

Oneida Nation

Legislative Reference Office
P.O. Box 365
Oneida, WI 54155
(920) 869-4376
(800) 236-2214
<http://oneida-nsn.gov/LOC>



Committee Members
Brandon Stevens, Chairperson
Tehassi Hill, Vice Chairperson
Fawn Billie, Councilmember
David P. Jordan, Councilmember
Jennifer Webster, Councilmember

LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA-REVISED

Business Committee Conference Room-2nd Floor Norbert Hill Center

July 15, 2015 9:00 a.m.

- I. Call To Order and Approval of the Agenda**
- II. Minutes to be approved**
 - 1. July 1, 2015 LOC Meeting Minutes
- III. Current Business**
 - 1. Children's Code
 - 2. Election Law Emergency Amendments
 - 3. Petition: Child Care Department Consumer Complaint Policy
 - ~~4. Petition: Constitution Amendments Regarding Membership~~
- IV. New Submissions**
 - 1. Per Capita Law Amendments
- V. Additions**
 - 1. Per Capita Law Emergency Amendments
 - 2. Rules of Civil Procedure Emergency Amendments
- VI. Administrative Updates**
 - 1. Kalihwisaks LOC Update
- VII. Executive Session**
- VIII. Recess/Adjourn**

Oneida Tribe of Indians of Wisconsin

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LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2nd Floor Norbert Hill Center

July 1, 2015 9:00 a.m.

PRESENT: Brandon Stevens, Tehassi Hill, David P. Jordan

EXCUSED: Fawn Billie, Jennifer Webster

OTHERS PRESENT: Candice Skenandore, Krystal John, Douglass McIntyre, Taniquelle Thurner, Ralinda Ninham-Lamberies, Laura Manthe, Eugene Schubert, Danelle Wilson, Ed Delgado, Daril Peters, Jordyn Rasmussen

I. Call To Order and Approval of the Agenda

Brandon Stevens called the July 1, 2015 Legislative Operating Committee meeting to order at 9:13 a.m.

Motion by David P. Jordan to approve the agenda; seconded by Tehassi Hill. Motion carried unanimously.

II. Minutes to be approved

1. June 17, 2015 LOC Meeting Minutes

Motion by David P. Jordan to approve the June 17, 2015 LOC meeting minutes; seconded by Tehassi Hill. Motion carried unanimously.

III. Current Business

1. Flag Code (16:37:-17:41)

Motion by David P. Jordan to accept the memorandum regarding the Flag Code update as FYI; seconded by Tehassi Hill. Motion carried unanimously.

2. Removal Law Amendments (17:43-18:09)

Motion by David P. Jordan to defer the Removal Law Amendments to a work meeting; seconded by Tehassi Hill. Motion carried unanimously.

3. Election Board Bylaws Amendments (18:09-18:59)

Motion by David P. Jordan to defer the Election Board Bylaws Amendments to the sponsor to bring back a report in two weeks; seconded by Tehassi Hill. Motion carried unanimously.

4. ONGO Amendments (19:01-21:30)

Motion by David P. Jordan to forward the ONGO Amendments to Public Meeting date of July 30, 2015; seconded by Tehassi Hill. Motion carried unanimously.

IV. New Submissions

1. Public Use of Tribal Land Emergency Amendments (00:54-16:21)

Motion by David P. Jordan to add the Public Use of Tribal Land Emergency Amendments to the active files list with himself as the sponsor; seconded by Tehassi Hill. Motion carried unanimously. 5:00-5:40

Motion by Tehassi Hill to approve the resolution and forward the Public Use of Tribal Land Emergency Amendments to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.

2. Community Support Fund Policy Amendments (21:42-24:33)

Motion by David P. Jordan to add the Community Support Fund Policy Amendments to the active files list with himself as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

3. Petition: Powless Per Capita Payments (24:41-25:32)

Motion by Tehassi Hill to add the Petition: Powless Per Capita Payments to the active files list with Brandon Stevens as the sponsor; seconded by David P. Jordan. Motion carried unanimously.

V. Additions

VI. Administrative Updates

1. LOC Sponsor List (25:39-27:57)

Motion by David P. Jordan to accept the LOC Sponsor List as FYI; seconded by Tehassi Hill. Motion carried unanimously.

Note: Brandon Stevens will sponsor the Administrative Procedures Emergency Act Amendments.

VII. Executive Session

VIII. Recess/Adjourn

Motion by Tehassi Hill to adjourn the July 1, 2015 Legislative Operating Committee Meeting at 9:41a.m.; seconded by David P. Jordan. Motion carried unanimously.



Legislative Operating Committee

July 15, 2015

Children's Code

Submission Date: September 17, 2014

Public Meeting:
 Emergency Enacted:

LOC Sponsor: Fawn Billie

Summary: *This item was carried over into the current term by the LOC. The proposal seeks to develop a Children's Code which would enable the Tribe to take jurisdiction of child welfare matters involving Tribal children. The proposal seeks establishment of a Child Welfare Office and the Oneida Child Protective Board, and would address child welfare proceedings including CHIPS; termination of parental rights; adoption; and foster home licensing.*

09/17/14 LOC: Motion by Fawn Billie to add the Children's Code to the Active Files List; seconded by Jennifer Webster. Motion carried unanimously.

Note: Fawn Billie will be the sponsor.

12/17/14 LOC: Motion by Jennifer Webster to move forward with requesting a fiscal analysis; seconded by Tehassi Hill.

Seconder withdraws the second, Motioner withdraws the motion; motion withdrawn.

Motion by Tehassi Hill to direct the Legislative Operating Committee Chair to work with the appropriate staff to develop a memorandum directing the Governmental Services Division Director to fulfill the Finance Department's request for information regarding the Children's Code in order to prepare the fiscal analysis; seconded by Fawn Billie. Motion carried unanimously.

1/28/15 OBC: Motion by Lisa Summers to direct the Law Office to create a policy statement and to request the Legislative Operating Committee consider the Children's Code a priority, seconded by Tehassi Hill. Motion carried unanimously.

2/18/15: Work meeting held with Social Services. Attendees include: Brandon Stevens, Fawn Billie, Tehassi Hill, Jessica Wallenfang, Fawn Cottrell, Taniquelle Thurner, Danelle Wilson, Michelle Mays, Rae Skenandore, Kathleen Laplant, Jennifer Kruse, Roxann Pazdera, Candice Skenandore, Lynn Franzmeier

04/15/15 LOC: Motion by Tehassi Hill to defer the Children's Code for 60 days for the fiscal and administrative analysis; seconded by Fawn Billie. Motion carried unanimously.

6/17/15 LOC: Motion by David P. Jordan to grant the 30-day extension requests and to accept the memorandum as FYI; seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

- Review analyses and direct next steps.

ONEIDA TRIBE OF INDIANS OF WISCONSIN

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Hart



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

ONEIDA FINANCE OFFICE

Office: (920) 869-4325 • Toll Free: 1-800-236-2214

FAX # (920) 869-4024

MEMORANDUM

DATE: July 10, 2015

FROM: Terry Cornelius, Chief Financial Advisor

TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

RE: Fiscal Impact of Oneida Children's Code

I. Background

Up for consideration of adoption is an Oneida Children's Code. The purpose of adoption of the Children's Code is listed as: *Purpose*. It is the purpose of this Law to:

- a) To preserve and protect the Tribe's most precious resources—it's Children.
- b) To provide for the welfare, care, and protection for children, preserving the unity of the family wherever possible.
- c) To divert children from the state court system whenever possible so as to handle matters regarding tribal children in the tribal court system.
- d) To preserve unity of the family, preferably by separating the child from his or her parents only when necessary.
- e) To take such actions as may be necessary and feasible to prevent the abuse, neglect, or abandonment of children.
- f) To respond to the needs of tribal children for care and treatment through reservation-derived programs and to keep children within a tribal context whenever possible.
- g) To the extent possible, to provide children in need of care with stable homes, with attention to special needs, and services to facilitate reunification of families.

II. Executive Summary of Findings

Currently, The Oneida Social Services Division has five Social Worker/ Case Managers employed in the Division. Research was needed to gain an understanding of the impact on number of cases if the Tribe were to adopt the Children's Code, and ascertain a recommended level of Case Managers and related staff. We contacted the Child Protection units in Brown County, Outagamie County and also the Tribal Affairs and Legislative Specialist at the Wisconsin Department of Children and Families. We were provided with data reports from the Wisconsin Department of Children and Families, as well as a 2013

study titled, Disproportionality Rates for Children of Color in Foster Care, produced by the National Council of Juvenile and Family Court Judges.

In general, research of both the state and the national studies indicated that while Native Americans make up just over 1% of the general population, there is a disproportionate representation in child welfare cases such that Native families average 5% of cases in the child welfare system. It was reported by the State of Wisconsin that in 2014 there were 4,785 initial assessments completed by Brown County Child Protective Services. Roughly 30-35% of assessments are expected to undergo screening and become ongoing cases. If we apply the expected disproportionality, it is anticipated that 5% of the number (4,785) were Indian Child Welfare Act (ICWA) related cases. It would be expected, therefore, that 239 were cases that would fall under an Oneida Children's Code – roughly 20 new cases per month. However, Brown County Child Protection reported that from November 2014 through April 2015, they averaged 45 new ICWA-related initial assessments per month. In applying the standard that 30-35% of assessments get screened in, that means that approximately 14 new ICWA related cases were transferred per month to ongoing status.

For Outagamie County, they did not track ICWA related cases specifically, so they were unable to give the average number of initial assessments per month that would fall under the Oneida Children's Code. In consulting the 2014 report from the State Department of Children and Families, it shows that 2,906 initial assessments were conducted. If we apply the average 5% expected disproportionality, that would mean that 145 assessments were expected to be ICWA related. However, if the actual percentage were similar to what Brown County reported as their recent trend, that would mean that approximately 300 new assessments would have fallen under the proposed Oneida Children's Code. This would average between 12 – 25 new assessments per month, with 4 – 8 new cases transferred into ongoing status each month.

As for recommended case loads, Brown County Child Protection recommended that each worker that performs initial assessments should handle about 8-10 new cases per month. For those workers that handle ongoing cases and try to reach resolutions, it was recommended that each one have a case load of no more than 12-14 families. Unfortunately, neither of the counties, nor the State DCF, nor Oneida Social Services could give an estimated time frame that each case averages in ongoing status before it is finally resolved. Some cases are resolved in a few months after being screened in, and some last multiple years.

The data showed that as of May 2015, there were 84 cases currently recorded that had potentially Oneida children wherein the children were residing outside of their biological home. The State Department of Children and Families offered a recommendation that Oneida have 10 case workers on staff, with 2 supervisors. We currently have five workers and one supervisor. It was also noted that with Oneida Family Court's current case load, another Judge and a Clerk would also be recommended to be added to the Staff. The State DCF also advised that roughly 15% of allowable costs may be reimbursed via a Title IV-E program.

III. Financial Impact

PERSONNEL COSTS

Five new case workers: The Interim Area Manager of Social Services estimated a \$45,000 annual salary for workers with a Bachelors of Social Work, \$52,000 for those with a Masters of Social Work. We will use three with MSW and two with BSW - \$246,000. When adding related Fringe Benefit (37.9%) and Indirect Cost (15.89%), total potential financial impact is **\$378,323 annually for case management.**

An additional supervisor is a suggested minimum of \$64,000. When adding the fringe benefit and indirect cost, that is a potential impact of **\$98,426 annually**.

Suggested salary for an additional Family Court Judge and a Clerk (\$70,000 and \$42,000 respectively, per Family Court Judge) totals \$112,000 annually. When applying the fringe benefit and indirect cost rates, this comes to **\$172,245 potential annual fiscal impact**. Moreover, we also need to include anticipated Guardian Ad Litem (GAL) fees that would be incurred. The Family Court Judge offered an estimate of \$800 per case. If using the conservative estimate that 84 new cases would be screened in per year from Brown County and 48 from Outagamie County, that would be 132 new cases per year. GAL fees would then be estimated to total **\$105,600 annually**. This Guardian Ad Litem cost could reach more than double that level, if it is more accurate to use Brown County's reported average of 45 new reports per month, instead of the 20 new reports per month in this example, advocated by the Expected Disproportionality.

Total estimated impact of Personnel Costs: \$754,594 per year.

EXTERNAL AND INTERNAL EXPENSES

Since the impact of personnel is roughly doubling the number of caseworkers in the current budget, we will use a rough estimate of doubling the current budget for external expense and internal expense. The FY 2015 Budget for these items was \$34,728 for external and \$44,641 for internal expense.

Total estimated impact of External and Internal Expenses: \$79,369 per year.

A conservative estimate of financial impact reaches a **grand total of \$833,963 per year**. If approved for full Title IV-E reimbursement from the State, (15%) the estimated fiscal impact would be reduced to **\$708,869 per year**.

RECOMMENDATION

The Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that General Tribal Council has sufficient information to render a decision.

Handout #2

**Oneida Tribe of Indians of Wisconsin**

Oneida Nation Social Services Department

P.O. Box 365

Oneida, WI 54155

Phone: (920) 490-3700

Fax: (920) 490-3799

MEMORANDUM

TO: Legislative Operating Committee

FROM: Lisa Kelly Skenandore, Social Services

DATE: July 14, 2015

RE: Administrative Impact of Oneida Children's Code

Administrative Impact

The following is prepared to the best of the ability with the child welfare staff consisting of Indian Child Welfare, Parenting, and Child Placement.

Background

In 2013, the Children & Family Services Director vacated the position and it was decided that the position would not be filled. The last two years have been difficult for the staff in the department namely the Indian Child Welfare and related staff due to the nature of the work. To provide stability and leadership, the Child Welfare department is currently undergoing a reorganization that will align the services better for the community. As part of this, the Title IV-B Administrator/Family Counselor will be retitled to Social Work Supervisor/Family Counselor and take supervision of the Indian Child Welfare positions, Child Placement Coordinator and Parenting Coordinator.

The Indian Child Welfare positions have also gone through a market analysis and the wages have been brought to current market. The titles have also changed to more accurately reflect the nature of the work performed, Social Worker/Case Manager.

Further programming will change with the Prevention staff working the Indian Child Welfare prevention cases that currently aren't assisted. These cases may not have risen to the level of children in need of protective services however they may need assistance and resources to prevent them from further interaction with the child protection system.

All fiscal costs have been forwarded to Terry Cornelius, Finance, for inclusion in the fiscal analysis and do include the recent market analysis.

Administrative Needs

The internal infrastructure poses some concerns at the present time. There is a lack of automated data collection in this area. It is recommended that the tribe utilize the Wisconsin eWiSACWIS data management system to provide an electronic means for case management and data collection. This will be a minimal cost to the tribe. The state has a history of allowing the tribes to utilize their data systems in their entirety with little to no cost.

As a part of the case management the department also will need to move to OnBase for its file management system. This area is just beginning to utilize OnBase and it will need to move forward with all department correspondence to be housed in OnBase. This will alleviate the disconnect between the Oneida Law Office and Oneida Child Protection Board. It will also assist the tribal court with information sharing. The recommendation is to hire an Emergency Temporary employee to assist with the project of moving all paper files to electronic format.

Training is an on-going need in the social work realm. Grant funds have been moved to accommodate the training needs in the next fiscal year. It is also suggested that we contract with an outside individual or agency for case processing/quality assurance for on-going support to the case management side.

Staff also requests a dedicated on-site attorney that works in conjunction on these cases. Right now the attorneys are split by jurisdictions and sit in the Oneida Law Office. Preference would be to have at least one full-time attorney on site for coordination and team inclusiveness as they are an important role.

Service Needs

There are currently some unknown factors with the administrative impact. Namely, who will provide some services to the families that currently is provided by the counties. This will need to be negotiated and included with the Memorandum of Agreements with both Brown and Outagamie Counties. Specifically the following will need to be addressed:

- Parent aides, wrap around workers, volunteer drivers, mentors
- AODA resources to include UA services
- Psychological evaluation services

It is unclear if both Brown and Outagamie Counties will enter into 161 agreements with the tribe too. The 161 agreement covers the cost of out of home placements and rests on the county levy and grant monies from the state.

Implementation

As with any new program, it is imperative that adequate planning and implementation time be given. We suggest moving forward with a timeline that accommodates the hiring of additional staff and training. Similar to how the child support agency adds staff as its

caseload increases can be used as resource or tool. This will also give adequate time to work with the counties and address the MOA's and 161 agreements.

Work has started on exploring the possibility of securing Title IV-E (Social Security Act – Foster Care Funding) reimbursement from the State of Wisconsin for case management services.

Conclusion

From an administrative perspective, adopting and implementing a Children's Code is possible with adequate resources and a time frame to accommodate the work that will need to be done.

We look forward to working with the Oneida Business Committee and Legislative Operating Committee on the Children's Code if the decision is made to move forward.



Legislative Operating Committee

July 15, 2015

Election Law Emergency Amendments

Submission Date: June 24, 2015

LOC Sponsor: Brandon Stevens

Public Meeting:
 Emergency Enacted: 6/28/15
Expires: 12/28/15

Summary: *Amendments to the Election Law were made on an emergency basis in order to comply with the Constitutional Amendments recently adopted by the Oneida Tribe and approved by the Secretary of the US Department of Interior. Specifically, the Constitutional amendments lowered the voting age to 18, but still require members to be at least 21 years old before they are eligible to serve on the Oneida Business Committee.*

6/28/15 Emergency OBC: Motion by Brandon Stevens to adopt resolution 06-28-15-A Emergency Amendments to the Election Law, seconded by Lisa Summers. Motion carried unanimously.

Next Steps:

- Consider retroactively approving e-poll.

From: David P. Jordan
Sent: Sunday, June 28, 2015 9:58 AM
To: Candice E. Skenandore; Brandon L. Yellowbird-Stevens; Fawn J. Billie; Jennifer A. Webster; Ronald W. Hill
Cc: Danelle A. Wilson; Fawn L. Cottrell; Leyne C. Orosco; Rhiannon R. Metoxen; Douglass A. McIntyre; Krystal John; Lynn A. Franzmeier; Taniquelle J. Thurner
Subject: RE: REVISED E-Poll Election Law Emergency Amendments

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Support

Subject: Danelle A. Wilson; Fawn L. Cottrell; Leyne C. Orosco; Rhiannon R. Metoxen; Douglass A. McIntyre; Krystal John; Lynn A. Franzmeier; Taniquelle J. Thurner
RE: REVISED E-Poll Election Law Emergency Amendments

Approve
Jenny

From: Ronald W. Hill
Sent: Sunday, June 28, 2015 8:52 AM
To: Candice E. Skenandore; Brandon L. Yellowbird-Stevens; David P. Jordan; Fawn J. Billie; Jennifer A. Webster
Cc: Danelle A. Wilson; Fawn L. Cottrell; Leyne C. Orosco; Rhiannon R. Metoxen; Douglass A. McIntyre; Krystal John; Lynn A. Franzmeier; Taniquelle J. Thurner
Subject: RE: REVISED E-Poll Election Law Emergency Amendments

Approve.

From: Candice E. Skenandore
Sent: Friday, June 26, 2015 6:16 PM
To: Brandon L. Yellowbird-Stevens; David P. Jordan; Fawn J. Billie; Jennifer A. Webster; Ronald W. Hill
Cc: Danelle A. Wilson; Fawn L. Cottrell; Leyne C. Orosco; Rhiannon R. Metoxen; Candice E. Skenandore; Douglass A. McIntyre; Krystal John; Lynn A. Franzmeier; Taniquelle J. Thurner
Subject: REVISED E-Poll Election Law Emergency Amendments

Attached is the Revised Election Law Emergency Amendments backup for the 06/28/2015 OBC meeting. The "Oneida Tribe of Indians of Wisconsin" has been replaced with "Oneida Nation" as requested.

The Legislative Procedures Act requires the LOC to review emergency legislation prior to forwarding to the OBC for consideration [See LPA '16.9-5 (a)]. I am asking that you approve this revised packet via e-poll as soon as possible; please note that this backup has already been sent to the OBC for be included in the packet. If you require any changes to the backup prior to the Sunday OBC meeting please contact me on my cell phone at [REDACTED]

Candice E. Skenandore

Legislative Reference Office

Legislative Analyst

From: Fawn J. Billie
Sent: Sunday, June 28, 2015 10:24 AM
To: Candice E. Skenandore; Brandon L. Yellowbird-Stevens; David P. Jordan; Jennifer A. Webster; Ronald W. Hill
Cc: Danelle A. Wilson; Fawn L. Cottrell; Leyne C. Orosco; Rhiannon R. Metoxen; Douglass A. McIntyre; Krystal John; Lynn A. Franzmeier; Taniquelle J. Thurner
Subject: RE: REVISED E-Poll Election Law Emergency Amendments

Approve



Legislative Operating Committee

July 15, 2015

Petition: Child Care Department Consumer Complaint Policy

Submission Date: 9/17/14

Public Meeting:
 Emergency Enacted:
Expires:

LOC Sponsor: Jennifer Webster

Summary: *A petition was submitted to mandate the OBC review, amend and implement a new complaint process for Oneida Child Care. The intent of the petition is to provide the minimum requirements of the new process which include mandatory administrative leave during investigations; investigation timelines, providing explanation of results, and quarterly reporting of all complaints to the Childcare Division Director and OBC.*

This item was added to the active files list on June 6, 2012. A legislative analysis was presented to GTC on November 19, 2012 and GTC approved the petition, directing the OBC to review, amend and implement a new parent communications and grievances process for the Oneida Childcare Department. Since then a draft was developed and an update was given to GTC on July 1, 2013 as directed. Public meetings were held on October 13, 2013 and February 27, 2014. On April 16, 2014 the sponsor began to develop the Policy through a series of work meetings.

9/17/14 LOC: Motion by Jennifer Webster to add the Child Care Department Consumer Complaint Policy to the Active Files List; seconded by Fawn Billie. Motion carried unanimously.

Note: Jennifer Webster will be the sponsor for this item.

11/18/14: Work meeting held. Attendees include: Candice Skenandore, Chenoa Webster, Michelle Mays, Dorothy A. Skenandore, Jenny Webster, Rae Skenandore, Donna Christensen, Jacob Metoxen, Bob Keck and Norbert Hill.

11/24/14: Work meeting held. Attendees include: Candice Skenandore, Michelle Mays and Stephen Webster.

12/5/14: Work meeting held. Attendees include: Candice Skenandore, Michelle Mays, Jennifer Webster, Dorothy Skenandore and Diane Heim-McLester

12/12/14: Work meeting held. Attendees include: Richard Cluckey, Stephen Webster and Candice Skenandore

2/23/15: Work meeting held. Attendees include: Norbert Hill, Dorothy Skenandore, Jennifer Webster, Bob Keck, Donna Christensen, Jessica Wallenfang, Rae Skenandore, Susan House, Chenoa Webster, Jacob Metoxen

3/18/15 LOC: Motion by Fawn Billie to defer the Child Care Department Consumer Complaint Policy for a legislative analysis and fiscal impact statement; seconded by Tehassi Hill. Motion carried unanimously.

6/3/15 LOC: Motion by Tehassi Hill to defer back to the Legislative Reference Office for redrafting; seconded by David P. Jordan. Motion carried unanimously.

Next Steps:

- Review the Child Care Department Consumer Complaint Policy draft and legislative analysis and direct next steps.

Draft 19 redline to Draft 18
2015 06 25

Oneida Child Care Department Consumer Complaint Policy

- | | |
|---|---|
| <p>Article I. Purpose and Policy
 Article II. Adoption, Amendment, Repeal
 Article III. Definitions
 Article IV. Filing of a Complaint
 Article V. Determination of Severity of Complaint
 Article VI. Processing the Complaint – Level 1: Very Mild, Mild, or Moderate and Level 2: Serious
 Article VII. Processing the Complaint – Level 3: Very Serious</p> | <p>Article VIII. Processing the Complaint - Level 4: Child Abuse or Neglect Allegations
 Article IX. Appeal
 Article X. Video Surveillance
 Article XI. Self-Reporting by Department
 Article XII. Parent/Teacher Organization
 Article XIII. Enforcement</p> |
|---|---|

<i>Analysis by the Legislative Reference Office</i>	
Title	Oneida Child Care Department Consumer Complaint Policy (Policy)
Requester	Petition: Vandehei et al Drafter Michelle Mays Analyst Candice E. Skenandore
Reason for Request	Motion by General Tribal Council to develop a parent communications and grievance process for the Child Care Department [GTC Meeting, November 19, 2012].
Purpose	Provide a formal process for addressing consumer complaints for anyone that uses the Oneida Child Care Department, this Policy is not intended to resolve employee complaints or grievances [See 1-1].
Authorized/ Affected Entities	Child Care Department, Area Manager of Education and Training, Ombudsperson, any parent/guardian that is currently utilizing the child care services, anyone on the child’s emergency contact list, anyone who witnesses child abuse or neglect, Audit Department, Records Department, Risk Management, Governmental Services Division Director and possibly Wisconsin Department of Children and Families, Oneida Indian Child Welfare Department, Oneida Police Department and Tribe’s Judiciary
Due Process	If the person who filed the complaint disagrees with the corrective action plan or a decision to unsubstantiated the complaint, this Policy allows for him/her to appeal to the Area Manager; and if dissatisfied with the Area Manager’s decision, the individual can appeal to the Judiciary [See 8-1 & 8-2].
Related Legislation	Investigative Leave Policy and possibly the Back Pay Policy; Tribe’s personnel policies and procedures, Rules of Appellate Procedure, standard operating procedures for disposing video surveillance; Wisconsin Statutes; Wisconsin Department of Children and Families Serious Violations List and Oneida Policy on Reporting Child Abuse and Neglect
Enforcement	Any Tribal member founding violating this Policy or retaliating against the children/family involved in a complaint is subject to discipline set out in the Tribe’s personnel policies and procedures [See 12-1].

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Background

On May 9, 2012, the Oneida Business Committee (OBC) accepted a petition which mandated the OBC to review, amend and implement a new complaint process for the Oneida Child Care. The intent of this petition was to provide the minimum requirements of the new process which include mandatory administrative leave during investigations, investigation timelines, providing explanation of results and quarterly reporting of all complaints to the Child Care Division Director and OBC. The petition was presented to General Tribal Council (GTC) on November 19, 2012 and GTC direct the OBC to review, amend and implement a new parent communications and grievances process for the Oneida Child Care Department. After further development on the Policy, it was decided to form a work group made of representatives from the following areas: LOC, Child Care Department, Area Manager of Higher Education, Internal Audit, Risk Management, Finance, Law Office, Petitioners,

Draft 19 redline to Draft 18
2015 06 25

13 Governmental Services, Records Management and the Chairperson's Office. The work group has
14 met numerous times between April 2014 and February 2015 and the collaborations from those
15 meetings were considered in developing this Policy.

17 **Overview**

18 Current Tribal legislation requires all employees to report suspected child abuse and neglect
19 to the Oneida Police Department as well as contact the Oneida Indian Child Welfare Department
20 [See Oneida Policy on Reporting Child Abuse and Neglect 6-3 & 6-6]. This Policy provides a
21 formal process for addressing consumer complaints, including complaints alleging child abuse and
22 neglect, for anyone that utilizes the services provided by the Oneida Child Care Department [See 1-
23 1].

24 This Policy explains the process of filing a complaint which includes placing a timeframe on
25 when to file a complaint, identifying who can file a complaint, what information must be included in
26 the complaint as well as how and where to file the complaint and how repeat complaints are handled
27 [See Article 4]. In addition, this Policy identifies the Ombudsperson as the neutral third party that
28 will receive the complaints, determine the severity of the complaint and make a recommendation on
29 who should complete an investigation. The Ombudsperson's responsibilities as well as the process
30 for recommending a Complaint Investigator are be found within this Policy [See 4-5, 4-6, 5-1 and 6-
31 7].

32 This Policy lists the steps for processing a complaint and conducting an investigation. The
33 Policy also places timeframes on how long an investigation can occur and when the person who filed
34 the complaint must be notified of the investigative findings. This Policy allows for mediation
35 between the parties so long as the complaint is not considered child abuse or neglect. Furthermore,
36 this Policy requires a corrective action plan be developed for complaints found to be substantiated;
37 and if necessary, a corrective action plan may also be created if a resolution is reached in mediation.

38 In addition, the Policy requires all Child Care staff members to comply with the corrective action
39 plans. Lastly, if the complaint is considered "very serious" and is referred to an outside agency, the
40 Policy requires the Department to complete its own internal investigation [See Article 6].

41 If the complaint falls in the child abuse or neglect category, the Policy requires the person
42 that receives the complaint to immediately refer the matter to the appropriate investigator and/or
43 agency. The Policy allows for the Oneida Child Care staff member to be placed on investigative
44 leave until the investigation is completed. If a staff member is found to have committed child abuse
45 or neglect, this Policy requires that individual's employment be terminated immediately [See 7-1].

46 This Policy identifies the Records Management Department as the responsible department
47 for maintaining the video surveillance [See Article 9].

48 This Policy requires any Child Care staff member that witnesses another staff member
49 behaving unethically or inappropriately to immediately document and report the behavior to the
50 Ombudsperson, unless the behavior constitutes child abuse or neglect, at which time the witness
51 must report in accordance with section 8-1 of this Policy [See 10-1].

52 This Policy requires the Department to form a parent/teacher organization for the purpose of
53 gathering and sharing information, addressing concerns and planning activities that enhance or
54 improve the Department [See 11-1].

55 This Policy will repeal the Oneida Early Childhood Program Policy: Internal Investigation of
56 Complaints (BC-07-29-95-A) which provided a format for addressing consumer complaints filed by

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57 anyone that used the Early Childhood Program. The Early Childhood Program incorporated both the
58 Oneida Heath Start Department and Child Care Department; however, in 1997, the two departments
59 split and the Oneida Head Start Department moved under the direction of the Oneida Social Services
60 Area Manager while the Child Care Department remained under the direction of the Education &
61 Training Area Manager. After this reorganization, the Oneida Early Childhood Program Policy:
62 Internal Investigation of Complaints was no longer utilized which lead this Policy to repeal the
63 Oneida Early Childhood Program Policy: Internal Investigation of Complaints.
64

65 **Considerations**

66 The LOC many want to consider the following:

- 67 ■ If the person who filed a complaint is 1) not the parent of the child and 2) agrees to
68 mediation, this Policy requires the child’s parent(s) to be noticed of and have a right to
69 attend the mediation meeting(s) [See 6-1]. The Policy does not specify who is responsible
70 for notifying the parent(s) or when notice must take place. In addition, if an investigation
71 occurs, the person who filed the complaint will be noticed if the investigation is extended.
72 The person will also be provided the results of the investigation [See 6-2 & 6-5]. The Policy
73 does not require notifying the parent(s) of an extension or allow the parent to receive the
74 investigation findings.
- 75 ■ When an outside agency conducts an investigation for a “very serious” complaint, the
76 Department must complete its own internal investigation [See 6-8]. The Policy does not
77 allude to how that internal investigation will be conducted. In addition, internal
78 investigations are not required for complaints that involve child abuse or neglect allegations
79 even though those complaints are investigated by an outside agency [See 7-1].
- 80 ■ A Child Care staff member may be placed on investigative leave until the investigation is
81 completed by the appropriate agency [See 6-9]. The Policy is not clear if the staff member
82 can be taken off investigative leave when the outside agency’s investigation is concluded or
83 the Department’s internal investigation is concluded.
- 84 ■ This Policy does not require a corrective action plan for child abuse or neglect complaints
85 [See 7-1]. There may be times when an investigation shows that the Child Care staff
86 member’s actions did not warrant child abuse or neglect but do warrant corrective measures.
- 87 ■ The petition, among other things, requested that all complaints made against the Department
88 be reported quarterly to the Division Director and OBC. This Policy gives, but does not
89 mandate, the Ombudsperson to report continuous failures in following the corrective action
90 plan to the OBC [See 6-7]. The Policy does not require the OBC to be noticed on how many
91 complaints are made against the Department.

92 **Miscellaneous**

94 A public meeting was held on October 31, 2013 and again on February 27, 2014;
95 however, because the Policy has gone through significant changes, another public meeting
96 should be considered. Please refer to the fiscal impact statement for any financial impacts.

97 **Article I. Purpose and Policy**

98 1-1. The purpose of this Policy is to provide a formal process for addressing consumer complaints
99 for anyone who uses the services of the Oneida Child Care Department. The Policy is not intended
100 to resolve employee complaints or grievances which shall be addressed through the process specified

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101 in the Tribe's personnel policies and procedures.

102 1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin to provide a safe, secure and
103 nurturing environment for all children that are enrolled in the Oneida Child Care Department. It is
104 also the policy of the Tribe to allow any person who utilizes the services of the Oneida Child Care
105 Department to have any and all complaints concerning those services addressed in a timely and
106 professional manner.

107

108 **Article II. Adoption, Amendment, Repeal**

109 2-1. This Policy is adopted by the Oneida Business Committee by resolution _____

110 2-2. This Policy may be amended or repealed by the Oneida Business Committee and/or the Oneida
111 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

112 2-3. Should a provision of this Policy or the application thereof to any person or circumstances be
113 held as invalid, such invalidity shall not affect other provisions of this Policy which are considered
114 to have legal force without the invalid portion(s).

115 2-4. In the event of a conflict between a provision of this Policy and a provision of another policy,
116 the provision of this Policy shall control; provided that this Policy repeals Resolution BC-7-26-95-A
117 (Policy on Internal Investigation of Complaints).

118 2-5. This Policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of
119 Wisconsin.

120

121 **Article III. Definitions**

122 3-1. This article shall govern the definitions of words and phrases used within the Policy. All words
123 not herein defined shall be used in their ordinary and everyday sense.

124 (a) "Abuse" shall mean any of the following:

- 125 (1) Physical injury inflicted on a child by other than accidental means;
- 126 (2) Sexual intercourse or sexual contact under Wis. Stats. 940.225 or 948.02, which
127 refers to sexual assault and sexual assault of a child;
- 128 (3) Sexual exploitation of a child under Wis. Stat. 948.05;
- 129 (4) Permitting, allowing, or encouraging a child to be involved in prostitution under
130 Wis. Stat. 944.30;
- 131 (5) Causing mental harm to a child under Wis. Stat. 948.04; or
- 132 (6) Causing a child to view or listen to sexually explicit activity under 948.055.¹

133 (b) "Area Manager" shall mean the Area Manager of Education and Training within the
134 Governmental Services Division.

135 (c) "Complaint" shall mean an allegation of certain wrongdoing against an Oneida Child
136 Care staff member or the Department.

137 (d) "Complaint Investigator" shall mean any of the following as recommended by the
138 Ombudsperson:

- 139 (1) the Supervisor of an Oneida Child Care staff member that has a complaint
140 against him or her;

¹ Wisconsin State Statutes can be found at <https://docs.legis.wisconsin.gov/statutes/prefaces/toc>

- 141 (2) the Supervisor’s substitute;
- 142 (3) the Area Manager; and/or
- 143 (4) an outside agency
- 144 (e) “Days” shall mean calendar days unless otherwise specified.
- 145 (f) “Department” shall mean the Oneida Child Care Department.
- 146 (g) “Director” shall mean the Oneida Child Care Department Director.
- 147 (h) “Neglect” shall mean a failure, refusal or inability of an Oneida Child Care staff member
- 148 to provide necessary care, food, clothing, medical care or shelter so as to seriously endanger
- 149 the physical health of a child, lack of supervision, or total abandonment.
- 150 (i) “Ombudsperson” shall mean an individual employed by the Oneida Tribe of Indians of
- 151 Wisconsin who functions as a designated confidential, independent, neutral and informal
- 152 dispute resolution resource that does not represent the Tribe or any specific party, but
- 153 advocates for fairness and the application of a fair and equitable process.
- 154 (j) “Substantiated” shall mean a finding that the complaint or allegation in the complaint is
- 155 valid because there is proof by a preponderance of the evidence.
- 156 (k) “Supervisor” shall mean the person in charge of the other Oneida Child Care staff, which
- 157 may include the Director.
- 158 (l) “Tribe” or “Tribal” shall mean the Oneida Tribe of Indians of Wisconsin.
- 159 (m) “Unsubstantiated” shall mean a finding that the complaint or allegation in the complaint
- 160 is not valid because there is not proof by a preponderance of the evidence.

161
162 **Article IV. Filing of a Complaint**

163 4-1. ~~Who May~~When to File. ~~The following people may file a~~A complaint shall be filed within sixty
164 (60) days of the alleged incident:² While a complaint may be filed after this timeline, any
165 complaint filed after sixty (60) days from the alleged incident shall not guarantee an investigation.³

166
167 4-2. Who May File. The following people may file a complaint:

- 168 (a) Any parent or guardian who is currently utilizing the services of the Department.
- 169 (b) Any person who is on the child’s emergency contact list.
- 170 (c) Any person who witnesses ~~an act of child abuse or neglect~~any action that would warrant
- 171 an investigation pursuant to this Policy as described in Section 5-1.

172 ~~4-2.3~~ 4-3. Format. A complaint shall be filed by either:

- 173 (a) using the specific form provided for by the Department, which shall at all times be made
- 174 available at the facility as well as on the Department’s webpage; or
- 175 (b) in writing following the requirements of Section 4-3.

176 ~~4-3.4~~ 4-4. Statement of Facts. The complaint filed shall contain specific allegations, which shall
177 include, if known, but is not limited to the following information:

- 178 (a) The name(s) of the child(ren) involved;

² ~~While a complaint can be filed within 60 days of the alleged incident, surveillance footage is only available to capture for ten (10) days after the alleged incident.~~

³ While a complaint can be filed within 60 days of the alleged incident, surveillance footage is only available to capture for ten (10) days after the alleged incident.

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- 179 (b) The name(s) of the Oneida Child Care staff member(s) involved;
- 180 (c) The specific date(s) and time(s) of the alleged incident(s);
- 181 (d) The specific details of the alleged incident;
- 182 (e) Name(s) of any witness(es) to the alleged incident and a written statement by the
- 183 witness(es) as to what he or she witnessed; and
- 184 (f) Any noted impacts.
- 185 (g) The contact information for the person filing the complaint, which at minimum shall
- 186 include the person’s name, address and telephone number.

187 The Ombudsperson shall have a Standard Operating Procedure for how to handle complaints that are
 188 missing the information required above.

189 4-45. *Where to File Complaint.* All fully completed complaints shall be delivered to the
 190 Ombudsperson, or if the Ombudsperson is unavailable, to the Area Manager. If it a complaint is
 191 delivered to the Area Manager due to the absence of the Ombudsperson, the Area Manager shall
 192 immediately forward a copy of the complaint to the Ombudsperson so it is available upon the
 193 Ombudsperson’s return.

194 4-~~5~~6. *Responsibilities of the Ombudsperson.*

195 (a) The Ombudsperson shall immediately secure the appropriate video surveillance footage
 196 that is relevant to the complaint.

