding a Garnishment Order  
96 within five (5) business days of the Garnishment Hearing. The Judge shall provide written  
97 notice of the final decision to all parties within ten (10) business days of his or her decision. If a  
98 Garnishment Order is issued, the written notice must include a copy of the Garnishment Order.

99 58.5-5. Garnishment Orders. Should the Judiciary issue a Garnishment Order, it must include  
100 the following:

101 (a) An Administrative Fee which must be assessed against the Debtor each pay period  
102 until the Garnishment Order is paid in full.

103 (1) The Accounting Department shall determine the amount of the  
104 Administrative Fee and provide notice of the fee amount to the Judiciary. The  
105 Judiciary shall post notice of the Administrative Fee amount in the Judiciary and  
106 on the Judiciary's webpage.

107 (b) The Garnishment Action Fee which must be awarded to the Creditor.

108 (c) The Garnishment amount. The Judge must begin with a presumption that a total of  
109 twenty percent (20%) of a Debtor's Disposable Earnings per pay period may be subject to  
110 Garnishment(s) at any one time

111 (1) In calculating the amount of the Garnishment per pay period, the Judge may  
112 not include amounts garnished pursuant to child support orders when calculating  
113 twenty percent (20%) of the Debtor's Disposable Earnings.

114 (A) The Debtor may request the Judiciary to lower the percentage  
115 deducted from his or her disposable earnings if the he or she can show that  
116 requiring a deduction of the maximum twenty percent (20%) would cause  
117 him or her undue harm by demonstrating that one (1) or more of the  
118 following apply:

119 (i) The Debtor is subject to child support orders that would leave  
120 him or her with less than fifty percent (50%) of his or her  
121 Earnings;

122 (ii) The Debtor receives, is eligible for or, within six (6) months  
123 of the date the Judiciary received the completed Petition, received  
124 public assistance;

125 (iii) The Debtor's household income is below the current federal  
126 poverty level;

127 (iv) The Garnishment of twenty percent (20%) of the Debtor's  
128 disposable earnings would cause the Debtor's household income to  
129 drop below the current federal poverty level; or

130 (v) The Garnishment of twenty percent (20%) of the Debtor's  
131 disposable earnings would cause the Debtor undue harm for  
132 reasons not identified in this section.

133 (2) The Debtor may request a higher percentage be deducted from his or her  
134 disposable earnings. Such requests must be made directly to the Judiciary.

135 (3) Nothing in this Law prohibits the Debtor from making additional payments to  
136 satisfy the Garnishment Order, provided that, if a Creditor receives payments  
137 from the Debtor outside of the Garnishment process, he or she must provide  
138 notice of said payment to the Accounting Department with a copy to the Debtor.

139 (d) Post Judgment Interest. Post Judgment interest must be applied to the amount  
140 recovered from the date of the Judgment until the Garnishment Order is satisfied. The  
141 post Judgment interest rate must be fixed for the duration of the Garnishment Order and  
142 is determined by one (1) of the following:

143 (1) An agreement by the parties to the Garnishment as to a fair annual post  
144 Judgment interest rate; or

145 (2) An annual post Judgment interest rate equal to one percent (1%) plus the  
146 prime rate in effect on the date in which the Judgment was awarded, as reported  
147 by the Federal Reserve Board in federal reserve statistical release H. 15.

148 58.5-6. Notice of Garnishment to Accounting Department. The Judiciary shall provide the  
149 Accounting Department with a copy of the Garnishment Order after the timeframe for all appeals  
150 has been exhausted.

151 58.5-7. Garnishment Implementation. Within ten (10) business days of receiving a copy of the  
152 Garnishment Order the Accounting Department shall implement the Garnishment by:

153 (a) Deducting the appropriate amount from the Debtor's paycheck(s) and forward that  
154 amount to the Creditor; and

155 (b) Notify the Debtor and Creditor when the Garnishment Order has been fulfilled.

156 58.5-8. Summary Process. The Judiciary shall summarily process Petitions when the Debtor  
157 owes fifty dollars (\$50) or less, unless the Debtor formally requests a Garnishment Hearing.

158 (a) For the purposes of this section, to summarily process a Petition means a Judge may  
159 make a determination regarding the Garnishment Order without holding a Garnishment  
160 Hearing.

