



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA
Business Committee Conference Room-2nd Floor Norbert Hill Center
April 5, 2017 9:00 a.m.

I. Call to Order and Approval of the Agenda

II. Minutes to be approved

1. March 15, 2017 LOC Meeting Minutes

III. Current Business

1. Endowment Fund Amendments
2. Children's Code
3. ~~Business Committee Meetings Law~~ (Deferred to work meeting – Content removed)
4. Drug and Alcohol Free Workplace Amendments
5. Employment Law
6. Higher Education Scholarship
7. Community Support Fund Amendments
8. Conflict of Interest Emergency Amendments

IV. New Submissions

1. Landlord-Tenant Rule No. 2 Certification – Income Based Rental Program
2. Landlord-Tenant Rule No. 3 Certification – Elder Rental Program
3. Eviction and Termination Rule No. 1 Certification – Disposal of Abandoned Personal Property
4. Professional Conduct for Attorneys and Advocates
5. Legal Resource Center

V. Additions

VI. Administrative Updates

1. LOC Meeting SOP
2. FY17 Second Quarter Report

VII. Executive Session

VIII. Recess/Adjourn



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2nd Floor Norbert Hill Center

March 15, 2017 9:00 a.m.

Present: Brandon Stevens, Fawn Billie, Tehassi Hill, David P. Jordan, Jennifer Webster

Others Present: Tani Thurner, Jennifer Falck, Clorissa Santiago, Maureen Perkins, Rae Skenandore, Krystal John

I. Call to Order and Approval of the Agenda

Tehassi Hill called the March 15, 2017 Legislative Operating Committee meeting to order at 9:01 a.m.

Motion by Fawn Billie to approve the agenda; seconded by Jennifer Webster. Motion carried unanimously.

II. Minutes to be approved

1. March 1, 2017 LOC Meeting Minutes

Motion by Jennifer Webster to approve the March 1, 2017 LOC meeting minutes; seconded by David P. Jordan. Motion carried, with David P. Jordan abstaining.

III. Current Business (5:00–5:38)

1. Tribal Environmental Response Law Amendments

Motion by Fawn Billie to accept the 60-day update; seconded by David P. Jordan. Motion carried unanimously.

Note: Brandon Stevens arrived at 9:04 a.m.

2. Endowments Law Amendments (5:41–10:11)

Motion by Jennifer Webster to accept the public meeting comments and responses, and the updated draft with the new changes, and direct the Legislative Reference Office to prepare the adoption packet; seconded by David P. Jordan. Motion carried unanimously.

3. Tribal Criminal, Traffic and Public Peace Laws (10:12–10:46)

Motion by Fawn Billie to approve a 60-day extension to complete research for these items; seconded by Tehassi Hill. Motion carried unanimously.

4. Petition: Benton- Change Pre-employment Drug Testing for (10:59–11:36)

Motion by Jennifer Webster to approve the statement of effect and to forward to the Oneida Business Committee; seconded by Tehassi Hill. Motion carried unanimously.

IV. New Submissions

1. Administrative Rulemaking Amendments (11:37-14:55)

Motion by Jennifer Webster to add the Administrative Rulemaking Amendments to the Active Files List as a high priority and assign Brandon Stevens as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

2. Conflict of Interest Emergency Amendments (14:57-21:17)

Motion by Jennifer Webster to add the Conflict of Interest Emergency Amendments to the Active Files List as a high priority and assign Brandon Stevens as the sponsor seconded by Fawn Billie. Motion carried unanimously.

V. Additions

VI. Administrative Updates

VII. Executive Session

VIII. Adjourn

Motion by David P. Jordan to adjourn the March 15, 2017 Legislative Operating Committee meeting at 9:19 a.m.; seconded by Tehassi Hill. Motion carried unanimously.



Legislative Operating Committee
April 05, 2017

Endowments Law Amendments

Submission Date: 12/21/16	Public Meeting: 2/16/17
LOC Sponsor: David P. Jordan	Emergency Enacted: n/a Expires: n/a

Summary: *An amendment to identify that authorization in a resolution creating an endowment is the equivalent of authority delegated by law as identified in the Administrative Rulemaking law for the purposes of developing rules.*

12/21/16 LOC: Motion by David P. Jordan to add Endowments Amendments to the Active Files list as a high priority with David P. Jordan as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

01/04/17LOC: Motion by David P. Jordan to forward the Endowment Fund Amendments to the LRO and the Finance Department for a legislative analysis and fiscal analysis to be completed by January 12, 2017; seconded by Tehassi Hill. Motion carried unanimously.

1/18/17 LOC: Motion by Fawn Billie to approve the public meeting packet and send the Endowments Amendments to a public meeting to be held on February 16, 2017 noting the fiscal impact statement will be added to the public meeting packet; seconded by Jennifer Webster. Motion carried unanimously.


2/16/17: Public meeting held.

3/15/17 LOC: Motion by Jennifer Webster to accept the public meeting comments and responses, and the updated draft with the new changes, and direct the Legislative Reference Office to prepare the adoption packet; seconded by David P. Jordan. Motion carried unanimously.

Next Steps:

- Approve the adoption packet and forward to the Oneida Business Committee for consideration.



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson 
DATE: April 12, 2017
RE: Endowments Law Amendments

Please find the following attached backup documentation for your consideration of the Endowments Law Amendments:

1. Resolution: Endowments Law Amendments
2. Statement of Effect: Endowments Law Amendments
3. Endowments Law Amendments Legislative Analysis
4. Endowments Law (Redline)
5. Endowments Law (Clean)
6. Endowments Law Amendments Fiscal Impact Statement

Overview

The attached Resolution will adopt amendments to the current Endowments law. The amendments:

- Allow a resolution which creates an endowment the ability to delegate rulemaking authority to others pursuant to the Administrative Rulemaking law. The delegation of rulemaking authority through resolutions allows endowments the ability to delegate rulemaking authority to programs in order for the programs to access funding derived from endowment investments. *[see Endowments section 131.11-1]*;
- Modify how an endowment fund account can be dissolved, now requiring a two-thirds (2/3) vote of each of the following: Oneida Trust Committee, Oneida Finance Committee and the Oneida Business Committee. Additionally a two-thirds (2/3) vote of the Oneida General Tribal Council is required if the endowment fund account proposed to be dissolved contains five hundred thousand dollars (\$500,000) or more. *[see Endowments section 131.10-1]*; and
- Update the language to ensure compliance with drafting style and formatting requirements.

In accordance with the Legislative Procedures Act, a public meeting was held regarding the amendments to the Endowments law on February 16, 2017, with a comment period closing on February 23, 2017. Those comments were accepted and considered by the Legislative Operating Committee at the March 15, 2017, Legislative Operating Committee meeting.

Requested Action

Approve the Resolution: Endowments Law Amendments

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Endowments Law Amendments

- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Endowments law (the "Law") was adopted by the Oneida Business Committee by resolution BC-02-23-05-G; and
- WHEREAS,** the amendments to the Law identify that authorization in a resolution creating an endowment is the equivalent of authority delegated by law as identified in the Administrative Rulemaking law so that a resolution which creates an endowment has the ability to delegate rulemaking authority to create and enact a set rules in accordance with the Administrative Rulemaking law, as authorized by the Law, in order to implement, interpret and/or enforce the Law; and
- WHEREAS,** the delegation of rulemaking authority through resolutions allows an endowment to delegate rulemaking authority to programs in order for programs to create and enact rules in order to access funding derived from endowment investments; and
- WHEREAS,** currently, the Law allows an endowment fund account to be dissolved only by recommendation of the Oneida Finance Committee and the Oneida Trust Enrollment Committee and ratification by the Oneida Business Committee; and
- WHEREAS,** the amendments modify how an endowment fund account can be dissolved now requiring a two-thirds (2/3) vote of each of the following: Oneida Trust Enrollment Committee, Oneida Finance Committee and the Oneida Business Committee. Additionally a two-thirds (2/3) vote of the Oneida General Tribal Council is required if the endowment fund account proposed to be dissolved contains five hundred thousand dollars (\$500,000) or more; and
- WHEREAS,** additional amendments update the language to ensure compliance with drafting style and formatting requirements; and
- WHEREAS,** a public meeting on the amendments was held on February 16, 2017, in accordance with the Legislative Procedures Act, and comments received were reviewed and accepted by the Legislative Operating Committee on March 15, 2017.

NOW THEREFORE BE IT RESOLVED, that amendments to the Endowments law are hereby adopted and effective immediately.



Statement of Effect

Endowments Law Amendments

Summary

This Resolution adopts amendments to the Endowments law which identify that authorization in a resolution creating an endowment is the equivalent of authority delegated by law as identified in the Administrative Rulemaking law for the purposes of developing rules, and modifies how an endowment fund account can be dissolved.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

This Resolution adopts amendments to the Endowments law (“the Law”), which was originally adopted by the Oneida Business Committee on February 23, 2005.

Amendments to the Law modify how an endowment fund account can be dissolved. Currently, the Law allows an endowment fund account to be dissolved only by recommendation of the Oneida Finance Committee and the Oneida Trust Enrollment Committee, with ratification by the Oneida Business Committee. The amendments now require a two-thirds (2/3) vote of each of the following: the Oneida Trust Enrollment Committee, Oneida Finance Committee and the Oneida Business Committee. Additionally, a two-thirds (2/3) vote of the Oneida General Tribal Council is required if the endowment fund account proposed to be dissolved contains five hundred thousand dollars (\$500,000) or more.

The amendments allow rulemaking authority to be granted through a resolution creating an endowment. The Administrative Rulemaking law allows for only authorized agencies granted rulemaking authority by a law to create rules. Those authorized agencies which were granted rulemaking authority by a law can then create rules interpreting the provisions of the law enforced or administered by it. The Endowments law was adopted before the Administrative Rulemaking law, and as a result there is a gap between the two laws which would not allow rules to be developed in accordance with a resolution.

The amendments allow a resolution to delegate rulemaking authority to create and enact a set of rules establishing requirements in accordance with the Administrative Rulemaking law, as authorized by the Law, in order to implement, interpret and/or enforce the Law. The delegation of rulemaking authority through resolutions allows endowments the ability to delegate rulemaking authority to programs in order for the programs to access funding derived from endowment investments.

Additional amendments update language to ensure compliance with drafting style and formatting requirements.

A public meeting on the proposed amendments was held on February 16, 2017, in accordance with the Legislative Procedures Act. On March 15, 2017, the LOC reviewed all comments received during the public comment period; and any changes made based on those comments have been incorporated into this draft.

Conclusion

Adoption of this Resolution would not conflict with any of the Nation’s laws.



Endowments Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: JoAnne House	SPONSOR: David P. Jordan	DRAFTER: Clorissa N. Santiago	ANALYST: Maureen Perkins
Intent of the Amendments	To grant Administrative Rulemaking authority by resolution to programs based upon criteria established by the endowments created under the Endowments law.		
Purpose	The purpose of this law is to provide the process for the establishment and maintenance of all endowment accounts established by the Oneida Nation <i>[see 131.1-1]</i> .		
Affected Entities	Finance Committee, Oneida Nation Treasurer, Oneida Business Committee, Oneida departments, Trust Enrollment Committee, Chief Financial Officer, Trust Enrollment Department,		
Affected Legislation	Administrative Rulemaking		
Enforcement/Due Process	There are no enforcement or due process provisions included in the law.		
Public Meeting	A public meeting was held February 16, 2017.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The current Endowments law does not include rulemaking authority. The current amendments fill this gap by granting rulemaking authority to Oneida entities according to a Oneida Business Committee resolution adopting the creation of the specific endowment *[see 131.11]*.
- B. This process opens endowments created according to the Endowments law to Oneida entities to create programming based upon criteria crated by resolution.

SECTION 3. CONSULTATION

- A. The Oneida Law Office, the Treasurer’s Office and the Finance Committee were consulted in the proposed amendments of this law.
- B. The amendments have incorporated the Administrative Rulemaking law to grant rulemaking authority by resolution.

SECTION 4. PROCESS

- A. The amendments are following the legislative process as legislative and fiscal analyses have been requested. A public meeting was held February 16, 2017.
- B. The Endowment Fund Amendments were added to the Active Files list as a high priority on December 21, 2016.

SECTION 5. CONTENTS OF THE PROPOSED AMENDMENTS

- A. Administrative Rulemaking authority was established through this law to be granted to Oneida entities by resolution *[see 131.11]*. This allows future endowments to be created under the Endowments law

- 23 and allows Oneida entities to create rules regarding how their programming under the established
24 endowments will work.
- 25 **B.** The proposed amendments are written to the current standard of the Oneida Business Committee with
26 the law containing the overarching goal of the endowment fund account process and the rules, as
27 granted by administrative rulemaking and authorized by resolution, containing the detail of how
28 entities will expend endowment funds. The rules created by Oneida entities utilizing the endowment
29 funds will contain more detailed directives which will undergo public comment period and Oneida
30 Business Committee input.
- 31 **C.** Section 131.10 was amended to mirror language in section 131.9. Specifically a two-thirds (2/3) vote
32 of each of the Oneida Trust Enrollment Committee, the Oneida Finance Committee and the Oneida
33 Business Committee are required to dissolve an established endowment [see 131.10-1(a)].
34 Additionally, a two-thirds (2/3) vote of the Oneida General Tribal Council is required if the proposed
35 dissolved account contains five hundred thousand dollars (\$500,000) or more [see 131.10-1(a)(1)].
36 These requirements are already present in the law under the Reduction of Principal section [see 131.9-
37 1(a) and 131.9-1(a)(1)].
- 38 **D.** Oneida Tribe of Indians of Wisconsin has been changed to Oneida Nation to reflect approved
39 constitutional amendments. The Trust Department has been changed to the Trust Enrollment
40 Department to reflect the current title of the department. The Trust Committee was changed to the
41 Trust Enrollment Committee to reflect the current title of the Committee. Section 131.2 was updated
42 to reflect the requirements set out in the Legislative Procedures Act.

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44 **SECTION 6. INTENT**

- 45 **A.** The intent of the changes is to provide rulemaking authority to Oneida entities to expend endowment
46 funds created by resolution as established by the Finance Committee with approval by the Oneida
47 Business Committee [see 131.5-1].
- 48 **B.** The legislation applies to the Trust Enrollment Committee, the Oneida Business Committee and the
49 Oneida Finance Committee in the creation and function of endowment accounts. Amendments grant
50 rulemaking authority to Oneida entities in expending funds from established endowment funds.

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52 **SECTION 7. EFFECT ON EXISTING LEGISLATION**

- 53 **A.** There are no impacts or conflicts with existing legislation.

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55 **SECTION 8. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR** 56 **OBLIGATIONS**

- 57 **A.** The proposed legislation provides a method for Oneida entities to access endowment funds established
58 under the Endowments law.
- 59 **B.** This law does not contain due process procedures.
- 60 **C.** No terms of office will be affected.
- 61 **D.** The proposed amendments will not affect any existing legal agreements.

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63 **SECTION 9. ENFORCEMENT**

- 64 **A.** There aren't any enforcement mechanisms in the current or amended law.

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SECTION 10. ACCOUNTABILITY

- A. The Oneida Business Committee is responsible for the oversight of the law and requesting accounts to be audited *[see 131.4]*. The Oneida Finance Committee is responsible for establishing endowment fund accounts with final approval of the Oneida Business Committee. This process requires proposals to be published in official media outlets of the Nation and presentation at a community meeting *[see 131.5]*. Endowments fund accounts established by private donors shall be established within 120 days from notice from the Finance Committee of the donation *[see 131.5-1(b)]*. The Trust Enrollment Committee shall have exclusive authority of the investment and collection of principle, interest and investments of all monies deposited in and income derived from all Oneida Nation endowment fund accounts *[see 131.6-1]*.
- B. The Trust Enrollment Committee is also responsible to provide OBC and GTC with written annual financial reports *[see 131.6-3]*. The Trust Enrollment Committee shall submit a semi-annual report to the Oneida Business Committee *[see 131.6-7]*. The Director of the Oneida Tribal Trust Enrollment Department shall submit to the Oneida Trust Enrollment Committee and the Office of the Oneida Nation Treasurer, quarterly financial reports and performance measurements on all Oneida Nation endowment fund accounts. The quarterly financial reports shall include an itemized accounting of all expenditures *[see 131.7-2]*.
- C. All reports to the OBC and the GTC are publically available to Oneida members.