197 (b) Upon receipt of the complaint, the Ombudsperson shall immediately forward a copy of
 198 the complaint to the Director and the Area Manager, as well as notify the person filing the
 199 complaint by mail or e-mail that the complaint was received and what the next steps will be.

200 If the complaint is a severity level 2, 3 or 4, the Ombudsperson shall forward a redacted
 201 copy of the complaint to the Risk Management Department.

202 (c) The Ombudsperson shall have five (5) business days to refer the matter to the Complaint
 203 Investigator. However, if the ~~parties agree~~person who filed the complaint agrees to mediate
 204 the matter with the Ombudsperson, the Ombudsperson shall have five (5) days additional
 205 days to recommend a Complaint Investigator, if needed after mediation.

206 (d) The Area Manager shall have the same responsibilities of the Ombudsperson should the
 207 Ombudsperson be unavailable.

208 4-~~6~~7. *Repeat Complaints.* A complaint that was deemed unsubstantiated or rejected on appeal shall
 209 not be re-filed unless new facts or new evidence have been discovered.

210
 211 **Article V. Determination of Severity of Complaint**

212 5-1. *Who Investigates.* Upon receipt of the complaint, the Ombudsperson shall make a
 213 determination as to the severity of the complaint and recommend to the Department an appropriate
 214 Complaint Investigator ~~to conduct an investigation~~pursuant to the chart below. The Department
 215 shall ensure that the appropriate investigator is assigned according to the following chart:

LEVEL	CATEGORY	DESCRIPTION	WHO INVESTIGATES
1	Very Mild, Mild and Moderate	Complaints such as poor business practices, inadequate equipment/furnishings, ratio violations or lack of supervision.	Supervisor if not resolved through the Ombudsperson

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2	Serious	Complaints that are listed on the Serious Violations List with the Wisconsin Department of Children and Families that do not pose a risk of direct harm to children.	Supervisor; may also include the Wisconsin Department of Children and Families and the Oneida Indian Child Welfare Department as determined by the investigator.
3	Very Serious	Complaints that are listed on the Serious Violations List with the Wisconsin Department of Children and Families that pose a risk of harm to children.	Supervisor and/or the Oneida Police Department as determined by the investigator. May also include the Wisconsin Department of Children and Families and the Oneida Indian Child Welfare Department as determined by the investigator.
4	Child Abuse or Neglect	Imminent danger to children.	Wisconsin Department of Children and Families; Police Department and the Oneida Indian Child Welfare Department.

217

218 | 5-2. ~~Oneida Child Care Department. The Ombudsperson shall recommend an appropriate~~
 219 | ~~Complaint Investigator based on the chart found in Section 5-1.~~

220 | ~~(a) Conflict of Interest.~~ If the Complaint Investigator has a conflict in conducting the investigation,
 221 | he or she shall immediately notify the Ombudsperson who shall recommend a new Complaint
 222 | Investigator to conduct the investigation.

223

224 | **Article VI. Processing the Complaint – Level 1: Very Mild, Mild, or Moderate, Level 2:**
 225 | **Serious, and Level ~~2~~: Very Serious**

226 | 6-1. The Ombudsperson shall facilitate a mediation meeting(s) between the person who filed the
 227 | complaint and the Department if the person who filed the complaint agrees. If the person who filed
 228 | the complaint is not the parent of the child at issue, than the parent(s) of the child shall be noticed
 229 | and have a right to attend the meeting. This meeting shall take place within five (5) business days of
 230 | the filing of the complaint. The intent of this meeting(s) is to resolve the complaint prior to
 231 | commencing a full investigation.

232 | (a) If a resolution is reached, the Ombudsperson shall inform the Department Director that a
 233 | corrective action plan shall be prepared, if necessary, based on the agreement.

234 | (b) If the matter is not resolved at the meeting(s), a full investigation shall be completed.

235 | 6-2. Once the complaint investigator is assigned, he or she shall have five (5) business days to
 236 | complete a thorough investigation. The Ombudsperson may grant a five (5) business day extension
 237 | for extenuating circumstances. If an extension is granted, the Ombudsperson shall send written

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238 notice to the person filing the complaint within twenty-four (24) hours of that extension being
239 granted.

240 6-3. Upon completion of the investigation, the Complaint Investigator shall either substantiate or not
241 substantiate the complaint and forward copies of all documents and findings to the Ombudsperson,
242 Area Manager and Director for review. The Ombudsperson, Area Manager and Director shall
243 complete a review within five (5) business days of receiving the investigation findings.

244 (a) Unsubstantiated Findings: The Ombudsperson, Area Manager and/or Director may
245 over-ride the Complaint Investigator’s decision to unsubstantiate the complaint. If the
246 decision is over-ridden, the Director shall complete a corrective action plan within five (5)
247 business days of over-riding the decision to not substantiate the complaint.

248 (1) The Director’s corrective action plan shall be finalized by the Ombudsperson and
249 Area Manager within five (5) business days. ~~The Area Manager shall forward a copy~~
250 ~~of the corrective action plan to Internal Audit Department within 24 hours of~~
251 ~~finalizing the plan.~~

252 (b) Substantiated Findings: The Complaint Investigator shall create a corrective action plan
253 within five (5) business days of forwarding the investigation findings.

254 (1) A decision to substantiate the complaint cannot be over-ridden.

255 (2) The corrective action plan shall be finalized by the Director and Ombudsperson
256 within five (5) business days.

257 6-4. All Oneida Child Care staff members shall comply with the corrective action plan.

258 6-5. The Ombudsperson shall notify the person who filed the complaint of the results of the
259 investigation in writing by U.S. or private mail using a delivery tracking feature within five (5)
260 business days of receiving the finalized corrective action plan or findings that do not substantiate the
261 complaint. The information provided to the person filing the complaint shall include, but is not
262 limited to the following:

263 (a) Details of the investigation which would not compromise the legally-protected
264 confidentiality of any other person; and

265 (b) Whether or not the complaint was substantiated; and

266 (c) Any corrective action plan prepared to resolve the complaint, redacting specific
267 employee related matters or information; or

268 (d) An explanation as to why the complaint is unsubstantiated, if necessary.

269 6-6. The Ombudsperson shall provide the corrective action plan to the Area Manager ~~who shall~~
270 ~~immediately forward the corrective action plan to the Internal Audit Department.~~

271 6-7. ~~Within thirty (30) days of receiving~~ Failure to follow the corrective action plan, ~~the Internal~~
272 ~~Audit Department shall work with the Department to complete a plan to improve the conditions and~~
273 ~~or processes to ensure the concerns brought up~~ could result in all substantiated further complaints are
274 being adequately addressed. ~~The Internal Audit Department shall have the right to monitor the~~ to the
275 Ombudsperson. A continuous improvement plan as they deem necessary pattern of failure to follow
276 the corrective action plan could result in a report to the Oneida Business Committee by the
277 Ombudsperson.

278
279 **Article VII. Processing the Complaint—Level 3: Very Serious**

280 7-16-8. When a ~~the~~ complaint involving an allegation under Level 3 is filed against is an allegation
281 under Level 3, and an Oneida Child Care staff member(s):

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282 | ~~(a) The person receiving the complaint shall immediately refer the matter to the appropriate~~
 283 | ~~investigator and/or outside agency for is contacted to complete an investigation and follow through,~~
 284 | ~~the Department shall still complete its own internal investigation of the complaint.~~

285 | ~~(b) The~~6-9. ~~If the complaint filed is one that contains an allegation under Level 3, the~~ Oneida
 286 | Child Care staff member(s) may be placed on investigative leave and/or transferred to another
 287 | department pursuant to the Investigative Leave Policy until the investigation is completed by the
 288 | appropriate agency. If placed on investigative leave, the staff member(s) shall be returned to work if
 289 | the complaint allegations are found to be unsubstantiated.

291 | **Article ~~VIII~~VII. Processing the Complaint - Level 4: Child Abuse or Neglect Allegations**

292 | ~~87~~-1. When a complaint involving an allegation under Level 4 is filed against an Oneida Child Care
 293 | staff member(s):

294 | (a) The person receiving the complaint shall immediately refer the matter to the appropriate
 295 | investigator and/or agency for investigation and follow through.

296 | (b) The Oneida Child Care staff member(s) may be placed on investigative leave and/or
 297 | transferred to another department pursuant to the Investigative Leave Policy until the
 298 | investigation is completed by the appropriate agency. If placed on investigative leave, the
 299 | staff member(s) shall be returned to work if the complaint allegations are found to be
 300 | unsubstantiated. A substantiation of a complaint for child abuse or neglect shall result in
 301 | immediate termination of the Oneida Child Care staff member(s).

303 | **Article ~~IX~~VIII. Appeal**

304 | ~~98~~-1. If the person who filed the complaint is dissatisfied with the finding that the complaint is
 305 | unsubstantiated, or is dissatisfied with the corrective action plan, that person may appeal the matter
 306 | to the Area Manager, in writing, within ten (10) business days of receiving the results of the
 307 | investigation and, if applicable, the corrective action plan. The Area Manager shall complete his or
 308 | her review of the appeal within five (5) business days of receiving the written appeal and inform the
 309 | person filing the complaint in writing of his or her decision.

310 | ~~98~~-2. If the person filing the complaint is dissatisfied with the Area Manager’s decision, he or she
 311 | may appeal to the Tribe’s Judiciary pursuant to the Judiciary’s Rules of Appellate Procedure.

313 | **Article ~~XIX~~. Video Surveillance**

314 | ~~109~~-1. The Department, for security purposes, shall have daily video surveillance. The video
 315 | surveillance footage shall not be erased by anyone in the Department. The Records Management
 316 | Department shall retain the video surveillance footage for at least ten (10) business days and dispose
 317 | of the video surveillance footage in accordance with their standard operating procedures.

318 | ~~109~~-2. Only the Ombudsperson, Department, Complaint Investigator, Area Manager, Governmental
 319 | Services Division Director, police department, Oneida Indian Child Welfare Department, Oneida’s
 320 | Risk Management Department, and/or the Wisconsin Department of Children and Families shall
 321 | have access to the video surveillance footage. The video surveillance footage shall be viewed at the
 322 | Records Department with a Records Management Department personnel present.

323 | ~~109~~-3. The Records Management Department shall follow a standard operating procedure for
 324 | disposal of video surveillance that complies with the child care industry standard.

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348**Article ~~XIX~~. Self-Reporting by Department**

~~H10~~-1. If any Oneida Child Care staff member witnesses another staff member behaving in an unethical or otherwise inappropriate manner as defined by the State of Wisconsin licensing requirements, that person shall immediately document and report such behavior to the Ombudsperson, who shall immediately report the behavior to the parent or guardian of the child(ren). -An investigation shall be conducted as if a complaint was filed. If the behavior witnessed constitutes child abuse or neglect, the staff member shall report in accordance with Section 8-1.

Article ~~XHXI~~. Parent/Teacher Organization

~~I211~~-1. The Department shall form a parent/teacher organization for the purpose of gathering and sharing information, addressing concerns, and planning activities to enhance or improve the Department. The first meeting shall be set by the Department. Thereafter, those involved in the parent/teacher organization shall agree to a convenient time and place for all future meetings.

Article ~~XHXII~~. Enforcement

~~I312~~-1. Any Tribal employee found violating this Policy or retaliating against the children or family involved in a complaint shall be subject to discipline in accordance with the Tribe's personnel policies and procedures.

End.



Legislative Operating Committee

July 15, 2015

Petition: Constitution Amendments in Regard to Membership

Submission Date: August 13, 2014

Public Meeting:
 Emergency Enacted:

LOC Sponsor:

Summary: *The Petition is to change the Oneida Constitution and Bylaws in regards to membership.*

8/13/14 OBC: Motion by Vince DelaRosa to accept the petition and send it on for the appropriate analyses to be completed and to come back to the Business Committee in 30 days, seconded by Melinda J. Danforth. Motion carried unanimously.

9/24/14 OBC: Motion by Fawn Billie to defer Michelle Danforth's Petition to change the Oneida Constitution and By-Laws in regards to membership to the next regular Business Committee meeting, seconded by Brandon Stevens. Motion carried unanimously.

10/01/14 LOC: Motion by Tehassi Hill to forward the memo to the Oneida Business Committee regarding amending the Constitution and Bylaws; seconded by Fawn Billie. Motion carried unanimously.

10/8/14 OBC: Motion by Trish King to defer Michelle Danforth's Petition to change the Oneida Constitution and By-Laws in regards to membership to the next regular Business Committee meeting, seconded by Tehassi Hill. Motion carried unanimously.

10/22/14 OBC: Motion by Melinda J. Danforth to accept the legislative, fiscal and legal analyses as provided for this petition and direct the Tribal Secretary to provide an update at the next Business Committee meeting on the update of the conversation with the petitioner, seconded by Tehassi Hill. Motion carried unanimously.

11/12/14 OBC: Motion by Melinda J. Danforth to accept the update as information and to direct the Tribal Secretary to provide a final recommendation on this item at the December 10, 2014, Business Committee meeting, seconded by Jenny Webster. Motion carried unanimously.

12/10/14 OBC: Motion by Jenny Webster to accept the update as information and direct the Tribal Secretary to bring back the final recommendation when it is ready, seconded by Tehassi Hill. Motion carried unanimously.

Next Steps:

- Review memorandum and direct next steps.

Legislative Operating Committee



Agenda Request Form

- 1) Request Date: July 10, 2015
- 2) Contact Person(s): Susan White Dept: Trust
 Phone Number: 920-490-3934 Email: SWhite@Oneidanation.org
- 3) Agenda Title: Per Capita Law Amendments
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
Clarifies minor and majority age beneficiary references as they relate to deferrals and hardships. Changes in frequency of form requirements and in Elder distributions.
Incorporating fees for stop payments and closed bank accounts. The enclosed resolutions require review based on recommended amendments and original intent, as they apply to current law.

List any supporting materials included and submitted with the Agenda Request Form

- | | |
|--------------------------------------|------------------------------------|
| 1) <u>Draft amendments to PC Law</u> | 3) <u>BC Resolution 1-28-04-A</u> |
| 2) <u>Per Capita Trust Agreement</u> | 4) <u>BC Resolution 11-06-02-A</u> |
- 5) Please List any laws, ordinances or resolution that might be affected:
Per Capita Law
 - 6) Please List all other departments or person(s) you have brought your concern to:
Child Support, Central Accounting
 - 7) Do you consider this request urgent? Yes No
 If yes, please indicate why: Reduce resource costs & produce more efficiency

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester: 7/10/2015

Please send this form and all supporting materials to:

LOC@oneidanation.org
 or
Legislative Operating Committee (LOC)
 P.O. Box 365
 Oneida, WI 54155
 Phone 920-869-4376

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Chapter 9
PER CAPITA
Shakotiwí? Stawihé Olihwá'ke
Issues concerning where they give the money

9.1. Purpose and Policy	9.5. Per Capita Payments
9.2. Adoption, Amendment, Repeal	9.6. Minors and Legally Incompetent Adults
9.3. Definitions	9.7. Payments
9.4. General	

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9.1. Purpose and Policy

9.1-1. *Purpose.* The purpose of this Law is:

- (a) To specify the procedure to be followed in the event that per capita payments are issueddistributed by the Tribe; and
- (b) To clearly state the responsibilities of the various entities in the distribution or maintenance of any such per capita payments.

9.1-2. *Policy.* It is the policy of the Oneida Tribe of Indians of Wisconsin to have a consistent methodology for issuanedistribution of per capita payments, including payments derived from Gaming Revenues and regulated by the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et.seq.

9.2. Adoption, Amendment, Repeal

9.2-1. This Law is adopted by the Oneida Business Committee by resolution BC-7-12-00-B and amended by resolution BC-11-06-02-A, BC-6-16-04-C, BC-04-22-09-A, BC-05-09-12-B, BC-08-14-13-D and _____.

9.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

9.2-3. 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.

9.2-4. 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.

9.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

9.3. Definitions

9.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Adult" shall mean those Tribal members who are at least eighteen (18) years old on or before September 1st of a given year.
- (b) "Arrears" shall mean the amount of money a person has not paid pursuant to the most recent child support court order against him or her.
- (c) "Court of competent jurisdiction" shall mean the Tribe's judicial system or another court which has the jurisdiction to hear and determine a particular legal proceeding.
- (d) "Day" shall mean calendar days, unless otherwise specifically stated.

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 + after w-cjl changes
 done 01/02/15.

- 36 (e) "Distribution" shall mean the transfer of per capita or minors trust funds to a Tribal
- 37 member.
- 38 (f) "Elder" shall mean those Tribal members who are age sixty-two (62) years or over, or
- 39 sixty-five (65) years or over, as of December 31st of a given year.
- 40 (g) "Legally incompetent adult" shall mean a Tribal member at least eighteen (18) years
- 41 old who has been declared incompetent by a court of competent jurisdiction because he
- 42 or she is temporarily or permanently impaired to the extent that the person lacks
- 43 sufficient understanding to make or communicate responsible personal decisions.
- 44 (h) ~~Minor~~Majority Age Beneficiary" shall mean a Tribal member who has ~~not yet~~
- 45 reached the age of eighteen (18) years by September 1st of a given year.
- 46 (i) "Minors trust" shall mean that account or those accounts established by the Trust
- 47 Committee for the benefit of Tribal members who are minor beneficiaries.
- 48 (j) "Per capita payment" shall mean the amount authorized by the General Tribal Council
- 49 to be distributed to a Tribal member or deposited to a trust account.
- 50 (k) "Tribal" or "Tribe" shall mean the Oneida Tribe of Indians of Wisconsin.
- 51 (l) "Tribal entity" shall mean a department, board, committee, or commission of the
- 52 Tribe.
- 53 (m) "Trust account" shall mean that account or those accounts established by the Trust
- 54 Committee for the Tribal members benefit of Tribal members who are identified as
- 55 needing trust accounts, for example, ~~minor~~beneficiary(ies) and legally incompetent
- 56 adults.
- 57 (n) "Trust Committee" shall mean that body designated by the General Tribal Council to
- 58 manage the trust funds for the Oneida Tribe of Indians of Wisconsin and their Tribal
- 59 membership, and which is also responsible for the enrollment records of the Oneida
- 60 Tribe. This Committee is also known as the Oneida Trust/Enrollment Committee.
- 61 (o) "Pooled Account" shall mean the account set up by Resolution BC 1-28-04-A.
- 62 (p) "Beneficiary(ies)" shall mean enrolled members of the Oneida Tribe of Indians of
- 63 Wisconsin who are eligible to receive a Per Capita Distribution in any year in which any
- 64 such Distribution is made, and who have not yet attained the age of eighteen years by
- 65 September 1st of the year in which such Distribution is made.

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66
 67 **9.4. General**

- 68 9.4-1. This section shall set forth the responsibilities delegated under this law.
- 69 9.4-2. *Supersedes.* This law shall supersede any contradictory language in any other per capita
- 70 payment plan.
- 71 9.4-3. *Budgetary Limitations.* This law shall not be construed as mandating a per capita
- 72 payment. Per capita payments shall be issued only at the direction of the General Tribal Council
- 73 through adoption of a resolution.
- 74 9.4-4. *Oneida Trust Committee.* The Trust Committee shall be delegated the following
- 75 responsibilities in regards to per capita activities. Any responsibility not specifically identified,
- 76 and reasonably related to the activities identified herein, shall be considered a Trust Committee
- 77 responsibility.

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- 78 (a) Fiduciary responsibility to manage trust accounts related to per capita
- 79 ~~distributions~~ payments.
- 80 (b) Maintenance of the membership rolls in such a manner as to accurately identify to
- 81 whom per capita ~~distribution~~ payments will be made.
- 82 (c) Holding administrative hearings regarding challenges to ~~payment~~ ~~distribution~~ or non-
- 83 ~~payment~~ denial of per capita or minor beneficiary ~~distributions~~ payments.
- 84 (d) Development of Tribal Revenue Allocation Plans necessary to make per capita
- 85 ~~distributions~~ payments.

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86 9.4-5. *Oneida Business Committee.* The Oneida Business Committee shall be identified as
 87 having the following responsibilities regarding per capita activities. Actions reasonably related
 88 to activities defined herein, shall be considered an Oneida Business Committee activity.

- 89 (a) Identification of funds for allocation for per capita payments.
- 90 (b) Approval of Tribal Revenue Allocation Plan and forwarding the Tribal Revenue
- 91 Allocation Plan for approval by the Bureau of Indian Affairs. ~~(BIA still required? Per~~
- 92 ~~IGRA?)~~
- 93 (c) Transfer of funds for the trust account to the Trust Committee in a timely manner and
- 94 within a reasonable time frame.

95 9.4-6. *Attachments.* Per capita payments are considered benefits offered by the Tribe to the
 96 membership. All ~~distributions of per capita payments~~, except ~~payments~~ ~~distributions~~ to or from a
 97 trust account (~~including adult trust accounts?~~), are subject to attachment prior to distribution in
 98 accordance with this section.

- 99 (a) Per capita attachments may only be ordered by the Tribe's judicial system for the
- 100 following purposes, and in the following order:
- 101 (1) Child support arrears ordered by a court of competent jurisdiction.
- 102 (2) Debt owed to a Tribal entity that is past due.
- 103 (A) "Debt owed to a Tribal entity" includes any money owed to a Tribal
- 104 entity and any fines that have been issued by a Tribal entity.
- 105 (3) A federal tax levy.
- 106 (b) After child support arrears are fully satisfied, any remaining per capita shall be used
- 107 for the payment of debt owed to a Tribal entity.
- 108 (1) If a Tribal member owes arrears in more than one (1) child support order, the
- 109 per capita shall be equally divided based on the number of court orders under
- 110 which arrears are owed.
- 111 (2) If a Tribal member owes debt to more than one (1) Tribal entity, the per
- 112 capita shall be equally divided based on the number of entities that are owed debt.
- 113 (c) After child support arrears and debt owed to a Tribal entity have been fully satisfied,
- 114 any remaining per capita shall be used for the payment of a federal tax levy.
- 115 (d) *Child Support Attachments.* All requests for attachments for child support arrears
- 116 shall be submitted to the Oneida Nation Child Support Agency. The claimant or a
- 117 representative of the entity designated to receive the arrears may request the attachment.
- 118 (1) After receiving an initial attachment request for child support arrears, the
- 119 Oneida Nation Child Support Agency shall send a one-time notice ~~and a voluntary~~

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~~federal income tax withholding request form~~ to those Tribal members whose per capita payment will be attached for child support arrears.

~~(2) For Federal Tax Withholding refer to 9.4-7(a).~~

~~(2)(3) The Oneida Nation Child Support Agency shall prepare a certified accounting of all attachment requests and forward the accounting to the Tribe's judicial system.~~

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~~(3)(4) The Tribe's judicial system shall issue an order of determination and return it to the Oneida Nation Child Support Agency in time for the Oneida Nation Child Support Agency to attach to the next distribution.~~

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~~(4) After the child support arrears have been satisfied, if an attachment request is submitted for the same Tribal member's per capita based on new child support arrears, the Oneida Nation Child Support Agency shall issue another one-time notice and federal income tax withholding form in accordance with 9.4-6(d)(1) above.~~

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(e) *Tribal Debt and Federal Tax Levy Attachments.* All requests for attachments for debt owed to a Tribal entity or to the federal government for a federal tax levy shall be submitted to the Tribe's judicial system. The claimant or a representative of the entity designated to receive the claim may request the attachment.

~~(1) For Federal Tax Withholding refer to 9.4-7(a). A Tribal member whose per capita payment will be attached for Tribal debt or a federal tax levy may make a request to the Enrollment Department to withhold federal income tax from his or her per capita payment.~~

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~~(2) The Tribe's judicial system shall issue an order of determination and forward it to the Enrollment Department at least one month prior to a distribution in time for the Enrollment Department to attach the next distribution.~~

(f) The Tribe's judicial system may order attachments against per capita distributions payments of Tribal members who do not return a notarized membership distribution form membership payment form Notice and Address Verification Form as required under 9.5-32(b) or who refuse a payment distribution under 9.5-32(e). If the amount of the per capita payment distribution exceeds the amount of the attachment, the remaining unclaimed balance shall remain available as identified in 9.5-32(c) and the remaining refused balance shall be deposited in accordance with 9.5-32(e)(2).

9.4-7. *Federal Income Tax Withholding.*

(a) *Voluntary.* Federal income tax may be withheld from a per capita distribution only when the following applies:

(1) Tribal Members who do not have an order of determination attached to their per capita distribution may submit a request to have federal income tax withheld. The request shall be received in accordance with the distribution deadline established by the Enrollment Department.

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(2) Tribal Members who have an order of determination attached to their per capita distribution must comply with the deadline established by Child Support or the Tribal Judiciary. Voluntary Federal income tax withholding requests received by the

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162 tribal entities established deadline, shall be applied to the per capita distribution before
 163 any attachments are applied.

164 If a Tribal member requests voluntary federal income tax withholding, federal
 165 income tax shall be withheld from per capita payments. The withholding request can be
 166 updated at any time, however an update shall be made at least twenty nine (29) days
 167 before a distribution in order to be applied to a per capita payment.

168 (b) *Mandatory.* A member who meets all of the requirements of this law, but refuses to
 169 provide the Enrollment Department with his or her social security number or Individual
 170 Tax Identification Number shall have mandatory federal income tax withheld from his or
 171 her distribution per capita payment, as required by federal law.

172 (c) Federal income tax withholding, whether voluntary or mandatory, shall be applied to
 173 the per capita amount before any attachments are applied.

174 (d) *IRS Publication 15a.* ~~In instances where federal income tax is withheld from a per~~
 175 ~~capita payment, the~~ The most recent edition of IRS Publication 15a shall be complied
 176 with in instances where federal income tax is withheld from a distribution.

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 178 **9.5. Distribution of Per Capita Distributions Payments**

179 9.5-1. *General.* This section shall set forth the processes to follow when a per capita payment is
 180 issued distributed.

181 ~~9.5-2.2. *Trust Committee.* The Trust Committee is responsible for the protection and~~
 182 ~~preservation of per capita payment funds for minors. As part of that responsibility, the Trust~~
 183 ~~Committee is responsible for the completion and issuance of any necessary reports to the minors.~~
 184 ~~The Trust Committee shall develop standard reporting procedures which establish valuation~~
 185 ~~dates, frequency of reports and identify data critical to the completion of reports. Such reporting~~
 186 ~~responsibilities may be delegated to duly selected vendors.~~

187 9.5-3. *Deadlines.* The following deadlines shall apply in regards to the annual per capita
 188 distribution payment. Where the dates fall on a Saturday, Sunday, or holiday the deadline shall
 189 be construed to be the close of business on the following business day. For any additional per
 190 capita distributions payments, the Trust Committee may establish dates and deadlines associated
 191 with those distributions payments, as needed.

192 (a) *Eligibility.* Eligibility falls into the following categories:

193 (1) *Filing Deadlines.* An individual who is not a Tribal member shall file a new
 194 enrollment application no later than the close of business on January 31st in order
 195 to be considered eligible for the following per capita distribution payment.

196 (2) *Enrollment Deadlines.* An individual is considered enrolled for the purposes
 197 of a per capita distribution payment if the individual has been approved for
 198 enrollment by a vote of the Oneida Business Committee by March 31st. (Still
 199 going with March 31?)

200 (3) *Dual Enrollment.* A member who is dually enrolled with the Tribe and
 201 another (Federally Recognized?) Indian Tribe is not eligible for a per capita
 202 distribution payment (this includes a deposit to a minor trust account) unless his or
 203 her relinquishment from the other tribe has been processed and written

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verification that the member is no longer enrolled with that tribe has been received by the Enrollment Department by September 1st.

(b) Payment Claims. Every enrolled Tribal member, who is eighteen (18) years of age by September 1st can claim a per capita distribution through two (2) methods.

(1) By July 1st the Enrollment Department will mail Membership Payment Forms to those who do not have a direct deposit record on file with the Enrollment Department.

(A) Tribal members shall notarize and return the Membership Payment forms and it must be received by the Enrollment or Trust Department by close of business on September 1st.

(2) By July 1st the Enrollment Department will provide Receipts to those who have a direct deposit record on file with the Enrollment Department. (Note: we don't have to worry about Incomps. but we will have to monitor for Relinquished-as they have to be manually removed prior to distribution)

(c) Direct Deposit. Direct Depositing is available and Tribal Members can submit a Direct Deposit form at any time. All Direct Deposit forms must be received by the per capita distribution deadline established by the Enrollment Department in order to be applied.

Notice and Address Verification. By July 1st, The Enrollment Department shall send a one-time Notice and Address Verification Form to all Tribal members who will be at least eighteen (18) years old on September 1st. Tribal members shall notarize and return the Notice and Address Verification Form by close of business on September 1st to be eligible for the next per capita payment. After the form is sent, the Enrollment Department is not required to make future mailings of the form to Tribal members, except as provided in 9.5-32(b)(1) below.

(1) The Enrollment Department shall send a one-time Notice and Address Verification Form to all legally competent Tribal members who become eligible to receive a per capita payment distribution by turning eighteen (18) years of age after the September 1st deadline in 9.5-32(b). The Tribal member shall notarize and return the Notice and Address Verification Form by close of business of the following September 1st to be eligible for the next per capita payment distribution.

(2) The annual per capita payment shall be distributed on or before September 30th to those individuals who have returned their Notice and Address Verification Forms in accordance with 9.5-32(b). First time elder per capita payments for those Tribal members who return a form and turn sixty-two (62) or sixty-five (65) after September 30th, and through December 31st, shall be distributed at the end of the month of the elder's birth date. (Wish to discontinue & pay these persons in September. This would result in late elders submissions having to wait until the March Supplemental distribution for processing)

(3) A Tribal member who has returned a form in accordance with this section shall be responsible for notifying the Enrollment Department, in writing, of any future changes made by the Tribal member that will affect the Tribal member's

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receipt of a per capita payment.
 (4) A Tribal member who has not returned a form in accordance with this section shall not receive a per capita payment distribution until he or she contacts the Enrollment Department and completes any required forms to request a per capita payment.
 (5) Any payment distribution that is returned to the Tribe shall revert to an account for those members who have not received their payment distribution, but have not yet become ineligible for the payment distribution.

(c) *Request for Prior Payment Distribution.*

(1) *Unclaimed Payment.* A request for a prior payment, for which a member was eligible, but ~~did that was~~ not claim claimed or fully attached, shall be filed by September 1st of the next year. For example, if a payment's original distribution date is in 2000, then the deadline is September 1, 2001. If a request is not received by the deadline date, the payment will expire and the funds shall be deposited in a pooled account in accordance with 9.5-65.

(2) *Un-cashed Payment Distribution.* A request for a prior payment, ~~for~~ which a member already claimed, but did not redeem, shall be filed by September 1st of the next year. For example, if a payment's original distribution date is in 2000, then the deadline is September 1, 2001.

(A) A payment distribution may only be reissued once. After the payment distribution is reissued the member has ninety (90) days to redeem it or the payment will expire and will not be reissued. The Expired funds shall then be deposited in a pooled account in accordance with 9.5-65.

(B) Any fees associated with reissuing a payment distribution shall be deducted from the reissued payment distribution. (This may include stop payment and tribal department costs for ACH rejections) The Tribe may waive fees if a check is reissued due to an error on their behalf. The reissue shall not count against the member as identified in 9.5-2 (c) (2) (A).

(d) *Prior Payments Distributions.*

(1) *Prior Payments Distributions: Elders.* Prior payment distributions requested by eligible elders on or before the twentieth (20th) day of the month shall be distributed by the last business day of that month. Prior payment distributions requested by elders after the twentieth (20th) day of the month shall be distributed by the last business day of the next month. (Wish to discontinue. Pay all submitted claims in September [including the Oct-Dec birthday elders])

(2) *Prior Payments Distributions: Non-Elders.* Prior payment distributions requested by eligible Tribal members who are not elders shall be distributed as follows:

(A) By March 31st, if the prior payment request is received after September 1st, but on or before March 1st.

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288 (B) By September 30th, if the prior ~~payment~~ request is received after
 289 March 1st, but on or before September 1st.

290 (e) ~~Refusal of Payments-Distributions~~. A Tribal member may refuse any per capita
 291 ~~payment~~distribution due to him or her, including a trust account ~~payment~~distribution, by
 292 completing a refusal form developed by the Enrollment Department. However, if the
 293 Tribe's judicial system has approved the attachment of the Tribal member's
 294 ~~payment~~distribution, only the remaining portion of the per capita ~~payment~~ distribution, if
 295 any, may be refused.

296 (1) Upon submitting the refusal form to the Enrollment Department, the Tribal
 297 member waives his or her right to the specific ~~payment~~distribution as indicated on
 298 the form.-

299 (2) Refusal forms must be received by the per capita distribution deadline
 300 established by the Enrollment Department.

301 (23) A refused ~~payment~~distribution shall be deposited in a pooled account in
 302 accordance with 9.5-65.

303 9.5-43. *Deceased Members*. A Tribal member shall be considered ineligible to receive a per
 304 capita payment if his or her date of death occurs on or before the ~~payment~~-distribution date. A
 305 deceased Tribal member's per capita payment shall be deposited in a pooled account in
 306 accordance with 9.5-65.

307 9.5-54. *Adult Relinquishment*. A Tribal member is ineligible for any future or prior per capita
 308 ~~payments~~-distributions as of the date his or her Tribal membership ~~is was~~ -relinquished. Funds
 309 set aside for a former Tribal member's per capita payment shall be deposited in a pooled account
 310 in accordance with 9.5-65.

311 9.5-65. *Pooled Account*. Upon failure to file a request for a prior ~~payment~~distribution or trust
 312 account funds within the time provided under this law, the member's eligibility for the prior
 313 ~~payment~~-distribution or trust account funds shall expire. Any unclaimed funds held in reserve
 314 for such claims shall be deposited in a pooled account to be used for a purpose designated by the
 315 General Tribal Council. Management of the pooled account shall be the responsibility of the
 316 Trust Committee. (Need to compare this language of depositing "unclaimed funds" to the Per
 317 Capita Trust Agreement language of depositing only "interest")
 318

319 **9.6. Minors and Legally Incompetent Adults**

320 9.6-1 *General*. This section shall set forth a consistent method to protect and preserve the
 321 interests of minors and legally incompetent adults in any per capita payment ~~to~~for which they
 322 may be ~~entitled~~eligible. If a per capita ~~payment~~-distribution includes minors and/or legally
 323 incompetent adults as eligible recipients, those per capita ~~payments~~-distributions shall be
 324 ~~deposited~~distributed into a trust account.

325 9.6-2. *Trust Committee*. The Trust Committee is responsible for the protection and preservation
 326 of per capita distributions for minors and legal incompetents. As part of that responsibility, the
 327 Trust Committee is responsible for the completion and issuance of any necessary reports to the
 328 minors and legal incompetents. The Trust Committee shall develop standard reporting
 329 procedures which establish valuation dates, frequency of reports and identify data critical to the

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330 completion of reports. Such reporting responsibilities may be delegated to duly selected
 331 vendors.

332 (a) The Trust Committee shall establish a standard operating procedure which shall
 333 identify the set-up and monitoring of the trust accounts. The Trust Committee may
 334 choose to maintain pooled or individual accounts, separate accounts for each
 335 paymentdistribution or series of paymentsdistributions, or any other combination which
 336 is in the interests of the recipients and which is consistent with the terms of the
 337 Minor's Per Capita Trust Agreement and the Trust Committee's Investment Policy.

338 (b) Costs of Account. The administrative costs related to a trust account shall be defined
 339 and allocated in accordance with the Minor's Per Capita Trust Agreement. No member
 340 who has funds in a trust account shall be guaranteed the specific amount of the per capita
 341 paymentdistribution.

342 (c) Deceased Member. The value of a member's trust account shall be inheritable on the
 343 date of death of the member. The Trust Committee shall establish a standard operating
 344 procedure which shall identify the processes by which an application for
 345 paymentdistribution shall be made. The payment-trust account funds shall be
 346 issueddistributed either in the name of the deceased member or the estate of the
 347 individual.

348 (1) If the trust account funds are not claimed by the estate of the deceased within
 349 one (1) year after the date of the member's death, the funds shall be deposited in
 350 accordance with 9.5-65.

351 9.6-23. *Minors.*

352 (a) *Disbursement of a Minor's Trust.* A Tribal member shall be eligible to receive any
 353 funds in the trust account established in his or her name when the member is eighteen
 354 (18) years old or older and provides the Enrollment or Trust Department with proof that
 355 he or she has obtained a High School Diploma, a High School Equivalency Diploma or a
 356 General Equivalency Diploma. The funds shall be disburseddistributed in accordance
 357 with an established paymentthe distribution schedule developed and approved by the
 358 Trust Department and Trust Committee.

359 (1) Majority Age Beneficiaries Eligible can claim a Minor's Trust Account
 360 distribution by submitting a distribution form by the distribution deadline
 361 developed and approved by the Trust Department and Trust Committee.

362 (2) Tribal members who are at least eighteen (18) years old, but do not provide
 363 proof of having obtained a High School Diploma, a High School Equivalency
 364 Diploma or a General Equivalency Diploma shall not be eligible to receive any
 365 trust funds established in their name until their twenty-first (21st) birthday.

366 (2) *Exceptions.* The following Tribal members may receive any trust funds
 367 established in his or her name at the age of eighteen (18) without providing the
 368 Enrollment or Trust Department with proof that he or she has obtained a High
 369 School Diploma, a High School Equivalency Diploma or a General Equivalency
 370 Diploma:

371 (A) Those who were in the graduating class of 2009 or a prior class.

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372 (B) Those who are declared legally incompetent adults, provided that, the
 373 requirements of 9.6-34 are met. Any funds in the minor's trust account for
 374 a Tribal member who is declared a legally incompetent adult shall be put
 375 into a trust account for the legally incompetent adult.

376 (C) Those who have a learning disability or other disability, provided he
 377 or she presents a certificate of attendance showing that he or she has
 378 attended twelve (12) years of school. That certificate shall be treated as a
 379 High School Diploma.

380 (3) *Fraudulent Proof of a Diploma.* In the event the Enrollment or Trust
 381 Department believes that an individual has submitted fraudulent proof that he or
 382 she has received a High School Diploma, High School Equivalency Diploma or a
 383 General Equivalency Diploma, the Trust Department shall notify the Tribal
 384 member that they are investigating the proof to verify its authenticity. If the proof
 385 is deemed fraudulent, the Trust Department shall:

386 (A) Withhold ~~payment~~distribution of the trust account funds, ~~if not~~
 387 ~~already paid to the Tribal member,~~ until the requirements of this Law
 388 have been met.

389 (B) Impose a fine against the Tribal member of one-third (1/3) of the
 390 Tribal member's trust account funds.