161 58.5-9. Appeals. A party may appeal the decision regarding a Garnishment Order, provided  
162 that the appeal must be submitted within ten (10) business days from the date of the notice of the  
163 Judge's determination. The appeal shall be filed with the Judiciary's Court of Appeals in  
164 accordance with the Judiciary Law and any applicable rules and procedures.

165 58.5-10. Records. The Judiciary shall keep records of all Garnishment actions. The records  
166 must contain, at minimum:

167 (a) Correspondence and notices to all parties involved;

168 (b) Bookkeeping records;

169 (c) Garnishment evidence presented by all parties and

170 (d) Decisions made by the Judge.

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## 172 58.6. Recognition of Child Support Orders

173 58.6-1. Orders for child support against any Employee must be recognized and enforced,  
174 provided that the order has been issued from a court of competent jurisdiction.

175 58.6-2. Authenticity of Order. The Judiciary must receive such child support orders and shall  
176 verify the authenticity of such orders. Upon verification of the child support order, the Judge  
177 shall forward such order to the Accounting Department for action.  
178 58.6-3. Administrative Fee. An Administrative Fee must be assessed monthly so long as the  
179 child support deduction is in effect.

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181 **58.7. Discharge from Employment**

182 58.7-1. The Tribe shall not discharge from employment, refuse to employ or otherwise take  
183 disciplinary action against an Employee solely because the Employee is subject to a Garnishment  
184 action.

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186 *End.*

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188 Adopted - BC-6-2-92

189 Adopted - BC-6-10-92

190 Adopted - BC-4-2-97-G

191 Amended - BC-06-25-14-B

**Chapter 58**  
**Garnishment Ordinance**  
Lotihwistáhkwa Olihwá·ke  
the matter of taking money out

58.1. Purpose and Policy  
58.2. Adoption, Amendment, Repeal  
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58.5. Garnishment Action Procedure  
58.6. Recognition of Child Support Orders  
58.7. Discharge from Employment

<i>Analysis by the Legislative Reference Office</i>	
<b>Title</b>	Garnishment (Law)
<b>Requester</b>	Judiciary <b>Drafter</b> Krystal L. John <b>Analyst</b> Candice E. Skenandore
<b>Reason for Request</b>	To state whether or not the Judiciary can include interest when a garnishment is ordered.
<b>Purpose</b>	The purpose of this Law to utilize the authority of the Tribe to provide an effective mechanism for creditors to access an employee’s income for reduction of personal debt <i>[See 58.1-1]</i> .
<b>Authorized/ Affected Entities</b>	Tribal employees that incur personal debt, the Accounting Department, the Judiciary (excluding the Family Court), creditors (can include Tribal entities), and a court of competent jurisdiction
<b>Due Process</b>	A party can appeal the decision regarding a garnishment order to the Court of Appeals within ten business days from the date of the notice of the Judge’s determination <i>[See 58.5-9]</i> .
<b>Related Legislation</b>	Related Tribal legislation includes the Judiciary Law and Rules of Appellate Procedure. The Child Support Law and Per Capita Law have similar concepts.
<b>Enforcement</b>	The Judiciary can issue a garnishment order against the debtor <i>[See 58.5-4]</i> .

**Overview**

This Law and the Child Support both deal with wage withholdings; however, this Law sets the hearing process for withholdings of Tribal employees that have personal debt. This personal debt can include to, but is not limited to child support orders from a court of competent jurisdiction. Child Support sets the process for child support orders made by the Family Court; those orders will not follow this Law *[See 58.6 and Child Support 78.9-2]*.

This Law explains how a creditor can seek a garnishment order against a debtor. The creditor must file a petition with the Judiciary and once the petition is received, the Judiciary must hold a garnishment hearing within 60 days. Within five business days of the garnishment hearing, the Judge will make a final decision and notify the parties. If the Judge issues a garnishment order, he/she will calculate a percentage of the debtor’s disposable income that will be garnished, starting with a presumption that 20 percent of the debtor’s disposable income can be garnished. However, the debtor can request a lesser percentage be garnished from his/her disposable income if the debtor meets certain criteria. On the other hand, the debtor can also request a greater percentage be garnished. Once the garnishment order is issued, the Accounting Department will begin deducting the appropriate amount from the debtor’s paycheck within ten business days of receiving a copy of the garnishment order. If the debtor owes \$50 or less, the Judge can hold a summary proceeding which does not require a formal hearing. A party can appeal the Judge’s decision regarding the garnishment. An employee cannot be discharged, disciplined or an applicant cannot be turned away solely because he/she is subject to a garnishment action.