Title 1. Government and Finances - Chapter 131

ENDOWMENTS

On[^]yote-a:ka Luwatithwistay[^]hahse Kay[^]tla-sla *Oneida Money Saved for our People the Laws*

<p>131.1. Purpose and Policy</p> <p>131.2. Adoption, Amendment, Repeal</p> <p>131.3. Definitions</p> <p>131.4. Powers and Duties <u>and Responsibilities</u> of the Oneida Business Committee</p> <p>131.5. Powers and Duties <u>and Responsibilities</u> of the Oneida Finance Committee</p> <p>131.6. Powers and Duties <u>and Responsibilities</u> of the Oneida Trust <u>Enrollment</u> Committee</p>	<p>131.7. Powers and Duties <u>and Responsibilities</u> of the Director of the Oneida Trust <u>Enrollment</u> Department</p> <p>131.8. Transfer of Funds</p> <p>131.9. Reduction of Principal</p> <p>131.10. Dissolution of Endowment <u>Fund</u> Accounts</p> <p>131.11. <u>Rulemaking Authority</u></p>
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131.1. Purpose and Policy—

131.1-1. The purpose of this law is to provide the process for the establishment and maintenance of all endowment fund accounts established by the Oneida Tribe of Indians of Wisconsin Nation.

131.1-2. It is the policy of the Tribe Nation that endowments ~~will~~shall be maintained, protected and grown in value for the benefit of the Oneida people, both those in the present, and future generations.

131.2. Adoption, Amendment, ~~Applicability and Repeal~~—

131.2-1. ~~This law is adopted under the authority of the Constitution of by the Oneida Tribe of Indians of Wisconsin by Oneida Business Committee Resolution # 2~~by resolution BC-02-23-05-G, and amended by BC.

131.2-2. This law may be amended, or repealed, by the Oneida Business Committee and/or by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

131.2-3. Should a provision of this law or the application ~~of this law~~thereof to any person or circumstances be held as invalid, such invalidity shall not ~~effect~~affect other provisions of this law which are considered to have legal force without the invalid portions.

131.2-4. ~~Any~~In the event of a conflict between a provision of this law and a provision of another law, policy, regulation, rule, resolution or motion, or portion thereof, which directly conflicts with the ~~the~~ provisions of this law is hereby repealed to the extent that it is inconsistent with or is contrary to this law shall control.

131.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin Nation.

131.3. Definitions—

131.3-1. 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) “Business day” means Monday through Friday from 8:00am-4:30pm, excluding holidays recognized by the Nation.

(b) “Contribution@” means a ~~cash or check~~monetary donation to the Oneida Tribe Nation for the purpose of contributing to an existing endowment fund account, or for the

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34 establishment of an endowment fund account. In addition, a ~~contribution~~bequest,
35 donation or gift may be accepted if it has potential monetary value, which may include,
36 but not be limited to, stocks, bonds, real estate, property, and other assets including, but
37 not limited to, assets which are current, commercial, equitable, earning, tangible and
38 intangible.

39 ~~(b) A~~ (c) “Endowment fund account” means an account established from a gift, bequest or
40 grant of monetary value, granted to the ~~Oneida Tribe~~Nation, or by the ~~Oneida~~
41 ~~Tribe~~Nation for the establishment of, or contribution to, an endowment fund account for
42 a specified purpose which may be invested or deposited to grow and provide income to
43 finance operations and programs of the ~~Tribe~~Nation or as specified in the creation of an
44 account with an identified trustee.

45 ~~(e) A~~ (d) “Income” means money or its equivalent derived from financial investments. The
46 ~~term~~ includes interest, dividends ~~or~~and capital appreciation.

47 ~~(d) A Tribe or Tribal~~ (e) “Nation” means the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

48 (f) “Rulemaking authority” means the authority to create and enact a set rules
49 establishing requirements in accordance with the Administrative Rulemaking law based
50 on authority delegated by resolution, as authorized by this law, in order to implement,
51 interpret and/or enforce this law.

53 **131.4. Duties and Responsibilities of the Oneida Business Committee–**

54 131.4-1. The Oneida Business Committee shall exercise oversight over endowment fund
55 accounts ~~which~~. Oversight authority includes, but is not limited to, the following:

- 56 (a) Approve Authority to approve or disapprove the establishment of endowment fund
57 accounts as recommended by the Finance Committee; and
58 (b) Authority to cause any or all endowment fund accounts to be audited by an
59 independent auditor. Said audit shall become part of the public record and made
60 available to the public. An executive summary of the audit shall be included on the
61 agenda of the next regularly scheduled meeting of the Oneida General Tribal Council.

63 **131.5. Duties and Responsibilities of the Oneida Finance Committee–**

64 **131.5-1.** The Oneida Finance Committee is charged with establishing all endowment fund
65 accounts, with final approval from the Oneida Business Committee.

66 (a) Before the Oneida Finance Committee establishes any endowment fund account the
67 Oneida Finance Committee shall publish a notice in official media outlets of the ~~Oneida~~
68 ~~Tribal newspaper (KALHWISAKS)~~Nation a minimum of ~~twenty (20) calendar~~ ten (10)
69 business days prior to a ~~community~~public meeting on the proposed endowment. The
70 notice shall include:

- 71 (1) A statement of the terms, substance, or a description of the subjects and issues
72 involved; and
73 (2) The time, place, whom, and manner in which views may be presented. Said
74 notice shall be published and posted for no less than ten (10) calendar days prior
75 to the community meeting.

76 (b) The establishment of endowment fund accounts from private donors shall take no
77 more than one hundred and twenty (120) calendar days from the date of– notification

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78 from the Finance Committee of the donation received for the purpose of establishing an
79 endowment fund account. These endowment fund accounts shall be exempt from the
80 community meeting requirements as stated above.
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131.6. Duties and Responsibilities of the Oneida Trust Enrollment Committee.—

82 131.6-1. The Oneida Trust Enrollment Committee shall have exclusive control of the investment
83 and collection of principal, interest and investments of all monies deposited in, and income
84 derived from, all Oneida ~~Tribe~~Nation endowment fund accounts.

85 131.6-2. The Oneida Trust Enrollment Committee is authorized to accept ~~donations, gifts,~~
86 ~~bequests~~contributions or other ~~instrument~~instruments from private donors for the purpose of
87 establishing endowment fund accounts and shall notify the Oneida Finance Committee
88 immediately upon receipt.
89

90 (a) Pending the establishment of an endowment fund account, the Oneida Trust
91 Enrollment Committee shall deposit the ~~gift~~contribution into an interest bearing account.

92 131.6-3. The Oneida Trust Enrollment Committee shall provide written annual financial reports
93 to the Oneida Business Committee and to the Oneida General Tribal Council. Such ~~financial~~
94 ~~report~~reports shall include, but are not limited to:

95 (a) An itemized accounting of all monies placed into endowment fund accounts;
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97 (b) An itemized accounting of all withdrawals to include the date and destination of any
98 ~~withdraw~~withdrawal from all endowment fund accounts; and

99 (c) An itemized accounting of all monies spent on consultants, the reason for such
100 consultation or ~~advise~~advice, and the total amount spent for the consultation or
101 ~~advise~~advice. Said accounting shall include the names of any non-~~Tribal~~Nation
employee financial consultants and investment advisors utilized.

131.6-4. The Oneida Trust Enrollment Committee ~~will~~shall have the sole approval and sign off
authority in relation to the Oneida Trust Enrollment Department-s administrative activities
regarding endowment fund accounts assigned to it by law.

131.6-5. With the Oneida Trust Enrollment Committee-s approval, the Oneida Trust Enrollment
Committee Chairperson shall sign all deeds, contracts and other documents relating to
endowment fund accounts.

131.6-6. The Oneida Trust Enrollment Committee shall submit a semi-annual report to the
Oneida Business Committee on the condition, management and goals of endowment fund
accounts.

131.6-7. Consistent with its ~~Bylaws~~bylaws and the provisions of this law, the Oneida Trust
Enrollment Committee shall adopt and implement internal procedures on investing endowment
fund accounts.

131.7. Duties and Responsibilities of the Director of the Oneida Trust Enrollment Department-

131.7-1. The Director of the Oneida Trust Enrollment Department shall adhere to the policies,
~~principals~~principles and procedures of the Oneida Trust Enrollment Committee.

131.7-2. The Director of the Oneida ~~Tribal~~-Trust Enrollment Department shall submit to the
Oneida Trust Enrollment Committee and the Office of the ~~Tribal~~Oneida Nation Treasurer,
quarterly financial reports and performance measurements on all Oneida ~~Tribe~~Nation

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endowment fund accounts. The quarterly financial reports shall include an itemized accounting of all expenditures.

131.8. Transfer of Funds–

131.8-1. Pursuant to the ~~Tribal~~Nation's budgetary process, the Director of the Oneida Trust ~~Enrollment~~ Department shall notify the ~~Tribal~~Oneida Nation Treasurer regarding how much investment and interest income may be available for ~~Tribal contribution~~the Nation to supply to programs identified to receive funding from endowment fund accounts.

131.8-2. Unless otherwise specified in the establishment of any endowment fund account, the amount available for ~~Tribal~~ programs of the Nation shall not exceed seventy five percent (75%~~%~~) of income earned from financial investments made from an endowment fund account owned by the ~~Tribe~~Nation. Income, minus administrative costs, not transferred shall be added to the principal of each endowment fund account.

(a) Unless otherwise expressed by the grantor, transfer of funds shall not be allowed if the principal of the account is less than ten thousand dollars (\$10,000) or the transfer of funds is less than five hundred dollars (\$500).

(b) Allocated funds from endowment fund accounts owned by the ~~Oneida Tribe~~Nation shall be transferred to line item accounts of designated programs within one (1)~~-calendar~~ week of the adoption of the fiscal year budget.

131.9. Reduction of Principal–

131.9-1. The principal of all ~~Oneida Tribe~~Nation endowment fund accounts shall not be reduced except in accordance with this section.

(a) Any reduction of an endowment fund account shall require a two-thirds (2/3) ~~majority~~ vote of each of the following: the Oneida Trust Enrollment Committee, Oneida Finance Committee and the Oneida Business Committee.

(1) The reduction of an endowment fund account which contains \$five hundred thousand dollars (\$500,000) or more shall require a two-thirds (2/3)~~majority~~ vote of the Oneida General Tribal Council.

131.10. Dissolution of Endowment Fund Accounts -

131.10-1. ~~Endowment~~An endowment fund ~~accounts~~account shall not be ~~closed~~only upon dissolved except in accordance with this section.

(a) The dissolution of an endowment fund account shall require a two-thirds (2/3) vote of each of the following: the Oneida Trust Enrollment Committee, Oneida Finance Committee and the Oneida ~~Trust Committee and ratification by the Oneida~~ Business Committee.

(1) The dissolution of an endowment fund account which contains five hundred thousand dollars (\$500,000) or more shall require a two-thirds (2/3) vote of the Oneida General Tribal Council.

(b) When an endowment fund account is ~~closed~~dissolved, no private person shall be entitled to any distribution or division of its assets. Any assets remaining to the endowment at dissolution or liquidation shall be distributed as follows:

(1) All liabilities of the endowment shall be paid or adequate provision shall be

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8 made for payment;

9 (2) Assets held by the endowment upon a condition which occurs by reason of
10 the dissolution shall be returned or otherwise conveyed in accordance with such
11 requirements; and

12 (3) All remaining assets shall be distributed to the Oneida ~~Tribe~~Nation General
13 Fund to be used to carry on activities consistent with the purposes for which the
14 endowment was organized.

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16 **131.11. Rulemaking Authority**

17 131.11-1. A resolution creating an endowment may delegate rulemaking authority to others
18 under the Administrative Rulemaking law. A resolution which delegates such rulemaking
19 authority shall be construed as authority granted under this law.

20
21 *End.*

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23
24 Adopted BC # 2-23-05-G ~~Adopted~~
25 Amended BC

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Title 1. Government and Finances - Chapter 131

ENDOWMENTS

On^yote-a:ka Luwatithwistay^hahse Kay^tla=sla
Oneida Money Saved for our People the Laws

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131.1. Purpose and Policy

131.1-1. The purpose of this law is to provide the process for the establishment and maintenance of all endowment fund accounts established by the Oneida Nation.

131.1-2. It is the policy of the Nation that endowments shall be maintained, protected and grown in value for the benefit of the Oneida people, both those in the present, and future generations.

131.2. Adoption, Amendment, Repeal

131.2-1. This law is adopted by the Oneida Business Committee by resolution BC-02-23-05-G and amended by BC_____.

131.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

131.2-3. 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.

131.2-4. 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.

131.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

131.3. Definitions

131.3-1. 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) "Business day" means Monday through Friday from 8:00am-4:30pm, excluding holidays recognized by the Nation.

(b) "Contribution" means a monetary donation to the Oneida Nation for the purpose of contributing to an existing endowment fund account, or for the establishment of an endowment fund account. In addition, a bequest, donation or gift may be accepted if it has potential monetary value, which may include, but not be limited to, stocks, bonds, real estate, property, and other assets including, but not limited to, assets which are current, commercial, equitable, earning, tangible and intangible.

(c) "Endowment fund account" means an account established from a gift, bequest or

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34 grant of monetary value, granted to the Nation, or by the Nation for the establishment of,
35 or contribution to, an endowment fund account for a specified purpose which may be
36 invested or deposited to grow and provide income to finance operations and programs of
37 the Nation or as specified in the creation of an account with an identified trustee.

38 (d) "Income" means money or its equivalent derived from financial investments. The
39 term includes interest, dividends and capital appreciation.

40 (e) "Nation" means the Oneida Nation.

41 (f) "Rulemaking authority" means the authority to create and enact a set rules
42 establishing requirements in accordance with the Administrative Rulemaking law based
43 on authority delegated by resolution, as authorized by this law, in order to implement,
44 interpret and/or enforce this law.

45
46 **131.4. Duties and Responsibilities of the Oneida Business Committee**

47 131.4-1. The Oneida Business Committee shall exercise oversight over endowment fund
48 accounts. Oversight authority includes, but is not limited to, the following:

49 (a) Authority to approve or disapprove the establishment of endowment fund accounts as
50 recommended by the Finance Committee; and

51 (b) Authority to cause any or all endowment fund accounts to be audited by an
52 independent auditor. Said audit shall become part of the public record and made
53 available to the public. An executive summary of the audit shall be included on the
54 agenda of the next regularly scheduled meeting of the Oneida General Tribal Council.

55
56 **131.5. Duties and Responsibilities of the Oneida Finance Committee**

57 131.5-1. The Oneida Finance Committee is charged with establishing all endowment fund
58 accounts, with final approval from the Oneida Business Committee.

59 (a) Before the Oneida Finance Committee establishes any endowment fund account the
60 Oneida Finance Committee shall publish a notice in official media outlets of the Nation a
61 minimum of ten (10) business days prior to a public meeting on the proposed
62 endowment. The notice shall include:

63 (1) A statement of the terms, substance, or a description of the subjects and issues
64 involved; and

65 (2) The time, place, whom, and manner in which views may be presented.

66 (b) The establishment of endowment fund accounts from private donors shall take no
67 more than one hundred and twenty (120) calendar days from the date of notification from
68 the Finance Committee of the donation received for the purpose of establishing an
69 endowment fund account. These endowment fund accounts shall be exempt from the
70 community meeting requirements as stated above.

71
72 **131.6. Duties and Responsibilities of the Oneida Trust Enrollment Committee**

73 131.6-1. The Oneida Trust Enrollment Committee shall have exclusive control of the investment
74 and collection of principal, interest and investments of all monies deposited in, and income
75 derived from, all Oneida Nation endowment fund accounts.

76 131.6-2. The Oneida Trust Enrollment Committee is authorized to accept contributions or other
77 instruments from private donors for the purpose of establishing endowment fund accounts and

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78 shall notify the Oneida Finance Committee immediately upon receipt.

79 (a) Pending the establishment of an endowment fund account, the Oneida Trust
80 Enrollment Committee shall deposit the contribution into an interest bearing account.

81 131.6-3. The Oneida Trust Enrollment Committee shall provide written annual financial reports
82 to the Oneida Business Committee and to the Oneida General Tribal Council. Such financial
83 reports shall include, but are not limited to:

84 (a) An itemized accounting of all monies placed into endowment fund accounts;

85 (b) An itemized accounting of all withdrawals to include the date and destination of any
86 withdrawal from all endowment fund accounts; and

87 (c) An itemized accounting of all monies spent on consultants, the reason for such
88 consultation or advice, and the total amount spent for the consultation or advice. Said
89 accounting shall include the names of any non-Nation employee financial consultants and
90 investment advisors utilized.

91 131.6-4. The Oneida Trust Enrollment Committee shall have the sole approval and sign off
92 authority in relation to the Oneida Trust Enrollment Department's administrative activities
93 regarding endowment fund accounts assigned to it by law.

94 131.6-5. With the Oneida Trust Enrollment Committee's approval, the Oneida Trust Enrollment
95 Committee Chairperson shall sign all deeds, contracts and other documents relating to
96 endowment fund accounts.