391 (C) Notify the Tribal member of the following:
 392 (i) the proof has been deemed fraudulent;
 393 (ii) ~~payment~~distribution of the trust account funds, ~~if not already~~
 394 ~~paid to the Tribal member,~~ will not occur until the Tribal member
 395 submits valid proof of a diploma or he or she turns twenty-one
 396 (21);
 397 (iii) a fine against the Tribal member of one-third (1/3) of the
 398 Tribal member's trust account funds will be imposed;
 399 (iv) he or she can appeal the Trust Department's decision to the
 400 Trust Committee; and
 401 (v) how to appeal the decision, including any applicable time
 402 limits.

403 (D) Take action to have the Tribal member's future per capita payments
 404 attached, in accordance with this Law, until the fine is satisfied.

405 (E) Deposit any funds collected to pay a fine imposed under this section
 406 in a pooled account in accordance with 9.5-65.

407 (b) *Deferral Elections.* An individual may postpone ~~payment~~distribution of his or her
 408 trust account to a later date by entering into a deferral election. Deferral elections are
 409 subject to the Tribal Allocation Plan and the rules and restrictions set forth within any
 410 applicable trust agreement.

411 (c) *Unclaimed Minors Trust.* Except as provided for in 9.6-23(c)(1) below, any funds in
 412 a minor's trust account that are not claimed within one (1) year after the beneficiary's
 413 twenty-first (21st) birthday shall be deposited in a pooled account in accordance with 9.5-

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(1) *Exception.* An individual who was at least eighteen (18) but not yet twenty-six (26) years old on May 6, 2009 shall have until his or her twenty-sixth (26th) birthday to file a claim for any funds in the minors trust account in his or her name.

(d) *Relinquishment.* Upon a minor's relinquishment of Tribal membership, the following provisions shall apply:

(1) Any funds in a trust account for the minor shall be deposited in a joint savings account in the name of the Trust Committee and the former Tribal member.

(2) The former Tribal member shall be eligible to claim the joint savings account in accordance with section 9.6-23(a).

(3) Accounts shall be held until one (1) year after the former Tribal member turns twenty-one (21) years old. Any fees necessary for the establishment and maintenance of such an account shall be allocated to the account in accordance with the procedures established by the Trust Committee.

(4) Any funds in a joint savings account that remain unclaimed by the former Tribal member one (1) year after his or her twenty-first (21st) birthday shall be deposited in accordance with 9.5-65.

(e) Tribal members who do not claim their trust fund monies after reaching the age of eighteen (18) shall receive regular per capita payments, if they meet the requirements for an adult Tribal member to receive a per capita payment as set out in this Law.

9.6-34. *Legally Incompetent Adults.*

(a) When an adult is declared legally incompetent, any per capita payments-distributions that are claimed on his or her behalf shall be placed in distributed to a trust account for health, welfare and/or education expenses. The Trust Committee shall develop guidelines to determine if an expense qualifies for reimbursement through from an established a-trust account fund payment distribution.

(1) The guardian of a legally incompetent adult shall file a petition with the Trust Department when requesting distributions from such person's trust account. The guardian shall provide the Trust Department with either or both of the following:

(A) an account, including receipts, of all expenditures made on behalf of the legally incompetent adult that have not been reimbursed from the trust account.

(B) a written request, including sufficient, current information about a specific need for which the advance distribution will be used. Any advance-distributions may be disbursed jointly to the guardian and the provider or institution providing the specific services or the amount disbursed may be paid directly to the provider or institution.

(2) The Trust Director or his/her designee shall either grant or deny the request within ten (10) business days.

(A) If the Trust Director approves a distribution request, the funds shall be disbursed within thirty (30) days after the approval. The Trust Director

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456 may, with the approval of the Trust Committee, authorize a regular
 457 distribution from the trust account for a legally incompetent adult's
 458 benefit.

459 (B) If the Trust Director denies a distribution request, ~~he or she shall send~~
 460 a denial and the reasons for the denial shall be sent, by registered mail
 461 (return receipt requested), ~~the denial and the reasons for the denial to the~~
 462 guardian within ten (10) business days after the decision is made.

463 (3) *Appeals.* A guardian whose petition for distributions is denied may file an
 464 appeal with the Trust Committee within ten (10) business days of the receipt of
 465 the denial.

466 (b) If a court of competent jurisdiction determines that an adult Tribal member is no
 467 longer legally incompetent, the Tribal member shall provide the Enrollment or Trust
 468 Department with a certified copy of the order. Any funds in the trust account in the
 469 member's name shall be ~~disbursed~~distributed to the Tribal member, provided that the
 470 Tribal member is otherwise eligible for the ~~payment-distribution~~ under this Law.~~(Can~~
 471 someone explain how a person would not be eligible for the distribution?)

472 (c) *Relinquishment.* Upon a legally incompetent adult's relinquishment of Tribal
 473 membership, any funds in a trust account for the legally incompetent adult shall be
 474 ~~disbursed~~distributed to the guardian of the legally incompetent adult.
 475

476 **9.7. Payments**

477 9.7-1. *General.* This section shall set forth the responsibilities of the various departments and
 478 committees when a per capita ~~payment-distribution~~ is issued.

479 9.7-2. *Enrollment Department.* The Enrollment Department is responsible for the following
 480 activities when a per capita ~~payment-distribution~~ is approved:

- 481 (a) Developing and finalizing a list of the eligible Tribal members broken down into the
- 482 following categories: minors, incompetent adults, adults and elderly.
- 483 (b) Providing the finalized list of the number of eligible Tribal members to the Trust
- 484 Department and the Accounting Division.
- 485 (c) Entering address and account information into the Enrollment data base.
- 486 (d) ~~Processing the payment and distributing all payments on the same day~~distribution
 487 data and forwarding to the Accounting Division.

488 9.7-3. *Trust Department.* The Trust Department is responsible for the following activities when
 489 a per capita ~~payment-distribution~~ is approved:

- 490 (a) Upon receipt of the number of eligible members to receive a per capita ~~payment~~
 491 distribuion, ensuring the availability and liquidity of funds for a funds transfer of the trust
 492 funds under the authorization/jurisdiction of the Trust Committee.
- 493 (b) Providing funds transfer instructions to the relevant initiating institution: the
 494 custodial bank or the Oneida Accounting Division.
- 495 (c) Working with the Trust Committee to establish any necessary trust accounts.
- 496 (d) Monitoring all accounts for the purposes of necessary reports, claims and
 497 ~~payment~~distribution verification.

Draft 2, 7/9/15
 † after w-cjl changes
 done 01/02/15.

498 9.7-4. *Accounting Division.* The Accounting Division is responsible for the following activities
 499 when a per capita ~~payment distribution~~ is approved:

- 500 (a) Upon receipt of funds transfer instructions from the authorizing entity, initiating and
- 501 completing the funds transfer. The physical movement of funds must happen no later
- 502 than one (1) business day prior to the distribution date of the payment.
- 503 (b) Recording issued, voided and stale dated distributions on the General Ledger.
- 504 (c) Completing bank account reconciliations.

505 9.7-5. *Tribal Treasurer.* The office of the Tribal Treasurer shall be responsible for the
 506 identification of funds and the timely transfer of the necessary amount of relevant funds to the
 507 Trust Committee and the Accounting Division. ~~The relevant funds shall be segregated and~~
 508 ~~obligated for the per capita payments and are those necessary to:~~ consistent with this Law.

- 509 (a) ~~Make a payment to those eligible Tribal members who are not minors or incompetent~~
- 510 ~~adults.~~
- 511 (b) ~~Cover unverified member payments for those members who do not have current~~
- 512 ~~contact information on file with the Enrollment Department.~~

513
 514 *End.*
 515
 516

-
- Adopted - BC-7-12-00-B
 - Emergency Amendments - BC-01-03-01-B
 - Emergency Amendments - BC-2-28-01-E
 - Amendments - BC-11-06-02-A (Elder Per Capita)
 - Emergency Amendments - BC-6-25-03-G (Child support priority for attachment)
 - Amendments - BC-6-16-04-C (Child support priority for attachment)
 - Emergency Amendments - BC-9-12-07-A (one-time per capita payment)
 - Amendments - BC-04-22-09-A (High School Diploma; legally incompetent adults)
 - Emergency Amendments - BC-06-08-11-D (Fraudulent diploma; dual enrollments)
 - Emergency Amendments extended - BC-11-09-11-E (Fraudulent diploma; dual enrollments)
 - Amendments Adopted - BC-05-09-12-B (Fraudulent diploma, dual enrollments)
 - Emergency Amendments - BC-09-12-12-A (Change in distribution date) Expired 3-12-13
 - Amendments Adopted - BC-08-14-13-D



ONEIDA TRUST DEPARTMENT

P.O. Box 365 • ONEIDA, WI 54155

PHONE: (920) 490-3935 FAX: (920) 496-7491

Per Capita Trust Agreement
November 9, 1994

Amended December 12, 2001
Amended February 23, 2005
Amended March 24, 2010
Amended February 13, 2013
Amended April 23, 2014
Amended May 13, 2015

This **Trust Agreement** is made and entered into on this 9th day of November 1994 between the **Oneida Business Committee of the Oneida Tribe of Indians of Wisconsin, acting on behalf of the General Tribal Council of Oneida Tribe of Indians of Wisconsin** (“trustor”), and on behalf of the **Beneficiaries** named herein, and the **Oneida Trust Committee of the Oneida Tribe of Indians of Wisconsin** (“trustee”).

In consideration of the following covenants, the **trustor** hereby transfers authority to the **trustee** to administer the trust fund, defined as all Per Capita Distributions of the Oneida Tribe of Indians of Wisconsin which are payable to the **beneficiaries** named herein. The **trustee** accepts the authority to hold these funds in **trust** and to administer these funds, directing investment, reinvestment, and collection of income from the funds. The **trustee** agrees to hold, administer and distribute the **trust** under the following terms and conditions.

Article I. Beneficiaries

The **beneficiaries** of the **trust** shall be all duly enrolled members of the Oneida Tribe of Indians of Wisconsin who are eligible to receive a Per Capita Distribution in any year in which any such Distribution is made, and who have not yet attained the age of eighteen years by September 1st of the year in which such Distribution is made.

Article II. Trust

- A. The per capita distributions(s) to each **beneficiary**, together with the net profit and income accumulations therefrom shall comprise an individual and separate **trust** for that **beneficiary**. Each **trust** shall be administered by the **trustee** as a separate **trust** but without the necessity of the **trustee** making physical division of the assets, unless the **trustee** deems it necessary or advisable to do so. For convenience of administration and investment, the **trustee** in making a division of the **trust** of any part thereof, into shares or trust as may be authorized or directed under these provisions, may allot to the **trusts** an undivided interest in any or all assets of the **trust** and may make joint investment of the funds in the **trusts** and may hold **trusts** as a common fund, dividing the net income and profits proportionately among them.

- B. The Oneida Tribe of Indians of Wisconsin ("Tribe") shall be treated as the grantor and owner of any trusts established herein.
- C. The **trust** hereby established shall be irrevocable.
- D. The **trust** is intended to be a grantor trust, of which the Tribe is grantor, within the meaning of subpart E, subchapter J, Chapter 1 subtitle A of the Internal Revenue Code of 1986, as amended, and shall be construed accordingly.
- E. The Tribe shall have the right at any time and from time to time in its sole discretion, to substitute assets of equal fair market value for any asset held in the **trust**. This right is exercisable by the Tribe in a non-fiduciary capacity without the approval or consent of any person in a fiduciary capacity.

Article III. Distribution, Death of Beneficiary, Discretionary Payments

A. General Rule - Distribution and Valuation:

- (1) Uniform Distribution Date: All distributions under the **trust** other than those subject to subsections B (deferral), or C (pre-18), or as otherwise provided for and approved herein, shall be processed on a uniform annual distribution date to be set by the Trustee on or after the first day of each fiscal year, October 1. Attempts will be made to establish the Trust's uniform distribution date, when practicable, to coincide with the general distribution date(s) for adult per capita payments to the general membership. For any additional per capita payments, including supplemental payments for members who were eligible but did not make a timely submission, the Trust Committee may establish dates and deadlines associated with those payments, as needed.
- (2) Age 18/Minimum Education Requirements: Except for those accounts subject to a deferred election as set forth in B, each **beneficiary** shall receive one **trust** account maturity payment of the monies accumulated in the "Minors Trust Fund," including earnings, for that particular **beneficiary** as of the Uniform Distribution Date on or immediately after reaching the age of eighteen (18) if the **beneficiary** provides the Enrollment Department with proof he or she has obtained a high school diploma, a high school equivalency diploma or a general equivalency diploma at least 30 days prior to the Uniform Distribution Date. If such proof is not provided by the **beneficiary** by such date, his or her **trust** funds shall not be disbursed until the Uniform Distribution Date on or immediately after his or her twenty-first (21st) birthday. Minors declared legally incompetent, and minors who have a learning disability or other disability are excepted from the diploma requirement. Funds for a minor declared legally incompetent shall be put into a trust account for the legally incompetent adult. Minors with a disability providing a certificate of twelve (12) years of school attendance will be treated as high school graduates. All accounts reaching maturity throughout the year will be processed and distributed annually, as of the next Uniform Distribution Date.

- (3) Valuation: The value of the **trust** shall be determined on an annual valuation date, which shall be the 30th day of September of each year, and such other dates as established for the valuation of **trust** assets of the **trustee**.
- (4) Death: Upon the death of a **beneficiary** who has not qualified for distribution of his/her trust, his/her **trust** shall be distributed to the **beneficiary's** estate. In all cases, such payment shall be made in the name of the **beneficiary** to be paid to the estate of the **beneficiary** as soon as reasonably practicable following the date of his/her death.

B. Deferral Elections:

- (1) Uniform Deferral Date: All deferral elections under the **trust** (as described below) must be entered into on or before July 1 of each year for distributions that would otherwise become payable as of the Uniform Distribution Date for the next fiscal year.
- (2) A **beneficiary** that desires to defer payment to a later date than that set forth in A above may enter into a deferral election subject to RAP Section VIII(C)(5) and the rules and restrictions set forth herein.
 - i. Age 18-21: Each **beneficiary** that would otherwise qualify for a distribution will be provided the option to elect up to three one-year deferrals between the ages of eighteen (18) and twenty-one (21), allowing for all or a portion of the **beneficiary's** then remaining account(s) to become payable on the Uniform Distribution Date following age nineteen (19), twenty (20), and/or twenty-one (21). The **beneficiary** must enter into a Deferred Payment Agreement on or before July 1 of the fiscal year in which the **beneficiary** turns age eighteen (18), nineteen (19) and/or twenty (20) as applicable. Deferral elections prior to age eighteen (18) must be signed by the **beneficiary** and the **beneficiary's** parent or legal guardian.
 - ii. Post-Age 21: Each **beneficiary** will be provided the option to extend the deferrals previously elected under (i) above for up to three (3) three-year options allowing for all or a portion of the **beneficiary's** then remaining account(s) to become payable following age twenty-four (24), twenty-seven (27) and/or thirty (30). The **beneficiary** must enter into a Deferred Payment Agreement on or before July 1 of the fiscal year in which the **beneficiary** turns twenty-one (21), twenty-four (24), and/or twenty-seven (27) as applicable.
 - iii. Deferred Payment Agreements shall, except in the case of Unforeseeable Emergency, be irrevocable. Each Deferred Payment Agreement shall be in a form approved by the **trustee**.

- iv. Distribution of a **beneficiary's** benefits shall thereafter be subject to the terms of the Deferred Payment Agreement rather than Section A above.
- (3) Notwithstanding any other provisions of the **trust** to the contrary, benefits may become payable prior to the regular or Deferred Payment dates set forth above, and annual deferral or payment agreements entered into may be modified, in the case of an Unforeseeable Emergency. An Unforeseeable Emergency for this purpose is a severe financial hardship to the **beneficiary** resulting from an illness or accident of the **beneficiary**, the **beneficiary's** spouse, the **beneficiary's** contingent **beneficiary**, or a dependent (as defined in Code Section 152(a)) of the **beneficiary**, loss of the **beneficiary's** property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the **beneficiary**. Any early withdrawal or modification to a Deferred Payment Agreement hereunder on account of an Unforeseeable Emergency approved by the **trustee** shall be limited to the amount necessary to meet the emergency, and modification of a deferral agreement may only be made on a prospective basis. An Unforeseeable Emergency may not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the **beneficiary's** assets (to the extent the liquidation of such assets would not itself cause severe financial hardship). The **trustee**, in its discretion, shall determine when a distribution or modification shall be made pursuant to this Section, but in accordance with rules, procedures and limitations deemed necessary for compliance with the Internal Revenue Code including rules against premature taxation due to constructive receipt and/or economic benefit. The existence of an Unforeseeable Emergency may be made with reference to Code Section 409A.
- (4) A **beneficiary** shall not vest in his benefits until distributed.
- (5) Deferred Payment Agreements shall be administered in a manner designed to avoid premature taxation through IRS doctrines of constrictive receipt and economic benefit. The **trustee** shall implement such election forms and agreements as may be necessary to accomplish the foregoing, and shall have the power to deny distributions that would otherwise not satisfy the foregoing rules.
- (6) **Trust** accounts subject to a deferral election will be invested by the **trustees**. The **trustees** shall invest said accounts in accordance with any investment policy which the Trust Committee may adopt and may amend from time to time. The investment policy may include an investment structure whereby the **trustee** is directed to meet (to the extent possible) hypothetical investment selections made by **beneficiaries** based on limited fund options approved by the **trustees**. The **trust** may also provide earnings credits (and reductions) to a **beneficiary's** account based on the hypothetical earnings / losses attributable to his or her elections. However, the

trustees, rather than **beneficiaries**, shall have ultimate authority as to which investments or investment funds are selected for actual investment of **trust** assets, and the direction of those funds.

C. Early Distributions (pre-18) for Health Education and Welfare:

- (1) The Oneida Trust Committee may order distribution of trust proceeds prior to the beneficiary's attainment of the age of eighteen provided that the Oneida Trust Committee determines that (1) the distributed funds will be used solely for the health, education or welfare of the minor beneficiary, and (2) the distribution is a result of an Unforeseeable Emergency.
- (2) Any petition for early distribution under this provision shall include the following information:
 - i. a detailed budget of monies necessary for the beneficiary's health, education, or welfare;
 - ii. a detailed justification for the need to expend Trust funds to meet the beneficiary health, education or welfare needs, including other possible sources of funds or the lack thereof;
 - iii. a showing that the request is for an Unforeseeable Emergency (as defined in Article III, Section B; and
 - iv. and a showing that all other resources, including federal, state, local, and tribal assistance, have been exhausted.
- (3) The showing of an Unforeseeable Emergency shall be made in accordance with the rules and procedures set forth in Article III, Section B.

D. There shall be no distribution of a **beneficiary's trust** before his/her qualification for distribution under the conditions listed.

Article IV. Additional funds

Additional funds may be transferred to this **trust** in any year in which a Per Capita Distribution is made, or as otherwise directed by the General Tribal Council of the Oneida Tribe of Indians of Wisconsin.

Article V. Accounting by Trustee

- A. The **trustee** shall render an accounting of its administration of this **trust** at thirty (30) day intervals, commencing on October 30, 1994, by delivering to the **trustor** a written accounting of its transactions pursuant to this agreement.
- B. The **trustee** shall, upon written request of a parent or guardian of a **beneficiary**, furnish a copy of the most recent valuation to the parent or guardian of the **beneficiary**.
- C. Each accounting furnished to the **trustor** shall be final and conclusive in respect to the transactions disclosed in that account and as to all **beneficiaries** of the **trust** and, after

settlement of the account by reason of the expiration of the sixty (60) day period after the submission of the accounting, the **trustee** shall no longer be liable to any **beneficiary** of the **trust** in respect to transactions disclosed in the accounting except for the **trustee's** will fraud. However, the **trustee** may at any time during the sixty (60) day period petition the Oneida Appeals Commission for a settlement of its accounts submitted pursuant to this agreement.

Article VI. Trustee Powers and Duties.

To carry out the purposes of this **trust**, the **trustee** is vested with the following powers in addition to powers already specified in this document and to any powers now or in the future conferred by the Oneida Tribe of Indians of Wisconsin or the State of Wisconsin:

- A. To direct the acquisition and holding of any property, real, personal, or mixed, and to direct the operation at risk of the **trust** of any property or business received into the **trust**, as long as the **trustee** deems it advisable to do so, the profit or losses of which will inure to or be chargeable to the **trust**.
- B. To sell, convey, or otherwise dispose of the whole or any part of any property at any time held hereunder at any time for any price, to any party or parties, in any manner, and upon other terms and conditions, as **trustee** shall deem advisable.
- C. To make such purchases or exchanges at any time, for any prices, in any manner and upon other terms and conditions as **trustee** shall deem advisable, and to invest and reinvest in securities, mortgages, insurance, leases, commodities or other evidence of rights, interests or obligations, secured or unsecured, or other property, real, personal, or mixed as **trustee** shall deem advisable, as long as such investment is in accordance with the investment policies of the **trustor**.
- D. To direct the investment and reinvestment of the principal of the **trust** in properties of every kind and nature, including specifically, but not limited to, saving accounts, corporate obligations, and stocks and bonds, which a reasonable person would acquire for their own account, including investments in common trust funds operated by **trustee** where **trustee** deems it in the best interest of the **trust** to do so.
- E. To have the power to exercise, respecting securities, all rights, powers and privileges of an absolute owner, including, but not limited to, vote stock; give proxies; pay calls for assessments; sell or exercise stock subscription or conversion rights; participate in foreclosures, reorganizations, consolidations, mergers, liquidations, pooling agreements, and voting trust and assent to corporate sales and other acts; and in connection therewith, to deposit securities with and transfer title to any protective or other committee under such terms as **trustee** may deem advisable.
- F. To pay or reserve sufficient funds to pay all expenses of management and administration of this **trust**, all or any part of which may, in **trustee's** discretion, be charged either to

income or principal of the **trust**.

- G. All taxes, assessments, fees, charges and other expenses incurred by **trustee** in the administration or protection of this **trust** shall be a charge on the **trust** estate, and prior to final distribution of the **trust** estate shall be paid by **trustee** in full from principal or income or partially from each in such manner as **trustee** in **trustee's** absolute discretion may determine advisable.
- H. To prescribe the manner in which all checks, stock certificates or other instruments may be signed, endorsed or executed by or for the **trustee**. The **trustee** may appoint or employ such agents, agencies, attorney, custodians, employees, assistants, accountants or legal or investment counsel as the **trustee** deems advisable. The **trustee** may make execute or deliver any transfer or their instrument or do any ministerial acts necessary or proper to be done in the execution of any duty imposed upon the **trustee** or for any purpose the **trustee** deems appropriate or desirable. The **trustee** may charge the expense for the above-listed activities to principal or income as the **trustee** shall determine proper.
- I. To do all acts, institute all proceedings, and to exercise all other rights, powers, and privileges that an absolute owner of the property would otherwise have the right to do, subject always to the discharge of the **trustee's** fiduciary obligations.
- J. In investing, reinvesting, purchasing, acquiring, exchanging and selling property for the benefit of this **trust**, **trustee** shall exercise the judgement and care, under the circumstances then prevailing, that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.
- K. The enumeration of certain powers in this agreement shall not limit the general or implied powers of the **trustee**. **Trustee** shall have all additional powers that may be necessary to enable **trustee** to administer this **trust** in accordance with the provisions of this **trust** instrument, subject only to limitations as may be expressly provided herein.

Article VII. Duration of Trustee Powers

All of the rights, powers, authorities, privileges and immunities given to **trustee** by this agreement shall continue after termination of the **trust** created hereby until **trustee** shall made actual distribution of all property held by it hereunder.

Article VIII. Assignment of Trust

The interest of all **beneficiaries** shall vest upon the receipt of funds from the **trust** account of the **beneficiary**.

No **beneficiary** shall have the power to pledge, assign, mortgage, sell or in any manner, transfer or hypothecate any interest which they may have or expect to have in the **trust**.

The interests of the **beneficiaries** shall not be subject in any manner while under the direction of the **trustee** to debts, contracts, liabilities, engagements, obligations or torts of such **beneficiary** nor to the claims of the creditors of the **beneficiary**, nor to the process of law.

**Article IX. Responsibility Regarding Payments to the
Trust Beneficiary When the Tribe is Insolvent.**

- A. The **trustee** shall cease payment of benefits to **trust beneficiaries** if the Tribe is Insolvent. The Tribe shall be considered "Insolvent" for purposes of this **trust agreement** if the Tribe becomes subject to a pending proceeding as a debtor under the United States Bankruptcy Code.
- B. Any Assets held by the **trust** will be subject to the claims of the Tribe's general creditors under federal and other applicable law in the event of insolvency, as defined in Subsection A herein.
- (1) The Chairperson of the Tribe shall have the duty to inform the **trustee** in writing of the Tribe's Insolvency. If a person claiming to be creditor of the Tribe alleges in writing to the **trustee** that the Tribe has become Insolvent, the **trustee** shall determine whether the Tribe is Insolvent and, pending such determination, the **trustee** shall discontinue payment of benefits to **trust beneficiaries**.
 - (2) Unless the **trustee** has actual knowledge of the Tribe's Insolvency, or has received notice from the Tribe or a person claiming to be a creditor alleging that the Tribe is Insolvent, the **trustee** shall have no duty to inquire whether the Tribe is Insolvent. The **trustee** may in all events rely on such evidence concerning the Tribe's solvency as may be furnished to it that provides the **trustee** with a reasonable basis for making a determination concerning the Tribe's solvency.
 - i. If at any time the **trustee** has determined that the Tribe is Insolvent, the **trustee** shall discontinue payments to **trust beneficiaries** and the **trustee** shall hold the assets of the **trust** for the benefits of the Tribe's general creditors; provided that (i) nothing in this **trust agreement** shall in any way diminish any rights of **trust beneficiaries** to pursue their rights as general creditors of the Tribe with respect to benefits due under the **trust**, the Gaming Allocation Plan or otherwise, and (ii) nothing herein shall enhance or grant independent claim rights to the Tribe's general creditors that they otherwise would not have against the Tribe or its assets.
 - ii. The **trustee** shall resume the payment of benefits to **trust beneficiaries** in accordance with Subsection 2 only after the **trustee** has determined that the Tribe is not insolvent (or is no longer insolvent) or after the legal claims of general creditors as satisfied (through payment or dismissal).
- C. Provided that there sufficient assets, if the **trustee** discontinues the payment of benefits

from the **trust** pursuant to Subsection 3b hereof and subsequently resumes such payments, the first payments following such discontinuance shall include the aggregate amount of all payments due to **trust beneficiaries** for the period of such discontinuance, less the aggregate amount of any payments made to **trust beneficiaries** by the Tribe in lieu of the payments provided for hereunder during any such period of discontinuance.

- D. In the event that any payment hereunder are discontinued (and not made up under Subsection 3c above or otherwise, the **trust beneficiaries** shall have (to the extent permitted under applicable law) a continuing claim against the Tribe for the remaining benefits due under the **trust** and or the Gaming Allocation Plan.

Article X. Termination of Trust

Unless terminated as otherwise provided for in this document, this **trust** and all trusts created herein, shall terminate at the date of twenty-two years from the initiation of this **trust**, or at the expiration of one year after the date on which the youngest **beneficiary** named shall qualify for distribution, whichever is later in time.

Upon the termination of this **trust**, all remaining assets of the **trust** shall revert to the General Fund of the General Tribal Council of the Oneida Tribe of Indians of Wisconsin.

Article XI. Liability of Trustee

The **trustee**, while acting under the conditions set forth in this document, shall incur no personal or individual liability to any individual or corporation dealing with the **trustee** in administering this **trust** in accordance with the provisions set out in this document, and may contract in such manner that it shall expressly be exempted from any personal or individual liability, and that its liability shall be limited to the property of the **trust** estate under its control. In no case shall any party dealing with the **trustee** in connection with the **trust** or to whom any part of the **trust** shall be conveyed, sold, leased, or mortgaged by direction of the **trustee**, be obliged to see to the application of any purchase money, rent or money loaned to the **trustee**, or be obliged to see that the terms of this **trust** have been complied with, or to inquire into the necessity or expediency of any act of the said **trustee**. Each **trustee** or successor **trustee** shall be requested and required to post \$50,000.00 bond.

Article XII. Designation of Trustee

The **trustor** designates the Oneida Trust Committee of the Oneida Tribe of Indians of Wisconsin as **trustee**. The **trustee** shall administer and distribute the **trust** under the terms and conditions set out in this agreement.

Article XIII. Resignation or Removal of Trustee

- A. Any **trustee** or successor **trustee** shall have the right to resign any time by giving thirty days written notice thereof to the Trust Committee and the **trustor**.
- B. Any removal of a **trustee** shall be pursuant the Oneida Removal Ordinance.

- C. That upon the resignation, removal, or death of any **trustee** or successor **trustee**, the Chairman of the Oneida Trust Committee will select or nominate a candidate subject to the approval of the Trust Committee. Upon the approval of a successor by the Trust Committee, notice shall be sent to the Oneida Business Committee informing them of the selection of a new Trust Committee member. The successor will then serve out the terms. If the resignation or death occurs with more than one year left of the three (3) year term of the predecessor **trustee**, a new committee member will be elected at the next General Tribal Council election to serve out the remainder of that term. Any successor **trustee** shall have all the immunities, rights, duties, and powers, discretionary or otherwise, granted to the **trustee** herein.

Article XIV. Successor Trustee

Any successor **trustee** may accept the account rendered and property delivered by a predecessor **trustee** as a full and complete discharge of the predecessor **trustee** and without any duty to examine the books and records of any such predecessor **trustee**.

No successor **trustee** shall be liable or responsible for anything done or omitted to be done by any predecessor **trustee**; to the date such successor **trustee**, nor shall such successor be required to inquire into or take any action concerning the acts of or against any predecessor **trustee** or **trustees**.

Article XV. Dispute Resolution

- A. Disputes between the Oneida Trust Committee and the Oneida Business Committee under this provision shall be negotiated by the parties to this agreement. If the matter cannot be resolved, the matter shall be resolved by the General Tribal Council at a regular meeting or at a special meeting called for that purpose.
- (1) In conflicts between the laws of the Oneida Tribe of Indians of Wisconsin and laws of the State the laws of the Oneida Tribe of Indians shall take precedence over the laws of Wisconsin.
- B. If any dispute arises out of the distribution of a beneficiary's interest under the Trust, all such matters shall be resolved according to the procedures set forth in the Oneida Administrative Procedures Act, except as otherwise provided in the Oneida Tribe of Indians of Wisconsin Revenue Allocation Plan.

Article XVI. Severability of Provisions

In any provision of this instrument is unenforceable, the remaining provisions shall, nevertheless, be carried into effect.

Article XVII. Amendment of Trust Agreement

Trustor, without the consent of any **beneficiary**, but with the written consent of **trustee**, may

amend or modify the terms and provisions of this **trust agreement**.

Article XVIII. Governing Law

This agreement and the dispositions hereunder shall be construed and regulated, and their validity and effect shall be determined by the laws of the Oneida Tribe of Indians of Wisconsin and the State of Wisconsin.

In witness thereof, **trustor** and **trustee** have executed this agreement at Oneida, Wisconsin the day and year first above written.

/s/ Deborah Doxtator
Deborah Doxtator
Chairperson,
Oneida Business Committee
November 09, 1994

/s/ Lois Strong
Lois Strong
Chairperson,
Oneida Trust Committee
November 09, 1994

In witness thereof, **trustor** and **trustee** have executed this amended agreement at Oneida, Wisconsin on December 12, 2001.

/s/ Gerald Danforth
Gerald Danforth
Chairperson,
Oneida Business Committee
December 12, 2001

/s/ Loretta V. Metoxen
Loretta V. Metoxen
Chairperson,
Oneida Trust Committee
December 12, 2001

In witness thereof, **trustor** and **trustee** have executed this amended agreement at Oneida, Wisconsin on February 23, 2005.

/s/ Cristina Danforth
Cristina Danforth
Chairperson,
Oneida Business Committee
February 23, 2005

/s/ Loretta V. Metoxen
Loretta V. Metoxen
Chairperson,
Oneida Trust Committee
February 23, 2005

In witness thereof, **trustor** and **trustee** have executed this amended agreement at Oneida, Wisconsin on March 10, 2010.

/s/ Richard G. Hill

/s/ Carole Liggins

Richard G. Hill
Chairperson,
Oneida Business Committee
March 24, 2010

Carole Liggins
Chairperson,
Oneida Trust Committee
March 24, 2010

In witness thereof, **trustor** and **trustee** have executed this amended agreement at Oneida, Wisconsin on February 13, 2013.

/s/ Edward Delgado
Edward Delgado
Chairperson,
Oneida Business Committee

/s/ Carole Liggins
Carole Liggins
Chairperson,
Oneida Trust/Enrollment Committee

IN WITNESS WHEREOF, the Oneida Business Committee and the Oneida Trust Committee have caused this Fifth Amendment to the Trust to be executed by their duly authorized representative this 23rd day of April 2014.

/s/ Edward Delgado
Edward Delgado
Chairperson,
Oneida Business Committee

/s/ Carole Liggins
Carole Liggins
Chairperson,
Oneida Trust/Enrollment Committee

IN WITNESS WHEREOF, the Oneida Business Committee and the Oneida Trust Committee have caused this Fifth Amendment to the Trust to be executed by their duly authorized representative this 13th day of May 2015.

Cristina Danforth
Cristina Danforth
Chairperson,
Oneida Business Committee

Carole Liggins
Carole Liggins
Chairperson,
Oneida Trust/Enrollment Committee

- Amendments approved by OTC 12-05-01
- Amendments approved by OBC 12-12-01
- Amendments approved by OTC 01-28-05
- Amendments approved by OBC 02-23-05
- Amendments approved by OTC 03-02-10
- Amendments approved by OBC 03-24-10
- Amendments approved by OTC 12-18-12
- Amendments approved by OBC 02-13-13
- Amendments approved by OTC 03-25-14
- Amendments approved by OBC 04-23-14
- Amendments approved by OTC 03-17-15
- Amendments approved by OBC 05-13-15

Oneida Tribe of Indians of Wisconsin

BUSINESS COMMITTEE



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

P.O. Box 365 • Oneida, WI 54155
Telephone: 920-869-4364 • Fax: 920-869-4040

SPECIAL BUSINESS COMMITTEE RESOLUTION # 1-28-04-A

Resolution designating the interest from unclaimed or unallocated per capita funds to be applied to the Oneida Language Revitalization Program

- WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin; and
- WHEREAS, the Oneida General Tribal Council, on January 8, 1977, approved the "Emigrant Indian Trust of the Oneida Tribe of Indians of Wisconsin," which established the Oneida Trust Committee, also known as the Oneida Trust and Enrollment Committee; and
- WHEREAS, the Oneida General Tribal Council, through GTC Resolution #1-8-77-C, delegated administrative authority to the Oneida Trust Committee to implement the areas of Trust; and
- WHEREAS, the General Tribal Council, through the Per Capita Trust Agreement on November 9, 1994, transferred authority to the Oneida Trust Committee to manage trust accounts for per capita payments to minors; and
- WHEREAS, the Oneida Business Committee, through BC Resolution #7-12-00-B and the Per Capita Ordinance, has delegated authority to the Oneida Trust Committee to manage trust accounts, to maintain membership rolls to identify persons eligible for per capita payments, to hold administrative hearings regarding eligibility to receive per capita payments, and to develop Tribal Allocation Plans; and
- WHEREAS, the Oneida Trust Committee is the official Governing and final authoritative body to carry out all policy and procedures in the operation of the Oneida Enrollment and Trust Departments; and
- WHEREAS, the Per Capita Ordinance provides at Section 9.5-6, "All funds which would have been dispersed in accordance with this ordinance, but which have been refused by the individual tribal member shall be deposited in a pooled account. The funds in this account can only be designated for expenditure for a specific purpose as determined by the General Tribal Council. Management of the pooled account shall be the responsibility of the Oneida Trust Committee;" and

Page Two
 Resolution 1-28-04-A

WHEREAS, unclaimed or unallocated per capita funds have been unclaimed for the following reasons: The Oneida Nation has not been able to locate a tribal member for seven (7) years; a tribal member has relinquished his or her enrollment from the Oneida Nation; a tribal member has refused a per capita payment; or a beneficiary of a per capita payment has died; and

WHEREAS, the General Tribal Council has not designated a specific purpose for the expenditure of the unclaimed or unallocated per capita funds in the pooled account; and

WHEREAS, the unclaimed or unallocated funds between the years 1994 and 2002 have grown to about \$1.7 million; and

WHEREAS, the Oneida Business Committee deems the Oneida Language as a national priority and the Oneida Language Revitalization Program supports this priority; and

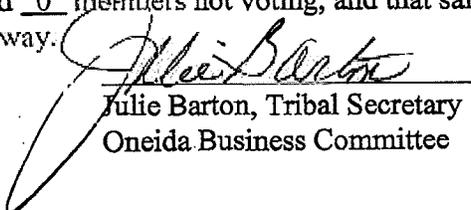
WHEREAS, the Oneida Business Committee has determined use of the pooled account containing unclaimed or unallocated per capita funds would best serve the Oneida Tribe if the interest from the unclaimed or unallocated per capita fund were used to fund the Oneida Language Revitalization Project.

NOW THEREFORE BE IT RESOLVED, that in accordance with the mandate of the Per Capita Ordinance, the General Tribal Council hereby designates that the interest from the pooled account containing unclaimed or unallocated per capita funds shall be used to fund the Oneida Language Revitalization. Furthermore, the principal of the account shall not be depleted.

NOW THEREFORE BE IT FINALLY RESOLVED, that future unclaimed or unallocated per capita funds be added to the pooled account and that the Oneida Trust Committee ensure that the interest from the principal continue to be directed toward the Oneida Language Revitalization Program each year hereinafter.

CERTIFICATION

I the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum. 7 members were present at a meeting duly called, noticed and held on the 28TH day of January 2004; that the foregoing resolution was duly adopted at such meeting by a vote of 6 members for; 0 members against; and 0 members not voting; and that said resolution has not been rescinded or amended in any way.