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### Proposed Amendments

Although there are a number of proposed amendments made to this Law, the following amendments have the greatest impact:

- The current Law sets the garnishment action fee at \$25.00 and the administrative fee at \$5.00. These amounts have been removed from the Law and instead the Judiciary is authorized to determine the garnishment action fee amount, while the Accounting Department determines administrative fee amount [See 58.5-2 (a) (1) and 58.5-5 (a) (1)].
- The current Law allows the parties to be represented by someone to speak on their behalf. The proposed amendments limit representation to an attorney or advocate [See 58.5-3 (d)].
- A post judgment interest must be applied to the amount received beginning on the date of the judgment and ending on the date the garnishment order was satisfied [See 58.5-3 (d)]. The post judgment interest rate is a fixed rate and will be determined by 1) an agreement by both parties or 2) an annual post judgment rate equal to one percent plus the prime rate that was in effect on the date of the judgment [See 58.5-5 (d) (1) & (2)].

### Considerations

The LOC may want to consider the following:

- These amendments require both Tribal and non-Tribal entities to pay the garnishment action fee [See 58.5-2 (a) (2)]. The purpose of the garnishment action fee is to cover the administrative costs incurred by the Judiciary in a garnishment proceeding [See 58.3-1 (i)]. The Judiciary will still incur these costs even if the creditor is a Tribal entity. The garnishment action fee is ultimately paid by the debtor through the garnishment process; however the fee is paid over time. The Judiciary would prefer to receive the garnishment action fee directly from Tribal entities at the time of filing like all other entities who file garnishments; whereas, Tribal entities do not prefer to pay the garnishment action fee to utilize the Tribe’s judiciary to collect unpaid debts from Tribal employees. The LOC may want to consider the impact the garnishment action fee will have on Tribal entities’ budgets as opposed to the Judiciary budget when a Tribal entity is the creditor in a garnishment action.
- The Law allows the debtor to request the Judiciary to lower the percentage deducted from his or her disposable earnings if he or she can show, among other things, that 1) the debtor receives, is eligible for or within six months from when the petition was filed, received public assistance or 2) the debtor’s household income is below the federal poverty level [See 58.5-5 (c) (1) (A) (ii & iii)]. The Law does not address what happens if one of the above instances occurs after a garnishment order has been issued. The LOC may want to consider clarifying if a debtor can request a modification to the garnishment order.
- This Law defines Judiciary as “the judicial system that was established by . . . GTC Resolution 01-07-13-B to administer the judicial authorities and responsibilities of the Tribe” [See 58.3-1 (n)]. Because the Family Court was adopted pursuant to BC Resolution 05-08-13-A, it not included in the definition for “Judiciary” and cannot hold garnishment hearings in accordance with this Law.
- Because the Law does not define “court of competent jurisdiction”, the LOC may want to specify if Tribal entities are considered courts of competent jurisdiction. In other words, if a Tribal entity issues a judgment, would that judgment satisfy the requirement set forth

- 69 58.5-1?
- 70 ■ The LOC may want to expand the definition for “earnings” to specifically exclude per
- 71 capita payments. The Per Capita Law addresses how attachments are made to per capita
- 72 payments [*See 58.3-1 (c) and Per Capita 9.4-6*].

### Miscellaneous

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75 A public meeting has not been held. Additional changes have been made throughout the

76 Law to ensure compliance with Tribal drafting style. In addition, revisions have been made to

77 improve the flow and sequence of the Law without changing the intended content. Please refer

78 to the fiscal impact statement for any financial impacts.

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#### 58.1-1. Purpose and Policy

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82 58.1-1. The purpose of this ~~Ordinance~~ Law is to ~~utilize~~ exercise the authority of the Oneida

83 Tribe of Indians to provide an effective mechanism for creditors to access an employee’s income

84 for reduction of personal debt.

85 58.1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin to afford all individuals due

86 process.