97 131.6-6. The Oneida Trust Enrollment Committee shall submit a semi-annual report to the
98 Oneida Business Committee on the condition, management and goals of endowment fund
99 accounts.

100 131.6-7. Consistent with its bylaws and the provisions of this law, the Oneida Trust Enrollment
101 Committee shall adopt and implement internal procedures on investing endowment fund
102 accounts.

103

104 **131.7. Duties and Responsibilities of the Director of the Oneida Trust Enrollment**
105 **Department**

106 131.7-1. The Director of the Oneida Trust Enrollment Department shall adhere to the policies,
107 principles and procedures of the Oneida Trust Enrollment Committee.

108 131.7-2. The Director of the Oneida Trust Enrollment Department shall submit to the Oneida
109 Trust Enrollment Committee and the Office of the Oneida Nation Treasurer, quarterly financial
110 reports and performance measurements on all Oneida Nation endowment fund accounts. The
111 quarterly financial reports shall include an itemized accounting of all expenditures.

112

113 **131.8. Transfer of Funds**

114 131.8-1. Pursuant to the Nation's budgetary process, the Director of the Oneida Trust
115 Enrollment Department shall notify the Oneida Nation Treasurer regarding how much
116 investment and interest income may be available for the Nation to supply to programs identified
117 to receive funding from endowment fund accounts.

118 131.8-2. Unless otherwise specified in the establishment of any endowment fund account, the
119 amount available for programs of the Nation shall not exceed seventy five percent (75%) of
120 income earned from financial investments made from an endowment fund account owned by the
121 Nation. Income, minus administrative costs, not transferred shall be added to the principal of

122 each endowment fund account.

123 (a) Unless otherwise expressed by the grantor, transfer of funds shall not be allowed if the
124 principal of the account is less than ten thousand dollars (\$10,000) or the transfer of funds
125 is less than five hundred dollars (\$500).

126 (b) Allocated funds from endowment fund accounts owned by the Nation shall be
127 transferred to line item accounts of designated programs within one (1) week of the
128 adoption of the fiscal year budget.

129

130 **131.9. Reduction of Principal**

131 131.9-1. The principal of all Nation endowment fund accounts shall not be reduced except in
132 accordance with this section.

133 (a) Any reduction of an endowment fund account shall require a two-thirds (2/3) vote of
134 each of the following: the Oneida Trust Enrollment Committee, Oneida Finance
135 Committee and the Oneida Business Committee.

136 (1) The reduction of an endowment fund account which contains five hundred
137 thousand dollars (\$500,000) or more shall require a two-thirds (2/3) vote of the
138 Oneida General Tribal Council.

139

140 **131.10. Dissolution of Endowment Fund Accounts**

141 131.10-1. An endowment fund account shall not be dissolved except in accordance with this
142 section.

143 (a) The dissolution of an endowment fund account shall require a two-thirds (2/3) vote of
144 each of the following: the Oneida Trust Enrollment Committee, Oneida Finance
145 Committee and the Oneida Business Committee.

146 (1) The dissolution of an endowment fund account which contains five hundred
147 thousand dollars (\$500,000) or more shall require a two-thirds (2/3) vote of the
148 Oneida General Tribal Council.

149 (b) When an endowment fund account is dissolved, no private person shall be entitled to
150 any distribution or division of its assets. Any assets remaining to the endowment at
151 dissolution or liquidation shall be distributed as follows:

152 (1) All liabilities of the endowment shall be paid or adequate provision shall be
153 made for payment;

154 (2) Assets held by the endowment upon a condition which occurs by reason of
155 the dissolution shall be returned or otherwise conveyed in accordance with such
156 requirements; and

157 (3) All remaining assets shall be distributed to the Oneida Nation General Fund
158 to be used to carry on activities consistent with the purposes for which the
159 endowment was organized.

160

161 **131.11. Rulemaking Authority**

162 131.11-1. A resolution creating an endowment may delegate rulemaking authority to others
163 under the Administrative Rulemaking law. A resolution which delegates such rulemaking
164 authority shall be construed as authority granted under this law.

165

166 *End.*

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Adopted BC # 2-23-05-G
Amended BC

MEMORANDUM

DATE: January 31, 2017
FROM: Rae Skenandore, Project Manager
TO: Larry Barton, Chief Financial Officer
Ralinda Ninham-Lamberies, Assistant Chief Financial Officer
RE: **Fiscal Impact of the Amendments to the Endowment Law**

I. Background

This Law was adopted by the Oneida Business Committee by resolution BC-02-23-05-G. A public meeting will be held on Thursday, February 16, 2017. This analysis was completed on Draft One (1) of the amendments. The Endowments amendments include the following:

- Endowments cannot be dissolved except with a two-thirds (2/3) vote of each of the following:
 - Oneida Trust/Enrollment Committee;
 - Oneida Finance Committee;
 - Oneida Business Committee;
 - If the endowment contains five hundred thousand dollars (\$500,000) or more, it shall require a two-thirds (2/3) vote of the Oneida General Tribal Council.
- Administrative rulemaking authority may be granted by the resolution creating the endowment and shall be understood as authority granted under Law.

II. Executive Summary of Findings

A “Fiscal Impact Statement” means an estimate of the total fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

The amendments duplicate the requirements needed to reduce the principle to include in the dissolution of an endowment account. Rulemaking authority may now be delegated by resolution and is not included in the law. These are process changes, therefore, it is assumed that existing internal resources will be utilized to implement the Law and there will be no additional expenditures. The amendments may be implemented immediately upon approval.

III. Financial Impact

No impact.

IV. 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 the Oneida Business Committee and General Tribal Council has full information with which to render a decision.



Legislative Operating Committee
 April 5, 2017

Children's Code

Submission Date: 9/17/14	Public Meeting: n/a
LOC Sponsor: Fawn Billie	Emergency Enacted: n/a Expires: n/a

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.*

9/17/14 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 for this item.*

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. [under F.2. Review Tribal Member Complaint Re: Child Protective Board]

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*

4/15/15 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.

7/15/15 LOC: Motion by Fawn Billie to continue developing the Children's Code; seconded by David P. Jordan. Motion carried unanimously.

1/20/16 LOC: Motion by David P. Jordan to approve the Children's Code memorandum and to forward it to the Oneida Business Committee; seconded by Tehassi Hill. Motion carried unanimously.

1/27/16 OBC: Motion by Lisa Summers to accept the update from the Legislative Operating Committee on the new Children's Code timeline, seconded by Trish King. Motion carried unanimously.

2/11/16: *Work meeting held. Attendees include Jennifer Berg-Hargrove, Heather Lee, Michelle Mays, Patricia Garvey, Douglass McIntyre, Maureen Perkins.*

- 10/7/16:** *Quarterly Sponsor Update Meeting Held.* Present: Fawn Billie, Cathy Bachhuber, Jennifer Falck, Maureen Perkins, Tani Thurner, Clorissa Santiago. Drafter (MG) was not present but updated the LRO Director before the mtg. She hopes to have a new draft in November or December 2016. Fawn will continue to update the Judiciary on this law, so they can begin to plan for a judge, admin. Staff, etc. if this is adopted.
- 12/19/16:** *Work Meeting Held.* Present: Jennifer Webster, Brandon Stevens, Jennifer Berg-Hargrove, David Jordan, Tehassi Hill, Fawn Billie, Maureen Perkins, Clorissa Santiago, Michelle Gordon, Candice Skenandore, Danelle Wilson, Heather Lee
- 1/23/17:** *Work Meeting w/ ICW.* Present: Jennifer Berg-Hargrove, Heather Lee, Jennifer Falck, Clorissa Santiago, Candice Skenandore, Cathy Bachhuber. Discussion surrounding implementation needs. Next steps include discussion with sponsor on adding exception in jurisdiction with blended families, discussion with Law Office about expanding jurisdiction to allow non-Oneidas to utilize the Family Court when they live on the Reservation and have Oneida parents/siblings, and set up a work meeting with ICW to begin going through Code and identifying ICW's roles and responsibilities.
- 1/23/17:** *Work Meeting w/ OFC.* Present: Hon. Marcus Zelenski, Patricia "Pixie" DeGrand, Jennifer Falck, Cathy Bachhuber, Clorissa Santiago, Candice Skenandore. Discussion surrounding implementation needs. Next steps include obtaining videoconferencing estimates, getting hearing numbers in Brown & Outagamie Counties that involve ICW and discussion with sponsor to determine if Children's Code should include court appointed counsel and juries as provided in State court.
- 2/15/17 LOC:** Motion by Jennifer Webster to upgrade the Domestic Animals Ordinance Amendments, the Children's Code, Code of Ethics Amendments, and the Sanctions and Penalties Law from medium priority to high priority; seconded by Tehassi Hill. Motion carried unanimously.
- 2/23/17:** *Work meeting w/ OFC.* Present: Hon. Marcus Zelenski, Pixie DeGrand, Rae Skenandore, Clorissa Santiago, Candice Skenandore.
Work meeting w/ ICW. Present: Jennifer Berg-Hargrove, Heather Lee, Rae Skenandore, Clorissa Santiago, Candice Skenandore.
- 3/1/17 LOC:** Motion by Fawn Billie to forward the Children's Code to the Legislative Reference Office for a legislative analysis and a fiscal impact statement, to bring back the analyses or an update by the April 5th LOC meeting; seconded by Tehassi Hill. Motion carried unanimously.
- 3/1/17:** *Work meeting w/ OFC.* Present: Hon. Marcus Zelenski, Pixie DeGrand, Raeann Skenandore, Rae Skenandore, Candice Skenandore, Clorissa Santiago
- 3/3/17:** *Work meeting w/ ICW.* Present: Jennifer Berg-Hargrove, Heather Lee, Alebra Cornelius, Roxanne Pazdera, Jen Falck, Clorissa Santiago, Candice Skenandore, Rae Skenandore, Fawn Billie, Cathy Bachhuber
- 3/17/17:** *Work meeting w/ OPD.* Present: Candice Skenandore, Clorissa Santiago, Eric Boulanger, Rich Vanboxtel, Cathy Bachhuber.

Next Steps:

- Review legislative analysis and updated draft;
- Consider approving the public meeting packet and forwarding the Child Welfare law to a public meeting to be held on May 4, 2017.

NOTICE OF
PUBLIC MEETING

TO BE HELD
Thursday, May 4th at 12:15 p.m.
 IN THE
OBC CONFERENCE ROOM
(2nd FLOOR—NORBERT HILL CENTER)

In accordance with the Legislative Procedures Act, the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal.

TOPIC: CHILD WELFARE LAW

This is a proposal to create a new Child Welfare law which would allow the Nation to exercise jurisdiction over its children who are in need of protection or services.

The goal of the proposed law is to ensure that child welfare cases involving Oneida children are handled on the Reservation where more family members and Oneida foster homes are located and the traditions and culture of the Nation can be better preserved.

The goal of the proposed Child Welfare law is to bring and maintain Oneida children and their families closer to the Nation's resources which may result in a higher percentage of reunifications and lower the number of unstable families.

The proposed Child Welfare law extensively details the roles and responsibilities of those entities involved in child welfare cases and the processes which will be followed by the Nation's Family Court.

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit www.oneida-nsn.gov/Register/PublicMeetings or contact the Legislative Reference Office.

PUBLIC COMMENT PERIOD
OPEN UNTIL May 11, 2017

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

Legislative Reference Office
PO Box 365 Oneida, WI 54155
LOC@oneidation.org
Phone: (920) 869-4376 or (800) 236-2214
Fax: (920) 869-4040



Child Welfare law Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: Oneida Child Protective Board	SPONSOR: Fawn Billie	DRAFTER: Clorissa N. Santiago	ANALYST: Candice E. Skenandore
Intent of the Amendments	Develop a Child Welfare law (Law) which would enable the Nation to take jurisdiction of child welfare matters involving the Nation's children.		
Purpose	Provide for the welfare, care and protection of Oneida children through the preservation of the family unit, while recognizing that in some circumstances it may be in the child's best interest to not be reunited with his/her family. This Law strengthens family life by assisting parents in fulfilling their responsibilities as well as facilitating the return of Oneida children to the jurisdiction of the Nation and acknowledging the customs and traditions of the Nation when raising an Oneida child.		
Affected Entities	Indian Child Welfare Department (Department), Oneida Police Department (OPD), Oneida Family Court (OFC), Trust Enrollment Department, Oneida Law Office (OLO), Oneida Child Protective Board (Board), Oneida Nation Child Support Agency		
Affected Legislation	This Law makes references to the Rules of Civil Procedure; Rules of Evidence; Rules of Appellate Procedure; Child Support; Wisconsin Statutes 940, 948, 48, 938 & 1708; Indian Child Welfare Act (ICWA), Wisconsin Indian Child Welfare Act (WICWA)		
Enforcement/Due Process	Any order issued under this Law is appealable to the Court of Appeals pursuant to the Rules of Appellate Procedure [See <i>Child Welfare</i> , 7 O.C. 708.43]. Anyone that does not abide by an order of the Court can be held in contempt.		
Public Meeting	A public meeting has not been held.		

SECTION 2. LEGISLATIVE DEVELOPMENT

A. This Law applies to all child welfare cases and legal proceedings in which the Nation has jurisdiction. This Law does not restrict or limit another court from hearing matters involving an Indian child. An Indian child is a member of a federally recognized Tribe or eligible for membership in a federally recognized Tribe and has a biological parent who is a member [See *U.S. Department of Interior, Bureau of Indian Affairs, Final Rule: Indian Child Custody Proceedings*, 25 CFR 23]. The Nation must continue to intervene in all ICWA and WICWA cases that involve a child that is enrolled or is eligible for enrollment with the Nation unless such intervention is impracticable as determined by the Department.

B. The expected benefits of this Law will allow the Nation to exercise its sovereignty and jurisdiction while at the same time strengthening the family unit and ensuring the Oneida child is raised with the customs and traditions of the Nation.

SECTION 3. CONSULTATION

A. The following departments were involved in consultations/discussions when developing this Law and legislative analysis:

- Finance Department
- Oneida Child Protective Board

- 19 ▪ Oneida Indian Child Welfare Department
- 20 ▪ Oneida Family Court
- 21 ▪ Oneida Judiciary
- 22 ▪ Oneida Law Office
- 23 ▪ Oneida Nation Child Support Agency
- 24 ▪ Oneida Police Department
- 25 ▪ Legislative Affairs
- 26 ▪ Trust Enrollment Department
- 27 **B.** The following experts were consulted during the development of this Law and legislative analysis:
 - 28 ▪ Anita Fineday, Managing Director, ICWP at Casey Family Programs
 - 29 ▪ Matthew Morton, former Deputy Director, National Indian Child Welfare Association
 - 30 ▪ Tania Cornelius, Tribal Affairs Specialist, Division of Safety and Permanence, Wisconsin
 - 31 Department of Children and Families
 - 32 ▪ Stephanie Lozano, Tribal Liaison, Wisconsin Department of Children and Families
 - 33 ▪ Lisa Skenandore, former Director of ICW & Child Support, current Vice President of
 - 34 Business Development, Systems & Methods, Inc.
 - 35 ▪ Gary Huebner, Connecting Point AV & Security, Camera Corner
 - 36 ▪ Bridget Bauman, Children’s Court Improvement Program Director, Director of State Courts
 - 37 Office
 - 38 ▪ Justin Wolff, Policy Analyst, Children’s Court Improvement Program
 - 39 ▪ Raeann Skenandore, Court Administrator, Oneida Judiciary
 - 40 ▪ Jacqueline M. Moen-Kadlec, Lead Administrative Social Worker, Ho Chunk Nation Child
 - 41 and Family Services
 - 42 ▪ Teresa Juga, Indian Child Welfare Manager, Stockbridge-Munsee
- 43 **C.** A number of child welfare laws and related documents were reviewed in the development of the Law
- 44 and legislative analysis, these laws and documents include:
 - 45 ▪ Confederated Salish and Kootenai Tribes, Title III, Chapter 2 – Child Abuse and Neglect
 - 46 ▪ Forest County Potawatomi Children’s Code Ordinance (Chapter 3-1)
 - 47 ▪ Fort McDowell Yawapai Nation, Court and Procedure (Chapter 1, Section 1-25 (C))
 - 48 ▪ Ho Chunk Nation Code Title 4 – Children, Family, and Elder Welfare Code, Section 3 Hocak
 - 49 Nation Children and Family Act
 - 50 ▪ Indian Child Welfare Act of 1978 (25 U.S.C 21)
 - 51 ▪ Lac du Flambeau Tribal Code, Child Welfare Code (Chapter 31)
 - 52 ▪ P.L.105-89, Adoption and Safe Families Act of 1997
 - 53 ▪ Red Cliff Children’s Code (Chapter 26)
 - 54 ▪ Shoshone & Arapaho Children’s Code, Title III
 - 55 ▪ State of Wisconsin, Children’s Code (Wis. Stat. 48)
 - 56 ▪ State of Wisconsin, Department of Health and Family Services, Division of Children and
 - 57 Family Services Memorandums regarding 161 Agreements and High Cost Pool Funds
 - 58 ▪ State of Wisconsin Foster Parent Handbook
 - 59 ▪ St. Croix Chippewa Indians of Wisconsin Children’s Code
 - 60 ▪ Stockbridge-Munsee Tribal Law, Youth Code (Chapters 7-11)
 - 61 ▪ U.S. Department of Interior, Bureau of Indian Affairs, Final Rule: Indian Child Custody
 - 62 Proceedings, 25 CFR 23
 - 63 ▪ White Earth Band of Ojibwe Child/Family Protection Code, Title 4: Children and Families
 - 64 ▪ White Earth Band of Ojibwe Judicial Code, Title 4a: Customary Adoption Code

66 **SECTION 4. PROCESS**

- 67 **A.** Thus far, the Law has followed the process set forth in the Legislative Procedures Act.