 Julie Barton, Tribal Secretary
 Oneida Business Committee

Oneida Tribe of Indians of Wisconsin BUSINESS COMMITTEE



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



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RESOLUTION # 11-06-02-A *Resolution Adopting Amendments to The Per Capita Ordinance*

- WHEREAS, the Oneida General Tribal Council is the duly recognized governing body of the Oneida Tribe of Indians of the Wisconsin, and
- WHEREAS, the General Tribal Council has been delegated the authority of the Constitution of the Oneida Tribe of Indians of Wisconsin, and
- WHEREAS, the Oneida Business Committee may be delegated duties and responsibilities by the Oneida General Tribal Council and is at all times subject to the review powers of the Oneida General Tribal Council, and
- WHEREAS, GTC Resolution #08-11-97-A established annual per capita payments for enrolled elders 62 and over in the amount of \$2,000.00, and
- WHEREAS, GTC Resolution #6-30-90-A directed per capita payments for enrolled elders 65 and over in the amount of \$500.00; and
- WHEREAS, *The Per Capita Ordinance* sets forth eligibility standards and procedures for issuing all per capita, and
- WHEREAS, the current Per Capita Ordinance definition of "Elder" is too restrictive because it limits eligibility to tribal members who are age 62 years or over as of January 1 of a given year, resulting in most Elders being ineligible until they reach 63 years of age, and
- WHEREAS, *The Per Capita Ordinance* definition of "Elder" needs to be amended to reflect the intent of the General Tribal Council to have Elderly Per Capita payments for members when they actually reach 62 or 65 years of age, and

Resolution #11-06-02-A

NOW THEREFORE BE IT RESOLVED, that 9.3-4. of *The Per Capita Ordinance* is hereby amended as follows (as indicated by underline for addition and ~~strikeout~~ for deletion): *Elder*: shall mean those tribal members who are age 62 years or over, or 65 years or over, as of December 31 ~~January 1~~ of a given year.

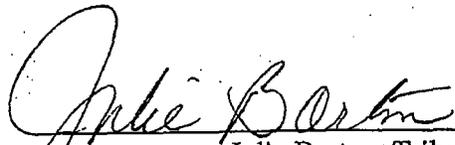
NOW THEREFORE BE IT FURTHER RESOLVED, that 9.5-3. of *The Per Capita Ordinance*, is hereby amended by adding the following (as indicated by underlined text):

- (c) *Payments Sent*. Per capita payments shall be mailed on September 30th.
 - (1) After September 30th and through December 31, first time elder per capita payments shall be sent in the month following birth date.
- (d) *Request for Prior Payment*. A request for a prior payment, for which a member was eligible, but did not receive, must be filed –
 - (1) for per capita payments made between January 1, 1990 and January 1, 2000, by December 31, 2000.
 - (2) for all future per capita payments, by September 1st of the next year. For example, if a payment is sent in 2000, then the cut off date is September 1, 2001 for a missed payment.
 - (3) However, tribal elders shall have until December 31, 2002 to file for years 2001 and 2002 for first-time elder per capita payments.

NOW THEREFORE BE IT FINALLY RESOLVED, that enrolled members who were 62 or 65 in 2001 or 2002, and who filed for per capita payments in those years, shall not be required to re-file in order to receive the elder per capita payments they are eligible for under the amendments enacted with the passage of this resolution.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum. 7 members were present at a meeting duly called, noticed and held on the 11th day of November, 2002; that the foregoing resolution was duly adopted at such meeting by a vote of 6 members for; 0 members against, and 0 members not voting; and that said resolution has not be rescinded or amended in any way.


 Julie Barton, Tribal Secretary
 Oneida Business Committee

Legislative Operating Committee



Handout

Agenda Request Form

- 1) Request Date: 7-14-15
- 2) Contact Person(s): Rae Skenandore Dept: Finance/Oneida Land Commission
Phone Number: 920-869-4337 Email: rskenanand@oneidanation.org
- 3) Agenda Title: Emergency amendments to the Rules of Civil Procedure and Per Capita Law
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
See attached

List any supporting materials included and submitted with the Agenda Request Form

- | | |
|---|----------|
| 1) <u>2013 Complaint for Judgement Attachment</u> | 3) _____ |
| 2) _____ | 4) _____ |

- 5) Please List any laws, ordinances or resolution that might be affected:
Rules of Civil Procedure, Per Capita Ordinance, and potentially the Stipend Policy
- 6) Please List all other departments or person(s) you have brought your concern to:
Land Commission, DOLM, Finance, Judiciary, Liaison staff, LRO
- 7) Do you consider this request urgent? Yes No
If yes, please indicate why: Time restrictions and the mailing of the per capita.

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester: Rae Skenandore

Please send this form and all supporting materials to:

LOC@oneidanation.org
or
Legislative Operating Committee (LOC)
P.O. Box 365
Oneida, WI 54155
Phone 920-869-4376

Emergency action is suggested to facilitate the collection of Tribal debt from per capita payments being issued October 1, 2015. Changes to Rules of Civil Procedure & possibly the Per Capita Ordinance request include the following:

The Oneida Land Commission as well as Finance is requesting the following:

1. The requirements of the filing fees are waived for internal Tribal entities.
2. The requirement of proof of service be lowered to certified mail delivered to the last known address.
3. Consider if LOC want to consider extending the timelines to allow for complaints and attachment to be made for this year per capita payment.

For context, Finance would like LOC to know that an estimate of the current debt owed that could be collected through the measures outlined above is approximately \$350,000.



Government Our Ways Resources Community Business Visit Us I want to...

Judiciary Transition Information

A Special Election was held on September 27, 2014.
The following seats were filled at this election:

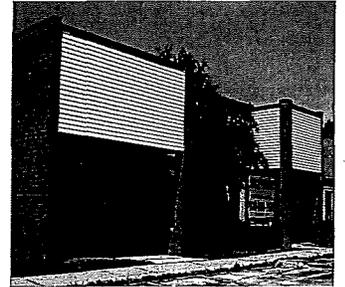
ONEIDA TRIBAL JUDICIAL SYSTEM

Trial Court

Denice Beans - Chief Judge of the Trial Court - 6-year term (full-time)
Layatalati Hill - Trial Court Judge - 6-year term (full-time)
John Powless III - Trial Court Judge - 3-year term (full-time)

Appellate Court

Gerald L. Hill - Chief Judge of the Appellate Court - 6-year term (full-time)
Sharon House - Appellate Court Judge - 6-year term (part-time)
Jennifer Hill-Kelley - Appellate Court Judge - 6-year term (part-time)
Diane House - Appellate Court Judge - 3-year term (part-time)
Chad Hendricks - Appellate Court Judge - 3-year term (part-time)



Judiciary Building
(formerly HRD)
2630 W. Mason St.
Ribbon cutting scheduled for
November 24, 2014

Cases accepted here:
3759 W Mason St. Ste. 1
Oneida, WI 54155

What's New

**ONEIDA JUDICIARY
FILING AND OTHER FEES
EFFECTIVE May 1, 2015**

Quick Links

Oneida Tribal Judicial System webpage



Oneida Family Court Seal

TRIAL COURT	FEE
GENERAL CIVIL CASE	\$50.00
SMALL CLAIMS (\$5000 OR LESS)	\$50.00
GARNISHMENT	\$25.00
MOTIONS & PETITIONS	\$50.00

NON CERTIFIED AUDIO RECORDINGS	TBD
NOTARIZE DOCUMENT	NO CHARGE

PLEASE NOTE: ANY REQUESTS FOR FEE WAIVERS REQUIRE

- Fee Waiver Form
- Proof of economic hardship

ADMISSION TO PRACTICE	FEE
ATTORNEY	\$100.00
LAY ADVOCATE	\$50.00

All Fees are nonrefundable.

PAYMENT OPTIONS: CASH, MONEY ORDERS, CASHIER'S CHECK, CREDIT CARDS

ONEIDA TRIBAL JUDICIAL SYSTEM

Complaint for Judgment Attachment of Per Cap and /or Payroll Wages

Date March 8, 2013

1. **Jurisdiction**

Petitioner	Respondent	
Central Accounting Department Oneida Tribe of Indians of Wisconsin PO Box 365 Oneida WI 54155		
	Case #	
	Enrollment #	
	Employee #	

2. **Course of events.**

- A. In -----, ----- received goods and/or services from the ----- Department, a business owned and operated by the Oneida Tribe of Indians of Wisconsin.
- B. Payment has not been made in full.
- C. Letters have been sent to the Respondent requesting payment.
- D. Respondent has not disputed the amount owed.

3. **What laws apply?** Refusal of payment for the goods and/or services received.

4. **How was the Oneida Tribe harmed by the violation?** The respondent has not paid for the goods and/or services.

5. **What damages did the Oneida Tribe suffer?**

- A. The Tribe has not received payment for the goods and/or services.
- B. Tribe has incurred additional expense for collection efforts and efforts to obtain authorization to process the garnishment.
- C. The Oneida Tribe requests payment in the amount owed of \$_____ plus a collection fee of \$15.00. Total due **\$ 00.00.**

Respectfully submitted,

Contact name at Central Accounting	
Contact phone # at Central Accounting	
Electronic signature	

Handout

BC Resolution _____
Per Capita Law Emergency Amendments

WHEREAS, the Oneida General Tribal Council is the duly recognized governing body of the Oneida Tribe of Indians of Wisconsin; and

WHEREAS, the Oneida General Tribal Council has been delegated the authority of Article IV, Section I of the Oneida Tribal Constitution; and

WHEREAS, the Oneida Business Committee may be delegated duties and responsibilities by the Oneida General Tribal Council and is at all times subject to the review powers of the Oneida General Tribal Council; and

WHEREAS, the Oneida Business Committee adopted the Per Capita Law on July 12, 2000, amended it on November 6, 2002; June 16, 2004; April 22, 2009; May 9, 2012 and August 14, 2013; and

WHEREAS, the Per Capita Law sets the processes for the distribution of the per capita payment and, if necessary, attachment of the per capita payment in order to collect debt; and

WHEREAS, in order to allow Tribal Entities additional time to collect debts owed to the Oneida Nation, the required filing date for submitting the complaint to the judiciary is hereby extended to August 1st and the required date for the judiciaries submittal of its determination to the Enrollment Department is hereby extended to September 1st; and

WHEREAS, the Land Commission has recommended that the Oneida Business Committee consider adopting these emergency amendments to the Per Capita Law in tandem with the emergency amendments to the Oneida Judiciary Rules of Civil Procedure (Law).

NOW THEREFORE BE IT RESOLVED, that the following amendments to Sections 9.4-6(e)(1) and (3)(A) of the Per Capita Law are hereby adopted on an emergency basis for six (6) months and shall take effect immediately.

(e)(1) Attachment requests for debt owed to a Tribal entity or to the federal government for a federal tax levy shall be made before ~~July~~ August 1st to attach the annual per capita payment. Attachment requests for debt owed to a Tribal entity or to the federal government for a federal tax levy for all other payments shall be made far enough in advance for the requirements of this law to be met and the order of determination on the attachment of the payment from the Tribe's judicial system to be received by the Enrollment Department at least thirty (30) days before the payment date.

(3) The Tribe's judicial system shall issue an order of determination and forward it to the Enrollment Department:

(A) before ~~August~~ September-1st for action in the next processed annual per capita payment;

**Oneida Nation
Legislative Reference Office**

Krystal L. John, Staff Attorney
 Douglass A. McIntyre, Staff Attorney
 Taniquelle J. Thurner, Legislative Analyst
 Candice E. Skenandore, Legislative Analyst



P.O. Box 365
 Oneida, WI 54155
 (920) 869-4375
 (800) 236-2214
<https://oneida-nsn.gov/Laws>

Statement of Effect

Per Capita Law Emergency Amendments

Summary

This Resolution adopts emergency amendments to the Per Capita Law effective immediately. The amendments change the deadline of when an attachment of a per capita payment must be requested from July 1st to August 1st. Additionally, the deadline for when a determination from the Judiciary is due is changed from August 1st to September 1st.

Submitted by: Douglass A. McIntyre, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

This Resolution adopts changes to the Per Capita Law originally adopted by the Oneida Business Committee in Resolution BC-7-12-00-B. The law currently requires that an attachment request for per capita payment be made before July 1st. The amendments seek to change this date to August 1st. Additionally, the law currently requires that the Judiciary issue an order of determination and forward to the Enrollment Department before September 1st. The amendments seek to change the deadline for this from August 1st to September 1st.

Section 16.9-5 of the Legislative Procedures Act (LPA) allows the OBC to take emergency action to amend a law where it is “necessary for the immediate preservation of the public health, safety, or general welfare of the reservation population” and when enactment or amendment of legislation is required sooner than would be possible under the LPA.

As emergency amendments, these changes would only be in effect for six (6) months unless there was an extension of the emergency amendment for up to an additional six (6) months or the law was amended.

Conclusion

Adoption of the amendments to these Law will not conflict with any Tribal law or policy.

Chapter 9
PER CAPITA
Shakotiwí? Stawihé Olihwá·ke
 Issues concerning where they give the money

- 9.1. Purpose and Policy
- 9.2. Adoption, Amendment, Repeal
- 9.3. Definitions
- 9.4. General

- 9.5. Per Capita Payments
- 9.6. Minors and Legally Incompetent Adults
- 9.7. Payments

<i>Analysis by the Legislative Reference Office</i>					
Title	Per Capita Law				
Requester	Rae Skenandore	Drafter	Krystal John	Analyst	Tani Thurner
Reason for Request	Emergency amendments to this Law and to the Rules of Civil Procedure are being proposed so that they can be in effect in time to apply to per capita attachments before the upcoming per capita payment distribution.				
Purpose	These changes extend the deadlines by one month for: - making attachment requests (from July 1 to August 1) -for the Judiciary to issue an attachment order (from August 1 to September 1)				
Authorized/ Affected Entities	Tribal Judicial System, any agency filing requests for an attachment order.				
Due Process	N/A				
Related Legislation	Rules of Civil Procedure				
Policy Mechanism	N/A				
Enforcement	N/A				

Proposed Amendments

These changes to the Per Capita law (“the Law”) are being submitted in conjunction with proposed changes to the Oneida Judiciary Rules of Civil Procedure (“the Rules) and both are being submitted for adoption on an emergency basis so that the changes can be in effect in time to apply to per capita attachments before the upcoming per capita payment distribution.

The changes to the Law include:

- Changing the annual deadline for attachment requests from July 1 to August 1. [9.4-6(e)(1)]
- Changing the annual deadline for the Judiciary to issue an order of determination (an attachment order) and forward it to the Enrollments Department. Currently, the orders must be forwarded by August 1, but the amendments change this to September 1. [9.4-6(e)(3)]

Although the corresponding emergency amendments to the Rules of Civil Procedure change the definition of “Tribal or Tribe” to reflect the recent Constitutional amendments that change the name of this sovereign to “The Oneida Nation”, this Law was not similarly amended.

In accordance with section 16.9-5 of the Legislative Procedures Act, the Oneida Business

Committee may temporarily enact an emergency law where legislation is necessary for the immediate preservation of the public health, safety or general welfare of the reservation population and the enactment or amendment of legislation is required sooner than would be possible under the standard legislative process. If these amendments are adopted on an emergency basis, they would be in effect for up to six months, and can be renewed one-time for up to an additional six months. [LPA 16.9-5(b)]

A public meeting is not required for emergency amendments.

Considerations

Tribal members whose annual per capita payments will be attached for Tribal debt or a federal tax levy, still have until September 1 to request that federal income tax be withheld from their per capita payment before it is attached. If this amendment goes into effect and the Judiciary can issue orders of determination until September 1, then some Tribal members may not have any or sufficient notice or time to request that federal income tax be withheld prior to the attachment. [9.4-7(e)].

Similarly, the Law still requires all adult Tribal members to return a notarized membership payment form by the close of business on September 1st in order to be eligible for a per capita payment. [9.5-3(b)] If this amendment goes into effect, then there would no longer be a one-month period after the attachment order is issued, before the Tribal member must submit his or her notarized payment form, and Tribal members may not be able to know if an attachment order has been issued before submitting that form.

Chapter 9 PER CAPITA

9.1. Purpose and Policy

9.1-1. *Purpose.* The Purpose of this law is:

- (a) To specify the procedure to be followed in the event that per capita payments are issued by the Tribe; and
- (b) To clearly state the responsibilities of the various entities in the distribution or maintenance of any such per capita payments.

9.1-2. *Policy.* It is the Policy of the Oneida Tribe of Indians of Wisconsin to have a consistent methodology for issuance of per capita payments, including payments derived from Gaming Revenues and regulated by the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et.seq.

9.2. Adoption, Amendment, Repeal

9.2-1. This law is adopted by the Oneida Business Committee by resolution BC-7-12-00-B and amended by resolution BC-11-06-02-A, BC-6-16-04-C, BC-04-22-09-A, BC-05-09-12-B and BC-08-14-13-D.

9.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

9.2-3. 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.

9.2-4. 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.

9.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

9.3. Definitions

9.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Adult" shall mean those Tribal members who are at least eighteen (18) years old on or before September 1st of a given year.

(b) "Arrears" shall mean the amount of money a person has not paid pursuant to the most recent child support court order against him or her.

(c) "Court of competent jurisdiction" shall mean the Tribe's judicial system or another court which has the jurisdiction to hear and determine a particular legal proceeding.

(d) "Day" shall mean calendar days, unless otherwise specifically stated.

(e) "Elder" shall mean those Tribal members who are age 62 years or over, or 65 years or over, as of December 31st of a given year.

(f) "Legally incompetent adult" shall mean a Tribal member at least eighteen (18) years old who has been declared incompetent by a court of competent jurisdiction because he or she is temporarily or permanently impaired to the extent that the person lacks sufficient understanding to make or communicate responsible personal decisions.

(g) "Minor" shall mean a Tribal member who has not yet reached the age of eighteen (18) years by September 1st of a given year.

(h) "Minors trust" shall mean that account or those accounts established by the Trust Committee for the benefit of Tribal members who are minors.

(i) "Tribal" or "Tribe" shall mean the Oneida Tribe of Indians of Wisconsin.

(j) "Tribal entity" shall mean a department, board, committee, or commission of the Tribe.

(k) "Trust account" shall mean that account or those accounts established by the Trust Committee for the benefit of Tribal members who are identified as needing trust accounts, for example, minors and legally incompetent adults.

(l) "Trust Committee" shall mean that body designated by the General Tribal Council to manage the trust funds for the Oneida Tribe of Indians of Wisconsin and their Tribal membership, and which is also responsible for the enrollment records of the Oneida Tribe. This Committee is also known as the Oneida Trust/Enrollment Committee.

9.4. General

9.4-1. This section shall set forth the responsibilities delegated under this law.

9.4-2. *Supersedes.* This law shall supersede any contradictory language in any other per capita payment plan.

9.4-3. *Budgetary Limitations.* This law shall not be construed as mandating a per capita payment. Per capita payments shall be issued only at the direction of the General Tribal Council through adoption of a resolution.

9.4-4. *Oneida Trust Committee.* The Trust Committee shall be delegated the following responsibilities in regards to per capita activities. Any responsibility not specifically identified, and reasonably related to the activities identified herein, shall be considered a Trust Committee responsibility.

- (a) Fiduciary responsibility to manage trust accounts related to per capita payments.
- (b) Maintenance of the membership rolls in such a manner as to accurately identify to whom per capita payments will be made.
- (c) Holding administrative hearings regarding challenges to payment or non-payment of per capita payments.
- (d) Development of Tribal Allocation Plans necessary to make per capita payments.

9.4-5. *Oneida Business Committee.* The Oneida Business Committee shall be identified as having the following responsibilities regarding per capita activities. Actions reasonably related to activities defined herein, shall be considered an Oneida Business Committee activity.

- (a) Identification of funds for allocation for per capita payments.
- (b) Approval of Tribal Allocation Plan and forwarding the Tribal Allocation Plan for approval by the Bureau of Indian Affairs.
- (c) Transfer of funds for the trust account to the Trust Committee in a timely manner and within a reasonable time frame.

9.4-6. *Attachments.* Per capita payments are considered benefits offered by the Tribe to the membership. All per capita payments, except payments to or from a trust account, are subject to attachment prior to distribution in accordance with this section.

(a) Per capita attachments may only be ordered by the Tribe's judicial system for the following purposes, and in the following order:

- (1) Child support arrears ordered by a court of competent jurisdiction.
- (2) Debt owed to a Tribal entity that is past due.
 - (A) "Debt owed to a Tribal entity" includes any money owed to a Tribal entity and any fines that have been issued by a Tribal entity.
- (3) A federal tax levy.

(b) After child support arrears are fully satisfied, any remaining per capita shall be used for the payment of debt owed to a Tribal entity.

(1) If a Tribal member owes arrears in more than one (1) child support order, the per capita shall be equally divided based on the number of court orders under which arrears are owed.

(2) If a Tribal member owes debt to more than one (1) Tribal entity, the per capita shall be equally divided based on the number of entities that are owed debt.

(c) After child support arrears and debt owed to a Tribal entity have been fully satisfied, any remaining per capita shall be used for the payment of a federal tax levy.

(d) *Child Support Attachments.* All requests for attachments for child support arrears shall be submitted to the Oneida Nation Child Support Agency. The claimant or a representative of the entity designated to receive the arrears may request the attachment.

(1) Attachment requests for child support arrears shall be made before July 1st to attach the annual per capita payment. Attachment requests for child support arrears for all other payments shall be made far enough in advance for the requirements of this law to be met and the order of determination on the

attachment of the payment from the Tribe's judicial system to be received by the Enrollment Department at least thirty (30) days before the payment date.

(2) After receiving an initial attachment request for child support arrears, the Oneida Nation Child Support Agency shall send a one-time notice and a voluntary federal income tax withholding request form to those Tribal members whose per capita payment will be attached for child support arrears.

(A) When subsequent requests for attachment are received, the Oneida Nation Child Support Agency shall proceed in accordance with 9.4-6(d)(5).

(3) The one-time notice shall inform the Tribal member of the following:

(A) A request to attach the Tribal member's per capita payment for child support arrears has been received;

(B) He or she has ten (10) business days from receipt of the notice to return the completed voluntary federal income tax withholding request form if he or she wants federal income tax withheld from the per capita payment before the attachment is applied; and

(C) The Tribal member's future per capita payments will be attached, upon request from a claimant or a representative of the entity designated to receive the arrears, until the child support arrears are satisfied.

(4) A Tribal member whose per capita payment will be attached for child support arrears has until ten (10) business days after receiving the one-time notice of attachment to submit a request to the Oneida Nation Child Support Agency that federal income tax be withheld from his or her per capita payment.

(A) A request received to withhold federal income tax shall remain in effect until the child support arrears have been satisfied or the Tribal member provides written notice to the Oneida Nation Child Support Agency stating otherwise, whichever occurs first.

(B) Without a request to withhold federal income tax from the per capita payment as required under this law, federal income tax shall not be withheld from the current or future per capita payments that are attached for child support arrears unless the Tribal member provides written notice to the Oneida Nation Child Support Agency stating otherwise.

(C) A request to change a Tribal member's voluntary federal income tax withholding status that is received before July 1st shall be applied to that year's annual per capita payment. Requests to change a Tribal member's voluntary federal income tax withholding status received on or after July 1st shall be applied to the next per capita payment made, whether it is an annual or prior payment.

(5) The Oneida Nation Child Support Agency shall prepare a certified accounting of all attachment requests and forward the accounting to the Tribe's judicial system. If the attachment request is for the annual per capita payment, the certified accounting shall be forwarded to the Tribe's judicial system before July 31st of the year in which the payment is scheduled to be made.

(6) The Tribe's judicial system shall issue an order of determination and forward

it to the Enrollment Department:

(A) before August 1st for action in the next processed annual per capita payment; or

(B) at least thirty (30) days before the payment date for action in the next processed prior payment distribution.

(7) After the child support arrears have been satisfied, if an attachment request is submitted for the same Tribal member's per capita based on new child support arrears, the Oneida Nation Child Support Agency shall issue another one-time notice and federal income tax withholding form in accordance with 9.4-6(d)(2) above.

(e) *Tribal Debt and Federal Tax Levy Attachments.* All requests for attachments for debt owed to a Tribal entity or to the federal government for a federal tax levy shall be submitted to the Tribe's judicial system. The claimant or a representative of the entity designated to receive the claim may request the attachment.

(1) Attachment requests for debt owed to a Tribal entity or to the federal government for a federal tax levy shall be made before ~~July~~ August 1st to attach the annual per capita payment. Attachment requests for debt owed to a Tribal entity or to the federal government for a federal tax levy for all other payments shall be made far enough in advance for the requirements of this law to be met and the order of determination on the attachment of the payment from the Tribe's judicial system to be received by the Enrollment Department at least thirty (30) days before the payment date.

(2) A Tribal member whose annual per capita payment will be attached for Tribal debt or a federal tax levy has until September 1st to request federal income tax be withheld from his or her per capita payment. A Tribal member whose prior per capita payment will be attached for Tribal debt or a federal tax levy has until the order of determination on the attachment of the payment from the Tribe's judicial system is issued to request federal income tax be withheld from his or her per capita payment.

(3) The Tribe's judicial system shall issue an order of determination and forward it to the Enrollment Department:

(A) before ~~August~~ September 1st for action in the next processed annual per capita payment; or

(B) at least thirty (30) days before the payment date for action in the next processed prior payment distribution.

(f) The Tribe's judicial system may order attachments against per capita payments of Tribal members who do not return a notarized membership payment form as required under 9.5-3(b) or who refuse a payment under 9.5-3(f). If the amount of the per capita payment exceeds the amount of the attachment, the remaining unclaimed balance shall remain available as identified in 9.5-3(c) and the remaining refused balance shall be deposited in accordance with 9.5-3(f)(2).

9.4-7. *Federal Income Tax Withholding.*

(a) *Voluntary.* If a voluntary federal income tax withholding request form has been received under 9.4-6(d)(4) or 9.4-6(e)(2), federal income tax shall be withheld from per

capita payments.

(b) *Mandatory.* A member who meets all of the requirements of this law, but refuses to provide the Enrollment Department with his or her social security number shall have mandatory federal income tax withheld from his or her per capita payment, as required by federal law.

(c) Federal income tax withholding, whether voluntary or mandatory, shall be applied to the per capita amount before any attachments are applied.

(d) *IRS Publication 15a.* In instances where federal income tax is withheld from a per capita payment, the most recent edition of IRS Publication 15a shall be complied with.

9.5. Per Capita Payments

9.5-1. *General.* This section shall set forth the processes to follow when a per capita payment is issued.

9.5-2. *Trust Committee.* The Trust Committee is responsible for the protection and preservation of per capita payment funds for minors. As part of that responsibility, the Trust Committee is responsible for the completion and issuance of any necessary reports to the minors. The Trust Committee shall develop standard reporting procedures which establish valuation dates, frequency of reports and identify data critical to the completion of reports. Such reporting responsibilities may be delegated to duly selected vendors.

9.5-3. *Deadlines.* The following deadlines shall apply in regards to the annual per capita payment. Where the dates fall on a Saturday, Sunday, or holiday the deadline shall be construed to be the close of business on the following business day. For any additional per capita payments, the Trust Committee may establish dates and deadlines associated with those payments, as needed.

(a) *Eligibility.* Eligibility falls into the following categories:

(1) *Filing Deadlines.* An individual who is not a Tribal member shall file a new enrollment application no later than the close of business on January 31st in order to be considered eligible for the following per capita payment.

(2) *Enrollment Deadlines.* An individual is considered enrolled for the purposes of a per capita payment if the individual has been approved for enrollment by a vote of the Oneida Business Committee by March 31st.

(3) *Dual Enrollment.* A member who is dually enrolled with the Tribe and another Indian Tribe is not eligible for a per capita payment unless his or her relinquishment from the other tribe has been processed and written verification that the member is no longer enrolled with that tribe has been received by the Enrollment Department by September 1st.

(b) *Membership Payment Form.* The Enrollment Department shall mail membership payment forms no later than July 1st. Each adult Tribal member shall return a notarized membership payment form by close of business on September 1st in order to be eligible for a per capita payment.

(c) *Request for Prior Payment.*

(1) *Unclaimed Payment.* A request for a prior payment, for which a member was eligible, but did not claim, shall be filed by September 1st of the next year. For example, if a payment's original distribution date is in 2000, then the deadline is

September 1, 2001. If a request is not received by the deadline date, the payment will expire and the funds shall be deposited in a pooled account in accordance with 9.5-6.

(2) *Un-cashed Payment.* A request for a prior payment, for which a member already claimed, but did not redeem, shall be filed by September 1st of the next year. For example, if a payment's original distribution date is in 2000, then the deadline is September 1, 2001. A payment may be reissued once. After the payment is reissued the member has ninety (90) days to redeem it or the payment will expire and will not be reissued. The funds shall then be deposited in a pooled account in accordance with 9.5-6.

(d) *Annual Payments.* Annual per capita payments shall be distributed on or before September 30th. First time elder per capita payments for those Tribal members who turn sixty-two (62) or sixty-five (65) after September 30th, and through December 31st, shall be distributed at the end of the month of the elder's birth date.

(e) *Prior Payments.*

(1) *Prior Payments: Elders.* Prior payments requested by eligible elders on or before the twentieth (20th) day of the month shall be distributed by the last business day of that month. Prior payments requested by elders after the twentieth (20th) day of the month shall be distributed by the last business day of the next month.

(2) *Prior Payments: Non-Elders.* Prior payments requested by eligible Tribal members who are not elders shall be distributed as follows:

(A) By March 31st, if the prior payment request is received after September 1st, but on or before March 1st.

(B) By September 30th, if the prior payment request is received after March 1st, but on or before September 1st.

(f) *Refusal of Payments.* A Tribal member may refuse any per capita payment due to him or her, including a trust account payment, by completing a refusal form developed by the Enrollment Department. However, if the Tribe's judicial system has approved the attachment of the Tribal member's payment, only the remaining portion of the per capita payment, if any, may be refused.

(1) Upon submitting the refusal form to the Enrollment Department, the Tribal member waives his or her right to the specific payment as indicated on the form.

(2) A refused payment shall be deposited in a pooled account in accordance with 9.5-6.

9.5-4. *Deceased Members.* A Tribal member shall be considered ineligible to receive a per capita payment if his or her date of death occurs on or before the payment distribution date.

(a) The estate of a deceased Tribal member may not submit a membership payment form on behalf of the deceased to claim a per capita payment.

(b) A deceased Tribal member's per capita payment shall be deposited in a pooled account in accordance with 9.5-6.

9.5-5. *Adult Relinquishment.* A Tribal member is ineligible for any future or prior per capita payments as of the date his or her Tribal membership is relinquished. Funds set aside for a former Tribal member's per capita payment shall be deposited in a pooled account in accordance

with 9.5-6.

9.5-6. *Pooled Account.* Upon failure to file a request for a prior payment or trust account funds within the time provided under this law, the member's eligibility for the prior payment or trust account funds shall expire. Any unclaimed funds held in reserve for such claims shall be deposited in a pooled account to be used for a purpose designated by the General Tribal Council. Management of the pooled account shall be the responsibility of the Trust Committee.

9.6. Minors and Legally Incompetent Adults

9.6-1 *General.* This section shall set forth a consistent method to protect and preserve the interests of minors and legally incompetent adults in any per capita payment to which they may be entitled. If a per capita payment includes minors and/or legally incompetent adults as eligible recipients, those per capita payments shall be deposited into a trust account.

(a) The Trust Committee shall establish a standard operating procedure which shall identify the set-up and monitoring of the trust accounts. The Trust Committee may choose to maintain pooled or individual accounts, separate accounts for each payment or series of payments, or any other combination which is in the interests of the recipients and which is consistent with the terms of the Minor's Trust Agreement and the Trust Committee's Investment Policy.

(b) *Costs of Account.* The administrative costs related to a trust account shall be allocated to the account. Administrative costs shall be defined as those costs related to third party fees and expenses resulting from managing the accounts. Administrative costs shall not include any costs related to the expenses of the Trust Department, Trust Committee or Enrollment Department. No member who has funds in a trust account shall be guaranteed the specific amount of the per capita payment.

(c) *Deceased Member.* The value of a member's trust account shall be inheritable on the date of death of the member. The Trust Committee shall establish a standard operating procedure which shall identify the processes by which an application for payment shall be made. The payment shall be issued either in the name of the deceased member or the estate of the individual.

(1) If the trust account funds are not claimed by the estate of the deceased within one (1) year after the date of the member's death, the funds shall be deposited in accordance with 9.5-6.

9.6-2. *Minors.*

(a) *Disbursement of a Minor's Trust.* A Tribal member shall be eligible to receive any funds in the trust account established in his or her name when the member is eighteen (18) years old or older and provides the Enrollment or Trust Department with proof that he or she has obtained a High School Diploma, a High School Equivalency Diploma or a General Equivalency Diploma. The funds shall be disbursed in accordance with an established payment schedule developed and approved by the Trust Department and Trust Committee.

(1) Tribal members who are at least eighteen (18) years old, but do not provide proof of having obtained a High School Diploma, a High School Equivalency Diploma or a General Equivalency Diploma shall not be eligible to receive any trust funds established in their name until their twenty-first (21st) birthday.

(2) *Exceptions.* The following Tribal members may receive any trust funds established in his or her name at the age of eighteen (18) without providing the Enrollment or Trust Department with proof that he or she has obtained a High School Diploma, a High School Equivalency Diploma or a General Equivalency Diploma:

(A) Those who were in the graduating class of 2009 or a prior class.

(B) Those who are declared legally incompetent adults, provided that, the requirements of 9.6-3 are met. Any funds in the minor's trust account for a Tribal member who is declared a legally incompetent adult shall be put into a trust account for the legally incompetent adult.

(C) Those who have a learning disability or other disability, provided he or she presents a certificate of attendance showing that he or she has attended twelve (12) years of school. That certificate shall be treated as a High School Diploma.

(3) *Fraudulent Proof of a Diploma.* In the event the Enrollment or Trust Department believes that an individual has submitted fraudulent proof that he or she has received a High School Diploma, High School Equivalency Diploma or a General Equivalency Diploma, the Trust Department shall notify the Tribal member that they are investigating the proof to verify its authenticity. If the proof is deemed fraudulent, the Trust Department shall:

(A) Withhold payment of the trust account funds, if not already paid to the Tribal member, until the requirements of this law have been met.

(B) Impose a fine against the Tribal member of one-third (1/3) of the Tribal member's trust account funds.

(C) Notify the Tribal member of the following:

(i) the proof has been deemed fraudulent;

(ii) payment of the trust account funds, if not already paid to the Tribal member, will not occur until the Tribal member submits valid proof of a diploma or he or she turns twenty-one (21);

(iii) a fine against the Tribal member of one-third (1/3) of the Tribal member's trust account funds will be imposed;

(iv) he or she can appeal the Trust Department's decision to the Trust Committee; and

(v) how to appeal the decision, including any applicable time limits.

(D) Take action to have the Tribal member's future per capita payments attached, in accordance with this law, until the fine is satisfied.

(E) Deposit any funds collected to pay a fine imposed under this section in a pooled account in accordance with 9.5-6.

(b) *Deferral Elections.* An individual may postpone payment of his or her trust account to a later date by entering into a deferral election. Deferral elections are subject to the Tribal Allocation Plan and the rules and restrictions set forth within any applicable trust agreement.

(c) *Unclaimed Minors Trust.* Except as provided for in 9.6-2(c)(1) below, any funds in a

minor's trust account that are not claimed within one (1) year after the beneficiary's twenty-first (21st) birthday shall be deposited in a pooled account in accordance with 9.5-6.

(1) *Exception.* An individual who was at least eighteen (18) but not yet twenty-six (26) years old on May 6, 2009 shall have until his or her twenty-sixth (26th) birthday to file a claim for any funds in the minors trust account in his or her name.

(d) *Relinquishment.* Upon a minor's relinquishment of Tribal membership, the following provisions shall apply:

(1) Any funds in a trust account for the minor shall be deposited in a joint savings account in the name of the Trust Committee and the former Tribal member.

(2) The former Tribal member shall be eligible to claim the joint savings account in accordance with section 9.6-2(a).

(3) Accounts shall be held until one (1) year after the former Tribal member turns twenty-one (21) years old. Any fees necessary for the establishment and maintenance of such an account shall be allocated to the account in accordance with the procedures established by the Trust Committee.

(4) Any funds in a joint savings account that remain unclaimed by the former Tribal member one (1) year after his or her twenty-first (21st) birthday shall be deposited in accordance with 9.5-6.

(e) Tribal members who do not claim their trust fund monies after reaching the age of eighteen (18) shall receive regular per capita payments, if they meet the requirements for an adult Tribal member to receive a per capita payment as set out in this law.

9.6-3. *Legally Incompetent Adults.*

(a) When an adult is declared legally incompetent, any per capita payments that are claimed on his or her behalf shall be placed in a trust account for health, welfare and/or education expenses. The Trust Committee shall develop guidelines to determine if an expense qualifies for reimbursement through a trust account fund payment.

(1) The guardian of a legally incompetent adult shall file a petition with the Trust Department when requesting distributions from such person's trust account. The guardian shall provide the Trust Department with either or both of the following:

(A) an account, including receipts, of all expenditures made on behalf of the legally incompetent adult that have not been reimbursed from the trust account.

(B) a written request, including sufficient, current information about a specific need for which the advance distribution will be used. Any advance distributions may be disbursed jointly to the guardian and the provider or institution providing the specific services or the amount disbursed may be paid directly to the provider or institution.

(2) The Trust Director or his/her designee shall either grant or deny the request within ten (10) business days.

(A) If the Trust Director approves a distribution request, the funds shall be disbursed within thirty (30) days after the approval. The Trust Director may, with the approval of the Trust Committee, authorize a regular

distribution from the trust account for a legally incompetent adult's benefit.

(B) If the Trust Director denies a distribution request, he or she shall send, by registered mail (return receipt requested), the denial and the reasons for the denial to the guardian within ten (10) business days after the decision is made.

(3) *Appeals.* A guardian whose petition for distributions is denied may file an appeal with the Trust Committee within ten (10) business days of the receipt of the denial.

(b) If a court of competent jurisdiction determines that an adult Tribal member is no longer legally incompetent, the Tribal member shall provide the Trust Department with a certified copy of the order. Any funds in the trust account in the member's name shall be disbursed to the Tribal member, provided that the Tribal member is otherwise eligible for the payment under this law.

(c) *Relinquishment.* Upon a legally incompetent adult's relinquishment of Tribal membership, any funds in a trust account for the legally incompetent adult shall be disbursed to the guardian of the legally incompetent adult.

9.7. Payments

9.7-1. *General.* This section shall set forth the responsibilities of the various departments and committees when a per capita payment is issued.

9.7-2. *Enrollment Department.* The Enrollment Department is responsible for the following activities when a per capita payment is approved:

(a) The Enrollment Department shall develop and finalize a list of the eligible Tribal members broken down into the following categories: minors, incompetent adults, adults and elderly.

(b) The Enrollment Department shall provide the finalized list of the number of eligible Tribal members to the Trust Department and the Accounting Division.

(c) Membership payment forms are sent out and upon return are entered into the Enrollment data base.

(d) After the membership payment form return deadline date, processing the payment and distributing all payments on the same day.

9.7-3. *Trust Department.* The Trust Department is responsible for the following activities when a per capita payment is approved:

(a) Upon receipt of the number of eligible members to receive a per capita payment, the Trust Department ensures the availability and liquidity of funds for a funds transfer of the trust funds under the authorization/jurisdiction of the Trust Committee.

(b) The Trust Department provides funds transfer instructions to the relevant initiating institution: the custodial bank or the Oneida Accounting Division.

(c) The Trust Department shall work with the Trust Committee in the establishment of any necessary trust accounts.