87 ~~process.~~

#### 58.2-1. Adoption, Amendment, Repeal

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89

90 58.2-1. This ~~law~~ Law is adopted by the Oneida Business Committee by resolution # BC-4-2-97-

91 G and amended by resolution BC-06-25-14-B and \_\_\_\_\_.

92 58.2-2. This ~~law~~ Law may be amended or repealed by the Oneida Business Committee or

93 General Tribal Council pursuant to the procedures set out in the Oneida

94 Administrative ~~Legislative~~ Procedures Act ~~by the Oneida Business Committee or Oneida General~~

95 Tribal Council.

96 58.2-3. Should a provision of this ~~law~~ Law or the application thereof to any person or

97 circumstances be held as invalid, such invalidity ~~shall~~ does not affect other provisions of this

98 ~~law~~ Law which are considered to have legal force without the invalid portions.

99 ~~58.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other~~

100 ~~similar actions which are inconsistent with this law are hereby repealed unless specifically re-~~

101 ~~enacted after adoption of this policy.~~

102 58.2-4. In the event of a conflict between a provision of this Law and a provision of another law,

103 the provision of this Law controls.

104 58.2-5. This ~~law~~ may be cited as the “Garnishment Ordinance.”

105 ~~58.2-6. This law may be interpreted to allow the fullest protections available to respondents~~

106 ~~available by~~ Law is adopted under the ~~federal Consumer Protection Act, 16 U.S.C. §1671, et~~

107 ~~seq., state laws protecting respondents in Child Support Orders, and other federal laws~~ authority

108 of the Constitution of the Oneida Tribe of Indians of Wisconsin.

#### 58.3-1. Definitions

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110

111 58.3-1. This Article ~~shall govern~~ governs the definitions of words or phrases as used herein. All

112 words not defined herein ~~shall~~ are to be used in their ordinary and everyday sense.

113 58.3-2. “Compensation” shall mean remuneration paid or (a) “Accounting Department”

114 means that department of the Tribe charged with managing the finances of the Tribe,

115 specifically, the office charged with responsibility for the payroll of the Tribe.

116 (b) “Administrative Fee” means the fee to cover the Accounting Department’s costs  
117 associated with enforcing Garnishment Orders, payable for personal services and travel,  
118 denominated as wages, bonuses, salary, expenses, and/or mileage. Compensation shall  
119 include any trade back for cash benefit or final paycheck involving pay out of benefits  
120 for a discharged employee.

121 ~~58.3-3. “Creditor” shall refer to one who seeks payment from the respondent through the~~  
122 ~~process of garnishment, pursuant to a Final Judgment through a garnishment action. The~~  
123 ~~Oneida Tribe is not excluded from being the creditor. This includes all departments,~~  
124 ~~programs, enterprises, authorities, or other bodies created pursuant to (c)~~

125 “Creditor” means anyone who is awarded a money Judgment which may include a  
126 Tribal law or a non-Tribal entity. Should the Oneida Tribe be the creditor, a designee of  
127 the department, program or enterprise from the Tribal entity shall represent the claim of  
128 indebtedness.

129 ~~58.3-4. “(d) “Debtor” means the Employee” shall mean any employee whom the Judgment~~  
130 ~~has been awarded against.~~

131 (e) “Disposable Earnings” means the part of the Oneida Debtor’s gross Earnings for a pay  
132 period remaining after deductions required by state and federal law.

133 (f) “Earnings” means compensation payable in exchange for personal services and  
134 includes, but is not limited to, wages, salaries, bonuses, commissions, expense  
135 reimbursements, trade-back-for-cash benefits and/or final paychecks involving pay-out of  
136 benefits.

137 (g) “Employee” means any individual hired by the Tribe and on the Tribe’s payroll and  
138 encompasses all forms of employment, including but not limited to, full-time, part-time,  
139 at-will, elected/appointed officials, political appointees and contracted persons.

140 ~~58.3-5. “Oneida Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.~~

141 ~~58.3-6. (h) “Garnishment” shall mean means the legal process in which money in the~~  
142 ~~hands Earnings of the Oneida Tribe of Indians of Wisconsin as employer, due Debtor is~~  
143 ~~required to be withheld by the respondent and are being claimed by Tribe for a~~  
144 ~~creditor payment of a money judgement.~~

145 ~~58.3-7. (i) “Garnishment Action Fee” means the fee paid to the Judiciary to cover the~~  
146 ~~administrative costs incurred during the Garnishment proceedings.~~

147 (j) “Garnishment Hearing” means the time and location where the Judiciary hears  
148 relevant evidence, determines the validity of the Petition for Garnishment and identifies  
149 the amount of the Garnishment Order, if applicable.