68 **B.** The Law was added to the LOC's active files list on: April 7, 2008; February 6, 2012 and again on
69 September 17, 2014. The Oneida Child Protective Board Ordinance made reference for a need of a
70 Children's Code back in 1981. The Nation at one time or another has had a desire to adopt a child
71 welfare law for the past 35 years.

72 **C.** At the time this legislative analysis was developed, following work meetings were held/scheduled in
73 regards to the development of the current proposed Law and legislative analysis:

- 74 ▪ December 19, 2016: LOC, ICW and OLO
- 75 ▪ January 20, 2017: OLO
- 76 ▪ January 23, 2017: ICW
- 77 ▪ January 23, 2017: OFC
- 78 ▪ January 30, 2017: LOC Sponsor
- 79 ▪ February 10, 2017: LOC Sponsor
- 80 ▪ February 23, 2017: ICW, Finance
- 81 ▪ February 23, 2017: OFC, Finance
- 82 ▪ March 1, 2017: Court Administrator, OFC, Finance
- 83 ▪ March 3, 2017: ICW, Finance
- 84 ▪ March 17, 2017: OPD
- 85 ▪ April 7, 2017: LOC, OBC
- 86 ▪ April 10, 2017: Oneida Child Protective Board, LOC/OBC
- 87 ▪ *April 14, 2017: Department of Children & Families, LOC, OPD, ICW, Legislative Affairs,
88 OLO, Finance, OFC
- 89 ▪ April 17, 2017: LOC, OPD, ICW, Legislative Affairs, Finance, OLO, OFC
- 90 *depending on the April 14th meeting, meeting(s) between Brown & Outagamie Counties may be scheduled in the future

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92 **SECTION 5. CONTENTS OF THE LEGISLATION**

93 **A.** It is the goal of this Law to allow the Nation to exercise jurisdiction over its children who are in the
94 need of protection or services and ensure that child welfare cases involving Oneida children are
95 handled on the Reservation where more family members are located and more Tribal foster homes are
96 available. Furthermore, it is the hope that the Law will bring Oneida children and their families
97 closer to the Nation's resources and keep these families near the Reservation which may result in a
98 higher percentage of reunifications and lower the number of unstable families.

99 **B.** The following is a more detailed overview of the proposed Law:

- 100 1. **Jurisdiction.** The Court will have personal jurisdiction, jurisdiction over the child who is alleged
101 to be in need of protection or services, and jurisdiction over other matters relating to the child. In
102 addition, cases from other courts of competent jurisdiction can be transferred to the Court so long
103 as personal jurisdiction is established. Furthermore, the Court can transfer a case under this Law
104 to a court of competent jurisdiction if that court has a significant interest and the transfer would
105 be in the child's best interest [*See Child Welfare, 7 O.C. 708.5*].
 - 106 a. **Personal Jurisdiction.** The Court has personal jurisdiction over a child that is present or
107 resides in Brown and Outagamie Counties and is enrolled or eligible for enrollment with the
108 Nation. The Court will also have personal jurisdiction over any child that is not enrolled or
109 eligible for enrollment so long as the child is 1) present or resides on the Reservation, 2) a
110 sibling of a child that is enrolled or eligible for enrollment, and 3) the child's parent, guardian
111 or legal custodian consent to personal jurisdiction [*Child Welfare, 7 O.C. 708-5-1 (b)*].
 - 112 b. **Jurisdiction over Children Alleged to be in Need of Protection or Services.** The Court will
113 have jurisdiction over a child alleged to be in need of protection or services if 1) personal
114 jurisdiction has been established and 2) the child is found to be subject to any of the
115 circumstances listed in section 708.5-2 of this Law. These circumstances include, but are not
116 limited to the child not having a parent or guardian, is a victim of abuse or neglect, is
117 receiving inadequate care, and more [*See Child Welfare, 7 O.C. 708.5-2*].

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- c. *Jurisdiction over other Matters Relating to Children.* The Court has jurisdiction to terminate parental rights; appoint, revise and/or remove a guardian and hold adoption proceedings [See *Child Welfare, 7 O.C. 708.5-3*].
- d. *Other.* Other tribes take jurisdiction over Indians that reside on their reservations. Indians are typically identified as any member of a federal recognized tribe, Alaskan Native or member of a regional corporation specified in 43 U.S.C. § 1606 [See *Hocak Nation, Children & Family Act 4 HCC § 3, Ch 1.7.a (3) (c & d); White Earth, Child/Family Protection, Ch 1, Section 1 (c), (e), (f) & (g) and Sections 2 & 3; Confederated Salish & Kootenai Tribes, Child Abuse & Neglect, 3-2-103; Stockbridge-Munsee, Youth Code, Ch 7.3 (A) (1-3); Lac du Flambeau, Child Welfare Code, 31.103 (3); and Potawatomi, Children’s Code Ordinance, 3-1 § 3.1 (c)*]. This Law limits jurisdiction to children who are enrolled or eligible for enrollment that are present or reside in Brown and Outagamie County or children that are not eligible for enrollment but live on the Reservation, have their parents’ consent to jurisdiction and have a sibling that is enrolled or eligible for enrollment. During the development of this Law it was discussed on whether or not to expand jurisdiction to include any Indian residing on the Reservation; however, at this time it was decided to limit jurisdiction to ensure the Nation is properly structured to handle child welfare cases. It is unknown how many child welfare cases the Nation may take jurisdiction over; but the Children’s Court Improvement Program provided the following number of cases involving Oneida children in need of protection or services. However, these numbers were provided by doing a search on CCAP which may not accurately portray the number of children in need of protection or services (CHIPS) cases that are active in the identified counties.

Year	Number of CHIPS Cases		
	BROWN CO.	OUTAGAMIE CO.	Total
2014	19	5	24
2015	22	9	31
2016	24	16	40

*please note that each case will most likely require multiple hearings per year

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To provide a better understanding of how many potential cases the Nation could have jurisdiction over, the following table illustrates how many cases the Department handles each month. The figures below include the Department’s entire caseload, not just Brown and Outagamie Counties. Currently, the Department only handles cases in which the child is enrolled or eligible for enrollment. Because this Law allows the Nation to take jurisdiction over non-enrolled siblings of enrolled or eligible for enrollment children, the potential impact could cause the Department’s workload to increase. It should be noted that both the Department and Ho Chunk Nation stated the number of CHIPS cases are continuing to rise because of current drug trends and increased mental health issues. These factors will also play a role in Department’s workload. To better understand the table it is important to know that there are two types of case managers that work at the Department. The on-going worker is will determine conditions and services that are ordered by the Court and ensure that those conditions and services are satisfied. On-going workers streamline the conditions and services process by providing resources to the clients. The intake worker is responsible for doing the initial investigation. The intake worker will make the initial determination to screen the case in or out. If the case is questionable on whether or not it is substantiated, the case can remain open for 60 days. If the case is substantiated it will transfer over to the on-going worker. Typically intake workers handle cases for up to 60 days before the cases are either screened out or transferred to the on-going workers. Currently, the county’s child protection services will do the investigation and make the determinations of whether or not to substantiate a case. This Law will remove the county from the process and require the

164 Department's workers to make those determinations. The following table may provide a
165 good indication of the amount of work the Department can expect if this Law is adopted:
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Date	On-Going Worker (# of Cases)	Intake Worker (# of Cases)	Total # of Cases per Month
October 2015	17	Not reported	17*
November 2015	11	Not reported	11*
December 2015	14	Not reported	14*
January 2016	15	6	21
February 2016	19	4	23
March 2016	17	3	20
April 2016	14	5	19
May 2016	13	0	13
June 2016	13	3	16
July 2016	12	4	16
August 2016	11	6	17
September 2016	14	2	16
October 2016	11	4	15
November	Not reported	Not reported	Not available
December 2016	18	4	22
January 2017	18	3	23
Average Monthly Cases	15	4	19

167 *notes missing information. It should also be noted that the Department was operating without a complete staff
168 during a portion of 2016.
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- 170 2. **Department's Duties & Responsibilities.** This Law specifically identifies the duties and
171 responsibilities of the Department and the Indian Child Welfare (ICW) worker. The ICW worker
172 responsibilities are located in section 708.7-1 of the Law and include: receiving, examining and
173 investigating complaints and allegations of CHIPS; determining if there is an emergency and
174 whether the child should be taken into custody; making recommendations to the Nation's child
175 welfare attorney and the Court; developing reports and performing functions as directed by the
176 Court; referring clients to counseling or services; identifying and developing resources in the
177 community that can be utilized by the Department or Court; conducting reviews; maintaining
178 confidentiality; participating in training, conferences and workshops; and more.

179 The Department's duties are found in section 708.7-2 of the Law and include identifying
180 and referring parties to resources available in the community; investigating, inspecting and
181 licensing foster homes as well as monitoring and supervising foster homes and children in foster
182 care; adhering to placement preference; entering into memorandum of understandings with
183 appropriate departments; and share information with social services, law enforcement agencies
184 and other entities of the Nation.

185 a. **MOAs.** The Department may want to enter into a memorandum of agreement with the Trust
186 Enrollment Department to ensure that both departments are acquiring the appropriate
187 information to perform their responsibilities. It is also suggested that the Department enter
188 into a memorandum of agreement with OPD to specify when it is necessary for the
189 Department to be contacted in cases involving child welfare matters.

190 b. **Foster Homes.** It should be noted that the Department already licenses level 2 foster homes
191 both on and off the Reservation. As of January 2017, the Nation had eight foster homes, with
192 the potential of three additional homes becoming available soon. At this time there were two
193 homes not being utilized, but the homes that are utilized may have space for another
194 placement [Information received from Foster Care Coordinator, email correspondence,
195 January 23, 2017]. Implementing this Law will require more foster home recruitment. It is

196 because of this that the Department has indicated a need of an additional foster care
197 coordinator.

198 **3. Guardians ad Litem.** This Law may require the use of guardians ad litem (GALs). A GAL is an
199 individual that is appointed by the Court to represent the best interest of the person in which
200 he/she was appointed for. The Court can appoint a GAL for any child in need of protection or
201 services but must appoint a GAL for a child that is subject to a termination of parental rights case
202 or a contested adoption or guardianship proceeding [*See Child Welfare, 7 O.C. 708.3-1 (w) and*
203 *708.8-1*]. In state court, GALs are attorneys [*See Wis. Stats. § 48.235 (2)*]. Like many other
204 tribal laws, to be a GAL according to this Law, the individual must meet the qualifications listed
205 in section 708.8-2 which include: being at least 21 years old, being certified and in good standing,
206 never been convicted of a felony unless a pardon or forgiveness was received; and never been
207 convicted of a crime against a child. The Law identifies when a GAL cannot be appointed to a
208 case and requires GALs to complete training or be certified before participating in child welfare
209 cases. The Law also specifies the GAL's responsibilities and addresses GAL compensation [*See*
210 *Child Welfare, 7 O.C. 708.8-2 through 708.8-4; Red Cliff, Children's Code, 26.6.3; Ho Chunk*
211 *Nation, Children and Family Act, I.6.v; White Earth, Child/Family Protection Code, Section*
212 *3(o)*].

213 **a. Current GAL Numbers.** The OFC has indicated that there are currently 17 GALs that have
214 been approved to take appointments from the OFC. Of this amount, six are not being utilized
215 because they said they no longer wish to take on any cases or they have failed to respond to
216 requests—making them inactive. Three GALs will only accept appointments about one-time
217 per year. In total, there are eight GALs that are actively taking cases; however, two of them
218 prefer only one appointment at a time. This may be because many of the GALs have full-
219 time jobs which limit their ability to take on multiple cases. It is unknown how many GALs
220 will be needed to successfully implement this Law but according to the OFC, a fair estimate
221 would be 2-3 effective GALs for every five cases. It should be noted that the current OFC
222 GALs will need additional training to participate in child welfare cases. Recruitment for
223 more GALs is essential for implementation of this Law.

224 **4. Advocates.** A parent, guardian and legal custodian can obtain an advocate to represent him/her at
225 any proceeding at his/her own expense [*See Child Welfare, 7 O.C. 708.9-1*]. In order to be an
226 advocate under this Law, the advocate must be at least 21 years old who is admitted to practice
227 before the Judiciary and has never been convicted of a felony unless he/she received a pardon or
228 forgiveness, and was never convicted of a crime against a child. In addition, the advocate must
229 comply with all laws, rules and policies of the Nation governing advocates [*See Child Welfare, 7*
230 *O.C. 708.9-2 and 708.9-3*]. It should be noted that in state court proceedings involving state and
231 federal Indian Child Welfare Acts, parents are appointed lawyers to represent them as outlined in
232 Chapter 48 of the Wisconsin Statutes [*See Wis. Stats. § 48.23 (1g) and (2g)*].

233 In order to participate in cases before the Oneida Judiciary, the advocate must be
234 formally approved for admission to practice. The Oneida Judiciary's Rules of Admission sets out
235 general requirements for lay advocates which require them to file a written application for
236 admission, pass a criminal background check, be at least 21 years old, be of good character to
237 practice, and take an oath of admission [*See Oneida Judiciary, Rules of Admission, Rule 1-2*]. In
238 addition to the requirements above, the lay advocate must provide educational and/or professional
239 background information, as well as follow the Oneida Rules of Professional Conduct for
240 Attorneys [*See Oneida Judiciary, Rules of Admission 1-5 & 1-8*].

241 **5. Placement Preference.** The preference for placement in CHIPS cases can be found in section
242 708.10-1 of the Law and includes the following prioritized order:

- 243 ▪ A member of the child's immediate or extended family
- 244 ▪ A family clan member
- 245 ▪ A member of the Nation
- 246 ▪ Descendants of the Nation

- 247 ▪ A member of another federally recognized tribe
- 248 ▪ Fictive kin within the Nation community
- 249 ▪ Fictive kin outside the Nation community
- 250 ▪ Any other person not listed above

251 The Court can deviate from this list if it is determined to be in the child’s best interest and if
 252 there is good cause. Good cause is when 1) the child’s parent or child, if the child is at least 12
 253 years old and makes a request, 2) the child requires specialized treatment because of an
 254 extraordinary physical, mental, or emotional health condition or 3) there is no suitable placement
 255 for the child in any of the preferences listed above [See *Child Welfare*, 7 O.C. 708.10-3].

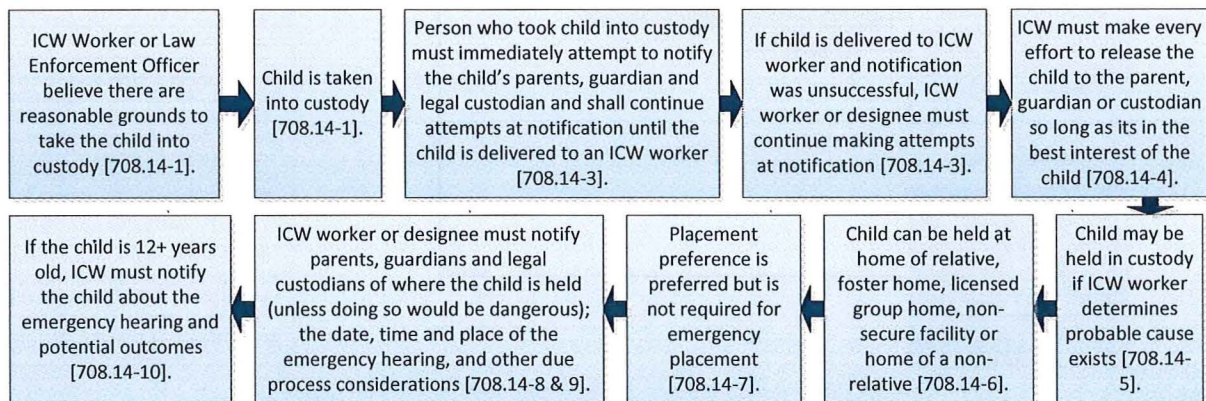
256 **6. Notice of Petitions.** Notice of the CHIPS petition can be given to the parties directly by the
 257 Nation’s Child Welfare Attorney or Department or pursuant to the Oneida Judiciary Rules of Civil
 258 Procedure. Petitions for termination of parental rights (TPR), guardianship, and adoption must follow
 259 the notice requirements found in the Oneida Judiciary Rules of Civil Procedure. Any other
 260 notification of subsequent hearings must be served by first class mail to the most recently verified
 261 last-known address of the party(ies) [See *Child Welfare*, 7 O.C. 708.11].