(d) The Trust Department is responsible for monitoring all accounts for the purposes of necessary reports, claims and payment verification.

9.7-4. *Accounting Division.* The Accounting Division is responsible for the following activities

when a per capita payment is approved:

- (a) Upon receipt of funds transfer instructions from the authorizing entity, initiate and complete the funds transfer. The physical movement of funds must happen no later than one (1) business day prior to the distribution date of the payment
- (b) Record issued, voided and stale dated distributions on the General Ledger.
- (c) Complete bank account reconciliations.

9.7-5. *Tribal Treasurer.* The office of the Tribal Treasurer shall be responsible for the identification of funds and the timely transfer of the necessary amount of relevant funds to the Trust Committee and the Accounting Division. The relevant funds shall be segregated and obligated for the per capita payments and are those necessary to:

- (a) Make a payment to those Tribal members responding to the membership payment form deadline who are not minors or incompetent adults.
- (b) Cover unverified member payments for those members who are unresponsive to the membership payment form deadline.

End.

Adopted - BC-7-12-00-B
 Emergency Amendments – BC-01-03-01-B
 Emergency Amendments - BC-2-28-01-E
 Amendments - BC-11-06-02-A (Elder Per Capita)
 Emergency Amendments - BC-6-25-03-G (Child support priority for attachment)
 Amendments - BC-6-16-04-C (Child support priority for attachment)
 Emergency Amendments - BC-9-12-07-A (one-time per capita payment)
 Amendments – BC-04-22-09-A (High School Diploma; legally incompetent adults)
 Emergency Amendments – BC-06-08-11-D (Fraudulent diploma; dual enrollments)
 Emergency Amendments extended – BC-11-09-11-E (Fraudulent diploma; dual enrollments)
 Amendments Adopted – BC-05-09-12-B (Fraudulent diploma, dual enrollments)
 Emergency Amendments – BC-09-12-12-A (Change in distribution date) Expired 3-12-13
 Amendments Adopted – BC-08-14-13-D

Chapter 9
PER CAPITA
Shakotiwi? Stawihé Olihwa'ke
 Issues concerning where they give the money

- 9.1. Purpose and Policy
- 9.2. Adoption, Amendment, Repeal
- 9.3. Definitions
- 9.4. General

- 9.5. Per Capita Payments
- 9.6. Minors and Legally Incompetent Adults
- 9.7. Payments

9.1. Purpose and Policy

9.1-1. *Purpose.* The Purpose of this law is:

- (a) To specify the procedure to be followed in the event that per capita payments are issued by the Tribe; and
- (b) To clearly state the responsibilities of the various entities in the distribution or maintenance of any such per capita payments.

9.1-2. *Policy.* It is the Policy of the Oneida Tribe of Indians of Wisconsin to have a consistent methodology for issuance of per capita payments, including payments derived from Gaming Revenues and regulated by the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et.seq.

9.2. Adoption, Amendment, Repeal

9.2-1. This law is adopted by the Oneida Business Committee by resolution BC-7-12-00-B and amended by resolution BC-11-06-02-A, BC-6-16-04-C, BC-04-22-09-A, BC-05-09-12-B and BC-08-14-13-D, and emergency amended by BC _____.

9.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

9.2-3. 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.

9.2-4. 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.

9.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

9.3. Definitions

9.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Adult" shall mean those Tribal members who are at least eighteen (18) years old on or before September 1st of a given year.
- (b) "Arrears" shall mean the amount of money a person has not paid pursuant to the most recent child support court order against him or her.
- (c) "Court of competent jurisdiction" shall mean the Tribe's judicial system or another court which has the jurisdiction to hear and determine a particular legal proceeding.
- (d) "Day" shall mean calendar days, unless otherwise specifically stated.
- (e) "Elder" shall mean those Tribal members who are age 62 years or over, or 65 years or over, as of December 31st of a given year.

- (f) "Legally incompetent adult" shall mean a Tribal member at least eighteen (18) years old who has been declared incompetent by a court of competent jurisdiction because he or she is temporarily or permanently impaired to the extent that the person lacks sufficient understanding to make or communicate responsible personal decisions.
- (g) "Minor" shall mean a Tribal member who has not yet reached the age of eighteen (18) years by September 1st of a given year.
- (h) "Minors trust" shall mean that account or those accounts established by the Trust Committee for the benefit of Tribal members who are minors.
- (i) "Tribal" or "Tribe" shall mean the Oneida Tribe of Indians of Wisconsin.
- (j) "Tribal entity" shall mean a department, board, committee, or commission of the Tribe.
- (k) "Trust account" shall mean that account or those accounts established by the Trust Committee for the benefit of Tribal members who are identified as needing trust accounts, for example, minors and legally incompetent adults.
- (l) "Trust Committee" shall mean that body designated by the General Tribal Council to manage the trust funds for the Oneida Tribe of Indians of Wisconsin and their Tribal membership, and which is also responsible for the enrollment records of the Oneida Tribe. This Committee is also known as the Oneida Trust/Enrollment Committee.

9.4. General

9.4-1. This section shall set forth the responsibilities delegated under this law.

9.4-2. *Supersedes.* This law shall supersede any contradictory language in any other per capita payment plan.

9.4-3. *Budgetary Limitations.* This law shall not be construed as mandating a per capita payment. Per capita payments shall be issued only at the direction of the General Tribal Council through adoption of a resolution.

9.4-4. *Oneida Trust Committee.* The Trust Committee shall be delegated the following responsibilities in regards to per capita activities. Any responsibility not specifically identified, and reasonably related to the activities identified herein, shall be considered a Trust Committee responsibility.

- (a) Fiduciary responsibility to manage trust accounts related to per capita payments.
- (b) Maintenance of the membership rolls in such a manner as to accurately identify to whom per capita payments will be made.
- (c) Holding administrative hearings regarding challenges to payment or non-payment of per capita payments.
- (d) Development of Tribal Allocation Plans necessary to make per capita payments.

9.4-5. *Oneida Business Committee.* The Oneida Business Committee shall be identified as having the following responsibilities regarding per capita activities. Actions reasonably related to activities defined herein, shall be considered an Oneida Business Committee activity.

- (a) Identification of funds for allocation for per capita payments.
- (b) Approval of Tribal Allocation Plan and forwarding the Tribal Allocation Plan for approval by the Bureau of Indian Affairs.
- (c) Transfer of funds for the trust account to the Trust Committee in a timely manner and within a reasonable time frame.

9.4-6. *Attachments.* Per capita payments are considered benefits offered by the Tribe to the membership. All per capita payments, except payments to or from a trust account, are subject to attachment prior to distribution in accordance with this section.

(a) Per capita attachments may only be ordered by the Tribe's judicial system for the following purposes, and in the following order:

(1) Child support arrears ordered by a court of competent jurisdiction.

(2) Debt owed to a Tribal entity that is past due.

(A) "Debt owed to a Tribal entity" includes any money owed to a Tribal entity and any fines that have been issued by a Tribal entity.

(3) A federal tax levy.

(b) After child support arrears are fully satisfied, any remaining per capita shall be used for the payment of debt owed to a Tribal entity.

(1) If a Tribal member owes arrears in more than one (1) child support order, the per capita shall be equally divided based on the number of court orders under which arrears are owed.

(2) If a Tribal member owes debt to more than one (1) Tribal entity, the per capita shall be equally divided based on the number of entities that are owed debt.

(c) After child support arrears and debt owed to a Tribal entity have been fully satisfied, any remaining per capita shall be used for the payment of a federal tax levy.

(d) *Child Support Attachments.* All requests for attachments for child support arrears shall be submitted to the Oneida Nation Child Support Agency. The claimant or a representative of the entity designated to receive the arrears may request the attachment.

(1) Attachment requests for child support arrears shall be made before July 1st to attach the annual per capita payment. Attachment requests for child support arrears for all other payments shall be made far enough in advance for the requirements of this law to be met and the order of determination on the attachment of the payment from the Tribe's judicial system to be received by the Enrollment Department at least thirty (30) days before the payment date.

(2) After receiving an initial attachment request for child support arrears, the Oneida Nation Child Support Agency shall send a one-time notice and a voluntary federal income tax withholding request form to those Tribal members whose per capita payment will be attached for child support arrears.

(A) When subsequent requests for attachment are received, the Oneida Nation Child Support Agency shall proceed in accordance with 9.4-6(d)(5).

(3) The one-time notice shall inform the Tribal member of the following:

(A) A request to attach the Tribal member's per capita payment for child support arrears has been received;

(B) He or she has ten (10) business days from receipt of the notice to return the completed voluntary federal income tax withholding request form if he or she wants federal income tax withheld from the per capita payment before the attachment is applied; and

(C) The Tribal member's future per capita payments will be attached, upon request from a claimant or a representative of the entity designated to

receive the arrears, until the child support arrears are satisfied.

(4) A Tribal member whose per capita payment will be attached for child support arrears has until ten (10) business days after receiving the one-time notice of attachment to submit a request to the Oneida Nation Child Support Agency that federal income tax be withheld from his or her per capita payment.

(A) A request received to withhold federal income tax shall remain in effect until the child support arrears have been satisfied or the Tribal member provides written notice to the Oneida Nation Child Support Agency stating otherwise, whichever occurs first.

(B) Without a request to withhold federal income tax from the per capita payment as required under this law, federal income tax shall not be withheld from the current or future per capita payments that are attached for child support arrears unless the Tribal member provides written notice to the Oneida Nation Child Support Agency stating otherwise.

(C) A request to change a Tribal member's voluntary federal income tax withholding status that is received before July 1st shall be applied to that year's annual per capita payment. Requests to change a Tribal member's voluntary federal income tax withholding status received on or after July 1st shall be applied to the next per capita payment made, whether it is an annual or prior payment.

(5) The Oneida Nation Child Support Agency shall prepare a certified accounting of all attachment requests and forward the accounting to the Tribe's judicial system. If the attachment request is for the annual per capita payment, the certified accounting shall be forwarded to the Tribe's judicial system before July 31st of the year in which the payment is scheduled to be made.

(6) The Tribe's judicial system shall issue an order of determination and forward it to the Enrollment Department:

(A) before August 1st for action in the next processed annual per capita payment; or

(B) at least thirty (30) days before the payment date for action in the next processed prior payment distribution.

(7) After the child support arrears have been satisfied, if an attachment request is submitted for the same Tribal member's per capita based on new child support arrears, the Oneida Nation Child Support Agency shall issue another one-time notice and federal income tax withholding form in accordance with 9.4-6(d)(2) above.

(e) *Tribal Debt and Federal Tax Levy Attachments.* All requests for attachments for debt owed to a Tribal entity or to the federal government for a federal tax levy shall be submitted to the Tribe's judicial system. The claimant or a representative of the entity designated to receive the claim may request the attachment.

(1) Attachment requests for debt owed to a Tribal entity or to the federal government for a federal tax levy shall be made before August 1st to attach the annual per capita payment. Attachment requests for debt owed to a Tribal entity or to the federal government for a federal tax levy for all other payments shall be

made far enough in advance for the requirements of this law to be met and the order of determination on the attachment of the payment from the Tribe's judicial system to be received by the Enrollment Department at least thirty (30) days before the payment date.

(2) A Tribal member whose annual per capita payment will be attached for Tribal debt or a federal tax levy has until September 1st to request federal income tax be withheld from his or her per capita payment. A Tribal member whose prior per capita payment will be attached for Tribal debt or a federal tax levy has until the order of determination on the attachment of the payment from the Tribe's judicial system is issued to request federal income tax be withheld from his or her per capita payment.

(3) The Tribe's judicial system shall issue an order of determination and forward it to the Enrollment Department:

(A) before September 1st for action in the next processed annual per capita payment; or

(B) at least thirty (30) days before the payment date for action in the next processed prior payment distribution.

(f) The Tribe's judicial system may order attachments against per capita payments of Tribal members who do not return a notarized membership payment form as required under 9.5-3(b) or who refuse a payment under 9.5-3(f). If the amount of the per capita payment exceeds the amount of the attachment, the remaining unclaimed balance shall remain available as identified in 9.5-3(c) and the remaining refused balance shall be deposited in accordance with 9.5-3(f)(2).

9.4-7. *Federal Income Tax Withholding.*

(a) *Voluntary.* If a voluntary federal income tax withholding request form has been received under 9.4-6(d)(4) or 9.4-6(e)(2), federal income tax shall be withheld from per capita payments.

(b) *Mandatory.* A member who meets all of the requirements of this law, but refuses to provide the Enrollment Department with his or her social security number shall have mandatory federal income tax withheld from his or her per capita payment, as required by federal law.

(c) Federal income tax withholding, whether voluntary or mandatory, shall be applied to the per capita amount before any attachments are applied.

(d) *IRS Publication 15a.* In instances where federal income tax is withheld from a per capita payment, the most recent edition of IRS Publication 15a shall be complied with.

9.5. Per Capita Payments

9.5-1. *General.* This section shall set forth the processes to follow when a per capita payment is issued.

9.5-2. *Trust Committee.* The Trust Committee is responsible for the protection and preservation of per capita payment funds for minors. As part of that responsibility, the Trust Committee is responsible for the completion and issuance of any necessary reports to the minors. The Trust Committee shall develop standard reporting procedures which establish valuation dates, frequency of reports and identify data critical to the completion of reports. Such reporting

responsibilities may be delegated to duly selected vendors.

9.5-3. *Deadlines.* The following deadlines shall apply in regards to the annual per capita payment. Where the dates fall on a Saturday, Sunday, or holiday the deadline shall be construed to be the close of business on the following business day. For any additional per capita payments, the Trust Committee may establish dates and deadlines associated with those payments, as needed.

(a) *Eligibility.* Eligibility falls into the following categories:

(1) *Filing Deadlines.* An individual who is not a Tribal member shall file a new enrollment application no later than the close of business on January 31st in order to be considered eligible for the following per capita payment.

(2) *Enrollment Deadlines.* An individual is considered enrolled for the purposes of a per capita payment if the individual has been approved for enrollment by a vote of the Oneida Business Committee by March 31st.

(3) *Dual Enrollment.* A member who is dually enrolled with the Tribe and another Indian Tribe is not eligible for a per capita payment unless his or her relinquishment from the other tribe has been processed and written verification that the member is no longer enrolled with that tribe has been received by the Enrollment Department by September 1st.

(b) *Membership Payment Form.* The Enrollment Department shall mail membership payment forms no later than July 1st. Each adult Tribal member shall return a notarized membership payment form by close of business on September 1st in order to be eligible for a per capita payment.

(c) *Request for Prior Payment.*

(1) *Unclaimed Payment.* A request for a prior payment, for which a member was eligible, but did not claim, shall be filed by September 1st of the next year. For example, if a payment's original distribution date is in 2000, then the deadline is September 1, 2001. If a request is not received by the deadline date, the payment will expire and the funds shall be deposited in a pooled account in accordance with 9.5-6.

(2) *Un-cashed Payment.* A request for a prior payment, for which a member already claimed, but did not redeem, shall be filed by September 1st of the next year. For example, if a payment's original distribution date is in 2000, then the deadline is September 1, 2001. A payment may be reissued once. After the payment is reissued the member has ninety (90) days to redeem it or the payment will expire and will not be reissued. The funds shall then be deposited in a pooled account in accordance with 9.5-6.

(d) *Annual Payments.* Annual per capita payments shall be distributed on or before September 30th. First time elder per capita payments for those Tribal members who turn sixty-two (62) or sixty-five (65) after September 30th, and through December 31st, shall be distributed at the end of the month of the elder's birth date.

(e) *Prior Payments.*

(1) *Prior Payments: Elders.* Prior payments requested by eligible elders on or before the twentieth (20th) day of the month shall be distributed by the last business day of that month. Prior payments requested by elders after the

twentieth (20th) day of the month shall be distributed by the last business day of the next month.

(2) *Prior Payments: Non-Elders.* Prior payments requested by eligible Tribal members who are not elders shall be distributed as follows:

(A) By March 31st, if the prior payment request is received after September 1st, but on or before March 1st.

(B) By September 30th, if the prior payment request is received after March 1st, but on or before September 1st.

(f) *Refusal of Payments.* A Tribal member may refuse any per capita payment due to him or her, including a trust account payment, by completing a refusal form developed by the Enrollment Department. However, if the Tribe's judicial system has approved the attachment of the Tribal member's payment, only the remaining portion of the per capita payment, if any, may be refused.

(1) Upon submitting the refusal form to the Enrollment Department, the Tribal member waives his or her right to the specific payment as indicated on the form.

(2) A refused payment shall be deposited in a pooled account in accordance with 9.5-6.

9.5-4. *Deceased Members.* A Tribal member shall be considered ineligible to receive a per capita payment if his or her date of death occurs on or before the payment distribution date.

(a) The estate of a deceased Tribal member may not submit a membership payment form on behalf of the deceased to claim a per capita payment.

(b) A deceased Tribal member's per capita payment shall be deposited in a pooled account in accordance with 9.5-6.

9.5-5. *Adult Relinquishment.* A Tribal member is ineligible for any future or prior per capita payments as of the date his or her Tribal membership is relinquished. Funds set aside for a former Tribal member's per capita payment shall be deposited in a pooled account in accordance with 9.5-6.

9.5-6. *Pooled Account.* Upon failure to file a request for a prior payment or trust account funds within the time provided under this law, the member's eligibility for the prior payment or trust account funds shall expire. Any unclaimed funds held in reserve for such claims shall be deposited in a pooled account to be used for a purpose designated by the General Tribal Council. Management of the pooled account shall be the responsibility of the Trust Committee.

9.6. Minors and Legally Incompetent Adults

9.6-1 *General.* This section shall set forth a consistent method to protect and preserve the interests of minors and legally incompetent adults in any per capita payment to which they may be entitled. If a per capita payment includes minors and/or legally incompetent adults as eligible recipients, those per capita payments shall be deposited into a trust account.

(a) The Trust Committee shall establish a standard operating procedure which shall identify the set-up and monitoring of the trust accounts. The Trust Committee may choose to maintain pooled or individual accounts, separate accounts for each payment or series of payments, or any other combination which is in the interests of the recipients and which is consistent with the terms of the Minor's Trust Agreement and the Trust Committee's Investment Policy.

(b) **Costs of Account.** The administrative costs related to a trust account shall be allocated to the account. Administrative costs shall be defined as those costs related to third party fees and expenses resulting from managing the accounts. Administrative costs shall not include any costs related to the expenses of the Trust Department, Trust Committee or Enrollment Department. No member who has funds in a trust account shall be guaranteed the specific amount of the per capita payment.

(c) **Deceased Member.** The value of a member's trust account shall be inheritable on the date of death of the member. The Trust Committee shall establish a standard operating procedure which shall identify the processes by which an application for payment shall be made. The payment shall be issued either in the name of the deceased member or the estate of the individual.

(1) If the trust account funds are not claimed by the estate of the deceased within one (1) year after the date of the member's death, the funds shall be deposited in accordance with 9.5-6.

9.6-2. *Minors.*

(a) *Disbursement of a Minor's Trust.* A Tribal member shall be eligible to receive any funds in the trust account established in his or her name when the member is eighteen (18) years old or older and provides the Enrollment or Trust Department with proof that he or she has obtained a High School Diploma, a High School Equivalency Diploma or a General Equivalency Diploma. The funds shall be disbursed in accordance with an established payment schedule developed and approved by the Trust Department and Trust Committee.

(1) Tribal members who are at least eighteen (18) years old, but do not provide proof of having obtained a High School Diploma, a High School Equivalency Diploma or a General Equivalency Diploma shall not be eligible to receive any trust funds established in their name until their twenty-first (21st) birthday.

(2) *Exceptions.* The following Tribal members may receive any trust funds established in his or her name at the age of eighteen (18) without providing the Enrollment or Trust Department with proof that he or she has obtained a High School Diploma, a High School Equivalency Diploma or a General Equivalency Diploma:

(A) Those who were in the graduating class of 2009 or a prior class.

(B) Those who are declared legally incompetent adults, provided that, the requirements of 9.6-3 are met. Any funds in the minor's trust account for a Tribal member who is declared a legally incompetent adult shall be put into a trust account for the legally incompetent adult.

(C) Those who have a learning disability or other disability, provided he or she presents a certificate of attendance showing that he or she has attended twelve (12) years of school. That certificate shall be treated as a High School Diploma.

(3) *Fraudulent Proof of a Diploma.* In the event the Enrollment or Trust Department believes that an individual has submitted fraudulent proof that he or she has received a High School Diploma, High School Equivalency Diploma or a General Equivalency Diploma, the Trust Department shall notify the Tribal

member that they are investigating the proof to verify its authenticity. If the proof is deemed fraudulent, the Trust Department shall:

- (A) Withhold payment of the trust account funds, if not already paid to the Tribal member, until the requirements of this law have been met.
- (B) Impose a fine against the Tribal member of one-third (1/3) of the Tribal member's trust account funds.
- (C) Notify the Tribal member of the following:
 - (i) the proof has been deemed fraudulent;
 - (ii) payment of the trust account funds, if not already paid to the Tribal member, will not occur until the Tribal member submits valid proof of a diploma or he or she turns twenty-one (21);
 - (iii) a fine against the Tribal member of one-third (1/3) of the Tribal member's trust account funds will be imposed;
 - (iv) he or she can appeal the Trust Department's decision to the Trust Committee; and
 - (v) how to appeal the decision, including any applicable time limits.
- (D) Take action to have the Tribal member's future per capita payments attached, in accordance with this law, until the fine is satisfied.
- (E) Deposit any funds collected to pay a fine imposed under this section in a pooled account in accordance with 9.5-6.

(b) *Deferral Elections.* An individual may postpone payment of his or her trust account to a later date by entering into a deferral election. Deferral elections are subject to the Tribal Allocation Plan and the rules and restrictions set forth within any applicable trust agreement.

(c) *Unclaimed Minors Trust.* Except as provided for in 9.6-2(c)(1) below, any funds in a minor's trust account that are not claimed within one (1) year after the beneficiary's twenty-first (21st) birthday shall be deposited in a pooled account in accordance with 9.5-6.

(1) *Exception.* An individual who was at least eighteen (18) but not yet twenty-six (26) years old on May 6, 2009 shall have until his or her twenty-sixth (26th) birthday to file a claim for any funds in the minors trust account in his or her name.

(d) *Relinquishment.* Upon a minor's relinquishment of Tribal membership, the following provisions shall apply:

- (1) Any funds in a trust account for the minor shall be deposited in a joint savings account in the name of the Trust Committee and the former Tribal member.
- (2) The former Tribal member shall be eligible to claim the joint savings account in accordance with section 9.6-2(a).
- (3) Accounts shall be held until one (1) year after the former Tribal member turns twenty-one (21) years old. Any fees necessary for the establishment and maintenance of such an account shall be allocated to the account in accordance with the procedures established by the Trust Committee.
- (4) Any funds in a joint savings account that remain unclaimed by the former

Tribal member one (1) year after his or her twenty-first (21st) birthday shall be deposited in accordance with 9.5-6.

(e) Tribal members who do not claim their trust fund monies after reaching the age of eighteen (18) shall receive regular per capita payments, if they meet the requirements for an adult Tribal member to receive a per capita payment as set out in this law.

9.6-3. *Legally Incompetent Adults.*

(a) When an adult is declared legally incompetent, any per capita payments that are claimed on his or her behalf shall be placed in a trust account for health, welfare and/or education expenses. The Trust Committee shall develop guidelines to determine if an expense qualifies for reimbursement through a trust account fund payment.

(1) The guardian of a legally incompetent adult shall file a petition with the Trust Department when requesting distributions from such person's trust account. The guardian shall provide the Trust Department with either or both of the following:

(A) an account, including receipts, of all expenditures made on behalf of the legally incompetent adult that have not been reimbursed from the trust account.

(B) a written request, including sufficient, current information about a specific need for which the advance distribution will be used. Any advance distributions may be disbursed jointly to the guardian and the provider or institution providing the specific services or the amount disbursed may be paid directly to the provider or institution.

(2) The Trust Director or his/her designee shall either grant or deny the request within ten (10) business days.

(A) If the Trust Director approves a distribution request, the funds shall be disbursed within thirty (30) days after the approval. The Trust Director may, with the approval of the Trust Committee, authorize a regular distribution from the trust account for a legally incompetent adult's benefit.

(B) If the Trust Director denies a distribution request, he or she shall send, by registered mail (return receipt requested), the denial and the reasons for the denial to the guardian within ten (10) business days after the decision is made.

(3) *Appeals.* A guardian whose petition for distributions is denied may file an appeal with the Trust Committee within ten (10) business days of the receipt of the denial.

(b) If a court of competent jurisdiction determines that an adult Tribal member is no longer legally incompetent, the Tribal member shall provide the Trust Department with a certified copy of the order. Any funds in the trust account in the member's name shall be disbursed to the Tribal member, provided that the Tribal member is otherwise eligible for the payment under this law.

(c) *Relinquishment.* Upon a legally incompetent adult's relinquishment of Tribal membership, any funds in a trust account for the legally incompetent adult shall be disbursed to the guardian of the legally incompetent adult.

9.7. Payments

9.7-1. *General.* This section shall set forth the responsibilities of the various departments and committees when a per capita payment is issued.

9.7-2. *Enrollment Department.* The Enrollment Department is responsible for the following activities when a per capita payment is approved:

(a) The Enrollment Department shall develop and finalize a list of the eligible Tribal members broken down into the following categories: minors, incompetent adults, adults and elderly.

(b) The Enrollment Department shall provide the finalized list of the number of eligible Tribal members to the Trust Department and the Accounting Division.

(c) Membership payment forms are sent out and upon return are entered into the Enrollment data base.

(d) After the membership payment form return deadline date, processing the payment and distributing all payments on the same day.

9.7-3. *Trust Department.* The Trust Department is responsible for the following activities when a per capita payment is approved:

(a) Upon receipt of the number of eligible members to receive a per capita payment, the Trust Department ensures the availability and liquidity of funds for a funds transfer of the trust funds under the authorization/jurisdiction of the Trust Committee.

(b) The Trust Department provides funds transfer instructions to the relevant initiating institution: the custodial bank or the Oneida Accounting Division.

(c) The Trust Department shall work with the Trust Committee in the establishment of any necessary trust accounts.

(d) The Trust Department is responsible for monitoring all accounts for the purposes of necessary reports, claims and payment verification.

9.7-4. *Accounting Division.* The Accounting Division is responsible for the following activities when a per capita payment is approved:

(a) Upon receipt of funds transfer instructions from the authorizing entity, initiate and complete the funds transfer. The physical movement of funds must happen no later than one (1) business day prior to the distribution date of the payment

(b) Record issued, voided and stale dated distributions on the General Ledger.

(c) Complete bank account reconciliations.

9.7-5. *Tribal Treasurer.* The office of the Tribal Treasurer shall be responsible for the identification of funds and the timely transfer of the necessary amount of relevant funds to the Trust Committee and the Accounting Division. The relevant funds shall be segregated and obligated for the per capita payments and are those necessary to:

(a) Make a payment to those Tribal members responding to the membership payment form deadline who are not minors or incompetent adults.

(b) Cover unverified member payments for those members who are unresponsive to the membership payment form deadline.

End.

Emergency Amendments - BC-2-28-01-E
Amendments - BC-11-06-02-A (Elder Per Capita)
Emergency Amendments - BC-6-25-03-G (Child support priority for attachment)
Amendments - BC-6-16-04-C (Child support priority for attachment)
Emergency Amendments - BC-9-12-07-A (one-time per capita payment)
Amendments – BC-04-22-09-A (High School Diploma; legally incompetent adults)
Emergency Amendments – BC-06-08-11-D (Fraudulent diploma; dual enrollments)
Emergency Amendments extended – BC-11-09-11-E (Fraudulent diploma; dual enrollments)
Amendments Adopted – BC-05-09-12-B (Fraudulent diploma, dual enrollments)
Emergency Amendments – BC-09-12-12-A (Change in distribution date) Expired 3-12-13
Amendments Adopted – BC-08-14-13-D

Legislative Operating Committee



Handout

Agenda Request Form

- 1) Request Date: 7-14-15
- 2) Contact Person(s): Rae Skenandore Dept: Finance/Oneida Land Commission
Phone Number: 920-869-4337 Email: rskenan@oneidanation.org
- 3) Agenda Title: Emergency amendments to the Rules of Civil Procedure and Per Capita Law
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
See attached

List any supporting materials included and submitted with the Agenda Request Form

- | | |
|---|----------|
| 1) <u>2013 Complaint for Judgement Attachment</u> | 3) _____ |
| 2) _____ | 4) _____ |

- 5) Please List any laws, ordinances or resolution that might be affected:
Rules of Civil Procedure, Per Capita Ordinance, and potentially the Stipend Policy
- 6) Please List all other departments or person(s) you have brought your concern to:
Land Commission, DOLM, Finance, Judiciary, Liaison staff, LRO
- 7) Do you consider this request urgent? Yes No
If yes, please indicate why: Time restrictions and the mailing of the per capita.

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee

Signature of Requester: Rae Skenandore

Please send this form and all supporting materials to:

LOC@oneidanation.org
or
Legislative Operating Committee (LOC)
P.O. Box 365
Oneida, WI 54155
Phone 920-869-4376

Emergency action is suggested to facilitate the collection of Tribal debt from per capita payments being issued October 1, 2015. Changes to Rules of Civil Procedure & possibly the Per Capita Ordinance request include the following:

The Oneida Land Commission as well as Finance is requesting the following:

1. The requirements of the filing fees are waived for internal Tribal entities.
2. The requirement of proof of service be lowered to certified mail delivered to the last known address.
3. Consider if LOC want to consider extending the timelines to allow for complaints and attachment to be made for this year per capita payment.

For context, Finance would like LOC to know that an estimate of the current debt owed that could be collected through the measures outlined above is approximately \$350,000.



Government Our Ways Resources Community Business Visit Us I want to...

Judiciary Transition Information

A Special Election was held on September 27, 2014.
The following seats were filled at this election:

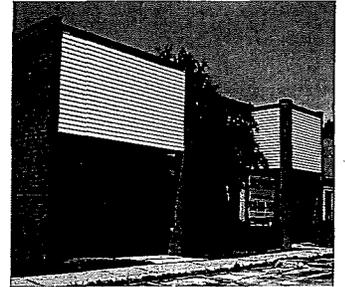
ONEIDA TRIBAL JUDICIAL SYSTEM

Trial Court

Denice Beans - Chief Judge of the Trial Court - 6-year term (full-time)
Layatalati Hill - Trial Court Judge - 6-year term (full-time)
John Powless III - Trial Court Judge - 3-year term (full-time)

Appellate Court

Gerald L. Hill - Chief Judge of the Appellate Court - 6-year term (full-time)
Sharon House - Appellate Court Judge - 6-year term (part-time)
Jennifer Hill-Kelley - Appellate Court Judge - 6-year term (part-time)
Diane House - Appellate Court Judge - 3-year term (part-time)
Chad Hendricks - Appellate Court Judge - 3-year term (part-time)



Judiciary Building
(formerly HRD)
2630 W. Mason St.
Ribbon cutting scheduled for
November 24, 2014

Cases accepted here:
3759 W Mason St. Ste. 1
Oneida, WI 54155

What's New

**ONEIDA JUDICIARY
FILING AND OTHER FEES
EFFECTIVE May 1, 2015**

Quick Links

Oneida Tribal Judicial System webpage



Oneida Family Court Seal

TRIAL COURT	FEE
GENERAL CIVIL CASE	\$50.00
SMALL CLAIMS (\$5000 OR LESS)	\$50.00
GARNISHMENT	\$25.00
MOTIONS & PETITIONS	\$50.00

NON CERTIFIED AUDIO RECORDINGS	TBD
NOTARIZE DOCUMENT	NO CHARGE

PLEASE NOTE: ANY REQUESTS FOR FEE WAIVERS REQUIRE

- Fee Waiver Form
- Proof of economic hardship

ADMISSION TO PRACTICE	FEE
ATTORNEY	\$100.00
LAY ADVOCATE	\$50.00

All Fees are nonrefundable.

PAYMENT OPTIONS: CASH, MONEY ORDERS, CASHIER'S CHECK, CREDIT CARDS

ONEIDA TRIBAL JUDICIAL SYSTEM

Complaint for Judgment Attachment of Per Cap and /or Payroll Wages

Date March 8, 2013

1. **Jurisdiction**

Petitioner	Respondent	
Central Accounting Department Oneida Tribe of Indians of Wisconsin PO Box 365 Oneida WI 54155		
	Case #	
	Enrollment #	
	Employee #	

2. **Course of events.**

- A. In -----, ----- received goods and/or services from the ----- Department, a business owned and operated by the Oneida Tribe of Indians of Wisconsin.
- B. Payment has not been made in full.
- C. Letters have been sent to the Respondent requesting payment.
- D. Respondent has not disputed the amount owed.

3. **What laws apply?** Refusal of payment for the goods and/or services received.

4. **How was the Oneida Tribe harmed by the violation?** The respondent has not paid for the goods and/or services.

5. **What damages did the Oneida Tribe suffer?**

- A. The Tribe has not received payment for the goods and/or services.
- B. Tribe has incurred additional expense for collection efforts and efforts to obtain authorization to process the garnishment.
- C. The Oneida Tribe requests payment in the amount owed of \$_____ plus a collection fee of \$15.00. Total due **\$ 00.00.**

Respectfully submitted,

Contact name at Central Accounting	
Contact phone # at Central Accounting	
Electronic signature	

Handout

BC Resolution _____*Oneida Judiciary Rules of Civil Procedure Emergency Amendments*

1
2
3
4 **WHEREAS,** the Oneida General Council is the duly recognized governing body of the Oneida
5 Tribe of Indians of Wisconsin; and

6 **WHEREAS,** the Oneida General Council has been delegated the authority of Article IV,
7 Section I of the Oneida Tribal Constitution; and

8 **WHEREAS,** the Oneida Business Committee may be delegated duties and responsibilities by
9 the Oneida General Tribal Council and is at all times subject to the review powers
10 of the Oneida General Tribal Council; and

11 **WHEREAS,** the Oneida Business Committee adopted the Oneida Judiciary Rules of Civil
12 Procedure (Law) through resolution BC-04-25-14-A.

13 **WHEREAS,** the Law requires that all parties filing complaints with the court to pay a filing fee
14 or other fee where specified by law or Court Rule; and

15 **WHEREAS,** the Law also requires all parties, except the court, to attempt to serve notice via
16 personal service by a law enforcement officer or other person, who is not a party
17 to the action and who is at least eighteen (18) years of age. A party may service
18 via mail only if personal service is not possible and by publication only if mail
19 service is not possible; and

20 **WHEREAS,** in order to reduce the Oneida Nation's debt collection costs emergency
21 amendments to the Oneida Judiciary Rules of Civil Procedure (Law) are required
22 to waive the filing fee for Tribal Entities filing complaints with the Judiciary and
23 to allow Tribal Entities, to provide service of notice via certified mail; and

24 **WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to
25 enact legislation on an emergency basis, to be in effect for a period of six (6)
26 months, renewable for an additional six (6) months; and

27 **WHEREAS,** emergency amendments to the Oneida Judiciary Rules of Civil Procedure (Law)
28 are necessary for the preservation of the public health, safety, or general welfare
29 of the reservation population, and observance of the adoption requirements under
30 the Legislative Procedures Act for passage of laws and policies would be contrary
31 to public interest.

32 **NOW THEREFORE BE IT RESOLVED,** that the following amendments to sections 153.3-1,
33 153.5-1, and 153.5-6 of the Oneida Judiciary Rules of Civil Procedure (Law) are hereby adopted
34 on an emergency basis for six (6) months, and shall take effect immediately:

35

36 153.3-1

37 (ss) “Tribe” or “Tribal” shall mean the Oneida NationTribe of Indians of Wisconsin.38 ~~(ss)~~(tt) “Tribal Entity” shall mean a department, board, committee, or commission of the
39 Tribe.40 ~~(tt)~~(uu) “Without prejudice” shall mean that none of the rights or privileges of the
41 individual involved are considered to be lost or waived. The parties are free to litigate
42 the matter in a subsequent action, as though the dismissed action had not been started.

43

44 153.5-1 *Complaint.* A civil action shall be commenced upon the filing of a complaint and
45 payment of a filing fee or other fee where specified by law or Court Rule, except that all Tribal
46 Entities are exempt from paying such filing fee or other applicable fees.

47

48 153.5-6 *Effective Service.* Excluding the complaint, summons and answer, a party may
49 serve any other papers by electronic means if the party being served consents in writing to
50 service by electronic means. Such consent shall include the electronic communication system,
51 including the address or number, in which to send such papers. The Consent shall be filed with
52 the Court. Otherwise, service shall be as follows: When possible, service shall be done by
53 personal service as described below. If personal service is not possible, or if the service is on
54 behalf of a Tribal Entity, then by-mail service is acceptable. ~~If mail service is not possible, then~~
55 ~~u~~Upon a showing of due diligence to make personal service and service by mail, service by
56 publication may be used as a last resort.

57

Oneida Tribe of Indians of Wisconsin

Legislative Reference Office

P.O. Box 365
Oneida, WI 54155
(920) 869-4376
(800) 236-2214



Committee Members

Brandon Stevens, Chairperson
Tehassi Hill, Vice Chairperson
Fawn Billie, Councilmember
David P. Jordan, Councilmember
Jennifer Webster, Councilmember

Statement of Effect

Oneida Judiciary Rules of Civil Procedure Emergency Amendments

Summary

This Resolution adopts emergency amendments to the Oneida Judiciary Rules of Civil Procedure to allow Tribal Entities to file complaints with the Oneida Judiciary without paying the filing fee or other applicable fee and also allows Tribal Entities to provide the requisite service via certified mail, rather than first requiring attempted personal service.

Submitted by Krystal L. John, Staff Attorney, Legislative Reference Office

Analysis from Legislative Reference Office

This Resolution adopts emergency amendments to the Oneida Judiciary Rules of Civil Procedure (Law), which was adopted through resolution BC-04-25-14-A. This Law establishes the rules for civil actions with the Oneida Judiciary. As written, the Law requires Tribal Entities, like the Land Commission, to pay a filing fee in order to bring a complaint in order to collect a debt owed the Oneida Nation. In Addition, it also requires all Tribal Entities to serve notice upon the defendants by first attempting personal service by a law officer or other person, who is not a party to the action and who is at least eighteen (18) years of age, and then, only if personal service is not possible, is an affected Tribal Entity able to serve notice via mail service. These emergency amendments would allow the Tribal Entities to avoid paying the filing fee and also to serve via mail without attempting personal service in order to reduce the Nation's costs incurred in the debt collection process.