150 (k) “Garnishment Order” means the order issued by the Judiciary which requires the  
151 Tribe to withhold an Employee’s Earnings in order to satisfy a Creditor’s unpaid money  
152 Judgment and must include any fees assessed against the Debtor.

153 (l) “Judge” means the member of the Judiciary assigned to hear the Petition for  
154 Garnishment.

155 (m) “Judgment” means any judgment, decree, or order from a court of competent  
156 jurisdiction, including, but not limited to, the Judiciary, which awards money to one or  
157 more parties.

158 (n) “Judiciary” means the judicial system that was established by Oneida General Tribal  
159 Council resolution GTC-01-07-13-B to administer the judicial authorities and  
160 responsibilities of the Tribe.

161 ~~58.3-8.~~ (o) “Petition” means a formal written request to the Judiciary to issue a Garnishment  
162 Order. ~~“Reservation” shall mean all lands within the Oneida Indian Reservation of~~  
163 ~~Wisconsin as established by the Treaty with the Oneida, 1838.~~

164 ~~58.3-9.~~ “Respondent” shall mean the employee ~~(p)~~ “Judge” means the member of the  
165 ~~Oneida Tribe who is subject to a garnishment action within the Oneida Tribe or person subject to~~  
166 ~~a repayment action.~~

167 ~~58.3-10.~~ “Hearing Officer” shall mean the Judiciary and the representative designated~~assigned~~  
168 ~~to hear the garnishment action~~Petition for Garnishment.

169 (q) “Tribal” or “Tribe” means the Oneida Tribe of Indians of Wisconsin.

## 170 171 **58.4. General**

172 58.4-1. Jurisdiction. By filing a Petition, Creditors are submitting to the jurisdiction of the Tribe  
173 for the subject action.

174 58.4-2. Consumer Protection Act. This Law may be interpreted to allow the fullest protections  
175 available to Debtors by the federal Consumer Protection Act, 16 U.S.C. §1671, et seq., state laws  
176 protecting Debtors in Child Support Orders, and other federal laws.

## 177 **58.5. Garnishment Action Procedure**

178 58.5-1. Judgment Required. A Creditor must obtain a Judgment before filing a Petition.

179 58.5-2. Filing Action. ~~58.3-11.~~ “Accounting Department” means that department of the Oneida  
180 Tribe charged with managing the finances of the Oneida Tribe, specifically, the office charged  
181 with responsibility for the payroll of the Oneida Tribe. That office shall designate a  
182 representative for receiving garnishment orders, irrevocable voluntary payroll deduction  
183 agreements, and child support orders, which shall be forwarded to the Hearing Body.

184  
185 ~~58.4-1. Garnishment Action Procedure.~~ ~~Judgement Required.~~ ~~A creditor shall begin a~~  
186 ~~garnishment action against an employee of the Oneida Tribe by first obtaining a final judgment~~  
187 ~~from an appropriate court. A garnishment action under this section shall not begin unless the~~  
188 ~~creditor has already obtained a valid final judgment and can show proof of judgment to the~~  
189 ~~Hearing Officer.~~

190 ~~58.4-2. Filing Action.~~ ~~The creditor shall be responsible for notifying the Hearing Officer of its~~  
191 ~~intent to begin the garnishment action.~~

192 ~~(a) A written notice shall be mailed or given to the Hearing Officer indicating the~~  
193 ~~creditor, the intended respondent, the reason for the claim and the amount of the claim.~~

194 ~~(b) The Hearing Officer shall, within ten days, set a date and time for a garnishment~~  
195 ~~hearing. The date for the hearing shall be within sixty days of receipt of the first~~  
196 ~~notification to the Hearing Officer.~~

197 ~~(c) It is the responsibility of the Hearing Officer to notify the creditor, respondent, and~~  
198 ~~any other parties in interest as to the date, time and place of the garnishment hearing.~~

199 ~~58.4-3. Hearing.~~ ~~The Hearing Officer shall establish a designated date, time, and place to hear~~  
200 ~~evidence in In order to render a determination as to the validity of a claim by the creditor in a~~  
201 ~~garnishment action and the amount of the garnishment order to be entered. Hearings shall not be~~  
202 ~~utilized to initiate a Garnishment, the Creditor must file a petition with the Judiciary. The~~  
203 ~~Petition must identify the Creditor, the intended Debtor, any other interested parties, the reason~~  
204 ~~for the claim, the name of the court that issued the Judgment and the amount awarded. The~~  
205 ~~Creditor must include a copy of the Judgment when filing the Petition.~~

206 (a) The Creditor shall pay the Garnishment Action Fee before the Judiciary may consider  
207 the Petition complete.