262 **7. Hearings (General).** The child may be excluded from hearings if the Court determines it is in the
 263 child’s best interest. In addition, the Oneida Judiciary Rules of Evidence are not binding in the Court
 264 proceedings listed in 708.12-2 of this Law. If an alleged father appears at a hearing under this Law,
 265 the Court can refer the matter to the Oneida Nation Child Support Agency to determine paternity [See
 266 *Child Welfare*, 7 O.C. 708.12].

267 **8. Discovery & Records.** Upon written request, the parties and their counsel have a right to inspect,
 268 copy, or photograph the child’s records identified in section 708.13-1 of this Law. The Court can
 269 issue an order if the request for discovery is refused. Discovery that violates privileged
 270 communication or a work product rule can be denied in whole or in part by the Court; in addition, the
 271 Court can place limits or set conditions on discovery. The person who filed a child welfare complaint
 272 must have their identity redacted in all documents that are made available to the parties. Discovery
 273 procedures identified in the Oneida Judiciary Rules of Civil Procedure will work in conjunction with
 274 this Law [See *Child Welfare*, 7 O.C. 708.13].

275 **9. Taking a Child into Custody Process.** A child can be taken into custody if there are reasonable
 276 grounds which include 1) a warrant to apprehend the child, 2) the child is suffering from an illness or
 277 injury or is in immediate danger and removal is necessary and/or, 3) the child violated the conditions
 278 of the order [See *Child Welfare*, 7 O.C. 708.14-1]. The following flow chart illustrates the process
 279 for taking a child into custody in accordance with section 708.14 of this Law:
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Taking Child Into Custody



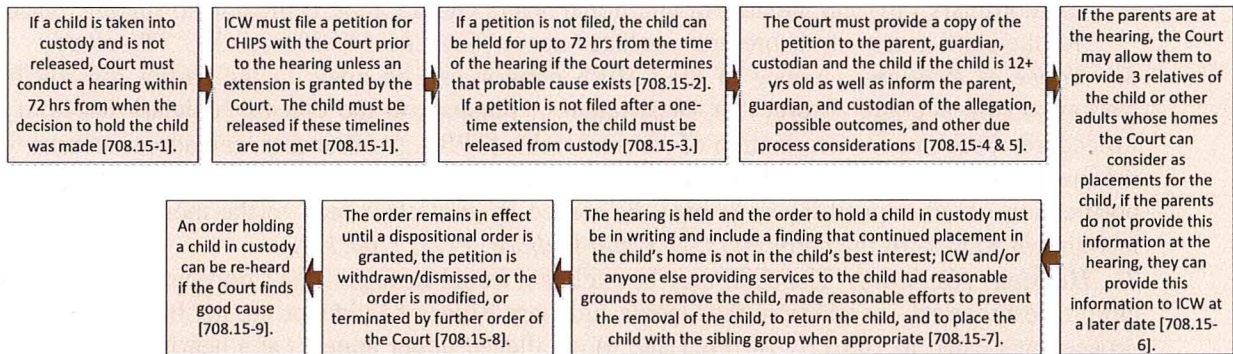
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- 283 ▪ **Probable Cause.** A child can be held in custody if probable cause exists. Probable cause
 284 exists if it is believed 1) the child will cause injury to him/herself or others, 2) the child will

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be injured by others, 3) the parent, guardian, or legal custodian or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care and that the child's (or any child in the home) safety and well-being is not adequately provided for, and 4) the child will run away or be taken prior to the proceedings [See *Child Welfare, 7 O.C. 708.14-5*].

10. Emergency Custody Hearing. The procedure for emergency custody hearings is shown below:

Emergency Custody Hearings

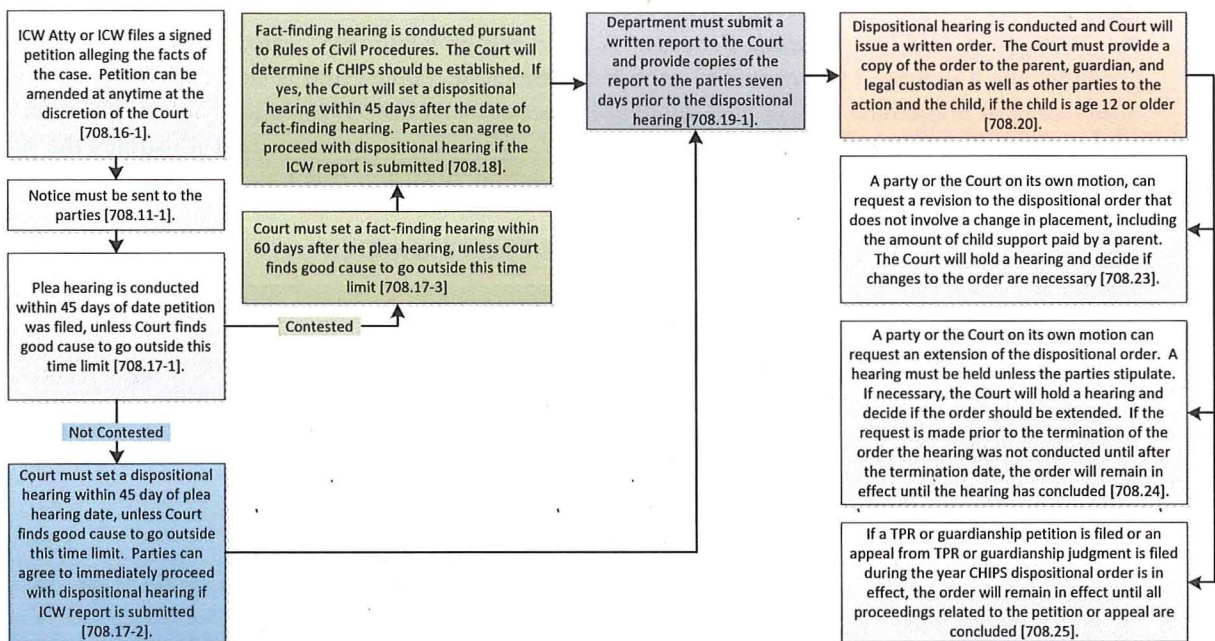


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- **Probable Cause.** If a petition is not filed prior to the hearing, the Court can hold a child for up to 72 hours excluding weekends and holidays if probable cause exists. Probable cause exists if 1) additional time is needed to determine if a petition initiating the proceeding is necessary, 2) the child is imminent danger to his/herself or others, or 3) the parent, guardian, and legal custodian or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care [See *Child Welfare, 7 O.C. 708.15-2*].

9. CHIPS Proceedings. The following illustration depicts the legal proceedings for a CHIPS case:

CHIPS Proceeding



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- **CHIPS Petitions.** The petition must include the names, birth dates, and tribal affiliations of the child, parents, guardians, legal custodians, and spouse, or if no person can be identified, the nearest relative. The petition must also include whether the child is in custody and if yes,

305 where the child is held and the date he/she was taken into custody so long as this information
306 does not put anyone in danger. A Uniform Child Custody Jurisdiction and Enforcement Act
307 affidavit must accompany the petition. In addition, the petition must include a statement of
308 facts and any other information required by the Court. If any of the required facts are
309 unknown, the petition must state this [*See Child Welfare, 7 O.C. 708.14-2 & 708.14-3*].

- 310 ■ *CHIPS Plea Hearing.* Before the Court can accept an admission or plea of no contest, the
311 Court must address the parties and determine: if the admission or plea of no contest is made
312 voluntarily; that the parties understand the allegations and potential outcomes; that no
313 promises or threats were made to elicit the admission or plea; and inquire as to the facts of the
314 admission or plea [*See Child Welfare, 7 O.C. 708.17-4*].
- 315 ■ *CHIPS Disposition Report.* The Department must submit a written report to the Court
316 regarding CHIPS cases and provide a copy of the report to the parties at least seven calendar
317 days prior to the disposition hearing. The report must contain the information listed in
318 section 708.19-1 of this Law which includes: the social history of the child, a strategic plan
319 for the care and assistance to the child and family that will alleviate the issues addressed in
320 the petition, a detailed explanation of the plan and the benefits of such plan, and if out-of-
321 home placement is recommended and specific reasons for such recommendation. If the
322 Department recommends out-of-home placement, the Department must include all of the
323 following in the written report: 1) the location of placement and where it fits within the
324 placement preferences, 2) whether child support should be established, 3) specific
325 information showing continued placement in the child's home is not in the child's best
326 interest, and 4) when necessary, that reasonable efforts to place the child with his/her sibling
327 group was made, unless it is not in the best interests of the child or the child's siblings. The
328 Department can ask the Court to withhold identifying information if such information would
329 result in imminent danger to the child or anyone else [*Child Welfare, 7 O.C. 708.19-2 &*
330 *708.19-3*].
- 331 ■ *CHIPS Dispositional Hearing.* Any party can present relevant evidence, including expert
332 testimony and make alternative dispositional recommendations. If out-of-home placement is
333 recommended, the Department must 1) show that the continued placement in the child's
334 home is not in the best interest of the child, 2) the Department made reasonable efforts to
335 prevent removal of the child, and 3) if appropriate, place the child with his/her sibling group
336 unless it is not in the best interest of the child or siblings. The parents can present evidence at
337 the hearing that relates to the amount of child support that is to be paid by either or both
338 parents. The Court must provide a written dispositional order which must protect the best
339 interests of the child in a way that is least restrictive of the parents' and child's rights as well
340 as assure the care, treatment and/or rehabilitation of the child and family. The family unit
341 must be preserved unless it is not in the best interests of the child, in which case, the Court
342 must consider transferring the custody pursuant to the placement preference list. The order
343 must include a treatment plan and specific services to be provided to the child and family and
344 legal custodian; if necessary, the location of the child so long as disclosing this information
345 does not put the child or anyone else in imminent danger; the date when the order expires; the
346 amount of child support to be paid, (if any); that the Department made reasonable efforts to
347 prevent removal of the child from the home so long as it was in the child's best interests; if
348 the child is placed under the supervision of the Department that the Department has
349 placement and care responsibility as well as primary responsibilities for providing services to
350 the child and family; place the child with his/her sibling group, when appropriate, so long as
351 it is in the child's or sibling's best interest; conditions in which the parties must comply and
352 set reasonable parental visitation as long as it is in the child's best interest [*See Child*
353 *Welfare, 7 O.C. 708.20-1 through 708.20-5*].

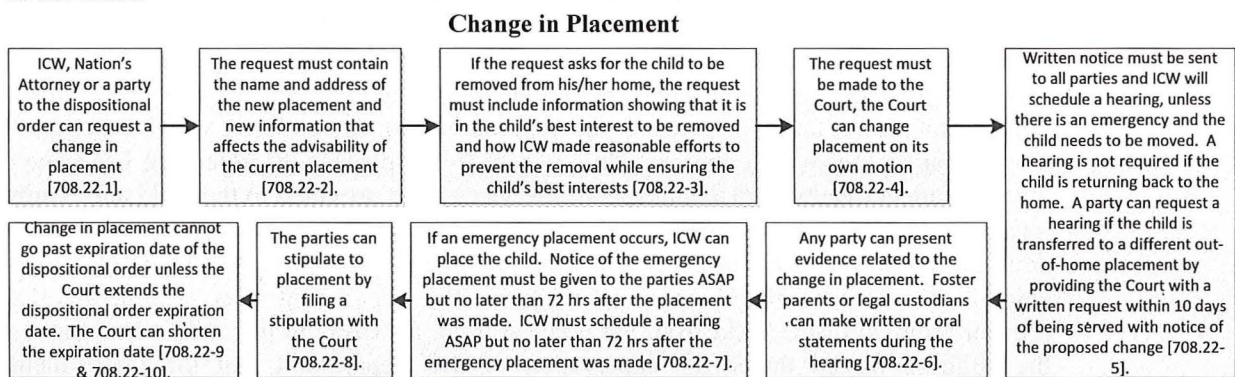
354 The Court can order the parent, guardian and legal custodian to comply with any
355 conditions or treatment plan. The conditions or treatment plan must identify 1) the problems

356 or conditions that resulted in child abuse or neglect, 2) the treatment goals and objectives for
 357 each condition or requirement included in the plan, including the safe return of the child to
 358 the family when applicable, 3) the specific treatment objectives that specifies the roles and
 359 responsibilities of all parties addressed in the plan, and 4) a notice that completion of the plan
 360 does not guarantee the return of the child. The treatment plan may include recommendations
 361 and the Court may require the parent, guardian and legal custodian participate in a treatment
 362 program such as mental health, substance abuse, anger management, individual or family
 363 counseling, parenting class, or any other treatment as deemed appropriate by the Court [See
 364 *Child Welfare, 7 O.C. 708.20-6*].

365 The Department may not be required to make reasonable efforts to return the child to
 366 his/her home if the parent was convicted of committing a crime contained in Chapters 940 &
 367 948 of the Wisconsin Statutes or any other similar laws [See *Child Welfare, 7 O.C. 708.20-7*].
 368 The Court must provide a copy of the disposition order to the child's parents, guardian
 369 and legal custodian as well as other parties to the action and the child, if the child is at least
 370 12 years old. If the child is placed out-of-the home or if visitation is denied because of
 371 CHIPS, the Court must both orally inform the parent at the hearing and include in the written
 372 disposition order, any grounds for TPR and the conditions necessary for the child to be
 373 returned or for parental visitation [See *Child Welfare, 7 O.C. 708.20-8 & 708.20-9*].

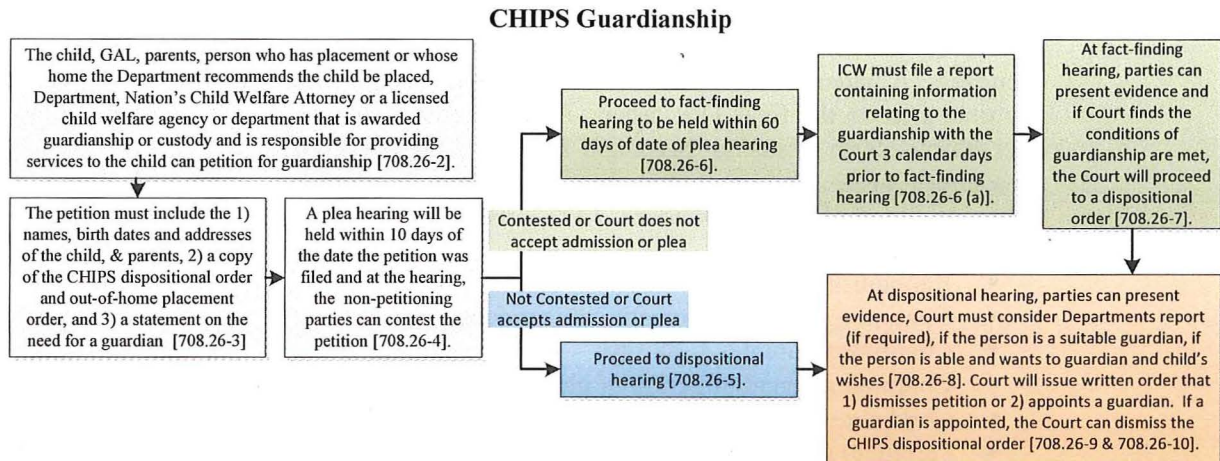
374 **10. Permanency Plans.** Any time a CHIPS dispositional order places the child outside of the home,
 375 the Department must prepare a written permanency plan. Section 708.21-1 of this Law sets out the
 376 requirements for what must be included in the plan. The initial permanency plan must be filed with
 377 the Court within 60 days after the date the child was removed from the home, unless the child was
 378 returned within that time. The Court must hold a review on the permanency plan no later than six
 379 month after the date the child was placed outside the home. After the hearing, the Court must enter a
 380 written order addressing 1) the necessity and appropriateness of the plan, 2) compliance with the plan
 381 by the identified parties, 3) efforts taken to meet the needs of the child and the parents, 4) progress on
 382 eliminating the causes of the child to be placed outside the home and returning the child or obtaining
 383 permanent placement, 5) date the child will be returned, be placed for adoption or other permanent
 384 living arrangement, 6) whether the Department made reasonable efforts to achieve the permanency
 385 plan goal and keep the sibling group together or have frequent visitation and 7) date of the next
 386 review hearing, if appropriate [See *Child Welfare, 7 O.C. 708.20*].