These amendments are being brought forth as emergency amendments in order to allow Tribal Entities to collect debt via attachment to annual per capita payments. Emergency amendments to the Per Capita Law are being requested in tandem with the emergency amendments to the Oneida Judiciary Rules of Civil Procedure because in order for a Tribal Entity to file a complaint for attachment of per capita payment with the Judiciary, as the Per Capita Law is currently written, Section 9.4-6(e)(1) requires the "request," which is the complaint, to be filed by July 1st and Section 9.4-6(e)(3)(A) requires the Judiciary to issue an order of determination and forward it to the Enrollment Department before September 1st for action in the next processed annual per capita payment. In order to allow Tribal Entities time to transition from working with the former Appeals Commission to working within the requirements of the Judiciary and so that attachment may still be made to this year's per capita payments, it has been requested that these deadlines be

extended to August 1st and September 1st respectively on an emergency basis for 6 months.

Section 16.9-5 of the Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is “necessary for the immediate preservation of the public health, safety or general welfare of the reservation population” and when “enactment or amendment of legislation is required sooner than would be possible under the” LPA. Through the Resolution, the Oneida Business Committee has issued a finding of an emergency and has stated the necessity for approving emergency amendments to this Law.

Conclusion

Adoption of this Resolution would not conflict with Tribal law.

Chapter 153 ONEIDA JUDICIARY RULES OF CIVIL PROCEDURE

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<i>Analysis by the Legislative Reference Office</i>					
Title	Oneida Tribal Judiciary Rules of Civil Procedure				
Requester	Rae Skenandore	Drafter	Krystal John	Analyst	Tani Thurner
Reason for Request	Emergency amendments to this Law and to the Per Capita Law are being proposed so that they can be in effect in time to apply to per capita attachments before the upcoming per capita payment distribution.				
Purpose	These changes				
Authorized/Affected Entities	This affects all Tribal entities, as it exempts them from paying filing fees for actions before the Judiciary, and it allows them to serve another party to an action by certified mail, without needing to first attempt to serve the party by personal service.				
Due Process	N/A				
Related Legislation	Per Capita Law				
Policy Mechanism	N/A				
Enforcement	N/A				

Proposed Amendments

These changes to the Oneida Judiciary Rules of Civil Procedure (“the Rules”) are being submitted in conjunction with proposed changes to the Per Capita law, and both are being submitted for adoption on an emergency basis so that the changes can be in effect in time to apply to per capita attachments before the upcoming per capita payment distribution.

The changes to the Rules include the following:

- A definition for “Tribal entity” is added – it means a department, board, committee, or commission of the Tribe. [153.3-1(tt)] This matches the definition used in the Per Capita Law.

- The Rules still state that a civil action is commenced upon the filing of a complaint and payment of a filing fee or other fee where specified by law or Court Rule, but an exception is added –Tribal Entities are exempt from paying “such filing fee or other applicable fees.” [153.5-1]
- Currently, when one party serves papers on another party for a matter that will be before the Judiciary; the party that serves the papers must first try to serve the other party by personal service, but if that is not possible then the party may serve the papers by certified mail; return receipt requested. The amendments add that if the service is on behalf of a Tribal entity, then mail service is acceptable without needing to try personal service first. [153.5-6]

The amendments also amend the definition for “Tribe or Tribal” to reflect the recently-passed Constitutional Amendment that changes the official name of the Tribe to “Oneida Nation.”

In accordance with section 16.9-5 of the Legislative Procedures Act, the Oneida Business Committee may temporarily enact an emergency law where legislation is necessary for the immediate preservation of the public health, safety or general welfare of the reservation population and the enactment or amendment of legislation is required sooner than would be possible under the standard legislative process. If these amendments are adopted on an emergency basis, they would be in effect for up to six months, and can be renewed one-time for up to an additional six months. [LPA 16.9-5(b)]

A public meeting is not required for emergency amendments.

Consideration

It may be beneficial to clarify what service “on behalf of a Tribal Entity” is intended to cover when the Law states that service “on behalf of a Tribal entity” is effected– i.e. whether it means that the Tribal Entity is the party to the action and is doing the serving, or whether the intent is something different. This provision could be subject to different interpretations which may cause conflict in later actions.

ONEIDA JUDICIARY RULES OF CIVIL PROCEDURE

153.1. Purpose and Policy

153.1-1. The purpose of this Law is to govern all civil actions that fall under the jurisdiction of the Oneida Tribe of Indians of Wisconsin.

153.1-2. It is the policy of the Tribe that there should be a consistent set of rules governing the process for civil claims, in order to ensure equal and fair treatment to all persons who come before the Tribal Courts to have their disputes resolved.

153.2. Adoption; Amendment; Repeal

153.2-1. This Law is adopted by the Oneida Business Committee by resolution BC-04-25-14-A.

153.2-2. This Law may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

153.2-3. 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.

153.2-4. 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 where the specific laws that fall under this Court's jurisdiction provide for more specific rules of procedure, those laws shall supersede.

153.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

153.3 Definitions

153.3-1. 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) "Advocate" shall mean an Oneida non-attorney advocate as provided by law and other advocate who is admitted to practice law and is presented to the Court as the representative or advisor to a party.
- (b) "Affidavit" shall mean a written statement voluntarily made under an oath or affirmation administered by a person authorized to do so by law.
- (c) "Affidavit of service" shall mean a document signed under oath or affirmation by the server certifying service which sets out the time, date and place that the party was served.
- (d) "Answer" shall mean a formal written statement addressing the dispute on the merits and presents any defenses and counterclaims.
- (e) "Court of Appeals" shall mean the Court of Appeals of the Judiciary.
- (f) "Attorney" shall mean a person trained and licensed to represent another person in Court, to prepare documents and to give advice or counsel on matters of law.
- (g) "Attorney's fees" shall mean compensation for legal services performed by an attorney or advocate for a client, in or out of Court.
- (h) "Clerk" shall mean the clerk of the Trial Court including, when appropriate, the Family Court clerk.
- (i) "Complaint" shall mean the initial pleading setting out the case or cause of action on which relief is sought by the plaintiff.
- (j) "Counterclaim" shall mean a claim set up and urged by the defendant in opposition to or reduction of the claim presented by the plaintiff.
- (k) "Court" shall mean the Trial Court of the Oneida Judiciary. All references to "Court" shall also apply to the Family Court unless specified otherwise.
- (l) "Crossclaim" shall mean a claim that is made by a party in a suit that is in opposition to a claim already made.
- (m) "Day" or "days" shall mean calendar days, except where otherwise specified.
- (n) "Defendant" shall mean the party, including a respondent in the Family Court, against whom relief or recovery is sought in an action or suit. All references to "defendant" apply to "respondent."
- (o) "Deposition" shall mean the taking and recording of testimony of a witness under oath before a Court reporter in a place away from the courtroom before trial.
- (p) "Discovery" shall mean the entire efforts to obtain information before trial through demands for production of documents, depositions, interrogatories, requests for admissions, examination of the scene and the petitions and motions employed to enforce discovery rights.
- (q) "Electronic" shall mean an electronic communication system, including, but is not limited to E-mail, used for filing papers with the Court or serving papers on any other party.

- (r) “Ex Parte” shall mean any contact with the Judge regarding a pending case where the opposing party has not received notice, is not present, and has not consented to the communication.
- (s) “Excusable neglect” shall mean a legitimate excuse for the failure to take some proper step at the proper time. The failure to act shall have been the act of a reasonably prudent person under the same circumstances; however, it shall not include situations brought about by the moving party’s own carelessness or inaction.
- (t) “Family Court” shall mean the Family Court pursuant to the Family Court Law, Chapter 151 of the Oneida Code of Laws. All references to “Court” shall also apply to the Family Court unless specified otherwise.
- (u) “Good cause” shall mean a substantial reason or legal justification for failing to appear, to act, or respond to an action.
- (v) “Interlocutory injunction” shall mean a Court order, made during the trial, to compel or prevent a party from doing certain acts pending the final determination of the case.
- (w) “Interrogatory” shall mean a set of written questions to a party to a lawsuit asked by the opposing party as part of the pre-trial discovery process.
- (x) “Judge” shall mean the person presiding over a case to hear and decide legal matters.
- (y) “Judgment” shall mean a determination of a Court of law including a decree and any order from which an appeal lies. The terms decision, opinion, judgment and order are generally used similarly throughout this Law.
- (z) “Judiciary” shall mean the judicial system that was established by Oneida General Tribal Council resolution GTC #1-07-13-B to administer the judicial authorities and responsibilities of the Tribe.
- (aa) “Motion” shall mean an application to the Court for any order, judgment or other form of relief requested separate from the original complaint.
- (bb) “Notice” shall mean a legal notification in a written format or through a formal announcement with proof of delivery to the recipient making the recipient aware of a legal process affecting their rights, obligations or duties.
- (cc) “Order” shall mean a decision by the Court or Judge, not included in a judgment, which determines some point or directs some step in the proceedings.
- (dd) “Peacemaker” shall mean an individual appointed by the parties or the Court 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.
- (ee) “Plaintiff” shall mean the party, including a petitioner initiating an action in the Family Court, who sues in a civil action. All references to “plaintiff” apply to “petitioner.”
- (ff) “Pleading” shall mean the formal allegations by the parties of their respective claims and defenses, for the judgment of the Court.
- (gg) “Proof of service” shall mean proof that a legal document has been delivered and accepted by the party it is intended for by means of filing a copy of the return receipt when certified mail is utilized or by an affidavit of service.
- (hh) “Punitive damages” shall mean monetary compensation awarded to an injured party that goes beyond that which is necessary to compensate the individual for losses and that is intended to punish the wrongdoer.
- (ii) “Purge” shall mean that a person or party has done what the Court required and is no longer in contempt of Court.
- (jj) “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.
- (kk) “Service” shall mean the delivery of a legal document that notifies the recipient of the commencement of a legal action or proceeding in which he or she is involved and is thereby advised or warned of some action or step which he or she is commanded to take or to forbear.
- (ll) “Subject-matter jurisdiction” shall mean that the Court has the authority to hear the type of case or controversy in its Court.
- (mm) “Subpoena” shall mean a formal document that orders a named individual to appear before the Court at a fixed time to give testimony and/or produce documents.
- (nn) “Summary judgment” shall mean a pre-trial Court order ruling that there are no disputed material issues of fact and that the movant is entitled to judgment as a matter of law without trial.
- (oo) “Summons” shall mean an order notifying a defendant to appear in person before the Court.
- (pp) “Trial Court” shall mean a Court of the Judiciary where evidence and testimony are first introduced, received, and considered. The Court of Appeals shall not be included in this definition.
- (qq) “Tribal Holiday” shall mean any holiday listed in the Tribe’s Human Resources Department’s published holiday observance schedule or any day designated by the Oneida Business Committee or General Tribal Council as a Tribal Holiday.
- (rr) “Tribal law” shall mean an adopted Tribal code, act, statute or ordinance.
- (ss) “Tribe” or “Tribal” shall mean the Oneida [Tribe of Indians Nation](#) of Wisconsin.
- ~~(ss)~~(tt) “Tribal Entity” shall mean a department, board, committee, or commission of the Tribe.
- ~~(tt)~~(uu) “Without prejudice” shall mean that none of the rights or privileges of the individual involved are considered to be lost or waived. The parties are free to litigate the matter in a subsequent action, as though the dismissed action had not been started.

153.4. General Provisions

153.4-1. *Forms of Action.* There shall be one (1) form of action, known as a “civil action”.

153.4-2. *Immunity Not Waived.* No section, rule or part thereof, of this Law shall be construed in any way to waive the sovereign immunity of the Tribe or the judicial immunity of the Judges within the Judiciary.

153.4-3. *Other Rules of Procedure Used.* All matters and proceedings not specifically set forth herein shall be handled in accordance with reasonable justice, as determined by the Judiciary. Where this Law is ambiguous or does not address a situation, the Federal Rules of Civil Procedure or Section 801 of the Wisconsin Statutes may be used as a guide. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in Tribal law unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

153.4-4. At every stage of the proceeding, the Court may disregard any technical error or defect in a failure to comply with this Law as long as the error or noncompliance does not affect the substantive rights of the parties; particularly those not represented by an attorney.

153.4-5. All communications, service, etc. shall be directed to a party’s attorney or advocate, if represented by an attorney or advocate.

153.4-6. *Application of this Law.* This Law shall be followed by the Court, except where other Court rules are more specific, then those laws shall supersede. This Law shall apply to

proceedings conducted by the Tribe's Personnel Commission, except where the Tribe's personnel policies and procedures are more specific, then those shall supersede. This Law shall not apply to the Mediation or Peacekeeping divisions of the Trial Court.

153.4-7. *Jurisdiction.* Jurisdiction shall be established as provided in the Judiciary, Chapter 150 of the Oneida Code of Laws.

153.4-8. *Standard of Proof.* All matters to be decided by the Court shall be proven by a preponderance of the evidence, unless specified otherwise.

153.5. Commencement of Action; Summons; Service of Process; Filing

153.5-1. *Complaint.* A civil action shall be commenced upon the filing of a complaint and payment of a filing fee or other fee where specified by law or Court Rule, except that all Tribal Entities are exempt from paying such filing fee or other applicable fees.

(a) *Contents.* A complaint shall include the following:

- (1) The name of the Court;
- (2) The full name and address of each plaintiff;
- (3) The full name and address of each defendant;
- (4) Why each defendant is being sued;
- (5) Facts supporting each claim;
- (6) Why this Court has jurisdiction;
- (7) Specifically what relief is sought from each defendant; and
- (8) A summons.

153.5-2. *Summons.* A complaint shall include a summons.

(a) *Contents.* A summons shall:

- (1) Name the Court and the parties;
- (2) Be directed to defendant;
- (3) State the name and address of the plaintiff's attorney or advocate, or if unrepresented, of the plaintiff;
- (4) State the date and time to appear before the Court;
- (5) Notify the defendant that a failure to appear and defend may result in a default judgment against the defendant for the relief demanded in the complaint; and
- (6) Be signed by the clerk, and the plaintiff or plaintiff's attorney or advocate.

(b) *Amendments.* The Court may permit a summons to be amended within ten (10) days of filing such summons.

(c) *Issuance.* At the time of filing the complaint, the plaintiff shall present a summons to the clerk for signature. If the summons is properly completed, the clerk shall sign and issue it to the plaintiff for service on the defendant.

153.5-3. *Service.* Within thirty (30) days after filing the summons and complaint with the Court, the plaintiff shall serve the summons and complaint upon the defendant in accordance with Rule 153.5-6. If the Tribe, or the officers, committees, commissions, boards, or any other department or division of the Tribe is a party, the plaintiff shall also serve notice to the Tribe's Secretary's Office within thirty (30) days.

(a) An additional thirty (30) days to serve the defendant may be requested and shall be in writing. The request may be granted by the Court upon a showing of good cause. The granting of this request is within the discretion of the Court.

(b) Proof of service shall be delivered, by the plaintiff, to the Court within ten (10) days of service upon the defendant. Proof of service shall be in accordance with Rule 153.5-6.

(c) If proof of service is not completed and/or delivered to the Court within thirty (30)

days, or sixty (60) days if an extension is granted, then the Court shall, after notice to the plaintiff, dismiss the matter without a hearing. Such dismissal based on a failure to timely serve shall be without prejudice.

153.5-4. *When Service Required.* Unless this Law or other Tribal Law provides otherwise, the filing party shall serve each of the following papers on every party:

- (a) An order that specifically states that service is required;
- (b) A pleading filed after the original complaint including, but not limited to: counterclaims, crossclaims, and third-party claims;
- (c) A discovery paper required to be served on a party, unless the Court orders otherwise;
- (d) A written motion; and
- (e) A written notice, appearance, demand, or offer of judgment or any similar paper.

153.5-5. *If a Party Fails to Appear.* No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party shall be served on that party according to this Law.

153.5-6. *Effective Service.* Excluding the complaint, summons and answer, a party may serve any other papers by electronic means if the party being served consents in writing to service by electronic means. Such consent shall include the electronic communication system, including the address or number, in which to send such papers. The Consent shall be filed with the Court. Otherwise, service shall be as follows: When possible, service shall be done by personal service as described below. If personal service is not possible, or if the service is on behalf of a Tribal Entity, then by-mail service is acceptable. ~~If mail service is not possible, then u~~Upon a showing of due diligence to make personal service and service by mail, service by publication may be used as a last resort.

(a) *Personal Service.* Personal service shall consist of delivering to the party a copy of the paper being served by a law enforcement officer or other person, who is not a party to the action and who is at least eighteen (18) years of age. An affidavit of service shall be filed with the Court as proof of service. Personal service shall be completed by hand delivering the required papers to any of the following:

- (1) The party named in the action or proceeding;
- (2) An individual residing at the party's home or usual place of abode, so long as the person signing for delivery is at least eighteen (18) years of age;
- (3) An officer, manager, agent, or partner of a non-individual party; or
- (4) An attorney or advocate of the party, if represented.

(b) *Mail Service.* Service of all papers made by mail from any party shall be by certified mail, with return receipt. However, the Court may provide service by first class mail. The certified mail return receipt shall be filed with the Court as proof of service. The return receipt shall be signed by:

- (1) The party named in the action or proceeding;
- (2) an individual residing at the party's home or usual place of abode, so long as the person signing for delivery is at least eighteen (18) years of age;
- (3) An officer, manager, agent, or partner of a non-individual party; or
- (4) An attorney or advocate of the party, if represented.

(c) *Service by Publication.* When the other party's whereabouts are unknown and cannot be found after diligent effort, service may be completed by publication. The publication shall be in the Tribal newspaper or in a newspaper of general circulation in the area of the party's last known address, and shall be designated as "Legal Notice." This notice shall be published at least two (2) times within a thirty (30) day period. The two (2) notices shall be published at least ten (10) days before the hearing. Copies of the two (2)

published notices and an affidavit of service stating the facts surrounding the failure of personal and mail service shall be filed with the Court as proof of service.

(1) The Court may, on its own, order different time limits for service by publication.

(d) *Service Refused.* If a party being personally served refuses service, service shall be deemed completed if the person serving the papers does all of the following:

- (1) Informs the party of the purpose of the service;
- (2) Offers copies of the papers served;
- (3) Leaves a copy of the papers where convenient; and
- (4) Notes upon a copy of the papers to be filed with the Court or in an affidavit of service, the time, date, and place of the attempted service, that refusal occurred and where the papers were left.

(e) *Admission of Service.* A plaintiff may request any defendant to admit service of a complaint and a summons. The request shall:

- (1) Be in writing;
- (2) Name the defendant;
- (3) Name the Court;
- (4) Include a copy of the complaint and summons, two (2) admission of service forms clearly identifying the requirement that the signature by the defendant must be notarized, and a prepaid means for returning one (1) signed admission of service form;
- (5) Inform the defendant of the consequences of admitting and not admitting service;
- (6) State the date the request is sent;
- (7) Give the party a reasonable time of at least thirty (30) days after the request was sent to return the admission of service; and
- (8) Be delivered in person or by certified mail.

(f) *Consequences of Admission of Service.*

(1) When the plaintiff files an admission of service signed by the defendant, proof of service as otherwise required in this section shall not be required and this Law shall apply as if a complaint and summons had been served at the time of filing the admission of service.

(2) If a defendant timely returns an admission of service, the defendant shall have sixty (60) days, from the time the request was sent, to serve an answer to the complaint.

(3) Signing and admission of service of a summons and complaint shall not waive any objection to personal jurisdiction or to venue.

(g) *Admission of Service other Papers.* A party may request an opposing party to admit service of any other papers required to be served. Such request shall follow the requirements of this section for admitting service except that under (e)(4) above, a copy of the papers subject to the request shall be included and not a copy of the complaint or summons.

153.5-7. *Filing.* Any paper after the complaint that is required to be served, including proof of service, shall be filed with the Court within a reasonable time after service.

(a) *How Filing is Made.* A paper is filed by any of the following:

- (1) Delivering it to the clerk.
- (2) Certified mail.

(A) If a filing is made by certified mail with return receipt but is untimely

and the filing party can show that the mailing occurred at least three (3) days prior to the due date, the Court may accept the filing as timely.

(3) **Electronic Filing.** A party may file papers electronically to the electronic address or number, designated for such filings, of the Clerk. A paper filed by electronic means shall constitute a written paper for the purpose of applying this Law. Upon receipt by the Clerk, any paper filed electronically shall be deemed filed, signed and verified by the filing party. A party filing electronically shall have three (3) business days from the day of filing to pay any filing fees associated with such filings.

(b) *Acceptance by the Clerk.* The clerk may refuse to accept any documents submitted for filing where other requirements of this Law or other Tribal laws have not been met including, but not limited to, lack of filing fee or unsigned pleadings. Filing parties shall be responsible for verifying acceptance of their filings with the clerk.

153.6. Computing and Extending Time

153.6-1. *Computing Time.* The following Rules apply in computing any time period specified in this Law.

(a) *Time Period Stated in Days.* When a time period is stated in days:

(1) The day that the period begins shall not be counted and the last day of the period shall be counted;

(A) In computing calendar days, time computation shall include Saturdays, Sundays and Tribal holidays

(B) In computing business days, Saturdays, Sundays or Tribal holidays shall not be counted.; and

(2) If the last day of the period falls on a Saturday, Sunday or Tribal holiday, the period shall be extended to the next day that is not a Saturday, Sunday or Tribal holiday.

(3) If the Clerks' office is inaccessible during part or all of the last day for filing, then the time for filing shall be extended to the first accessible day that is not a Saturday, Sunday or Tribal Holiday.

(b) *"Last Day."* Unless a different time is set by a Tribal Law or Court order, the last day ends for filing papers with the Judiciary at the close of business on the due date.

153.6-2. *Extending Time.*

(a) When an act may or shall be done within a specified time, the Judge presiding over the matter may, for good cause, extend time:

(1) On its own motion or the motion of any party, with or without notice, if made before the original time or its extension expires; or

(2) On motion made after the time has expired if the party failed to act because of excusable neglect.

(b) *Extension of Time for Mail Service:*

(1) Whenever a party may or shall act within a specified time after service and service is made by mail, three (3) days shall be added after the period would otherwise expire.

(c) Except where otherwise specified by Law, extensions shall not be granted ex parte.

153.7. Pleadings; Form of Pleadings, Motions and Other Papers; Procedure

153.7-1. *General Rules for Pleading.* All pleadings shall be liberally construed by the Court to preserve and promote justice for all parties.

153.7-2. *Pleadings*. Only these pleadings are allowed:

- (a) A complaint;
- (b) An answer to a complaint;
- (c) An answer to a counterclaim designated as a counter claim;
- (d) An answer to a crossclaim;
- (e) A third-party complaint;
- (f) An answer to a third-party complaint; and
- (g) If the Court orders one, a reply to an answer.

153.7-3. *Form of Pleadings*. The Rules governing captions and other matters of form in pleadings apply to motions and other papers.

(a) *Claim for Relief*. A pleading that states a claim for relief shall be a short, clear and plainly written statement specifying the following:

- (1) The basis upon which the Court has both subject matter jurisdiction over the matter, and personal jurisdiction over the parties;
- (2) The events upon which the claims are based and the grounds upon which relief is sought; and
- (3) A demand for a judgment granting the relief that is sought and which the plaintiff considers to be just. Multiple forms of relief may be sought in the alternative or hypothetical form and need not be consistent.

(b) *Defenses; Admissions and Denials*.

(1) In responding to a pleading, a party shall:

- (A) State in short and plain terms its defenses to each claim asserted against it; and
- (B) Admit or deny the allegations asserted against it by an opposing party.

(2) *Denials*. A denial shall fairly respond to the substance of the allegation.

(3) *General and Specific Denials*. A party that intends in good faith to deny all the allegations of a pleading, including the jurisdictional grounds, may do so by a general denial. A party that does not intend to deny all the allegations shall either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) *Denying Part of an Allegation*. A party that intends in good faith to deny only part of an allegation shall admit the part that is true and deny the rest.

(5) *Lacking Knowledge or Information*. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation shall so state, and the statement has the effect of a denial.

(6) *Effect of Failing to Deny*. An allegation, other than an allegation relating to the amount of damages, is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation shall be denied or avoided.

(c) *Affirmative Defenses*. Responding to a pleading, a party shall affirmatively state any avoidance or affirmative defense, including:

- (1) accord and satisfaction;
- (2) arbitration and award;
- (3) assumption of risk;
- (4) contributory negligence;
- (5) duress;
- (6) estoppel;
- (7) failure of consideration;

- (8) fraud;
- (9) illegality;
- (10) injury by fellow servant;
- (11) laches;
- (12) license;
- (13) payment;
- (14) release;
- (15) res judicata;
- (16) statute of frauds;
- (17) statute of limitations; and
- (18) Waiver.

(d) *Mistaken Designation*. If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the Court shall, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(e) *Caption*. Every pleading shall contain a caption heading with the name of the Court, the title of the action, the trial docket number (if known) and a designation as to what kind of pleading it is.

(1) The title of the complaint shall name all the names of the parties, mailing address, phone number and agent or other contact person, if known.

(2) The name of the first party on each side may be used in all pleadings except the initial complaint, which shall include all litigants.

(3) In the interest of judicial efficiency, the Court may amend a caption heading at any time to accurately identify the parties to the action.

(f) *Paragraphs*. All statements of the complaint and answer shall be set forth in separate numbered paragraphs which shall be limited, as close as practicable, to a single occurrence, event, circumstance or issue.

(g) *References and Exhibits*. Pleadings may adopt, by reference, any statements elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit or attachment is a part of the pleading for all purposes. References shall be clear and specific to a particular document or other piece of evidence.

(h) *Paper*. Where possible, all papers filed with the Court shall be on letter sized paper (8.5 x 11), typed with 1.5 line spacing, and have at least a one inch (1") margin on all sides.

(i) *Copies Submitted*. Parties filing papers with the Court shall include one original and one (1) copy for use by the Court.

(1) Parties shall serve one (1) copy of said papers to the opposing party or if represented, to opposing party's attorney or advocate.

(2) Failure to supply sufficient copies to the Court may result in a copy fee assigned to the filing party.

153.7-4. *Form of Motion*. A request for a Court order shall be made by motion. The motion shall:

- (a) Be in writing unless made during a hearing or trial;
- (b) State with particularity the grounds for seeking the order; and
- (c) State the relief sought.

153.7-5. *Procedure*. All parties filing any motion for consideration by the Court shall serve such motion at least fourteen (14) days prior to the hearing and shall adhere to the following procedure, except where the Court determines that the application of the time limits would be impractical in an individual case:

- (a) The moving party shall submit the motion to the Court, with proof of service.
- (b) From the date that the motion is filed with the Court, the opposing party shall have fourteen (14) days to file with the Court and serve on any opposing party, a written response to the motion.
- (c) Non-substantive procedural motions, such as a motion for extension, motion to submit additional pages, notice of representation, etc. may be granted or denied immediately by the Court and without a response from the opposing party.
- (d) Motions filed with the Court less than fourteen (14) days prior to a hearing may be considered at or before the hearing, if justice so requires. An opportunity shall be given to the non-moving party to respond verbally or in writing to the motion at or before the hearing.

153.7-6. *Supporting Affidavits.* Any affidavit supporting a motion shall be served with the motion. Any opposing affidavit shall be served at least seven (7) days before the hearing, unless the Court permits service at another time.

153.8. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

153.8-1. *Signature.* Every pleading, motion or other paper shall be signed by the party or the party's attorney or advocate, if represented by an attorney or advocate. Every pleading, motion or other paper shall state the signer's address and telephone number.

- (a) The Court shall strike an unsigned paper unless the omission is promptly corrected within a reasonable period of time after being called to the attorney's, advocate's or party's attention.
- (b) A pleading need not be verified or accompanied by an affidavit.

153.8-2. *Representations to the Court.* By presenting to the Court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it, an attorney, advocate or unrepresented party certifies that to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances that:

- (a) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (b) The claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying or reversing existing law or for establishing new law;
- (c) The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (d) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

153.8-3. *Sanctions.*

- (a) *In General.* If, after notice and a reasonable opportunity to respond, the Court determines that Rule 153.8-2 has been violated, the Court may impose an appropriate sanction on any attorney, law firm, advocate, or party that violated the Rule or is responsible for the violation. Absent exceptional circumstances, a law firm shall be held jointly responsible for a violation committed by its partner, associate, or employee.
- (b) *Motion for Sanctions.* A motion for sanctions shall be made separately from any other motion and shall describe the specific conduct that allegedly violates Rule 153.8-2. The motion shall be served under Rule 153.5-6, but it shall not be filed or be presented to the Court if the challenged paper, claim, defense, contention, or denial is withdrawn or

appropriately corrected within twenty-one (21) days after service or within another time the Court sets. If warranted, the Court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(c) *On the Court's Initiative.* On its own, the Court may order an attorney, law firm, advocate, or party to show cause why the representations to the Court have not violated Rule 153.8-2.

(d) *Nature of a Sanction.* A sanction imposed under this Rule shall be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into the Court; or if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(e) *Limitations on Monetary Sanctions.* The Court shall not impose a monetary sanction:

- (1) Against a represented party for violating Rule 153.8-2; or
- (2) On its own, unless a party failed to show cause under Rule 153.8-3(c).

(f) *Requirements for an Order.* An order imposing a sanction shall describe the sanctioned conduct and explain the basis for the sanction.

153.8-4. *Inapplicability to Discovery.* This Rule, 153.8, shall not apply to disclosures, requests, responses, objections and motions made during discovery under Rules 153.14 through 153.20.

153.9 Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidated Motions; Waiving Defenses; Pretrial Hearing

153.9-1. *Time to Serve a Responsive Pleading.*

(a) *In General.* Except as otherwise provided by this Law or other Tribal Law, the time for serving a responsive pleading is as follows:

- (1) A party shall serve an answer to a complaint, counterclaim, crossclaim or third-party claim within twenty (20) days after being served with the pleading that states the complaint, counterclaim, crossclaim or third-party claim.
- (2) A party shall serve a reply to an answer within twenty (20) days after being served with an order to reply, unless the order specifies a different time.
- (3) A party may answer or reply orally at a hearing with the Court's permission.

(b) *Effect of a Motion.* Unless the Court sets a different time, serving a motion under this Rule alters these periods as follows:

- (1) If the Court denies the motion or postpones its disposition until trial, the responsive pleading shall be served within fourteen (14) days after notice of the Court's action; or
- (2) If the Court grants a motion for a more definite statement, the responsive pleading shall be served within fourteen (14) days after the more definite statement is served.

153.9-2. *How to Present Defenses.*

(a) Every defense to a claim for relief in any pleading shall be asserted in the responsive pleading if one is required, except those listed below. If a responsive pleading is not required, any defense may be asserted at hearing. A party may assert the following defenses by motion:

- (1) Lack of subject-matter jurisdiction;
- (2) Lack of personal jurisdiction;
- (3) Improper venue;
- (4) Insufficient process;

- (5) Insufficient service of process;
- (6) Failure to state a claim upon which relief can be granted; and
- (7) Failure to join a party.

(b) A motion asserting any of these defenses shall be made before pleading if a responsive pleading is required. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one (1) or more other defenses or objections in a responsive pleading or in a motion.

153.9-3. *Motion for Judgment on the Pleadings.* Pleadings are closed when every pleading asserting a claim, counter-claim or crossclaim has been answered. After the pleadings are closed, but early enough not to delay trial, a party may move for judgment on the pleadings.

153.9-4. *Result of Presenting Matters Outside the Pleadings.* If, on a motion under Rule 153.9-2(a)(6) or 153.9-3, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment. All parties shall be given a reasonable opportunity to present all the material that is pertinent to the motion.

153.9-5. *Motion for a More Definite Statement.* A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion shall be made before filing a responsive pleading and shall point out the defects complained of and the details desired. If the Court orders a more definite statement and the order is not obeyed within fourteen (14) days after notice of the order or within the time the Court sets, the Court may strike the pleading or issue any other appropriate order.

153.9-6. *Motion to Strike.* The Court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The Court may act:

- (a) On its own; or
- (b) On motion made by a party either before responding to the pleading or, if a response is not allowed, within twenty-one (21) days after being served with the pleading.

153.9-7. *Joining Motions.*

- (a) *Right to Join.* A motion under this section may be joined with any other motion allowed by this section.
- (b) *Limitation on Further Motions.* Except as required in Rule 153.9-8(b) or (c), a party that makes a motion under Rule 153.9-2(a) shall not make another motion under Rule 153.9-2(a) raising a defense or objection that was available to the party but omitted from its earlier motion.

153.9-8. *Waiving and Preserving Certain Defenses.*

(a) *When Some Are Waived.* A party waives any defense listed in Rule 153.9-2(a)(2)–(5) by:

- (1) Omitting it from a motion in the circumstances described in Rule 153.9-7(b); or
- (2) Failing to either:
 - (A) Make it by motion under this Rule; or
 - (B) Include it in a responsive pleading or in an amendment allowed by Rule 153.11-1 as a matter of course.

(b) *When to Raise Others.* The following may be raised in any pleading, by motion, or at trial:

- (1) Failure to state a claim upon which relief can be granted;
- (2) Failure to join a necessary party; and/or
- (3) Failure to state a legal defense to a claim.

(c) *Lack of Subject-Matter Jurisdiction.* If the Court determines at any time that it lacks subject-matter jurisdiction, the Court shall dismiss the action.

153.9-9. *Hearing Before Trial.* Upon the motion of any party, the Court may hear and decide the following prior to trial, unless the Court orders a deferral until trial:

- (a) any defense listed in Rule 153.9-2(a), or
- (b) a motion for judgment on the pleadings.

153.10. Counterclaim; Crossclaim; Third-Party Claim;

153.10-1. *Counterclaim.*

(a) A party against whom a claim has been made may assert a claim against the opposing party if the claim:

- (1) Arises out of the same transaction or occurrence that is the subject-matter of the opposing party's claim; and
- (2) Does not require adding another party over whom the Court cannot acquire jurisdiction.

(b) *Exception.* The pleader may not assert the claim if the claim is subject to another pending action.

(c) *Relief.* A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

153.10-2. *Crossclaim.* A party against whom a claim is made may assert a claim against a co-party if the claim arises out of the same transaction or occurrence that is the subject-matter of the original action or of a counterclaim.

153.10-3. *Third-Party Claim.* A party against whom a claim is made may assert against a third-party any claim arising out of the same transaction or occurrence, alleging that the third-party is liable for part or the entire claim of the opposing party. A party asserting a third-party claim shall, by motion, obtain the Court's leave if it files the third-party claim more than fourteen (14) days after serving its original answer. If any person or entity believes it should be included in a case, it may motion the Court to be joined as a third-party.

153.11. Amended Pleadings

153.11-1. *Amendments Before Trial.* A party may amend any pleading once within ten (10) days of the original filing, unless an answer has already been filed. If an answer has been filed, any amendments may only be made with the opposing party's written consent or with the Court's permission. The Court shall freely give permission when justice so requires.

(a) Unless the Court orders otherwise, any required response to an amended pleading shall be made within the time remaining to respond to the original pleading or within fourteen (14) days after service of the amended pleading, whichever is later.

153.11-2. *Amendments During and After Trial.*

(a) *Based on an Objection at Trial.* If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the Court may permit the pleadings to be amended. The Court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the Court that the evidence would prejudice that party's action or defense on the merits. The Court may grant a continuance to enable the objecting party to provide evidence to satisfy the Court that the evidence would prejudice their action or defense on the merits.

(b) *For Issues Tried by Consent.* When an issue not raised by the pleadings is tried by the parties' express or implied consent, it shall be treated in all respects as if raised in the

pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform to the evidence and to raise an unpleaded issue. However, failure to amend shall not affect the outcome of that issue.

153.12. Pretrial Meeting and Filing

153.12-1. Purposes of a Pretrial Meeting.

(a) Upon written request of either party or the Court’s own initiative, a pretrial meeting shall be scheduled directing the attorneys or advocates and any unrepresented parties to appear, for such purposes as:

- (1) Expediting disposition of the action;
- (2) Establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) Discouraging wasteful pretrial activities;
- (4) Improving the quality of the trial through more thorough preparation, including a discovery plan. A discovery plan shall state the parties’ views and proposals on:

(A) what changes should be made in the timing, form, or requirement for disclosures under Rules 153.14-2 and 153.14-5, including a statement of when initial disclosures were made or will be made;

(B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(C) any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(D) any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production— whether to ask the Court to include their agreement in an order;

(E) what changes should be made in the limitations on discovery imposed under this Law or by local rule, and what other limitations should be imposed; and

(F) any other orders that the Court should issue under Rule 153.14-6 or under Rules 153.12-1(c) and (e); and

- (5) Facilitating settlement.

(A) If the parties request or agree to participate in peacemaking or mediation, the trial proceedings may be stayed up to forty-five (45) days in order for the parties to work towards reaching an acceptable solution. The Court shall appoint a peacemaker or mediator when necessary.

(B) If the parties are close to a resolution, but need more time, they may move the Court for an extension of the stay. The extension shall not exceed an additional thirty (30) days.

(b) *Parties’ Responsibility.* In conferring, the parties shall consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rules 153.14-2 and 153.14-5; discuss any issues about preserving discoverable information; develop a proposed discovery plan; and prepare a pretrial statement.

- (1) The attorneys or advocates of record and all unrepresented parties that have appeared in the case shall be jointly responsible for arranging the meeting, for

attempting in good faith to agree on the proposed discovery plan, preparing the pretrial statement, and for submitting to the Court within fourteen (14) days after the meeting a written report outlining the plan and the pretrial statement. The Court may order the parties, advocates or attorneys to attend the meeting in person. The pretrial statement shall contain the following:

- (A) The uncontested facts deemed material;
- (B) The uncontested issues of fact and law as the attorneys or advocates or unrepresented parties can agree are material or applicable;
- (C) A separate statement by each party of other issues of fact or law which that party believes material;
- (D) A list of the witnesses intended to be used by each party during the trial, other than those intended to be used solely for impeachment. No witnesses shall be used at the trial other than those listed, except to prevent injustice; and
- (E) A list of the exhibits which each party intends to use at trial, other than those intended to be used solely for impeachment, specifying exhibits which the parties agree are admissible at trial. No exhibits shall be used during the trial other than those listed, except to prevent injustice.

(c) During pretrial meetings, the Court may take appropriate action including, but not limited to:

- (1) Any matters which will aid in the simplification, clarification, settlement or disposition of the case;
- (2) Additional or deleted procedures to be followed at the hearing;
- (3) Settlement discussions;
- (4) The necessity or desirability of amending the pleadings;
- (5) The appropriateness and timing of a summary judgment;
- (6) The control and scheduling of discovery;
- (7) The identification of witnesses and documents, the need and schedule for filing and exchanging of pretrial briefs, the dates for further pretrial meetings and trial;
- (8) The disposition of pending motions;
- (9) The need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;
- (10) Obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence; and
- (11) Facilitating in other ways the just, speedy and inexpensive disposition of the action.

(d) Unless the Court orders otherwise, one (1) pretrial meeting shall be scheduled at least twenty-one (21) days prior to a formal hearing.