208 (1) The Judiciary shall determine the amount of the Garnishment Action Fee and  
209 post notice of the fee amount at the Judiciary and on the Judiciary’s webpage.

210 58.5-3. Garnishment Hearing. The Judiciary shall hold a Garnishment Hearing within sixty (60)  
211 days of receiving the completed Petition.

212 (a) The Judiciary shall provide written notice of the garnishment hearing to the Creditor,  
213 Debtor and any other interested parties within ten (10) business days of receiving the  
214 completed petition.

215 (b) The Debtor may challenge the authenticity of the Judgment document at the  
216 Garnishment Hearing but he or she may not challenge the validity of the final judgement  
217 other than the authenticity of the document. The time may be Judgment.

218 (c) A Garnishment Hearing may be used to resolve one (1) or more deduction claims of  
219 Petitions for one (1) or more employees. However Debtors; however, each claim  
220 shall Petition must be heard and determined separately. This hearing will be known as the  
221 Garnishment Hearing.

222 58.4-4. (d) Throughout the Garnishment proceedings, the parties may choose to Final Decision.  
223 The Hearing Officer will make the final decision as to the garnishment action within five days of  
224 the garnishment hearing and notify by formal order all parties within ten days of the decision.

225 58.4-5. Representation. The respondent and creditor may represent themselves or may  
226 be represented by someone to speak on their behalf, if they so choose. Both an attorney or  
227 advocate. All parties shall have an equal opportunity to present evidence as to the action  
228 to be taken before a Hearing Officer at the garnishment hearing at the Garnishment  
229 Hearing.

230 58.4-6. Notice of Garnishment. 58.5-4. Final Decision. The Hearing Officer will notify the  
231 Accounting Department should a decision to garnish an employee’s compensation be made.  
232 Such notice shall be forwarded after the deadline for an appeal has passed. Provided that, no  
233 garnishments shall be allowed where an appeal has been filed by an employee within the appeal  
234 deadline. The notice shall contain the amount to be garnished, how long the garnishment will  
235 take place or the number of garnishment and any related fees authorized under this Ordinance.

236 58.4-7. The Judge shall make the final decision regarding a Garnishment Order within five (5)  
237 business days of the Garnishment Hearing. The Judge shall provide written notice of the final  
238 decision to all parties within ten (10) business days of his or her decision. If a Garnishment  
239 Order is issued, the written notice must include a copy of the Garnishment Order.

240 58.5-5. Garnishment Orders. Should the Judiciary issue a Garnishment Order, it must include  
241 the following:

242 (a) An Administrative Fee which must be assessed against the Debtor each pay period  
243 until the Garnishment Order is paid in full.

244 (1) Garnishment Implementation. The Accounting Department shall begin garnishments within  
245 ten days of notification of the judgment. The Accounting Department shall then:

246 (a) Send to the creditor the allowable determine the amount garnished from the  
247 employee’s paycheck following each payroll period of the Administrative Fee and  
248 provide notice of the fee amount to the Judiciary. The Judiciary shall post notice  
249 of the Administrative Fee amount in the Judiciary and on the Judiciary’s  
250 webpage.

251 (b) The Garnishment Action Fee which must be awarded to the Creditor.

252 (c) The Garnishment amount. The Judge must begin with a presumption that a total of  
253 twenty percent (20%) of a Debtor’s Disposable Earnings per pay period may be subject to  
254 Garnishment(s) at any one time

255 (1) In calculating the amount of the Garnishment per pay period, the Judge may  
256 not include amounts garnished pursuant to child support orders when calculating  
257 twenty percent (20%) of the Debtor’s Disposable Earnings.