387 **11. Change in Placement.** The following flow chart shows the process for changing the placement
 388 of the child:



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 391 **12. CHIPS Guardianship.** The Court can appoint a guardian for a child if certain conditions are
 392 present: child is in need of protection or services and is either placed outside the home or the
 393 Department recommends the child be placed with the guardian; the person nominated as guardian is
 394 the person the child is currently placed with or the person the Department recommends the child will
 395 likely be placed with for an extended period of time or until the child reaches 18 years of age; the

396 person is willing and able to be the child's guardian; that termination of parental rights is not in the
397 child's best interest; the child's parents are neglecting, refusing or unable to perform the duties of a
398 guardian; and the Department made reasonable efforts to prevent the child from removal of his/her
399 home and to return the child [See *Child Welfare*, 7 O.C. 708.26-1]. The CHIPS guardianship process
400 is identified in the flow chart below:

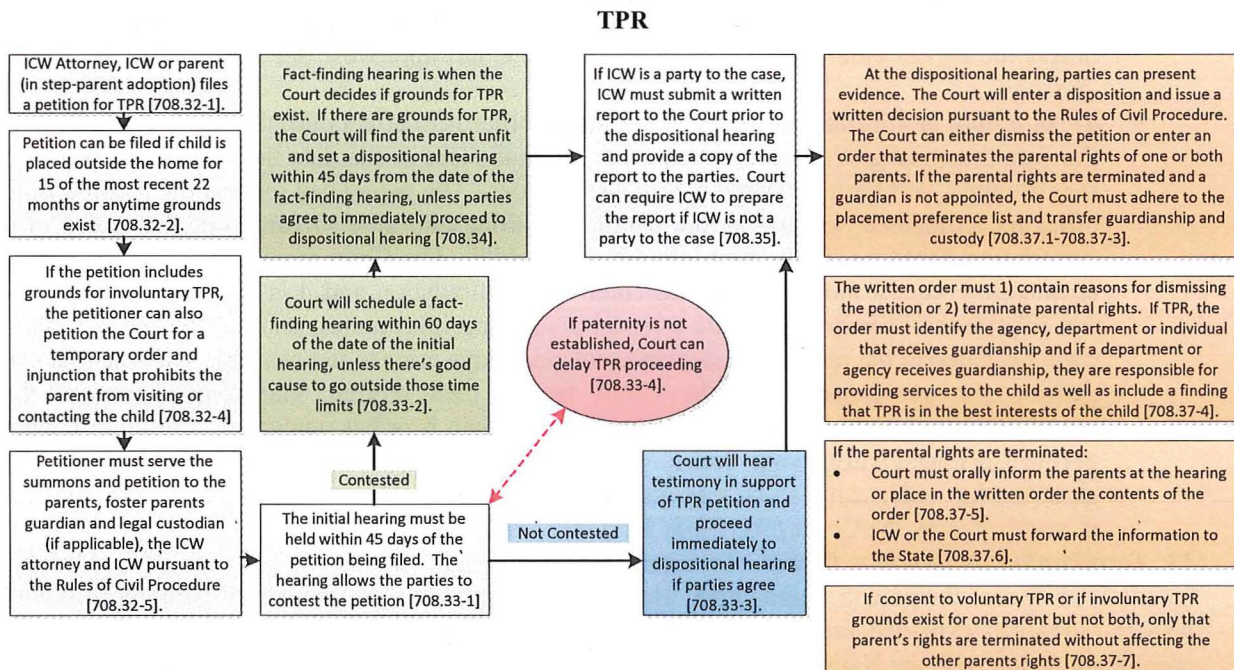


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- **Revising Guardianship Orders.** Anyone that can file a petition for guardianship can also request a revision to the guardianship order. In addition, the Court can also make a revision upon its own motion. The request or Court proposal must show there is a substantial change in circumstances and that revisions are in the best interest of the child. The Court can require the Department to file a report which contains information relating to the request or proposal and the report must be provided to the parties at least three days prior to the hearing. The Court must hold a hearing if new information is available that affects the guardianship order, unless the parties enter into a stipulation and the Court approves [See *Child Welfare*, 7 O.C. 708.27].
 - **Termination of Guardianship.** A guardianship order is in effect until the child reaches 18; or the date the child graduates high school or its equivalent or the date the child reaches 19; or the date the Court terminates the guardianship order. The parent can request the guardianship order be terminated so long as the parent is willing and able to carry out the duties of a guardian and that it is in the best interest of the child. The Court must hold a hearing on the termination request unless the parties enter into a stipulation and it is approved. The Court can require the Department to file a report containing information relating the request and a copy provided to the parties at least three calendar days prior to the hearing. Anyone that can petition for guardianship, or the Court by its own motion, can request/propose the guardianship appointment be terminated if the guardian is or has neglected, refused or cannot perform his/her guardianship duties. The Court must hold a hearing on the request. The guardianship order can also be terminated if the guardian submits his/her resignation and the it is accepted by the Court [See *Child Welfare*, 7 O.C. 708.28].
- 13. Termination of Parental Rights.** Terminating parental rights permanently severs all legal rights and duties between the parent(s) and child. However this may not affect the child's relationship with his/her biological extended family. In addition, the TPR will not have an impact on the child's enrollment status with the Nation, or interfere with the child's clanship, tradition and spiritual growth as a member of the Nation. The parents' rights can be terminated either voluntarily or involuntarily [See *Child Welfare*, 7 O.C. 708.29].
- **Voluntary TPR.** If a parent wishes to terminate their parental rights, the Court can conduct a dispositional hearing immediately so long as the Department submitted the TPR court report. The Judge must explain the effects of TPR, question the parent and/or allowed the party(ies)

434 counsel to question the parent. The parent must provide his/her consent at the hearing unless
 435 the Court allows the parent to appear by phone or using a live audiovisual device. If the
 436 Judge believes consent was informed and voluntary, he/she can accept the consent. If anyone
 437 believes the parents do not have the capacity to voluntarily consent, the Court must determine
 438 if the parent is capable of giving informed, voluntary consent. If the Court finds the parent is
 439 not capable of providing voluntary consent, the Judge must dismiss the voluntary proceedings
 440 without prejudice. However, this may not prohibit involuntary TPR proceedings from
 441 occurring. A parent that began a voluntary TPR proceeding can withdraw his/her consent at
 442 any time prior to the final TPR order. A parent cannot consent to TPR within ten calendar
 443 days after the birth of a child [See *Child Welfare*, 7 O.C. 708.30].

- 444 ■ **Involuntary TPR.** A parent may have his/her parental rights terminated if any of the
 445 following occurs [See *Child Welfare*, 7 O.C. 708.31]:
 - 446 ■ Abandonment
 - 447 ■ Relinquishment
 - 448 ■ Continuing need for protection or services
 - 449 ■ Continuing parental disability
 - 450 ■ Continuing denial of period of physical placement or visitation
 - 451 ■ Child abuse
 - 452 ■ Failure to assume parental responsibility
 - 453 ■ Incestuous parenthood
 - 454 ■ Homicide or solicitation to commit homicide of a parent
 - 455 ■ Parenthood as a result of sexual assault
 - 456 ■ Commission of a felony against a child
 - 457 ■ Prior involuntary TPR of another child
- 458 ■ **TRP Proceedings.** The process for terminating parental rights is as follows:

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 462 **TPR Petition.** A petition for TPR can be filed when the child is placed outside of his/her
 463 home for 15 of the last 22 months except if the child is cared for by a fit and willing relative,
 464 the permanency plan shows that TPR is not in the best interest of the child, the Department
 465 failed to make reasonable efforts or failed to meet the time periods set forth in the

466 permanency plan or grounds for TPR do not exist. The petition must include the names, birth
467 dates, addresses, and tribal affiliation of the child and parents, a Uniform Child Custody
468 Jurisdiction and Enforcement Act affidavit, and a statement that consent will be given
469 voluntarily or identify the grounds for involuntary TPR [*See Child Welfare, 7 O.C. 708.32-2*
470 *& 207.32-3*].

471 The Court can issue a temporary order and injunction that prohibits the parent from
472 visiting or contacting the child if the Court determines it is in the child's best interest. This
473 injunction is effective according to its terms but cannot go beyond the date the Court
474 dismisses the petition for TPR or issues an order for TPR [*See Child Welfare, 7 O.C. 708.32-*
475 *4 (a)*].

476 Department's TPR Court Report. Whenever the Department is a party to the case or if the
477 Court orders, the Department must submit a written report to the Court prior to the
478 dispositional hearing and supply a copy of the report to the parties. The report must contain
479 the following:

- 480 ▪ Social history of the child and family including medical conditions
- 481 ▪ Statement of facts showing need for TPR
- 482 ▪ Steps the Department has taken to alleviate the issues for which the child was in need
483 of protection or services as well as the reasons why the child was not returned to
484 his/her home, if applicable
- 485 ▪ How the standards and factors were applied
- 486 ▪ Recommendations for TPR must include statement on how likely the child will be
487 adopted. This includes identifying 1) factors that might prevent adoption, 2) those
488 that may facilitate adoption, and 3) the Department must facilitate the adoption. If
489 adoption is not likely or is not in the best interest of the child, the report must include
490 a plan to place the child in a permanent family setting [*See Child Welfare, 7 O.C.*
491 *708.35*].

492 Standards and Factors. When preparing the TPR dispositional order, the Court must consider
493 the best interests of the child. The best interests of the child include, but are not limited to,
494 the following:

- 495 ▪ Likelihood of the child's adoption after TPR
- 496 ▪ If the child will be raised in an environment that respects the child's race, culture, and
497 heritage
- 498 ▪ The age and health of the child at the dispositional hearing and when the child was
499 removed from the home
- 500 ▪ The child's substantial relationships with the parents and other family members and
501 if it is harmful to the child to sever those relationships
- 502 ▪ The wishes of the child
- 503 ▪ The duration of separation of the parent from the child
- 504 ▪ If the child will enter into a more stable and permanent family relationship as a result
505 of TPR [*See Child Welfare, 7 O.C. 708.36*].

506 **14. Adoption.** This Law allows for two types of adoptions, customary adoption and closed adoption.
507 All adoption must be customary adoptions unless the Court determines there is good cause to utilize a
508 closed adoption. Customary adoption does not permanently deprive the child to his/her biological
509 family but instead just provides a permanent home. Customary adoption order must allow the
510 relationship between the adoptive parent and child to have the same rights, responsibilities, and legal
511 consequences as the relationship between the child and his/her biological parents; the child must have
512 an absolute right to information and knowledge about his/her biological family and Oneida heritage,
513 if applicable; that adoption does not prevent the child from inheriting from the biological parent and
514 adoptive parent but that the biological parent cannot inherit from the child; the biological parent can
515 retain residual rights based on agreement between the adoptive parent and biological parent or by

516 Court order; and adoption does not extinguish the child’s relationship with his/her extended biological
 517 family [See *Child Welfare*, 7 O.C. 708.37-1 and 708.38-2].

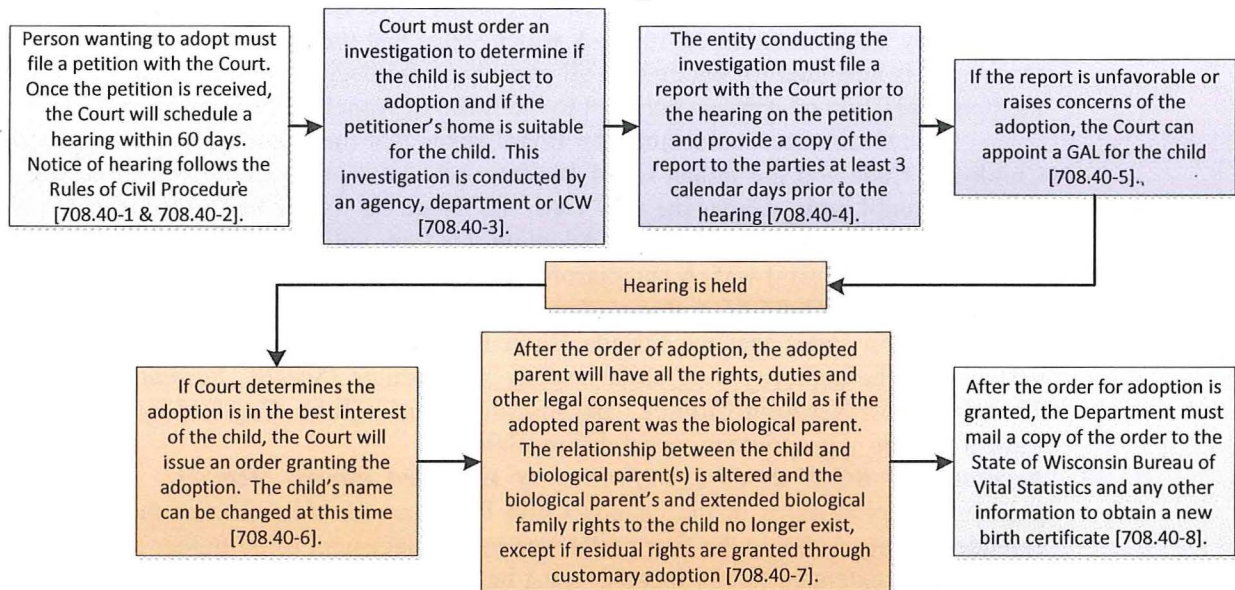
518 Closed adoptions happen when a child needs to sever all ties between his/her biological family
 519 and needs a permanent home. When a closed adoption occurs, the relationship between the adopted
 520 parent and child will be the same as if the adopted parent was the child’s biological parent; the
 521 relationship between the child and his/her biological parents are completely altered all rights, duties
 522 and other legal consequences of those relationships no longer exist; the child’s biological family is
 523 not entitled to or has access to any information regarding the child; and the child is entitled to
 524 information regarding his/her biological family when the child reaches the age of 18 [See *Child*
 525 *Welfare*, 7 O.C. 708.38-3]. The comparison table shows the difference between customary adoption
 526 and closed adoption:
 527

Customary Adoption	Closed Adoption
Adopted parent has same rights as biological parent	Adopted parent has same rights as biological parent
Child has right to information and knowledge about his/her biological family and culture	Child must be entitled to information regarding his/her biological family when the child reaches 18
Adoption does not stop child from inheriting from biological parent but biological parent cannot inherit from child, adoptive parent can inherit from child	Does not address inheritance
Biological parent has residual rights to the child (communication, visitation, support/education, consultation, & other rights ordered by the Court)	Child’s biological family is not entitled to have or access the child’s information
Adoption does not extinguish relationship between child and child’s extended biological family	Relationship between child and biological parents and extended biological family is completely altered and all rights, duties and legal consequences no longer exist

528 This Law allows a child to be adopted if both parents are deceased, the parental rights of both
 529 parents are terminated, the parental rights of the only living parent are terminated or the person
 530 petitioning for adoption is the spouse of the parent and either the other parent is deceased or has
 531 his/her parental rights terminated. A married couple, spouse of the parent or an adult can adopt a
 532 child. The Court can allow a person to adopt a child even if the person has not successfully cleared a
 533 background check or has a conviction that was not pardoned, forgiven, reversed, set aside or vacated
 534 so long as the adoption is in the child’s best interest [See *Child Welfare*, 7 O.C. 708.39].
 535

536 In order to start an adoption proceeding, a petition must be filed. The petition for adoption must
 537 include the names, birth dates, addresses, and tribal affiliations of the petitioner; child and biological
 538 parents of the child, as well as the name by which the child will be known; the relationship of the
 539 petitioner to the child; and a copy of the order that terminated the parental rights of the child’s parents
 540 [See *Child Welfare*, 7 O.C. 708.40-1]. The following chart shows the adoption procedure:

Adoption

541
542

543 **15. Non-Compliance with Residual Rights Agreement.** Any party to a residual rights agreement can
 544 petition the Court that approved the agreement to compel any person bound by the agreement to
 545 comply with the agreement. The Court will set a date for a hearing and provide notice to all parties to
 546 the agreement and may reappoint a GAL for the child. The Court can issue an order requiring the
 547 person to comply the agreement and can find the person in contempt. The Court cannot revoke TPR
 548 or an order of customary adoption because of non-compliance [See *Child Welfare*, 7 O.C. 708.41].