- (1) Subsequent pretrial meetings may be scheduled at any time before trial, provided that, at least one (1) has taken place earlier than twenty-one (21) days before a formal hearing or other time set by the Court.
- (2) The Court may, in its discretion, forgo pretrial meetings under this Rule.

(e) Scheduling Order. The Court shall issue a scheduling order as soon as practicable, but in any event within the earlier of sixty (60) days after any defendant has been served with the complaint or forty-five (45) days after any defendant has appeared. The

scheduling order shall limit the time to join other parties, amend the pleadings, complete discovery and file motions. A schedule may be modified only for good cause and with the Court's consent. The scheduling order may include, but is not limited to:

- (1) modifying the timing of disclosures under Rules 153.14-2 and 153.14-5;
- (2) modifying the extent of discovery;
- (3) providing for disclosure or discovery of electronically stored information;
- (4) any agreements the parties reach for asserting claims of privilege or of protection as trial preparation material after information is produced;
- (5) setting dates for pretrial meetings and for trial; and
- (6) other appropriate matters.

153.12-2. *Pretrial Filing Procedure*

(a) *Submission of Documents.* Parties shall submit all documents including, but not limited to, proposed exhibits and other evidence (or copies) that a party plans to use at trial for the Court to review not less than two (2) days prior to a scheduled hearing.

- (1) Documents submitted after this time or at the time of the hearing shall only be admitted if the Court determined that:
 - (A) The documentation has a direct impact upon the outcome of the hearing;
 - (B) Is admissible under this Law or the Rules of Evidence; and
 - (C) Good cause is shown as to why the submission is untimely.

153.12-3. *Pretrial Orders.* After any meeting under this Rule, the Court shall issue an order reciting the action taken. This order controls the course of the action unless the Court modifies it.

153.12-4. *Final Pretrial Meeting and Orders.* The Court may hold a final pretrial meeting to formulate a trial plan, including a plan to facilitate the admission of evidence. The meeting shall be held as close to the start of trial as is reasonable, and shall be attended by at least one (1) attorney or advocate who shall conduct the trial for each party and by any unrepresented party. The Court may modify the order issued after a final pretrial meeting only to prevent manifest injustice.

153.12-5. *Sanctions.*

(a) *In General.* On motion or on its own, the Court may issue any just orders, including those authorized by Rule 153.20-2(b)(1), if a party or its attorney or advocate:

- (1) Fails to appear at a scheduling or other pretrial meeting;
- (2) Is substantially unprepared to participate—or does not participate in good faith—in the meeting; or
- (3) Fails to obey a scheduling or other pretrial order.

(b) *Imposing Fees and Costs.* Instead of or in addition to any other sanction, the Court shall order the party, its attorney or advocate, or all to pay the reasonable expenses—including attorney's fees—incurred because of any noncompliance with this Rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

153.13. Substitution of Parties

153.13-1. *Death of a Party.*

(a) *Substitution if the Claim Is Not Extinguished.* If a party dies and the claim is not extinguished, the Court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within ninety (90) days after service, to the Court and all other parties, of a statement noting the death, the action by or against the decedent shall be

dismissed.

(b) *Continuation Among the Remaining Parties.* After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action shall not abate, but proceeds in favor of or against the remaining parties. The death shall be noted on the record.

(c) *Service.* A motion to substitute, together with a notice of hearing, shall be served on the parties. A statement noting death shall be served in the same manner.

153.13-2. *Incompetency.* If a party becomes incompetent, the Court may, on its own or on motion, permit the action to be continued by or against the party's representative.

153.13-3. *Transfer of Interest.* If an interest is transferred, the action may be continued by or against the original party unless the Court, on motion, orders the transferee to be substituted in the action or joined with the original party.

153.14. Discovery

153.14-1. *Scope.* Unless otherwise limited by Court order, the scope of discovery is as follows:

(a) Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter.

(b) For good cause, the Court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 153.14-3.

153.14-2. *Required Disclosures.* A party shall, without awaiting a discovery request, provide to the other parties:

(a) The name and, if known, the address and telephone number of each individual likely to have discoverable information along with the subjects of that information that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(b) A copy or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(c) A computation of each category of damages claimed by the disclosing party;

(d) For inspection and copying as under Rule 153.17, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(e) *Exceptions.* Required disclosures under this section may be excused, at the Courts discretion, in a Family Court case.

153.14-3. *Limitations.* On motion or on its own, the Court shall limit the frequency or extent of discovery otherwise allowed by this Law if it determines that:

(a) The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; or

(b) The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(c) The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in

resolving the issues.

153.14-4. *Time for Required Disclosures.* A party shall make the required disclosures at the parties' Rule 153.12 pretrial meeting unless a different time is set by the Court.

153.14-5. *Required Pretrial Disclosures.*

(a) In addition to the disclosures required by Rule 153.14-2, a party shall provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

- (1) the name and, if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises;
- (2) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and
- (3) an identification of each document or other exhibit, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.

(b) *Time for Required Pretrial Disclosures; Objections.* Unless the Court orders otherwise, these disclosures shall be made at least 30 (thirty) days before trial. Within fourteen (14) days after they are made, unless the Court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use of a deposition designated by another party under Rule 153.14-5(a)(2) and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 153.14-5(a)(3). An objection not so made—except for one under Oneida Judiciary Rules of Evidence, Rules 155.7-2 or 155.7-3—is waived unless excused by the Court for good cause.

153.14-6. *Protective Order.* A party or any person or entity from which discovery is sought may move for a protective order from the Court. The motion shall include a certification that the movant has in good faith conferred or attempted to confer with the other parties, persons or entities in an effort to resolve the issue without Court action. The Court may issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one (1) or more of the following:

- (a) Forbidding the disclosure or discovery;
- (b) Specifying terms, including time and place, for the disclosure or discovery;
- (c) Prescribing a discovery method other than the one selected by the party seeking discovery;
- (d) Forbidding inquiry into certain matters, or limiting the scope of disclosure, or discovery to certain matters;
- (e) Designating the persons who may be present while the discovery is conducted;
- (f) Requiring that a deposition be sealed and opened only on Court order;
- (g) Requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the Court directs;
- (h) Redacting sensitive documents; or
- (i) Any other order necessary to ensure discovery is conducted fairly.

153.14-7. *Supplementing Disclosures and Responses.* A party or person who has made a disclosure or who has responded to an interrogatory, request for production, or request for admission, shall supplement or correct its disclosure or response:

- (a) In a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not

otherwise been made known to the other parties during the discovery process or in writing; or

(b) As ordered by the Court.

153.14-8. *Signature Required; Effect of Signature.*

(a) Every disclosure under Rule 153.14-2 and 153.14-5 and every discovery request, response, or objection shall be signed by at least one (1) attorney or advocate of record in the attorney's or advocate's own name—or by the party personally, if unrepresented—and shall state the signer's address and telephone number. By signing, an attorney, advocate or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry that:

(1) With respect to a disclosure, it is complete and correct as of the time it is made; and

(2) With respect to a discovery request, response, or objection, it is:

(A) Consistent with this Law and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(B) Not used for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(C) Neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(b) *Failure to Sign.* Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the Court shall strike it unless a signature is promptly supplied after the omission is called to the attorney's, advocate's or party's attention.

153.14-9. *Failure to Disclose.* If a party fails to respond or appear for discovery under this Rule, the opposing party may move for an order to compel the defaulting party to perform. The Court may award costs to the non-defaulting party.

(a) If a party fails to perform after being ordered to do so by the Court, the Court may order any sanction under Rule 153.20-2(b)(1).

153.14-10. *Information Produced.* If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party:

(a) Shall promptly return, sequester, or destroy the specified information and any copies it has;

(b) Shall not use or disclose the information until the claim is resolved;

(c) Shall take reasonable steps to retrieve the information if the party disclosed it before being notified; and

(d) May promptly present the information to the Court under seal for a determination of the claim. The producing party shall preserve the information until the claim is resolved.

153.15. Depositions

153.15-1. *Generally.* All depositions shall be taken under oath or under penalty of perjury before a person authorized to administer oaths or a person appointed by the Court to administer oaths and take testimony.

(a) *When a Deposition May Be Taken.* A party may, by oral and/or written questions, depose any person, including a party, at any time if consented to orally or in writing by such person being deposed, or during the time set during the pretrial meeting under Rule

153.12-1(a).

(b) *Notice.* A party who wants to depose a person shall give reasonable written notice to every other party. The notice shall state the time and place of the deposition and, if known, the deponent's name and address.

(1) Not less than ten (10) days' notice shall be given, if deposing an adverse party or non-party witness.

(c) *Service; Required Notice.*

(1) A party who wants to depose a person by written questions shall serve such questions on every other party.

(2) Any questions to the deponent from other parties shall be served on all parties as follows: cross-questions, within seven (7) days after being served with the notice and direct questions; redirect questions, within seven (7) days after being served with cross-questions; and recross-questions, within seven (7) days after being served with redirect questions. The Court may, for good cause, extend or shorten these times.

(d) *Producing Documents.* If a subpoena requiring production of documents is to be served on the deponent, the materials designated for production shall be listed in the notice or in an attachment.

(e) *Transcripts.* A transcript of the deposition shall be made and shall be available for use by the parties and the Court. The deposing party bears the cost of recording. Each party shall bear its own cost of obtaining transcripts.

(f) *Objections.* An objection at the time of the examination—whether to evidence, to a party's conduct, to the manner of taking the deposition, or to any other aspect of the deposition—shall be noted on the record, but the examination shall still proceed; the testimony is taken subject to any objection. An objection shall be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege or to enforce a limitation ordered by the Court.

(g) *Duration.* Unless otherwise stipulated or ordered by the Court, a deposition shall be limited to two (2) days, with questioning occurring for up to seven (7) hours per day.

153.15-2. *Sanction.* The Court may impose an appropriate sanction—including the reasonable expenses and attorney's fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.

153.15-3. *Motion to Terminate or Limit.*

(a) *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. If the objecting deponent or party so demands, the deposition shall be suspended for the time necessary to obtain an order.

(b) *Order.* The Court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 153.14-6. If terminated, the deposition may be resumed only by order of the Court.

153.16. Interrogatories

153.16-1. *In General.*

(a) Unless otherwise stipulated or ordered by the Court, a party may serve on any other party no more than twenty-five (25) written interrogatories. Parties shall not evade this limitation through the device of joining as "subparts" questions that seek information

about separate subjects. However, a question asking about communications of a particular type shall be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each such communication. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 153.14-3. (b) An interrogatory may relate to any matter that may be inquired into under Rule 153.14-1. An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the Court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial meeting or some other time.

153.16-2. *Answers and Objections.*

(a) *Responding Party.* The interrogatories shall be answered by the party to whom they are directed.

(b) *Time to Respond.* The responding party shall serve its answers and any objections within twenty (20) days after being served with the interrogatories. A shorter or longer time may be ordered by the Court.

(c) *Answering Each Interrogatory.* Each interrogatory shall, to the extent it is not objected to, be answered separately and fully in writing under oath or penalty of perjury.

(d) *Objections.* The grounds for objecting to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the Court, for good cause, excuses the failure.

(e) *Signature.* The person who makes the answers shall sign them, and the person who objects shall sign any objections.

153.17. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

153.17-1. *In General.* A party may serve on any other party a request within the scope of Rule 153.14:

(a) To produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(1) Any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(2) Any designated tangible things.

(b) To permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party or representative may inspect, measure, survey, photograph, record, test, or sample the property or any designated object or operation thereon.

153.17-2. *Procedure.*

(a) *Contents of the Request.* The request:

(1) Shall describe with reasonable particularity each item or category of items to be inspected;

(2) Shall specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(3) May specify the form or forms in which electronically stored information is to be produced.

(b) *Responses and Objections.*

(1) *Time to Respond.* The party to whom the request is directed shall respond in writing within ten (10) days after being served. A shorter or longer time may be ordered by the Court.

(2) *Responding to Each Item.* For each item or category, the response shall either state that inspection and related activities shall be permitted as requested or state an objection to the request, including the reasons.

(3) *Objections.* An objection to part of a request shall specify the part and permit inspection of the rest.

(4) *Responding to a Request for Production of Electronically Stored Information.* The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party shall state the form or forms it intends to use.

(5) *Producing the Documents or Electronically Stored Information.* Unless otherwise stipulated or ordered by the Court, these procedures apply to producing documents or electronically stored information:

(A) A party shall produce documents as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request;

(B) If a request does not specify a form for producing electronically stored information, a party shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(C) A party need not produce the same electronically stored information in more than one (1) form.

153.17-3. *Nonparties.* A nonparty may be compelled to produce documents and tangible things or to permit an inspection in accordance with this section.

153.18. Physical and Mental Examinations

153.18-1. Order for an Examination.

(a) *In General.* The Court where the action is pending may order a party who's mental or physical condition—including blood group—is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The Court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(b) *Motion and Notice; Contents of the Order.* The order:

(1) May be made only on motion for good cause and on notice to all parties and the person to be examined; and

(2) Shall, unless the Court orders otherwise, specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who shall perform it.

153.18-2. Examiner's Report.

(a) *Request by the Party or Person Examined.* The party who moved for the examination shall, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(b) *Contents.* The examiner's report shall be in writing and shall set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(c) *Request by the Moving Party.* After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(d) *Waiver of Privilege.* By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition.

(e) *Failure to Deliver a Report.* The Court on motion may order—on just terms—that a party deliver the report of an examination. If the report is not provided, the Court may exclude the examiner's testimony at trial.

(f) *Scope.* This section applies also to an examination made by the parties' agreement, unless the agreement states otherwise. This section shall not preclude obtaining an examiner's report or deposing an examiner under other Rules.

(g) *Exception.* The Court may, in its discretion, limit or amend the requirements under this section.

153.18-3. *Cost of Examination.* The requesting party shall be responsible for the costs of an examination, unless the Court orders otherwise.

153.19. Requests for Admission

153.19-1. *Scope and Procedure.*

(a) *Scope.* A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 153.14-1 relating to:

- (1) Facts, the application of law to fact, or opinions about either; and
- (2) The genuineness of any described documents.

(b) *Time to Respond; Effect of Not Responding.* A matter is admitted unless, within ten (10) days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party under oath or penalty of perjury. A shorter or longer time for responding may be ordered by the Court.

(c) *Answer.* If a matter is not admitted, the answer shall specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial shall fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer shall specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(d) *Objections.* The grounds for objecting to a request shall be stated. A party shall not object solely on the ground that the request presents a genuine issue for trial.

(e) *Motion Regarding the Sufficiency of an Answer or Objection.* The requesting party may move to determine the sufficiency of an answer or objection. Unless the Court finds an objection justified, it shall order that an answer be served. On finding that an answer does not comply with this Rule, the Court may order either that the matter is admitted or that an amended answer be served. The Court may defer its final decision until a pretrial meeting or a specified time before trial. Rule 153.20-1(e) applies to an award of

expenses.

153.19-2. *Effects of an Admission, Withdrawing or Amending it.* A matter admitted under this Rule shall be conclusively established unless the Court, on motion, permits the admission to be withdrawn or amended. The Court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the Court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this Rule is not an admission for any other purpose and shall not be used against the party in any other proceeding.

153.20. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

153.20-1. *Motion for an Order Compelling Disclosure or Discovery.*

(a) *In General.* On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion shall include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without Court action.

(b) *Appropriate Court.* A motion for an order to a party or nonparty shall be made in the Court where the action is pending.

(c) *Specific Motions.*

(1) *To Compel Disclosure.* If a party fails to make a disclosure required by Rule 153.14-2 or 153.14-5, any other party may move to compel disclosure and for appropriate sanctions.

(2) *To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(A) A deponent fails to answer a question asked under Rule 153.15;

(B) A party fails to answer an interrogatory submitted under Rule 153.16;
or

(C) A party fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 153.17.

(3) *Related to a Deposition.* When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(d) *Evasive or Incomplete Disclosure, Answer, or Response.* For purposes of this section, an evasive or incomplete disclosure, answer, or response shall be treated as a failure to disclose, answer, or respond.

(e) *Payment of Expenses; Protective Orders.*

(1) *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* If the motion is granted, or if the disclosure or requested discovery is provided after the motion was filed, the Court shall, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party, advocate or attorney advising that conduct, or all to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. Provided that the Court shall not order this payment if:

(A) The movant filed the motion before attempting in good faith to obtain the disclosure or discovery without Court action;

(B) The opposing party's nondisclosure, response, or objection was substantially justified; or

(C) Other circumstances make an award of expenses unjust.

(2) *If the Motion Is Denied.* If the motion is denied, the Court may issue any

protective order authorized under Rule 153.14-6 and shall, after giving an opportunity to be heard, require the movant, the attorney or advocate filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the Court shall not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(3) *If the Motion Is Granted in Part and Denied in Part.* If the motion is granted in part and denied in part, the Court may issue any protective order authorized under Rule 153.14-6 and may, after giving an opportunity to be heard, apportion the reasonable expenses, including attorney's fees, for the motion.

153.20-2. *Failure to Comply with a Court Order.*

(a) *Sanctions.* If the Court orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of Court.

(b) *Sanctions by the Court.*

(1) *For Not Obeying a Discovery Order.* If a party fails to obey an order to provide or permit discovery, the Court may issue further just orders. They may include the following:

(A) Directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(B) Prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(C) Striking pleadings in whole or in part;

(D) Staying further proceedings until the order is obeyed;

(E) Dismissing the action or proceeding in whole or in part;

(F) Rendering a default judgment against the disobedient party; or

(G) Treating as contempt of Court the failure to obey any order, except an order to submit to a physical or mental examination.

(2) *For Not Producing a Person for Examination.* If a party fails to comply with an order under Rule 153.18-1 requiring it to produce another person for examination, the Court may issue any of the orders listed in Rule 153.20-2(b)(1), unless the disobedient party shows that it cannot produce the other person.

(3) *Payment of Expenses.* Instead of or in addition to the orders above, the Court may order the disobedient party, the attorney or advocate advising that party, or all to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

153.20-3. *Failure to Disclose, to Supplement an Earlier Response, or to Admit.*

(a) *Failure to Disclose or Supplement.* If a party fails to provide information or identify a witness as required by Rules 153.14-2, 153.14-5 or 153.14-7, the party shall not use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the Court, on motion and after giving an opportunity to be heard:

(1) May order payment of the reasonable expenses, including attorney's fees, caused by the failure; and

(2) May impose other appropriate sanctions, including any of the orders listed in Rule 153.20-2(b)(1).

(b) *Failure to Admit.* If a party fails to admit what is requested under Rule 153.19-1(a) and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The Court shall so order unless:

- (1) The request was held objectionable under Rule 153.19-1;
- (2) The admission sought was of no substantial importance;
- (3) The party failing to admit had a reasonable ground to believe that it might prevail on the matter; or
- (4) There was other good reason for the failure to admit.

153.20-4. *Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Production.*

(a) *In General.*

(1) *Motion; Grounds for Sanctions.* The Court may, on motion, order sanctions if:

- (A) A party fails, after being served with proper notice, to appear for that person's deposition; or
- (B) A party, after being properly served with interrogatories or a request for production, fails to serve its answers, objections, or written response.

(2) *Certification.* A motion for sanctions for failing to answer or respond shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without Court action.

(b) *Unacceptable Excuse for Failing to Act.* A failure described in Rule 153.20-4(a)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 153.14-6.

(c) *Types of Sanctions.* Sanctions may include any of the orders listed in Rule 153.20-2(b)(1). Instead of or in addition to these sanctions, the Court shall require the party failing to act, the attorney or advocate advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

153.20-5. *Failure to Provide Electronically Stored Information.* Absent exceptional circumstances, the Court may not impose sanctions under this Law on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

153.20-6. *Failure to Participate in Framing a Discovery Plan or Pretrial Statement.* If a party or its attorney or advocate fails to participate in good faith in developing and submitting a proposed discovery plan or pretrial statement as required by Rule 153.12-1, the Court may, after giving an opportunity to be heard, require that party, advocate or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

153.21. Dismissal of Action

153.21-1. *Voluntary Dismissal.*

(a) *By the Plaintiff.*

(1) *Without a Court Order.* The plaintiff may dismiss an action without a Court order by filing:

- (A) A notice of dismissal before the opposing party serves either an

answer or a motion for summary judgment; or

(B) A stipulation of dismissal signed by all parties who have appeared.

(2) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any action based on or including the same claim, a notice of dismissal operates as adjudication on the merits.

(b) *By Court Order; Effect.* Except as required in Rule 153.21-1(a)(1), an action may be dismissed at the plaintiff's request only by Court order, on terms that the Court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (b) is without prejudice.

153.21-2. *Involuntary Dismissal; Effect.* If the plaintiff fails to prosecute or to comply with this Law or a Court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision 153.21-2 and any dismissal not under this Rule—except one for lack of jurisdiction, improper venue, or failure to join a party—operates as an adjudication on the merits.

153.21-3. *Dismissing a Counterclaim, Crossclaim, or Third-Party Claim.* This Rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 153.21-1(a)(1)(A) shall be made:

(a) Before a responsive pleading is served; or

(b) If there is no responsive pleading, before evidence is introduced at a hearing or trial.

153.21-4. *Costs of a Previously Dismissed Action.* If a plaintiff who previously dismissed an action in any Court files an action based on or including the same claim against the same defendant, the Court:

(a) May order the plaintiff to pay all or part of the costs of that previous action; and

(b) May stay the proceedings until the plaintiff has complied.

153.22. Consolidation; Separate Trials

153.22-1. *Consolidation.* If actions before the Court involve a common question of law or fact, the Court may:

(a) Join for hearing or trial any or all matters at issue in the actions;

(b) Consolidate the actions; or

(c) Issue any other orders to avoid unnecessary cost or delay.

153.22-2. *Separate Trials.* For convenience, to avoid prejudice, or to expedite and economize, the Court may order a separate trial of one (1) or more separate issues, claims, crossclaims, counterclaims, or third-party claims.

153.23. Taking Testimony

153.23-1. *In Open Court.* At trial, the witnesses' testimony shall be taken in open Court unless this Law or other rules adopted by the Tribe provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the Court may permit testimony in open Court by contemporaneous transmission from a different location.

153.23-2. *Affirmation Instead of an Oath.* When this Law requires an oath, a solemn affirmation suffices.

153.23-3. *Evidence on a Motion.* When a motion relies on facts outside the record, the Court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

153.23-4. *Interpreter*. The Court may appoint an interpreter of its choosing; fix reasonable compensation to be paid and designate the compensation as Court costs.

153.24. Subpoena

153.24-1. In General.

(a) *Form and Contents*.

(1) *Requirements—In General*. Every subpoena shall:

(A) State the Court from which it issued;

(B) State the title of the action, the Court in which it is pending, and its civil-action number; and

(C) Command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises.

(2) *Command to Attend a Deposition—Notice of the Recording Method*. A subpoena commanding attendance at a deposition shall state the method for recording the testimony.

(3) *Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information*. A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena shall specify the form or forms in which electronically stored information is to be produced.

(4) *Command to Produce; Included Obligations*. A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding party to permit inspection, copying, testing, or sampling of the materials.

(b) *Issued*. A subpoena shall be issued for the following:

(1) Attendance at a hearing or trial;

(2) Attendance at a deposition; and

(3) Production or inspection, if separate from a subpoena commanding a person's attendance.

(c) *Issued by Whom*. The clerk shall issue a subpoena, signed but otherwise in blank, to a party who requests it. That party shall complete it before service. An attorney also may issue and sign a subpoena as an officer of the Court in which the attorney is authorized to practice.

153.24-2. *Service*.

(a) *By Whom; Tendering Fees; Serving a Copy of Certain Subpoenas*. Any person who is at least eighteen (18) years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served, a notice shall be served on each party.

(b) *Proof of Service*. Proving service, when necessary, requires filing with the Court a statement showing the date and manner of service and the names of the persons served. The statement shall be certified by the server.

(c) *Subpoena Fees.* The party issuing the subpoena shall be responsible for tendering, if applicable, the fees for one (1) day's attendance and mileage. Payment shall be paid at the time of delivery of the subpoena in the amount as set by Court Rule.

(d) *Place of Service.* A subpoena may be served at any place:

- (1) Within the reservation;
- (2) Outside the reservation but within one hundred (100) miles of the place specified for the deposition, hearing, trial, production or inspection; or
- (3) That the Court authorizes on motion and for good cause.

153.24-3. *Protecting a Person Subject to a Subpoena.*

(a) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The Court shall impose an appropriate sanction—including, but not limited to, lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(b) *Command to Produce Materials or Permit Inspection.*

(1) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(2) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party, advocate or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection shall be served before the earlier of the time specified for compliance or fourteen (14) days after the subpoena is served. If an objection is made, the following Rules apply:

(A) At any time, on notice to the commanded person, the serving party may move the Court for an order compelling production or inspection.

(B) These acts may be required only as directed in the order, and the order shall protect a person who is not a party from significant expense resulting from compliance.

(c) *Quashing or Modifying a Subpoena.*

(1) *When Required.* On motion, the Court shall quash or modify a subpoena that:

(A) Fails to allow a reasonable time to comply;

(B) requires a person who is not a party to travel more than one hundred (100) miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to Rule 153.24-3(c)(2)(C), the person may be commanded to attend a trial by traveling from any such place within the state of Wisconsin;

(C) Requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(D) Subjects a person to undue burden.

(2) *When Permitted.* To protect a person subject to or affected by a subpoena, the Court may, on motion, quash or modify the subpoena if it requires:

(A) Disclosing a trade secret or other confidential research, development, or commercial information;

(B) Disclosing an unretained expert's opinion or information that does not

describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(C) A person who is not a party to incur substantial expense to travel more than one hundred (100) miles to attend trial.

(3) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 153.24-3(c)(2), the Court may, instead of quashing or modifying a subpoena, order appearance, inspection or production under specified conditions if the serving party:

(A) Shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(B) Ensures that the subpoenaed person will be reasonably compensated.

153.24-4. *Duties in Responding to a Subpoena.*

(a) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(1) *Documents.* A person responding to a subpoena to produce documents shall produce them as they are kept in the ordinary course of business or shall organize and label them to correspond to the categories in the subpoena.

(2) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(3) *Electronically Stored Information Produced in Only One (1) Form.* The person responding need not produce the same electronically stored information in more than one (1) form.

(4) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding shall show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from such sources if the requesting party shows good cause. The Court may specify conditions for the discovery.

(b) *Claiming Privilege or Protection.*

(1) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material shall:

(A) Expressly make the claim; and

(B) Describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(c) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party, advocate or attorney shall promptly return, sequester, or destroy the specified information and any copies it has; shall not use or disclose the information until the claim is resolved; shall take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the Court under seal for a determination of the claim. The person who

produced the information shall preserve the information until the claim is resolved.

153.24-5. *Contempt.* The issuing Court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey shall be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 153.24-3(c)(1)(B).

153.25. Recesses; Personal Conduct

153.25-1. *Recesses.* The Court may order postponements or recesses in its discretion at any time during the hearing for any reason. Specifically, when objections are made with respect to questions asked or evidence presented, or other motions are made during a hearing, the Court may order a short recess in order to deliberate on any motions or objections raised by a party.

(a) The recess shall continue until a decision is reached, which may be to reserve a ruling for later, at which time the hearing shall reconvene and the decision concerning the objection shall be entered into the record.

(b) A party may enter into the record an objection to the decision reached by the Court in order to preserve the issue on appeal, though such an objection is not required for such preservation.

153.25-2. *Personal Conduct.* Parties, including parties' attorney or advocate, shall present and conduct themselves in a professional manner while before the Court. Parties shall be prepared to present their case, to include evidence, arguments and witnesses at the time of the hearing. Disorderly conduct, insulting or demeaning behavior, or interrupting a speaking judge, party, or party's attorney or advocate may be grounds for contempt and/or other penalties.

153.26. Contempt

153.26-1. *Grounds.* In addition to other grounds for contempt identified in this Law or other Tribal law, the following acts or failures to act may serve as the basis for finding an individual or other entity in contempt:

- (a) Failure to obey a subpoena;
- (b) Refusal to testify or appear when so ordered;
- (c) Refusal to obey any order or judgment of the Court;
- (d) Disorderly, demeaning, or insulting behavior toward a Judge while conducting a hearing which tends to interrupt the course of the proceedings or undermine the dignity of the Court;
- (e) A breach of the peace or loud or boisterous conduct which tends to interrupt the course of a judicial proceeding;
- (f) Deceit or abuse of process or proceedings of the Court by a party, advocate or attorney to a judicial proceeding;
- (g) Any other interference with the process, proceedings, or dignity of the Court or a Judge while in the performance of official duties.

153.26-2. *Relief.* Individuals or other entities found to be in contempt shall be subject to a fine 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 payable to the Judiciary or to the complaining party. When that individual or other entity either pays the money or does whatever the Court orders that person to do, the contempt order shall be purged.

153.26-3. *Procedure.*

- (a) Direct contempt is one committed in the presence of the Court or so near in presence as to be disruptive of the judicial proceedings, and such may be adjudged and punished summarily. All others are indirect contempt.

(b) Indirect contempt may be determined after a hearing in which the person accused of contempt is given notice and an opportunity to be heard.

(1) The Court may, after testimony is given concerning the reasons for any contemptuous act, allow the person accused one (1) opportunity to comply or be held in contempt.

(c) The Court may, in its discretion or on motion by a party, resolve issues of indirect contempt through receipt and deliberation of briefs rather than a hearing.

153.27. Findings and Conclusions by the Court; Judgment on Partial Findings; Offer of Judgment

153.27-1. Findings and Conclusions.

(a) *In General.* The Court shall state the findings of facts and its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the Court.

(b) *For an Interlocutory Injunction.* In granting or refusing an interlocutory injunction, the Court shall similarly state the findings and conclusions that support its action.

(c) *For a Motion.* The Court is not required to state findings or conclusions when ruling on a motion unless this Law provide otherwise.

(d) *Questioning the Evidentiary Support.* A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

153.27-2. *Amended or Additional Findings.* On a party's motion filed no later than twenty-eight (28) days after the entry of judgment, the Court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may accompany a motion for a new trial.

153.27-3. *Judgment on Partial Findings.* If a party has been fully heard on an issue and the Court finds against the party on that issue, the Court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The Court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings shall be supported by findings of fact and conclusions of law as required by Rule 153.27-1(a).

153.27-4. Offer of Judgment.

(a) *Making an Offer; Judgment on an Accepted Offer.* At any time before or during trial, a party may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The Court shall then enter judgment.

(b) *Unaccepted Offer.* An unaccepted offer shall be considered withdrawn, but it shall not preclude a later offer. Evidence of an unaccepted offer shall not be admissible except in a proceeding to determine costs.

153.28. Judgment; Costs

153.28-1. *Generally.* A decision includes any final order or judgment that may be appealed to the Court of Appeals. No special form of judgment is required. A judgment shall not include recitals of pleadings or a record of prior proceedings, unless the Court deems that information necessary.

153.28-2. Types of Relief.

(a) Every final decision of the Court shall grant relief based in law and equity to the party in whose favor the decision is rendered. Relief granted need not be identical to the relief demanded in the pleadings or at a hearing.

(b) *Judgment on Multiple Claims or Involving Multiple Parties.* When an action presents more than one (1) claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the Court may direct entry of a final judgment as to one (1) or more, but fewer than all, claims or parties only if the Court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.

153.28-3. *Form of Decision.* The Court may issue decisions in the form of fines, orders, penalties, or others the Court deems appropriate, which may include, but not limited to:

- (a) Awarding monetary damages, including punitive damages, to be paid by the party found to be in violation of any Tribal law, to the injured party;
- (b) Directing the surrender of certain property to the injured party which the injured party is found to be legally entitled;
- (c) Directing the performance of some act or the ceasing and desisting from performance of some act for the benefit of the injured party;
- (d) Directing a party in violation of Tribal laws to cease and desist from further violations and cure said violations within a specified period of time;
- (e) Directing the payment of specific monetary fines for violations of Tribal laws, Court orders or agreements made during mediation or peacemaking;
- (f) Directing mandated community service and/or denial of specific Tribal benefits;

153.28-4. *Costs.*

- (a) The Court may, in its discretion, require the non-prevailing party to pay some or all of the reasonable costs of the prevailing party.
- (b) *Attorney’s Fees.* The Court shall not award attorney’s fees unless:
 - (1) The fees have been specifically provided for by Tribal law, contract or agreement between the parties in dispute;
 - (2) It has been clearly and convincingly shown that the case is frivolous or has been prosecuted in bad faith for purposes of harassment only; or
 - (3) It has been shown that there was no reasonable expectation of success on the part of the claiming party.
- (c) If the Court finds by clear and convincing evidence that the matter before the Court was frivolous or has been prosecuted in bad faith, the Court may assess against the plaintiff, some or all of the Court’s and/or defendant’s costs in the matter.
- (d) Court costs shall be based on actual cost or set by Court Rule.

153.28-5. *Punitive Damages.* A party may recover punitive damages against another party unless the other party is the Tribe, or an officer or agency of the Tribe. The Court shall only order punitive damages when a party’s willful or reckless conduct is exceptionally egregious or malicious and the order will deter that party and others from committing the same or similar acts in the future. Punitive damages shall not exceed an amount greater than four (4) times the amount of any other monetary damages ordered. In cases involving non-economic harm where punitive damages are ordered, the Court shall determine punitive damages by considering:

- (a) The nature of the wrongdoer’s behavior;
- (b) The extent of the prevailing party’s loss or injury;

- (c) The degree to which the wrongdoer's conduct is offensive to a societal sense of justice and decency; and
- (d) The financial worth of the wrongdoer.

153.29. Default; Default Judgment

153.29-1. *Appearance Required.* Parties to a case are required to appear before the Court at any scheduled hearing or proceeding.

- (a) A party may be excused from appearing with the permission of the Court if the party makes a motion seeking permission prior to the hearing or proceeding and shows good cause as to why the party's appearance is not necessary.
- (b) The Court may allow a proceeding to continue without a party's appearance so long as a representative of the party appears, or may postpone the hearing until the party will attend, or may find the party not in attendance in contempt for failing to appear.
- (c) The Court may allow a party to appear by telephone. Requests to appear by telephone shall be in writing and submitted at least seven (7) days before a hearing or proceeding.

153.29-2. *Defendant.* When a party against whom a judgment for relief is sought has failed to appear, plead or otherwise defend as required in this Law or elsewhere, a default judgment may be granted by the Court upon the receipt of whatever evidence is deemed necessary to establish the claim.

153.29-3. *Plaintiff.* When a party who has filed a claim fails to appear, plead, or prosecute said claim as provided in this Law or elsewhere, a dismissal may be granted by the Court, on its own or on a party's motion, dismissing the claim. For purposes of this section, dismissal shall be treated as default.

153.29-4. *Entering a Default Judgment.* The Court may conduct hearings or make referrals when, to enter or effectuate judgment, it needs to:

- (a) Conduct an accounting;
- (b) Determine the amount of damages;
- (c) Establish the truth of any allegation by evidence; or
- (d) Investigate any other matter.

153.29-5. *Demand for Judgment.* The Court may assign any costs incurred by the non-defaulting party and any hearing costs incurred by the Court, to the defaulting party.

153.29-6. *Setting Aside a Default or a Default Judgment.* The Court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 153.33-2 within one (1) year of entry of default or default judgment.

153.30. Summary Judgment

153.30-1. *Motion for Summary Judgment or Partial Summary Judgment.* A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The Court shall state on the record the reasons for granting or denying the motion.

153.30-2. *Time to File a Motion.* Unless a different time is set by the Court, a party may file a motion for summary judgment at any time after commencement of an action, but at least fifteen (15) days prior to the scheduled trial.

153.30-3. *Procedures.*

- (a) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed shall support the assertion by:

(1) Citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(2) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(b) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(c) *Materials Not Cited.* The Court need consider only the cited materials, but it may consider other materials in the record.

(d) *Affidavits.* An affidavit used to support or oppose a motion shall be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated.

153.30-4. *When Facts Are Unavailable to the Nonmovant.* If a nonmovant shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the Court may:

- (a) Defer considering the motion or deny it;
- (b) Allow time to obtain affidavits or to take discovery; or
- (c) Issue any other appropriate order.

153.30-5. *Failing to Properly Support or Address a Fact.* If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 153.30-3, the Court may:

- (a) Give an opportunity to properly support or address the fact;
- (b) Consider the fact undisputed for purposes of the motion;
- (c) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or
- (d) Issue any other appropriate order.

153.30-6. *Judgment Independent of the Motion.* After giving notice and a reasonable time to respond, the Court may:

- (a) Grant summary judgment for a nonmovant;
- (b) Grant the motion on grounds not raised by a party; or
- (c) Consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

153.30-7. *Failing to Grant All the Requested Relief.* If the Court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

153.30-8. *Affidavit Submitted in Bad Faith.* If satisfied that an affidavit under this Rule is submitted in bad faith or solely for delay, the Court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, incurred as a result. An offending party, advocate or attorney may also be held in contempt or subjected to other appropriate sanctions.

153.31. Entering Judgment; Enforcement

153.31-1. *Entering Judgment.*

- (a) *Signature.* All decisions shall be signed by the Judge assigned to the case and

filed with the clerk.

(b) *Filing and Notation.* A decision shall be complete and entered for all purposes when it is signed and filed with the clerk for publication, unless the case is nonpublic and/or not subject to publication in which case it is deemed complete and entered upon being signed by the Judge. The clerk shall make a notation of the decision in a case log or index of cases and decisions. If publication occurs more than seven (7) days after entry of the decision, this shall be noted and the date of publication shall be the official date of entry.

(c) *Death of a Party.* If a party dies after a decision is rendered upon any issue or fact, but before entry of the judgment, judgment may still be entered.

(d) *Satisfaction of Decision.* The clerk shall file all satisfactions of decisions and note whether whole or partial and the amount thereof in any existing case log or index of cases and decisions. A decision may be satisfied, in whole or part, as to any or all of the non-prevailing parties, when:

(1) The party awarded the decision files an acknowledgment of satisfaction specifying the amount paid and whether such is a full or partial satisfaction; or

(2) The Trial Court may order the entry of satisfaction upon the proof of payment by the debtor and failure of the decision creditor to file a satisfaction;

(e) *Effect of Satisfaction.* A decision satisfied in whole shall be entered in the index of decisions as such.

(1) A partially satisfied decision or unsatisfied decision shall continue in effect for four (4) years or until satisfied, whichever occurs sooner.

(2) An action to renew the decision remaining unsatisfied may be maintained any time prior to the expiration of four (4) years and shall extend the period of an additional four (4) years and may be thereafter further extended by the same procedure.

(f) *Written Decisions.* All decisions, opinions, and orders rendered, unless specified otherwise in this Law, shall be in writing and include the findings of fact and conclusions of law.

(1) Upon completion of the hearing or trial, the Court shall complete a written decision within thirty (30) days.