258 (A) The Debtor may request the Judiciary to lower the percentage  
259 deducted from his or her disposable earnings if the he or she can show that  
260 requiring a deduction of the maximum twenty percent (20%) would cause  
261 him or her undue harm by demonstrating that one (1) or more of the  
262 following apply:

263 (i) The Debtor is subject to child support orders that would leave  
264 him or her with less than fifty percent (50%) of his or her  
265 Earnings;

266 (ii) The Debtor receives, is eligible for or, within six (6) months  
267 of the date the Judiciary received the completed Petition, received  
268 public assistance;

269 (iii) The Debtor’s household income is below the current federal  
270 poverty level;

271 (iv) The Garnishment of twenty percent (20%) of the Debtor’s  
272 disposable earnings would cause the Debtor’s household income to  
273 drop below the current federal poverty level; or

274 (v) The Garnishment of twenty percent (20%) of the Debtor’s  
275 disposable earnings would cause the Debtor undue harm for  
276 reasons not identified in this section.

277 (2) The Debtor may request a higher percentage be deducted from his or her  
278 disposable earnings. Such requests must be made directly to the Judiciary.

279 (3) Nothing in this Law prohibits the Debtor from making additional payments to  
280 satisfy the Garnishment Order, provided that, if a Creditor receives payments  
281 from the Debtor outside of the Garnishment process, he or she must provide  
282 notice of said payment to the Accounting Department with a copy to the Debtor.

283 (d) Post Judgment Interest. Post Judgment interest must be applied to the amount  
284 recovered from the date of the Judgment until the Garnishment Order is satisfied. The  
285 post Judgment interest rate must be fixed for the duration of the Garnishment Order and  
286 is determined by one (1) of the following:

287 (1) An agreement by the parties to the Garnishment as to a fair annual post  
288 Judgment interest rate; or

289 (2) An annual post Judgment interest rate equal to one percent (1%) plus the  
290 prime rate in effect on the date in which the Judgment was awarded, as reported  
291 by the Federal Reserve Board in federal reserve statistical release H. 15.

292 58.5-6. Notice of Garnishment to Accounting Department. The Judiciary shall provide the  
293 Accounting Department with a copy of the Garnishment Order after the timeframe for all appeals  
294 has been exhausted.

295 58.5-7. Garnishment Implementation. Within ten (10) business days of receiving a copy of the  
296 Garnishment Order the Accounting Department shall implement the Garnishment by:

297 (a) Deducting the appropriate amount from the Debtor’s paycheck(s) and forward that  
298 amount to the Creditor; and

299 (b) Notify the ~~employee~~Debtor and ~~creditor~~Creditor when the ~~garnishments are~~  
300 ~~terminated~~Garnishment Order has been fulfilled.

301 58.4~~5~~-8. Summary Process. ~~Where the claim of indebtedness is \$50.00 or less, it shall be~~  
302 ~~processed~~The Judiciary shall summarily ~~by the Hearing Officer~~process Petitions when the  
303 ~~Debtor owes fifty dollars (\$50) or less,~~ unless the ~~debtor~~Debtor formally requests a  
304 ~~hearing~~Garnishment Hearing.

305 (a) For the purposes of this section, to summarily process a Petition means a Judge may  
306 make a determination regarding the Garnishment Order without holding a Garnishment  
307 Hearing.

308 58.4~~5~~-9. Appeals. ~~A respondent has~~party may appeal the decision regarding a Garnishment  
309 Order, provided that the appeal must be submitted within ten (10) business days from the date of  
310 ~~receipt of the notice to file an appeal of a garnishment order~~the Judge's determination. The  
311 appeal shall be filed with the Judiciary's Court of Appeals in accordance with the Judiciary Law  
312 and any applicable rules and procedures.

313 58.4~~5~~-10. Records. The ~~Hearing Officer~~Judiciary shall keep ~~complete~~ records of all  
314 ~~garnishment~~Garnishment actions ~~that are started and/or completed.~~ The records ~~shall~~must  
315 contain, at minimum:

- 316 (a) Correspondence and notices to all parties involved;
- 317 (b) Bookkeeping records;
- 318 (c) Garnishment evidence presented by all parties; and
- 319 (d) Decisions made by the ~~Hearing Officer~~Judge.