549 **16. Peacemaking and Mediation.** The Court can refer the parties to peacemaking or mediation if the
 550 parties agree. The parties cannot participate in peacemaking or mediation if doing so will cause
 551 undue hardship or would endanger the health or safety of a party. If the parties do participate in
 552 peacemaking or mediation based by the Court's referral, the Court must suspend time limits
 553 established in this Law to allow time for the parties to go through the peacemaking or mediation
 554 process [See *Child Welfare*, 7 O.C. 708.42].

555 **17. Appeals.** Any order issued under this Law can be appealed to the Court of Appeals pursuant to
 556 the Rules of Appellate Procedure [See *Child Welfare*, 7 O.C. 708.43].

557 **18. Liability.** This Law prevents liability from being attached to the Department and its workers
 558 including the attorney or anyone else that acts under their authority for statements, acts or omissions
 559 made in good faith while in the course of activities under taken under this Law [See *Child Welfare*, 7
 560 O.C. 708.44].
 561

562 SECTION 6. EFFECT ON EXISTING LEGISLATION

563 **A.** The Rules of Civil Procedure, Rules of Evidence, Rules of Appellate Procedure, and Child Support
 564 may be used in conjunction with this Law.

565 **B.** This Law does not conflict with other laws of the Nation.

566 **C.** This Law will repeal the following BC Resolutions:

567 1. **Resolution # BC-09-25-81 Oneida Child Protective Board Ordinance and Resolution # BC-**
 568 **01-14-15-A Amendment of BC Resolution # BC-09-25-81: Oneida Child Protective Board**
 569 **Ordinance.** ICWA was enacted in 1978 and on September 25, 1981, OBC adopted the
 570 Oneida Child Protective Board Ordinance (Ordinance) which delegated all authorities and
 571 responsibilities for administering ICWA to the Board. BC Resolution 09-25-81 requires an
 572 appeal of the Board's decision to be heard by the OBC and an appeal of the OBC's decision

573 can be heard by the General Tribal Council (GTC) whose decision is final [*See Oneida Child*
574 *Protective Board Ordinance, pg. 2, Be It Further Enacted Clause*]. However, this was
575 amended by BC Resolution 01-14-15-A which states that the Oneida Child Protective Board
576 Ordinance is amended to require that all appeals of the decisions of the Board be filed with
577 the [Oneida] Court of Appeals pursuant to the Rules of Appellate Procedure.

578 The Ordinance establishing the Board states that the Board must follow the Oneida
579 Children's Code and the Indian Child Welfare Act; however, a Children's Code was never
580 developed until now. Under the new Law, the Board no longer has a role as cases will be
581 brought forward by the Department. Adopting this Law will repeal BC Resolution 09-25-81
582 and BC Resolution 01-14-15-A and dissolve the Board.

- 583 2. **Resolution # BC-10-07-81-A Appointing Members to the Oneida Child Protective Board.**
584 This resolution states that the Oneida Child Protective Board be the administrative body
585 vested with the authority over child custody proceedings [*See BC Resolution 10-07-81-A,*
586 *Therefore Be It Resolved Clause*]. Because the Board will be dissolved by passage of this
587 Law, it may be appropriate to repeal this resolution.
- 588 3. **Resolution # BC-05-24-84-C Definition of Extended Family Member.** The ICWA and
589 policies and procedures of the Oneida Child Protective Board reference the Indian child's
590 extended family as being the first preference in the placement of an Indian child and ICWA
591 states that an extended family member must be defined by the laws or customs of the Indian
592 child's tribe; therefore, BC Resolution 05-24-84-C adopted a definition of extended family
593 member. The definition has been incorporated into the Law which means the BC Resolution
594 05-24-84-C is no longer needed [*See Child Welfare, 7 O.C. 708.3-1 (p)*].
- 595 4. **Resolution # BC-05-13-15-A Indian Child Welfare Act Policy.** ICWA allows an Indian
596 tribe to establish a different order of placement preference for foster care placements and
597 adoptive placements and the OBC believed it was critical to establish a policy statement to
598 provide direction to the Oneida Child Protective Board, Department and OLO. In addition,
599 this resolution established the placement preference as well as defines "best interest of the
600 child". The placement preference listed in this resolution as well as the definition of "best
601 interest of the child" have been incorporated into this Law [*See Child Welfare, 7 O.C. 708.3-*
602 *1 (e) and 708.10-1*]. Unlike the resolution, the Law allows an order to deviate from the
603 placement preference list if the party can show good cause by 1) a request from the child (age
604 12 or older) or the child's parent, 2) extraordinary physical, mental or emotional health needs
605 of the child requires highly specialized treatment services or 3) there is no suitable placement
606 after diligent efforts have been made to place the child in the placement preference list [*See*
607 *Child Welfare, 7 O.C. 708.10-2*].

608 Furthermore, this resolution contains language that says for cases where the parent(s)
609 are voluntarily terminating their parental rights, if no family or other Native home is available
610 for adoptive placement, the Nation will not seek to intervene in the adoption proceeding [*See*
611 *BC Resolution 05-13-15-A, Now Therefore Be It Resolved Clause, #4*]. This resolution refers
612 to child welfare legal matters that are outside of the Nation's jurisdiction. This Law will
613 allow the Nation to intervene when parents voluntarily terminate their parent rights even if no
614 family or other Native home is available for adoption for those cases fall under the Nation's
615 jurisdiction.

616 Lastly, the resolution states the Nation will continue to follow and adhere to Federal
617 Law, Court opinions which interpret Federal Law, the Bureau of Indian Affairs Guidelines,
618 and the Bureau of Indian Affairs Regulation [*See BC Resolution 05-13-15-A, Be It Finally*
619 *Resolved Clause*]. This Law does not include this language. Tribes are not bound by ICWA
620 and including this language would place added regulations on the OFC even though these
621 regulations do not necessary apply to tribal courts. However, there are many provisions
622 found in ICWA and WICWA that have been incorporated into this Law.

623 **D. Board Bylaws.** If the Board is dissolved, its bylaws will no longer be in effect.

624
625 **SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR**
626 **OBLIGATIONS**

627 **A. Impacts on Existing Rights.** In State court, an attorney is provided to the parties in child welfare
628 matters, this Law allows for parties to obtain counsel which includes an attorney or advocate at the party's
629 own expense. The General Tribal Council recently directed that a Legal Resource Center be created to
630 provide Tribal members and Tribal employees representation for any proceeding before the Judiciary. If
631 a party to a child welfare case before the Court is a non-Oneida, non-employee, he/she will not be
632 provided representation. It should be noted that these individuals can still seek assistance through
633 Judicare and/or legal aid.
634

635 **SECTION 8. ENFORCEMENT**

636 **A.** Anyone that does not abide by a Court order can be placed in contempt. Anyone who is not in
637 compliance with the residual rights agreement can petition the Court to enforce the agreement, the
638 Court can issue an order demanding compliance or the Court can place the non-complying party in
639 contempt.
640

641 **SECTION 9. OTHER CONSIDERATIONS**

642 **A.** The following personnel are needed to implement this Law:

643 1. **ICW Department.** After meeting with the Department, it was determined that the Department's
644 personnel needs to expand to implement this Law, the table below depicts the current personnel
645 compared to what is needed.
646

Position	Current	Needed	Total
Director	1 Family Support Services	1 ICW	1 ICW, 1 Family Support
Supervisor	1	1	1
Intake Worker (in house)	1 (does all intake duties)	1	1
Intake Worker (call 24/7)	0	2	2
On-going Worker	4	2	6
Parenting Specialist	1	1	2
Foster Care Coordinator	1	1	2
Security Officer	0	0.5*	0.5*

647 *a meeting will be scheduled to discuss the possibility of ICW and the Judiciary sharing a security officer.
648

649 2. **OFC.** After meeting with the OFC, it was determined additional staff will be required to
650 implement this Law. The table (below) depicts the minimum staffing required to exercise
651 jurisdiction over child welfare legal issues:
652

Position	Current	Needed	Total
OFC Judge	1	1	2
OFC Clerk	1	1	2
Security	1	0.5*	1.5*

653 *a meeting will be scheduled to discuss the possibility of ICW and the Judiciary sharing a security officer.
654

655 **a. Judiciary.** There are potential issues the LOC may want to be aware of in regards to the
656 OFC's workload. My discussions with the OFC have lead me to believe that the OFC's
657 current workload has reached its maximum capacity. The OFC believes that in order to
658 implement this Law, they will need two full-time judges, two full-time clerks and one part-
659 time clerk. During discussions it was suggested that perhaps one Trial Court clerk could
660 assist the OFC to alleviate the stress, balance the workload and potentially provide a cost

661 savings by not hiring an additional part-time OFC clerk. Another potential concern the LOC
 662 may want to consider is the issue of court room space. The Judiciary currently has two court
 663 rooms. At this time, the OFC does not believe space is an issue; however, there are factors
 664 that could change this in the future. These factors include, but are not limited to, General
 665 Tribal Council's directive to create a Legal Resource Center (Tribal members and Tribal
 666 employees will have access to representation which may result in more contested issues and
 667 longer hearings); a possible Traffic Code, and the addition of an administrative division of the
 668 Trial Court. There are also a number of items on the LOC's active files list that could
 669 increase the Judiciary's workload including the Criminal Code and Public Peace law. It
 670 appears the Judiciary's workload will continue to increase which may require a need for more
 671 court room space in the future.

672 **b. Judiciary Workload.** The following chart illustrates the Judiciary's filing numbers since
 673 2008:
 674

Number of Filings							
Year	OFC	Trial Court				Appellate	Peacemaking
		Trial	Garnishment	Debt	Small Claims		
2008	17	39	204	120	0	28	8
2009	170*	24	123	130	0	25	13
2010	551**	30	190	198	0	33	28
2011	606	17	142	128	0	30	44
2012	577	21	190	109	0	25	25
2013	649	19	212	103	0	19	26
2014	581	14	162	174	0	18	42
2015	492	6	133	40	4	19	58
2016	571	19	105	61	3	12	83
2017 ⁺	106	7	26	24	0	3	15

675 *five months of reports missing for OFC, actually number of filings is higher
 676 **three months of reports missing for OFC, actually number of filings is higher
 677 + All numbers are through February 2017
 678

679 There are variables that impact the number of filings identified above. For example, in 2010,
 680 Brown County began transferring cases to the OFC. In 2013, Milwaukee County began
 681 transferring cases. Both of these events had an impact on the OFC's filing numbers. Another
 682 issue that impacts the number of filings for OFC is the staffing level at the Oneida Nation Child
 683 Support Agency. The table below shows the Judiciary's Hearing Numbers:
 684

Number of Hearings						
Year	OFC	Trial Court				
		Trial	Garnishment	Debt	Small Claims	
2008	7	36	**	***	0	
2009	70	47	**	***	0	
2010	171	61	**	***	0	
2011	300	27	**	***	0	
2012	404	33	**	***	0	
2013	383*	36	**	***	0	
2014	509	20	**	***	0	
2015	468	10	108	40	0	
2016	490	21	116	56	1	
2017 ⁺	85	6	25	11	1	

685 *six weeks without hearings due to transition of Appeals Commission to OFC, **Hearings held in batches every 2nd &
 686 4th Wednesday of the month, ***Hearings scheduled in batches as needed, + All numbers are through February 2017

687 According to the OFC staff, the OFC used to hold court one day per week when
688 operating as the Oneida Appeals Commission; however, they are now averaging three to four
689 days of court per week with some weeks having five days of
690 court hearings. Family Court hearings last anywhere from 15
691 minutes to a full day, depending on the type of filing and the
692 number of contested issues. Because this Law allows parties to
693 call and examine witnesses, child welfare hearings have the
694 potential to last multiple days. Family Court cases will require
695 additional staff to satisfactorily operate the Court.

696 It is not anticipated that the workload of the OFC will
697 decrease. This is mainly due to the number of child support
698 cases that the OFC has exercised jurisdiction over. The table
699 (right) shows the number of cases the Oneida Nation Child
700 Support Agency has. As of last month, the agency had 2861
701 cases. In most cases, a child support cases is up for a review
702 hearing every two years. Many of these reviews require court
703 hearings. Other child support cases come back sooner for modifications due to a change in
704 employment, incarceration, or a number of other factors.

Year	# of Cases at Child Support Agency
2008	482
2009	804
2010	1434
2011	2256
2012	2549
2013	2680
2014	2872
2015	2991
2016	3016
2017	2861

705 The OFC anticipates that the number of child support cases will rise due to the transfer of
706 cases from Milwaukee County and other counties within the State of Wisconsin. Milwaukee
707 County has 614 potential transfer cases and 119 cases have transferred already. Statistics have
708 not been provided to the OFC regarding the number of cases that many transfer from other
709 counties.

710 In addition to the child support cases, the OFC has experienced a rise in other contested
711 matters, most notably divorces, paternity establishments, third party custody cases, and disputes
712 regarding legal custody and physical placement. Peacemaking has helped but many of these
713 contested issues end up in hearings.

- 714 **b. Implementation.** The LOC may want to consider pursuing the addition of a second OFC judge
715 and clerk as soon as this Law is adopted and well prior to the Law's implementation date. This
716 will allow the required preparations to be completed prior to the Law becoming effective. One of
717 the more time consuming tasks associated with this Law will be the recruiting and training of
718 GALs. As the GAL work pursuant to this Law will differ from the work done on the other
719 Family Court matters, a training curriculum will have to be developed and time will have to be set
720 aside to do several multiple day training sessions. Currently, GALs focus on issues such as
721 allocating legal custody and recommending a physical placement schedule. As this Law deals
722 with different issues including abuse, neglect, termination of parental rights, etc., the GALs will
723 have to be trained to appropriately address the complexity of the cases and seriousness of the
724 issues. Additionally, court documents will need to be created such as the Uniform Child Custody
725 Jurisdiction and Enforcement Act affidavit and a temporary physical custody form [*See Child*
726 *Welfare, 7 O.C. 708.32-3*]. A process for collecting GAL fees may also need to be developed as
727 currently the OFC is not collecting GAL fees due to the workload and lack of process to collect
728 the fees for those not subject to per capita attachment and wage garnishment.

729 **B.** The following infrastructure is needed to implement this Law:

- 730 **1. 161 Agreements.** The Nation will need to enter into 161 agreements with both Brown and
731 Outagamie Counties. 161 agreements clarify relationships between tribes and the county in
732 providing health, safety and welfare to Indian children. The purpose of these agreements is to
733 provide and improve systems for services, referral, and mutual assistance between the tribes and
734 the counties. The Wisconsin Department of Health and Family Services will facilitate negotiation
735 process between the tribes and the counties if requested. The Nation has a meeting scheduled
736 with the State to discuss the contexts of the 161 agreements. It may be necessary to meet with

737 Brown and Outagamie County to discuss entering into a 161 agreement in order to implement this
738 Law.

739 C. The following are policy considerations the LOC may want to address:

740 1. **GALs.** The Nation has a number of laws which address GALs [*See Child Welfare, 7 O.C. 708.8,*
741 *Oneida Family Court Rules, 8 O.C. 807, Rule 14, Rules of Civil Procedure, 8 O.C. 803.37 and*
742 *Child Custody, Placement, and Visitation 7 O.C. 705.8*]. In addition, the Oneida Tribal Judiciary
743 Canons of Judicial Conduct states that GALs have judicial immunity—immunity from civil
744 liability [*See Oneida Tribal Judiciary Canons of Judicial Conduct, 8 O.C. 802, Limited Judicial*
745 *Immunity*]. Because multiple laws address GALs, the LOC may want to consider removing the
746 GAL sections from these laws and creating a separate Guardian ad Litem law for the purposes of
747 avoiding duplications and providing a more convenient way to locate, among other things, the
748 roles, responsibilities, appointments and trainings required for GALs. If the LOC does not wish
749 to develop a separate GAL law, they may want to consider revising this section to refer the reader
750 to the Rules of Civil Procedure and any other laws, rules or policies governing the conduct of
751 GALs.

752 2. **Permanency Plan Review.** This Law requires the OFC to hold a hearing to review the
753 permanency plan no later than six months after the date the child was placed outside the home
754 and every six months thereafter for as long as the child is placed outside the home and is need of
755 protection or services [*See Child Welfare, 7 O.C. 708.21-3*]. A Department of Children &
756 Families (DCF) memorandum dated June 4, 2008 regarding 161 Agreements requires that all
757 agreements include provisions related to permanency planning. The memo states that “It shall be
758 agreed that for each case to be funded, an administrative review or judicial hearing will be held in
759 accordance with State and Federal law or regulation as codified in s. 48.38 (5) and (5m), Wis.
760 Stats. [*See DCF memorandum, 06/04/2008, Guidelines for Implementation of Act 161*
761 *Agreements (Out-of-Home Placements of Indian Children by Tribal Courts), III, (I)*]. Wisconsin
762 law allows for either the court or a review panel, appointed by the Court, comprised of three
763 individuals that are not employed by the [Department] and who are not responsible for providing
764 services to the child or family [*See Wis. Stats. 48.38 (5)*]. This Law requires the Court to conduct
765 the permanency plan reviews; however an alternative is to have a three-person panel conduct
766 these six month reviews. The LOC may want to determine if the OFC or a panel conduct these
767 reviews and if it is decided to have a panel, provide direction on who could serve on this panel.