(A) The Court may, upon written notice to all parties, extend this time period to not more than an additional thirty (30) days from the original due date.

153.31-2. *Enforcement.*

(a) *Time.* The non-prevailing party shall have sixty (60) days from entry of the judgment to comply with the order of the Court and/or complete payment of any monetary award or to make arrangements with the prevailing party for payment or installment payments. If the non-prevailing party does not comply and/or satisfy the judgment within sixty (60) days, does not make arrangements to satisfy judgment within sixty (60) days, or fails to make installment payments to satisfy judgment for more than sixty (60) days, then the prevailing party may make a motion to the Court for the enforcement of the decision.

(b) *Means of Enforcement.* The Court shall conduct a hearing on the issue of enforcement of a judgment. The Court may:

(1) Order the garnishment of any non-prevailing party's wages, including but not limited to per capita payments by the Tribe, the amount to be determined by the Court and to be paid to the prevailing party;

(2) Fine the non-prevailing party if the non-prevailing party is found to be in contempt of the judgment. Fines shall be paid to the prevailing party; or

- (3) Issue any other order or decision for the purposes of satisfying the judgment which the Court deems just.
- (4) If it is determined at this hearing that any of the above options for the enforcement are unavailable or unduly difficult or inequitable, the Court may order the execution and sale of such property of the non-prevailing party's to satisfy the judgment.
- (c) *Seizure of Property.* The non-prevailing party shall be ordered to appear before the Court and answer under oath regarding the reasons for failure to satisfy the judgment. If good cause is not shown for the failure to satisfy the judgment, the Court may:
- (1) Determine, under Wisconsin law, what property of the non-prevailing party is available for execution;
 - (2) Issue an order for the seizure of as much of such property as reasonably necessary to pay the judgment amount and costs of seizing and auctioning such property;
 - (A) The order for seizure shall be issued to and enforced by the Oneida Police Department (OPD);
 - (B) The non-prevailing party shall have, starting on the day after seizure of property, ten (10) days to satisfy the judgment and redeem the property seized from the OPD. If redemption is not made, the OPD shall proceed with the sale of seized property.
 - (C) Sale of seized property shall be at public auction conducted by the OPD. The person conducting the auction:
 - (i) Shall place public notice in at least three (3) prominent places within the Oneida Reservation and publication in the Tribal newspaper, at least ten (10) days prior to the auction.
 - (ii) Shall sell the property to the highest bidder who shall make payment for the property at the time of sale.
 - (iii) Shall issue a certificate of sale to the purchaser and shall make a report and return to the Court reciting the details of the sale.
 - (iv) May postpone and reschedule the auction, providing notice of the new date as per sub part (i) above, if there is deemed to be inadequate response to the auction or bidding.
 - (D) The sale shall not be deemed full satisfaction of the judgment unless such sale actually fully satisfies the judgment. Any excess proceeds from the sale shall be issued to the non-prevailing party.
- (d) *Exemption from Enforcement.* The Court shall only order seizure and sale of such property of the non-prevailing party to satisfy a money judgment, the loss of which shall not impose an immediate and substantial hardship on the non-prevailing party or the non-prevailing party's immediate family.

153.32. Record of Proceedings

153.32-1. *Generally.* All proceedings shall be recorded by audio, video or other means such that an accurate transcript may be produced when needed or requested. The record of the civil action shall include the following:

- (a) All pleadings, motions, orders, and intermediate rulings;
- (b) All evidence received or considered;
- (c) All statements of matters officially noticed;

- (d) All questions and offers of proof, objections and rulings thereon;
- (e) All proposed findings and exceptions;
- (f) All decisions, opinions or reports of the Court; and
- (g) A complete record of the hearing itself, in the form of written transcript, video or audio recordings.

153.32-2. *Open Record.* The records of all hearings and matters shall be available except where they are prohibited from disclosure by this Law, any other Tribal law or Court order or rule.

- (a) The Court shall be construed as a Court of record for purposes of full faith and credit.
- (b) Any person may request to view the record of any case and may receive copies of the record at that person's expense.

(1) Records of cases involving juveniles shall remain confidential and shall only be viewed by the parties or the legal guardian of a party who is a minor and their attorney or advocate, Judges and staff assigned to the case, and those other persons who first obtain a written release from a party to view material contained in the record.

(2) Copies of final decisions and case file material shall be available for any person's review at that person's expense after the time line for filing a notice of appeal or motion for reconsideration has passed and no such filing has occurred. This shall ensure that the case is concluded and open for public record.

(3) At the request of any party or on its own motion, the Court may seal any part of a case file, preventing public disclosure. A file or part of a file may only be sealed where the safety of a party, witness or other individual may be in jeopardy if the material is not placed under seal.

- (c) Deliberations of the Court are confidential, not part of the record and are not subject to reproduction.

153.33. Relief from a Judgment or Order; Harmless Error

153.33-1. *Corrections Based on Clerical Mistakes; Oversights and Omissions.* The Court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The Court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the Court of Appeals and while it is pending, such a mistake may be corrected only with the Court of Appeals' leave.

153.33-2. *Grounds for Relief from a Final Judgment, Order, or Proceeding.* On motion and just terms, the Court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
- (b) Newly discovered evidence that, with reasonable diligence, could not have been discovered;
- (c) Fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (d) The judgment is void;
- (e) The judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (f) Any other reason that justifies relief.

153.33-3. *Timing and Effect of the Motion.*

- (a) *Timing.* A motion under Rule 153.33-2 shall be made within a reasonable time—and for reasons (a), (b), and (c) no more than one (1) year after the entry of the judgment or

order or the date of the proceeding.

(b) *Effect on Finality.* The motion shall not affect the judgment's finality or suspend its operation.

153.33-4. *Other Powers to Grant Relief.* This Rule shall not limit the Court's power to:

- (a) Entertain an independent action to relieve a party from a judgment, order, or proceeding;
- (b) Grant relief to a defendant who was not personally notified of the action; or
- (c) Set aside a judgment for fraud on the Court.

153.33-5. *Harmless Error.* Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the Court or a party—is grounds for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order.

153.34. Stay of Proceedings to Enforce a Judgment

153.34-1. *Automatic Stay; Exceptions for Injunctions.* Except as stated in this Rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until fourteen (14) days have passed after its entry. But unless the Court orders otherwise, interlocutory or final judgments in an action for an injunction are not stayed after being entered, even if an appeal is taken.

153.34-2. *Stay Pending the Disposition of a Motion.* On appropriate terms for the opposing party's security, the Court may stay the execution of a judgment—or any proceedings to enforce it—pending disposition of any of the following motions:

- (a) For judgment as a matter of law;
- (b) To amend the findings or for additional findings;
- (c) For a new trial or to alter or amend a judgment; or
- (d) For relief from a judgment or order.

153.34-3. *Injunction Pending an Appeal.* While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the Court may suspend, modify, restore, or grant an injunction on terms that secure the opposing party's rights.

153.34-4. *Court of Appeals' Power Not Limited.* This Rule shall not limit the power of the Court of Appeals or one (1) of its Judges:

- (a) To stay proceedings—or suspend, modify, restore, or grant an injunction—while an appeal is pending; or
- (b) To issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

153.34-5. *Stay with Multiple Claims or Parties.* The Court may stay the enforcement of a final judgment under Rule 153.28-2(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

153.34-6. *Stay in Favor of the Tribe, or Agency Thereof.* When an appeal is taken by the Tribe, or an officer or agency of the Tribe, and the execution or enforcement of the judgment is stayed; no bond, obligation, or other security shall be required.

153.35 Injunctions and Restraining Orders

153.35-1 *Preliminary Injunction.*

- (a) *Notice.* The Court may issue a preliminary injunction only on notice to the adverse party.
- (b) *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the Court may advance the trial on

the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.

(c) *Expediting the Preliminary-Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction shall be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order shall proceed with the motion; if the party does not, the Court shall dissolve the order.

153.35-2. *Temporary Restraining Order.*

(a) *Issuing Without Notice.* The Court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney or advocate only if:

(1) Specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(2) The movant's attorney or advocate certifies in writing any efforts made to give notice and the reasons why it should not be required to give notice.

(b) *Contents; Expiration.* Every temporary restraining order issued without notice shall state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—not to exceed fourteen (14) days—that the Court sets, unless before that time the Court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension shall be entered in the record.

(d) *Motion to Dissolve.* On two (2) days' notice to the party who obtained the order without notice—or on shorter notice set by the Court—the adverse party may appear and move to dissolve or modify the order. The Court shall then hear and decide the motion as promptly as justice requires.

153.35-3. *Security.* The Court may issue a preliminary injunction or a temporary restraining order only if the movant gives security, unless the movant is the Tribe, or an officer or agency of the Tribe. Security shall be in an amount that the Court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.

153.35-4. *Contents and Scope of Every Injunction and Restraining Order.*

(a) *Contents.* Every order granting an injunction and every restraining order shall:

(1) State the reasons why it issued;

(2) State its terms specifically; and

(3) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(b) *Persons Bound.* The order binds only the following who receive actual notice of it by personal service or otherwise:

(1) The parties;

(2) The parties' officers, agents, servants, employees, and attorneys or advocate; and

(3) Other persons who are in active concert or participation with anyone described in Rule 153.35-4(b)(1) or (2).

153.36. Behavior, Disability, Disqualification of Judges

153.36-1. *Judicial Code of Conduct.* All Judges are subject to the Rules and standards of the Oneida Tribal Judiciary Canons of Judicial Conduct as specified in that document.

153.36-2. *Disability and Disqualification.* Rule 150.12 of the Judiciary law shall govern the reprimand, suspension and/or removal of a Judge.

153.37. Guardian Ad Litem

153.37-1. This section shall govern the appointment, conduct, duties and powers of guardian's ad litem where it is appropriate and authorized under Tribal Law. This section, 153.37, shall apply in every situation where a guardian ad litem is necessary, except where other Tribal Law is more specific regarding guardians ad litem, then those laws shall supersede.

(a) A guardian ad litem shall be an attorney or trained advocate. Before being appointed as guardian ad litem, advocates shall demonstrate an understanding of the role of the guardian ad litem. Such understanding may be demonstrated by passing an examination administered by the Judiciary or by an interview conducted by the Chief Judge, Family Court Judge or such other means determined by the Judiciary.

(b) *Represent Best Interests.* A guardian ad litem shall represent the best interest of the person for whom he or she is appointed. Representation of best interests may be inconsistent with the wishes of the person whose interest the guardian ad litem represents. The guardian ad litem shall not advocate on behalf of or advise any party so as to create in the mind of a reasonable person the appearance of representing that party as an attorney or an advocate.

(c) *Maintain Independence.* A guardian ad litem shall maintain independence, objectivity and the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom.

(d) *Professional Conduct.* A guardian ad litem shall act in a manner consistent with the Judge's obligations under Rule 1.7 of the Oneida Tribal Judiciary Canons of Judicial Conduct.

(e) *Avoid Conflicts of Interest.* No person who is an interested party in a proceeding, appears as an attorney or advocate in a proceeding on behalf of any party, or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding. A guardian ad litem shall:

(1) Avoid any actual or apparent conflict of interest or impropriety in the performance of guardian ad litem responsibilities.

(2) Avoid self-dealing or association from which a guardian ad litem might directly or indirectly benefit, other than for compensation as guardian ad litem.

(3) Take action immediately to resolve any potential conflict or impropriety and advise the Court and the parties of action taken, resign from the matter, or seek Court direction as may be necessary to resolve the conflict or impropriety.

(4) Not accept or maintain appointment if the performance of the duties of guardian ad litem may be materially limited by the guardian's ad litem responsibilities to another client or a third person, or by the guardian's ad litem own interests.

(f) *Treat parties with respect.* A guardian ad litem is an officer of the Court and as such shall at all times treat the parties with respect, courtesy, fairness and good faith.

(g) *Become informed about case.* A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. A guardian ad litem shall examine material information and sources of information, taking into account the positions of the parties.

(h) *Make requests for evaluations to Court.* A guardian ad litem shall not require any evaluations or tests of any person except as required by Tribal Law or Court order issued

following notice and opportunity to be heard.

(i) *Timely inform the Court of relevant information.* A guardian ad litem shall file a written report with the Court and the parties as required by law or Court order, or in any event not later than five (5) business days prior to a hearing for which a report is required. The report shall be accompanied by a written list of documents considered or called to the attention of the guardian ad litem and persons interviewed during the course of the investigation.

(j) *Limit duties to those ordered by Court.* A guardian ad litem shall comply with the Court's instructions as set out in the order appointing a guardian ad litem, and shall not provide or require services beyond the scope of the Court's instruction unless by motion and on adequate notice to the parties, a guardian ad litem obtains additional instruction, clarification or expansion of the scope of such appointment.

(1) A guardian ad litem shall not be called as a witness in any proceeding or hearing in which he/she is a guardian ad litem, except where, with the Court's permission, clarification is requested regarding the guardian ad litem's report. In such case, testimony shall be restricted to that which is needed to clarify such report.

(k) *Inform individuals about role in case.* A guardian ad litem shall identify him or herself as a guardian ad litem when contacting individuals in the course of a particular case and inform individuals contacted in a particular case about the role of a guardian ad litem in the case at the earliest practicable time. A guardian ad litem shall advise information sources that the documents and information obtained may become part of Court proceedings.

(l) *Appear at hearings.* The guardian ad litem shall be given notice of all hearings and proceedings. A guardian ad litem shall appear at any hearing for which the duties of a guardian ad litem or any issues substantially within a guardian ad litem's duties and scope of appointment are to be addressed.

(m) *Ex parte communication.* A guardian ad litem shall not have ex parte communications concerning the case with the Judge(s) involved in the matter except as permitted by Court Rule or by Tribal Law.

(n) *Maintain privacy of parties.* As an officer of the Court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the Court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall maintain the confidential nature of identifiers or addresses where there are allegations of domestic violence or risk to a party's or child's safety. The guardian ad litem may recommend that the Court seal the report or a portion of the report of the guardian ad litem to preserve the privacy, confidentiality, or safety of the parties or the person for whom the guardian ad litem was appointed. The Court may, upon application, and under such conditions as may be necessary to protect the witnesses from potential harm, order disclosure or discovery that addresses the need to challenge the truth of the information received from the confidential source.

(o) *Perform duties in timely manner.* A guardian ad litem shall perform responsibilities in a prompt and timely manner, and, if necessary, request timely Court reviews and judicial intervention in writing with notice to parties or affected agencies.

(p) *Maintain documentation.* A guardian ad litem shall maintain documentation to substantiate recommendations and conclusions and shall keep records of actions taken by the guardian ad litem.

(q) *Keep records of time and expenses.* A guardian ad litem shall keep accurate records

of the time spent, services rendered, and expenses incurred in each case and file an itemized statement and accounting with the Court and provide a copy to each party or other entity responsible for payment. The Court may make provisions for fees and expenses pursuant to Tribal Law or Court Rule in the Order Appointing Guardian ad Litem or in any subsequent order.

(r) At final paternity hearings, dispositional hearings and at other times when appropriate, the guardian ad litem shall provide a written report to the Court with his or her recommendations. The recommendations shall be based upon a full and independent investigation of the facts. The report shall include:

- (1) The sources of information used by the guardian ad litem;
- (2) What home visits were done by the guardian ad litem and the results of the visits;
- (3) Who the guardian ad litem interviewed including parents, relatives and professionals;
- (4) Whether the guardian ad litem had contact with the child or children;
- (5) Relevant provisions of the law; and
- (6) The guardian ad litem's recommendation on the contested issues

(s) The appointment of a guardian ad litem terminates upon the entry of the Court's final order or upon the termination of any appeal in which the guardian ad litem participates.

(t) As an officer of the Court, a guardian ad litem has only such authority conferred by the order of appointment. A guardian ad litem shall have the following authority:

(1) *Access to party.* Unless circumstances warrant otherwise, a guardian ad litem shall have access to the persons for whom a guardian ad litem is appointed and to all information relevant to the issues for which a guardian ad litem was appointed.

(A) The access of a guardian ad litem to the child and all relevant information shall not be unduly restricted by any person or agency.

(B) When the guardian ad litem seeks contact with a party who is represented by an attorney or advocate, the guardian ad litem shall notify the attorney or advocate in advance of such contact. The guardian ad litem's contact with the represented party shall be as permitted by the party's attorney or advocate, unless otherwise ordered by the Court.

(2) *Timely receipt of case documents.* Until discharged by Court order a guardian ad litem shall be timely furnished copies of all relevant pleadings, documents, and reports by the party which served or submitted them.

(3) *Timely notification.* A guardian ad litem shall be timely notified of all Court hearings, administrative reviews, staffing's, investigations, dispositions, and other proceedings concerning the case by the person or agency scheduling the proceeding.

(4) *Notice of proposed agreements.* A guardian ad litem shall be given notice of, and an opportunity to indicate his or her agreement or objection to any proposed agreed order of the parties governing issues substantially related to the duties of a guardian ad litem.

(5) *Participate in all proceedings.* A guardian ad litem shall participate in Court hearings through submission of written and supplemental oral reports and as otherwise authorized by Tribal law or Court Rule.

(6) *Access to records.* Except as limited by law or unless good cause is shown to the Court, upon receiving a copy of the order appointing a guardian ad litem, any

person or agency shall permit a guardian ad litem to inspect and copy any and all records and interview personnel relating to the proceeding for which a guardian ad litem is appointed. Examples of persons and agencies to whom this provision applies include but not limited to any hospital, school, child care provider, organization, department of social and health services, doctor, health care provider, mental health provider, chemical health program, psychologist, psychiatrist, or law enforcement agency.

(7) *Access to Court files.* Within the scope of appointment, a guardian ad litem shall have access to all relevant Judiciary files. Access to sealed or confidential files shall be by separate order. A guardian ad litem's report shall inform the Court and parties if the report contains information from sealed or confidential files. The clerk of Court shall provide certified copies of the order of appointment to a guardian ad litem upon request and without charge.

(u) *Rights and powers.* In every case in which a guardian ad litem is appointed, a guardian ad litem shall have the rights and powers set forth below. These rights and powers are subject to all applicable Tribal laws and Court Rules.

(1) *File documents and respond to discovery.* A guardian ad litem shall have the right to file pleadings, motions, notices memoranda, briefs, and other documents, and may, subject to the Trial Court's discretion engage in and respond to discovery.

(2) *Note motions and request hearings.* A guardian ad litem shall have the right to make motions and request hearings before the Court as appropriate to the best interests of the person(s) for whom a guardian ad litem was appointed.

(3) *Introduce exhibits, examine witnesses, and appeal.* A guardian ad litem shall have the right, subject to the Court's discretion, to introduce exhibits, subpoena witnesses, and conduct direct and cross examination of witnesses.

(4) *Oral argument and submission of reports.* A guardian ad litem shall have the right to fully participate in the proceedings through submission of written reports, and, may with the consent of the Court present oral argument.

(v) *Additional rights and powers in other cases.* For good cause shown, a guardian ad litem may petition the Court for additional authority.

153.38. Hearing Procedure

153.38-1. *General Procedure.* The Court shall follow the procedures contained below for all hearings and trials, but may in its discretion shorten or eliminate procedural steps that are unnecessary for a particular hearing which may not be complex enough to warrant every step contained below.

(a) *Hearing is called to Order.*

(1) The full name of the Court is stated.

(2) The name of the presiding Judge is stated.

(3) A statement of authority and jurisdiction is made, making reference to General Tribal Council Resolution 01-07-13-Band Judiciary Law, Chapter 150 of the Oneida Code of Laws or, if in Family Court, Family Court Law, Chapter 151 of the Oneida Code of Laws.

(4) The docket number of the civil case and the names of all parties are stated for the record. Advocates for parties shall state their name for the record.

(b) *Pending Motions.* All pending motions are resolved prior to the commencement of the full hearing.

(1) Motions filed less than fourteen (14) days prior to the hearing shall only be considered and decided in accordance with Rule 153.7-5(d).

(c) *Stipulations; Additional Documents.* All stipulations or matters officially noted which are known to the parties or Judge prior to the hearing shall be entered into the record.

(1) Either party with additional documents to submit for the Court's review which was not submitted two (2) days prior to the hearing may attempt to submit these documents at this time.

(2) A party attempting to submit additional documents shall have a copy for each Judge and the opposing party and shall show good cause as to why the documents were not submitted prior to the hearing.

(3) The Court may accept or deny the submission of documents immediately, or postpone a decision as to the reasonableness for the untimely submission until the close of the hearing.

153.38-2. *Order of Presentation.* The Parties shall proceed in this order:

- (a) Parties' Opening Statements;
 - (1) Plaintiff's opening statement.
 - (2) Defendant's opening Statement.
- (b) The plaintiff's case;
- (c) The defendant's case;
- (d) Plaintiff rebuttal;
- (e) Defendant rebuttal;
- (f) Plaintiff closing statement;
- (g) Defendant closing statement.

153.39. Appeals

153.39-1. *Where to Appeal.* All requests for an appeal from a decision of any lower hearing body or Court shall be heard by the Court of Appeals.

153.39-2. *Appellate Procedure.* Upon commencement of the appellate action, parties shall be required to follow the Court of Appeals' Rules of Procedure, Chapter 154 of the Oneida Code of Laws.

End.

Adopted BC-04-25-14-A



Legislative Operating Committee Update

Proposals to Create or Change Tribal Law that are Currently Being Processed

Law Related to the Use of Our Land

- ♦ **Agriculture Law.** This is a proposal for agricultural legislation and research to identify agricultural products that can be grown on the Reservation in order to exercise the Tribe's sovereignty and pursue economic diversification. *LOC Sponsor: Tehassi Hill*
- ♦ **Hunting Fishing Trapping Law Amendments.** Changes were requested to update and streamline the Law; and to remove rules that change regularly from the Law (giving the Environmental Resource Board authority to establish regulations instead) so that the Law will not need to be amended as frequently. *LOC Sponsor: Tehassi Hill*
- ♦ **Environmental Health and Safety Law.** This is a new Law that enables the Environmental, Health and Safety Department (EHSD) to protect land, water, air people and safety on the Reservation; authorizing EHSD to do business on the Reservation and perform duties such as creating rules in implementing this Law. *LOC Sponsor: Tehassi Hill*

Financial & Economic Development Law

- ♦ **Industrial Hemp Law.** The 2013 Farm Bill authorizes institutions of higher education or State departments of agriculture, in states where it is legal to grow hemp, to grow hemp for research or agriculture pilot programs. The state of Wisconsin does not have hemp legislation. This is a proposal to look at how industrial hemp could be grown on the Reservation, if the appropriate federal permits are obtained. *LOC Sponsor: Tehassi Hill*
- ♦ **Tribally-Owned Business Organization Code.** This is a proposal for a corporations code to govern Tribal Corporations, including the several Tribally-owned entities that currently exist under the corporate laws of other jurisdictions. *LOC Sponsor: Jennifer Webster*
- ♦ **Oneida Nation Gaming Ordinance Amendments.** Minor changes were made to ONGO to replace references to the Oneida Appeals Commission with references to the Judiciary, and after adoption, were submitted to National Indian Gaming Commission (NIGC) for approval. NIGC returned the proposed amendments with three additional amendments that need to be made, and additional feedback since then has resulted in additional permanent amendments being proposed. *LOC Sponsor: Brandon Stevens*
- ♦ **Higher Education.** The Oneida Business Committee has directed the LOC to look at codifying the rules created by the Higher Education Office, which currently govern how Higher Ed disburses higher education funding in accordance with GTC directives. *LOC Sponsor: Fawn Billie*

Law To Take Care of the People

- ♦ **Membership Ordinance.** Amendments were requested to include an individual's New York Oneida blood and Oneida of the Thames blood when determining blood quantum for membership in the Oneida Tribe of Indians of Wisconsin. This item is on hold temporarily while the Sustain Oneida initiative gathers information. *LOC Sponsor: Brandon Stevens*
- ♦ **Guardianship Law.** A Guardianship Law for minor children was requested since the Child Custody, Placement and Visitation Law permits a third party (i.e. a non-parent) to petition for custody of a minor child, but does not address third-party guardianships. *LOC Sponsor: Fawn Billie*
- ♦ **Violence Against Women Act.** This is a request to look at how the Tribe can exercise jurisdiction over non-Indians in domestic abuse cases on the Reservation. *LOC Sponsor: Jennifer Webster*
- ♦ **Children's Code.** This is a proposal for a Children's Code which would enable the Tribe to take jurisdiction of child welfare matters involving Tribal children. The proposal seeks to create a Child Welfare Office and formally establish the Oneida Child Protective Board in law, and to address child welfare proceedings including CHIPS; termination of parental rights; adoption; and foster home licensing. *LOC Sponsor: Fawn Billie*

Tribal Workplace Law

- ♦ **Employment Law.** The original proposal is for the development of an employment law to replace the current Personnel Policies and Procedures. *LOC Sponsor: Brandon Stevens*
- ♦ **Workplace Violence Policy.** The proposed Policy provides guidance to Tribal employees to maintain an environment at and within the Tribe's property and events that is free of violence and the threat of violence. *LOC Sponsor: Tehassi Hill*
- ♦ **Employee Advocacy Law.** The Employee Advocacy Law would formally codify the rules and requirements for Tribal employees who wish to serve as an advocate for other Tribal employees who are challenging disciplinary action. *LOC Sponsor: Jennifer Webster*
- ♦ **Fitness for Duty Policy.** Employees who are not fit for duty may present a health and/or safety hazard to themselves, to other employees, to the Tribe and to the general public. Since no policy exists currently, supervisors either do nothing and let the issues continue; force an employee on a leave of absence, adversely modify job duties, and/or terminate the employee. *LOC Sponsor: Jennifer Webster*
- ♦ **Vehicle Driver Certification and Fleet Management.** The proposal is for a new law to govern the use of Tribal vehicles, and the use of personal vehicles while on Tribal business, by Tribal employees, officials, and volunteers. This proposal would combine and replace the current Vehicle Driver Certification Policy and the Fleet Management Policy. *LOC Sponsor: Jennifer Webster*
- ♦ **Whistleblower Law.** This is a proposal to replace the current Employee Protection Law with a new Whistleblower Law to protect employees from retaliation after filing a complaint. *LOC Sponsor: Jennifer Webster*
- ♦ **Child Care Department Consumer Complaint Policy.** This proposal stems from a GTC petition, and is being processed provide the minimum requirements of a new process for responding to complaints filed against Child Care Department staff. Provisions address mandatory administrative leave during investigations; investigation timelines, providing explanation of results, and quarterly reporting of all complaints to the Childcare Division Director and OBC. *LOC Sponsor: Jennifer Webster*
- ♦ **Furlough Policy.** This is a proposal for a policy that would enable the Tribe to place employees on furlough (unpaid leave) as a short-term remedy for budget shortfalls. A Furlough Policy was adopted on an emergency basis last term, but the emergency adoption expired. The OBC has directed the LOC to process a Furlough Policy for permanent adoption. *LOC Sponsor: Fawn Billie*
- ♦ **Back Pay Policy Amendments.** This request was submitted to clarify conflicting provisions related to whether health insurance coverage continues during involuntary separation/terminations, and to require reinstated employees to reimburse Community Health Services (CHS) dollars used if an employee claims medical treatment from CHS prior to reinstatement. *LOC Sponsor: David P. Jordan*

Law For the Tribal Judicial System

- ♦ **Family Court Amendments: Bench Warrants.** This is a proposal for changes to the Family Court Law and/or Family Court Rules would enable the Family Court to issue bench warrants. A bench warrant is a court order authorizing the seizure of a person in order for them to appear in court. *LOC Sponsor: Brandon Stevens*
- ♦ **Capping Damages and Awards from the Judicial System.** This item is an OBC directive for the LOC to develop legislation that would set a limit, or cap, on the amount or type of damages and awards that can be issued or imposed by the Judicial System. *LOC Sponsor: Jennifer Webster*
- ♦ **Tribal Hearing Bodies.** On June 10, 2015, the OBC approved the creation of an administrative court. If approved and enacted, an administrative court would take over some of the responsibilities of certain boards, committees and commissions that currently function as Tribal hearing bodies. *LOC Sponsor: Jennifer Webster*

Tribal Governance & Operations

- ♦ **Budget Management and Control Law.** This proposal is for the development of a law to provide a consistent manner to govern the Tribal budget process, establish a procedural framework, and oversee Tribal expenditures. *LOC Sponsor: Brandon Stevens*
- ♦ **Sanctions and Penalties Law.** This item is a proposal for a consistent process that would provide for members of the Oneida Business Committee and other Boards, Committees and Commissions to face sanctions for misconduct. Currently, the only penalty that OBC members are subject to is removal from office, which is a complicated process or termination of appointment. *LOC Sponsor: Brandon Stevens*
- ♦ **Rulemaking Law.** This proposal seeks a consistent process for the adoption of administrative rules by Tribal agencies that have been granted rulemaking authority under other Tribal laws. *LOC Sponsor: Tehassi Hill*
- ♦ **Code of Ethics Amendments.** The proposal seeks to change the current Code of Ethics to strengthen accountability of employees, elected officials and appointed officials. Among other things, a new enforcement process would be added and would include a panel to hear ethical complaints and recommend penalties. *LOC Sponsor: Tehassi Hill*
- ♦ **Election Law Amendments.** Changes were initially requested to:
 - prohibit Tribal members from running for more than one seat per election
 - prohibit Tribal members from serving on more than one board, committee or commission at a time
 - include enforcement provisions for campaign violations
 - streamline the role of the Election Board
 - require a Milwaukee polling site;
 - include provisions regarding election observers; and
 - clarify the referendum process.
 Additional changes had been proposed but were removed based on the public meeting feedback and on GTC actions, including proposed term limits and prohibiting Tribal employees from serving as elected or appointed officials. *LOC Sponsor: Tehassi Hill*
- ♦ **Law Enforcement Ordinance—Conservation Officers.** The Oneida Police Department and the Law Office are recommending changes to the Law Enforcement Ordinance to clarify that Conservation Wardens are

- not sworn police officers, so there is no conflict when it comes to the issuance of fines. *LOC Sponsor: Tehassi Hill*
- ♦ **Audit Law Amendments.** The Audit Committee requested changes to the Law, primarily to establish standard requirements for correcting high risk findings and clarify roles and responsibilities related to Audit issue interpretations and resolutions. Since the request was initially submitted, the Audit Committee has also requested additional changes which are also being processed. *LOC Sponsor: Jennifer Webster*
- ♦ **Comprehensive Policy Governing Boards, Committees, and Commissions Amendments.** Originally, changes were requested that would prohibit individuals from serving on multiple boards, committees and commissions at one time; set term limits; and prohibit Tribal employees from serving on tribal boards, committees and commissions. Additional changes are also being considered that would update the Policy. *LOC Sponsor: Jennifer Webster*
- ♦ **GTC Meetings Law.** This proposal is for a new law to govern the scheduling and conducting of GTC meetings, including: a standard agenda format and a code of conduct for those in attendance; outlining the duties of those preparing and assisting with GTC meetings, and establishing how petitions would be processed. *LOC Sponsor: Fawn Billie*
- ♦ **Administrative Procedures Act (APA) Emergency Amendments.** With the establishment of the Judiciary, the APA was set to be repealed as of March 1, 2015; however repealing it would have left various Tribal hearing bodies without any rules to govern hearings. A revised APA was adopted on an emergency basis on February 25, 2015. *LOC Sponsor: Brandon Stevens*
- ♦ **Removal Law Amendments.** Requested changes would enable the OBC to remove elected members of boards, committees and commissions upon petition or request by the board, committee or commission. The OBC member removal process would not change. *LOC Sponsor: Fawn Billie*
- ♦ **Flag Code.** The OBC requested that the LOC develop a flag code policy which would include protocol for those who oversee flag responsibilities, identifying persons with the authority to lower the flag to half-staff, the height and position of the Tribal Flag compared to the US Flag, and related requirements. *LOC Sponsor: Jennifer Webster*

New & Improved Oneida Law Changes That Have Gone Into Effect During the 2014-2017 Term

Constitutional Amendments **June 24, 2015**

- ☑ **Investigative Leave Policy Amendments.** Language was removed that had prohibited putting an employee on investigative leave when a complaint is filed. The change was made because it could have prevented supervisors from acting to protect the Tribe in certain cases where inappropriate activities are identified based on a complaint arising out of a disciplinary or complaint process. The amendments also reduce the time period of an investigation from 30 days to 15 days.

April 22, 2015

- ☑ **Motor Vehicle Registration Law.** Specific fees were removed from the law, so that the fees could be established separately and changed in the future without needing to amend the entire Law. Other changes were also made to generally update the law, which had not been updated since 1999. At the same time these amendments were adopted, the OBC also adopted a separate schedule of registration fees, by resolution.
- ☑ **Oneida Nation Gaming Ordinance Emergency Amendments—Extension.** The OBC extended the emergency amendments that were adopted on October 8, 2014, so they can remain in effect while permanent amendments are pending.

December 10, 2014

- ☑ **Public Use of Tribal Land law.** The Law was amended to enable certain non-Oneida persons to have limited access to land that is designated as Tribal Member Access Only. This enables employees to perform their responsibilities, and emergency personnel to respond to emergencies, without violating the Law.

October 8, 2014

- ☑ **Oneida Nation Gaming Ordinance Emergency amendments.** After ONGO was amended to replace references to the Appeals Commission with references to the new Judiciary, the amended law was sent to the National Indian Gaming Commission (NIGC) for required approval. However, NIGC returned the draft with additional changes that needed to be made. Those changes were adopted by emergency amendment in order to comply with NIGC regulations.

March 25, 2015

- ☑ **Judiciary Rules of Appellate Procedure Amendments.** The changes streamlined procedural requirements for appeals cases, to make the appeals process more user-friendly. These changes were first adopted on an emergency basis on December 19, 2014, and the amendments were then adopted permanently on this date after going through the full legislative process.

February 25, 2015

- ☑ **Four Tribal policies and ten Tribal laws** were amended to replace references to the Oneida Appeals Commission with references to the new Judiciary.
- ☑ **Administrative Procedures Act**

May 13, 2015

- ☑ **New Leasing Law.** This is a new Tribal Law that enables the Tribe to enter into leases for Tribal trust land without needing to first obtain approval from the Secretary of the US Department of Interior for each individual lease. The Law also governs leasing of Tribal fee lands.
- ☑ **Real Property Law Amendments.** Minor changes were made to ensure this Law is consistent with the new Leasing law.

June 28, 2015

- ☑ **Election Law Emergency Amendments.** Changes were adopted to reflect the Tribal Constitutional Amendments that lowered the voting age to 18. These were adopted on an emergency basis so that they would become effective before an upcoming election; and the changes are also currently being processed for permanent adoption.

Changes to Other Laws & Policies

June 24, 2015

- ☑ **Investigative Leave Policy Amendments.** Language was removed that had prohibited putting an employee on investigative leave when a complaint is filed. The change was made because it could have prevented supervisors from acting to protect the Tribe in certain cases where inappropriate activities are identified based on a complaint arising out of a disciplinary or complaint process. The amendments also reduce the time period of an investigation from 30 days to 15 days.

May 27, 2015

- ☑ **Marriage Law Amendments.** After the U.S. Supreme Court declined to review a lower court's finding that Wisconsin's same-sex marriage ban was unconstitutional, the OBC adopted amendments to the Tribe's Marriage Law to allow for same-sex marriage, so that the Tribe's law reflects Wisconsin law regarding the validity of same sex-marriages.

April 22, 2015

- ☑ **Motor Vehicle Registration Law.** Specific fees were removed from the law, so that the fees could be established separately and changed in the future without needing to amend the entire Law. Other changes were also made to generally update the law, which had not been updated since 1999. At the same time these amendments were adopted, the OBC also adopted a separate schedule of registration fees, by resolution.
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Contact the Legislative Operating Committee

The Membership is always welcome to visit, call, e-mail, and/or write to any LOC member to discuss or learn about any legislation that the LOC member is sponsoring or to suggest future legislative changes. To learn more about the LOC, please visit us online at: www.oneida-nsn.gov/LOC. Individual LOC members and their legislative assistants can be contacted as follows:

Brandon Stevens <i>LOC Chair</i> (920) 869-4378 BStevens@Oneidanation.org	Tehassi Hill <i>LOC Vice-Chair</i> (920) 869-4420 RHill7@Oneidanation.org	Jennifer Webster <i>Councilmember</i> (920) 869-4457 JWebste1@Oneidanation.org	Fawn Billie <i>Councilmember</i> (920) 869-4428 FBillie@Oneidanation.org	David P. Jordan <i>Councilmember</i> (920) 869-4483 DJordan1@Oneidanation.org
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For a full history of the past few years, or to see new changes as they occur, visit the Legislative History webpage on the Oneida Register at: www.oneida-nsn.gov/Register/LegislativeActions

July 2015

July 2015							August 2015						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
5	6	7	1	2	3	4	2	3	4	5	6	7	1
12	13	14	8	9	10	11	9	10	11	12	13	14	8
19	20	21	15	16	17	18	16	17	18	19	20	21	15
26	27	28	22	23	24	25	23	24	25	26	27	28	22
			29	30	31		30	31					29

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Jun 28	29	30	Jul 1	2	3	4
Jun 28 - Jul 4				9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar		8:00am 4:30pm 4th of July Holiday	
	5	6	7	8	9	10	11
Jul 5 - 11		6:00pm 10:00pm GTC Semi-Annual (Radisson)		BC Meeting (BCCR)			
	12	13	14	15	16	17	18
Jul 12 - 18				9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar		2:00pm 4:30pm LOC Work Meeting: Vehicle Driver PM Review & Higher Ed (ECR) - LOC_Calendar	
	19	20	21	22	23	24	25
Jul 19 - 25				BC Meeting (BCCR)			
	26	27	28	29	30	31	Aug 1
Jul 26 - Aug 1		2:30pm 4:30pm Tribal Hearing Bodies/Administrative Court Work Meeting (ECR) - Candice E. Skenand			12:15pm 2:00pm Public Meeting-ONGO (BCCR)		

August 2015

August 2015							September 2015						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
2	3	4	5	6	7	8	6	7	8	9	10	11	12
9	10	11	12	13	14	15	13	14	15	16	17	18	19
16	17	18	19	20	21	22	20	21	22	23	24	25	26
23	24	25	26	27	28	29	27	28	29	30			
30	31												

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Jul 26	27	28	29	30	31	Aug 1
7/26 - 31							
	2	3	4	5	6	7	8
8/2 - 7				9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar			
	9	10	11	12	13	14	15
8/9 - 14				BC Meeting (BCCR)			
	16	17	18	19	20	21	22
8/16 - 21				9:00am 2:00pm LOC Meeting (BCCR) - LOC_Calendar			
	23	24	25	26	27	28	29
8/23 - 28				BC Meeting (BCCR)			
	30	31	Sep 1	2	3	4	5
8/30 - 9/4							