320  
321 ~~58.5 1. Garnishment Action Fee. At the time of creditor's first notice to the Hearing Officer,~~  
322 ~~the creditor shall pay a fee of \$25.00 which shall be known as the Garnishment Action Fee. The~~  
323 ~~Hearing Officer is not required to begin any action on the claim until the fee is paid. The fee~~  
324 ~~shall be charged to the respondent should a decision be made to garnish. The fee will be~~  
325 ~~applicable in each case, except that in cases where indebtedness is with a department, program or~~  
326 ~~enterprise of the Oneida Tribe.~~

327 ~~58.5 2. Administrative Fee. An administrative fee of \$5.00 shall be deducted monthly along~~  
328 ~~with the ordered garnishment until the amount claimed is paid in full. This fee is to cover the~~  
329 ~~cost of garnishing as expended by the Accounting Department.~~

330 ~~58.5 3. Amount of Garnishment. The Hearing Officer may order the employee's compensation~~  
331 ~~to be subject to a garnishment of up to twenty percent of the employee's disposable weekly~~  
332 ~~wage, the remainder to be identified as a protected subsistence allowance. Provided that, in~~  
333 ~~calculating twenty percent, the Hearing Officer shall not include amounts garnished regarding~~  
334 ~~child support orders. The employee may voluntarily request more to be deducted. The request~~  
335 ~~shall be made directly to the Accounting Department.~~

336 ~~58.5 4. Exceptions to 20 % Presumption. It is presumed that the beginning amount to be~~  
337 ~~deducted in any garnishment hearing shall begin at twenty percent of the employee's weekly~~  
338 ~~wages. The respondent is responsible for presenting evidence that it is unreasonable to require~~  
339 ~~the full twenty percent to be deducted. Examples of exceptions shall include, but not be limited~~  
340 ~~to, pre-existing garnishment orders, child support orders that would leave less than 50% of the~~  
341 ~~debtor's wages, other evidence presented which would cause garnishments such that additional~~  
342 ~~garnishment orders would cause undue harm.~~

344 ~~58.6-1. Irrevocable Voluntary Payroll Deduction.~~ An employee may request an irrevocable  
345 voluntary payroll deduction negotiated with a creditor for legal debts. The request must be  
346 signed by the employee and submitted to the Accounting Department.

347 ~~58.6-2. Preemption of Garnishment Acton.~~ If the request is made prior to a garnishment action  
348 decision or during a garnishment action:

349 (a) ~~The irrevocable voluntary payroll deduction request must be made to the Hearing~~  
350 ~~Officer.~~

351 (b) ~~The Hearing Officer shall notify the creditor of the request.~~

352 (c) ~~If the parties agree, the Hearing Officer may then cancel the hearing, notify all parties~~  
353 ~~and forward the executed agreement to the Accounting Department.~~

354 ~~58.6-3. Administrative Fee.~~ An administrative fee of \$5.00 shall be assessed monthly so long as  
355 ~~the irrevocable voluntary payroll deduction is in effect.~~

357 ~~58.7-1. Recognition of Order~~ **Child Support Orders**

358 ~~58.6-1.~~ Orders for child support against any ~~employee shall~~ **Employee must** be recognized and  
359 enforced, provided that the order has been issued from a court of competent jurisdiction.

360 ~~58.7-2.~~ Authenticity of Order. The ~~Hearing Officer shall~~ **Judiciary must** receive such **child**  
361 **support** orders; and **shall** verify the authenticity of ~~the orders~~ **such orders**. Upon verification of the  
362 child support order, the ~~Hearing Officer~~ **Judge** shall forward such order to the Accounting  
363 Department for action.

364 ~~58.7-3.~~ Administrative Fee. An ~~administrative fee of \$5.00 shall~~ **Administrative Fee must** be  
365 assessed monthly so long as the child support deduction is in effect.

367 ~~58.8-17.~~ **Discharge from Employment**

368 ~~58.7-1.~~ The ~~Oneida~~ Tribe shall not discharge ~~an employee because an employee is being~~  
369 ~~subjected from employment, refuse~~ to ~~garnishment actions~~ **employ or otherwise take disciplinary**  
370 **action against an Employee solely because the Employee is subject to a Garnishment action.**

371 ~~58.8-2. Jurisdiction.~~ ~~All creditor filing a garnishment action must sign a Jurisdiction~~  
372 ~~Submission Statement. The statement will indicate that the creditor is submitting to the~~  
373 ~~jurisdiction of the Oneida Tribe in that particular action.~~

374  
375 *End.*

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377 Adopted - BC-6-2-92

378 Adopted - BC-6-10-92

379 Adopted - BC-4-2-97-G

380 Amended - BC-06-25-14-B