768 3. **Guardianship Law.** Other tribal laws require their child welfare departments to transfer a child
769 to the appropriate jurisdiction if the child is believed to be incompetent and is under the custody
770 of the department. The transfer must be done before the child reaches the age of 18 for the
771 purposes of adult guardianship. The intent of this provision is to ensure an incompetent adult is
772 not released from placement when he/she reaches adulthood. If the LOC would like to add a
773 similar provision in the Law, then the LOC may want to consider developing a guardianship law
774 as the Nation does not have a law that addresses guardianship over a person or estate.

775 4. **Current ICWA Cases.** The LOC will want to decide if the Nation will transfer current child
776 welfare cases that are active in Brown and Outagamie Counties or wait for those cases to remain
777 in the counties and begin new cases at the OFC.

778 D. Recommendations, alternatives and other information the LOC may want to consider?

779 1. **Customary Adoptions.** According the DCF, customary adoptions are legal adoptions and
780 placement could be eligible for adoption assistance if the child and family meet the eligibility
781 criteria. Being a Native American child automatically qualifies a child as eligible for the Special
782 Needs Adoption Program. Please see the Adoption Assistance Forms Checklist/Routing
783 Instructions Tribal or Customary Adoption form for eligibility requirements.

784 2. **Adopting Resolution.** The LOC may want to consider identifying an effective date of the Law at
785 least a year from the date of adoption. Many issues will need to be addressed prior to
786 implementing this Law: 161 agreements, GAL recruitment and training, legal document
787 development, staff trainings, foster home recruitment, etc. In work meetings with various affect

788 entities, there was a mutual understanding that the departments will need at least a year to prepare
789 and create the necessary infrastructure needed for successful implementation of this Law.

790 **3. Ho Chunk Nation.** As of March 24, 2017, Ho Chunk Nation had 66 open child protection cases
791 (both CHIPS and consent decrees/66 children) that are under the jurisdiction of the tribe. They also
792 have three informal agreements. This number does not include current open ICW cases that are in the
793 counties. However, Ho Chunk Nation has been transferring more cases to their tribal court as have
794 many other tribes and counties because of the high number of cases related to the current
795 heroin/methamphetamine epidemic. Ho Chunk is modifying their Children and Family Act to make
796 timelines more apparent and to include safety standards. In addition, Ho Chunk has a Prevention
797 Program -funded by IV-B funding - that focuses on assisting the family to preserve the family unit.

798 **4. Stockbridge Munsee.** Stockbridge Munsee has approximately 35 tribal cases/35 children. On
799 occasion Stockbridge Munsee will share a case with the county that involves enrolled children but at
800 this time there are no shared cases. According to their Indian Child Welfare Manager, Stockbridge
801 Munsee does not use the temporary physical custody (TPC) state form and has had difficulty placing
802 children into custody. When placing a child into shelter care for tribal children, the facility requires
803 the TPC state form; to prevent this from happening at Oneida, a TPC form may need to be created.
804 Stockbridge has a 161 agreement with Shawano County; however, in many cases there are
805 disagreements with the information and the decision on how the county case is screened in or out.
806 Stockbridge screens in 100% of their tribal cases and does the investigations. When there is a safety
807 or child protection services issue with a family, the child welfare manager will ask the county to be
808 involved, especially if foster care is involved in that the county pays for that service. It should be
809 noted that Stockbridge Munsee's child welfare department consists of one employee who is both the
810 ICW worker and director.

811 **5. Lac du Flambeau.** Lac du Flambeau has 112 child involved in current child welfare cases, of
812 those 38 are ICWA cases.

813 **6. Red Cliff.** Red Cliff has 35 children in child welfare cases.

814

815 *Please refer to financial impact statement for the fiscal impact of this Law.*

816

817

Title 7. Children, Elders and Family - Chapter 708
CHILD WELFARE

708.1.	Purpose and Policy	708.23.	Revision of Dispositional Orders
708.2.	Adoption, Amendment, Repeal	708.24.	Extension of Dispositional Orders
708.3.	Definitions	708.25.	Continuation of Dispositional Orders
708.4.	Scope	708.26.	Guardianship for Certain Children in Need of Protection or Services
708.5.	Jurisdiction	708.27.	Revisions of Guardianship Order
708.6.	Nation's Child Welfare Attorney	708.28.	Termination of Guardianship
708.7.	Indian Child Welfare Department Duties and Responsibilities	708.29.	Termination of Parental Rights
708.8.	Guardian ad litem	708.30.	Voluntary Termination of Parental Rights
708.9.	Advocate	708.31.	Grounds for Involuntary Termination of Parental Rights
708.10.	Order of Placement Preferences	708.32.	Petition for Termination of Parental Rights
708.11.	Notice of Petition	708.33.	Initial Hearing on the Termination of Parental Rights Petition
708.12.	Hearings (General)	708.34.	Fact Finding Hearing for a Termination of Parental Rights
708.13.	Discovery and Records	708.35.	Department's Termination of Parental Rights Report
708.14.	Taking a Child into Custody	708.36.	Standards and Factors
708.15.	Emergency Custody Hearing	708.37.	Dispositional Hearings for Termination of Parental Rights
708.16.	Petition for a Child in Need of Protection or Services	708.38.	Adoption
708.17.	Plea Hearing for a Child in Need of Protection or Services	708.39.	Adoption Criteria and Eligibility
708.18.	Fact-finding Hearing for a Child in Need of Protection or Services	708.40.	Adoption Procedure
708.19.	Department's Disposition Report for a Child in Need of Protection or Services	708.41.	Non-Compliance with a Residual Rights Agreement
708.20.	Dispositional Hearing for a Child in Need of Protection or Services	708.42.	Peacemaking and Mediation
708.21.	Permanency Plans	708.43.	Appeals
708.22.	Change in Placement	708.44.	Liability

1

2 **708.1. Purpose and Policy**

3 708.1-1. *Purpose.* The purpose of this law is to provide for the welfare, care, and protection of
4 Oneida children through the preservation of the family unit, while recognizing that in some
5 circumstances it may be in the child's best interest to not be reunited with his or her family.
6 Furthermore, this law strengthens family life by assisting parents in fulfilling their
7 responsibilities as well as facilitating the return of Oneida children to the jurisdiction of the
8 Nation and acknowledging the customs and traditions of the Nation when raising an Oneida
9 child.

10 708.1-2. *Policy.* It is the policy of the Nation to ensure there is a standard process for
11 conducting judicial proceedings and other procedures in which children and all other interested
12 parties are provided fair hearings in addition to ensuring their legal rights are recognized and
13 enforced, while protecting the public safety.

14

15 **708.2. Adoption, Amendment, Repeal**

16 708.2-1. This law was adopted by the Oneida Business Committee by resolution BC-__-__-__-
17 __.

18 708.2-2. This law may be amended or repealed by the Oneida Business Committee and/or
19 Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures
20 Act.

21 708.2-3. Should a provision of this law or the application thereof to any person or circumstances
22 be held as invalid, such invalidity shall not affect other provisions of this law which are
23 considered to have legal force without the invalid portions.

24 708.2-4. In the event of a conflict between a provision of this law and a provision of another law
25 or law, the provisions of this law shall control. Provided that, this law repeals the following:

- 26 (a) Resolution # BC-09-25-81 *Oneida Child Protective Board Ordinance*;
27 (b) Resolution # BC-10-07-81-A *Appointing Members to the Oneida Child Protective*
28 *Board*;
29 (c) Resolution # BC-05-24-84-C *Definition of Extended Family Member*;
30 (d) Resolution # BC-01-14-15-A *Amendment of Oneida Child Protective Board*
31 *Ordinance*; and
32 (e) Resolution # BC-05-13-15 *Indian Child Welfare Act Policy*.

33 708.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.
34

35 **708.3. Definitions**

36 708.3-1. This section shall govern the definitions of words and phrases used within this law. All
37 words not defined herein shall be used in their ordinary and everyday sense.

- 38 (a) "Abuse" means any of the following:
39 (1) Physical injury inflicted on a child by other than accidental means;
40 (2) Sexual assault;
41 (3) Sexual exploitation of a child;
42 (4) Prostitution or trafficking of a child;
43 (5) Causing a child to view or listen to sexual activity or sexually explicit
44 materials;
45 (6) Exposing a child to the manufacture, sale, or use of controlled substances;
46 and/or
47 (7) Emotional damage for which the child's parent, guardian, or legal custodian
48 has neglected, refused, or been unable for reasons other than poverty to obtain the
49 necessary treatment or take steps to address the issue.
50 (b) "Advocate" means a person who is a non-attorney presented to the Court as the
51 representative or advisor to a party.
52 (c) "Alcohol and other drug abuse impairment" means a condition of a person which is
53 exhibited by characteristics of habitual lack of self-control in the use of alcoholic
54 beverages or controlled substances to the extent that the person's health is substantially
55 affected or endangered or the person's social or economic functioning is substantially
56 disrupted.
57 (d) "Attorney" means a person trained and licensed to represent another person in Court,
58 to prepare documents and to give advice or counsel on matters of law.
59 (e) "Best interest of the child" means the interest of a child to:
60 (1) Have a full, meaningful, and loving relationship with both parents and family
61 as much as possible;
62 (2) Be free from physical, sexual and emotional abuse;
63 (3) Be raised in conditions that foster and encourage the happiness, security,
64 safety, welfare, physical and mental health, and emotional development of the
65 child;
66 (4) Receive appropriate medical care;
67 (5) Receive appropriate education;
68 (6) Be raised in conditions which maximize the chances of the child becoming a
69 contributing member of society; and

- 70 (7) Be raised in an environment that is respectful of the child's race(s), culture(s),
71 and heritage(s).
- 72 (f) "Child" means a person who is less than eighteen (18) years of age.
- 73 (g) "Clear and convincing evidence" means that a particular fact is substantially more
74 likely than not to be true.
- 75 (h) "Counsel" means an attorney or advocate presented to the Court as the representative
76 or advisor to a party.
- 77 (i) "Court" means the Oneida Nation Family Court, which is the branch of the Judiciary
78 that has the designated responsibility to oversee family matters.
- 79 (j) "Court of competent jurisdiction" means a state or tribal court that has jurisdiction
80 and authority to do a certain act or hear a certain dispute.
- 81 (k) "Department" means the Oneida Nation Indian Child Welfare Department.
- 82 (l) "Disposition" means the Court's final ruling or decision on a case or legal issue.
- 83 (m) "Dispositional hearing" means a hearing for the Court to make its final
84 determination of a case or issue.
- 85 (n) "Emotional damage" means harm to a child's psychological or intellectual
86 functioning evidenced by one (1) or more of the following characteristics exhibited to a
87 severe degree:
- 88 (1) anxiety;
- 89 (2) depression;
- 90 (3) withdrawal;
- 91 (4) outward aggressive behavior; and/or
- 92 (5) a substantial and observable change in behavior, emotional response, or
93 cognition that is not within the normal range for the child's age and stage of
94 development.
- 95 (o) "Expert" means a person with special training, experience, or expertise in a field
96 beyond the knowledge of an ordinary person.
- 97 (p) "Extended family" means a person who has reached the age of eighteen (18) and who
98 is the child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece,
99 nephew, first, second, third or fourth cousin, or stepparent.
- 100 (q) "Fact-finding hearing" means a hearing for the Court to determine if the allegations in
101 a petition under this law are proved by clear and convincing evidence.
- 102 (r) "Fictive kin" means any person or persons who, to the biological parents of the child
103 at issue, have an emotional tie to that parent wherein they are like family.
- 104 (s) "Foster home" means any home which is licensed by Department and/or applicable
105 licensing agency and maintained by any individual(s) suitable for placement of children
106 when taken into custody or pending court matters.
- 107 (t) "Good cause" means adequate or substantial grounds or reason to take a certain
108 action, or to fail to take an action.
- 109 (u) "Group home" means any facility operated by a person required to be licensed by the
110 Department and/or applicable licensing agency for the care and maintenance of five (5) to
111 eight (8) children.
- 112 (v) "Guardian" means any person, agency or department appointed by the Court to care
113 for and manage the child in a particular case before the Court. A guardian has the right to
114 make major decisions affecting a child including education, religious and cultural

- 115 upbringing, the right to consent to marriage, to enlistment in the armed forces, to major
116 surgery and medical treatment and to adoption, or make recommendations as to adoption.
117 (w) "Guardian ad litem" means a person appointed by the Court to appear at any
118 peacemaking, mediation, or hearing and tasked with representing the best interest of the
119 person appointed for.
- 120 (x) "Holiday" means any holiday recognized by the Nation as identified in the Nation's
121 laws, rules and policies governing employment.
- 122 (y) "ICWA" means the Indian Child Welfare Act, a federal law that governs jurisdiction
123 over the removal of Native American children from their families.
- 124 (z) "Indian Child Welfare Worker" means a person employed by the Nation in the Indian
125 Child Welfare Department tasked with the responsibility to carry out the duties,
126 objectives and provisions of this law.
- 127 (aa) "Legal custodian" means any person other than a parent or guardian to whom
128 legal custody of a child has been granted by court order and has the rights and
129 responsibilities for the following:
- 130 (1) To have physical custody of the child as determined by the Court, if physical
131 custody is not with the person having legal custody;
 - 132 (2) To protect, educate and discipline the child so long as it is in the child's best
133 interest; and
 - 134 (3) To provide the child with adequate food, shelter, education, ordinary medical
135 care and other basic needs, according to court order. In an emergency situation, a
136 custodian shall have the authority to consent to surgery as well as any other
137 emergency medical care needs.
- 138 (bb) "Mediation" means a method of dispute resolution that involves a neutral third
139 party who tries to help disputing parties reach an agreement.
- 140 (cc) "Nation" means the Oneida Nation.
- 141 (dd) "Neglect" means failure, refusal, or inability on the part of a caregiver, for reasons
142 other than poverty, to provide necessary care, food, clothing, medical or dental care, or
143 shelter so as to seriously endanger the physical health of the child.
- 144 (ee) "Parent" means the biological or adoptive parent of a child.
- 145 (ff) "Peacemaking" means a method of dispute resolution that is based on traditional
146 methods of resolving disputes and addresses the needs of rebuilding relationships
147 between people.
- 148 (gg) "Permanency Plan" means a plan designed to ensure that a child is reunified with
149 his or her family whenever appropriate, or that the child quickly attains a placement or
150 home providing long-term stability.
- 151 (hh) "Physical injury" includes, but is not limited to, any of the following:
- 152 (1) lacerations;
 - 153 (2) fractured bones;
 - 154 (3) burns;
 - 155 (4) internal injuries;
 - 156 (5) severe or frequent bruising;
 - 157 (6) bodily injury which creates a substantial risk of death;
 - 158 (7) bodily injury which causes serious permanent disfigurement;
 - 159 (8) bodily injury which causes a permanent or protracted loss or impairment of
160 the function of any bodily member or organ; or

- 161 (9) any other serious bodily injury.
162 (ii) "Plea hearing" means a hearing to determine whether any party wishes to contest a
163 petition filed under this law.
164 (jj) "Probable cause" means there are sufficient facts and circumstances that would lead
165 a reasonable person to believe that something is true.
166 (kk) "Reasonable effort" means an earnest and conscientious effort to take good faith
167 steps to provide the services ordered by the Court which takes into consideration the
168 characteristics of the parent or child, the level of cooperation of the parent and other
169 relevant circumstances of the case.
170 (ll) "Relative" means any person connected with a child by blood, marriage or adoption.
171 (mm) "Reservation" means all the land within the exterior boundaries of the
172 Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the
173 Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.
174 (nn) "Shelter care facility" means a non-secure place of temporary care and physical
175 custody for children, licensed by the Department and/or applicable licensing agency.
176 (oo) "Social history" means the social, economic, cultural and familial aspects of a person
177 and how those aspects affect the person's functioning and situation in life.
178 (pp) "Special treatment or care" means professional services which need to be provided
179 to a child or family to protect the well-being of the child, prevent out-of-home placement,
180 or meet the needs of the child.
181 (qq) "Stepparent" means the spouse or ex-spouse of a child's parent who is not a
182 biological parent of the child.
183 (rr) "Stipulation" means an agreement to do something.
184 (ss) "Substantial parental relationship" means the acceptance and exercise of significant
185 responsibility for the daily supervision, education, protection and care of a child.
186 (tt) "Termination of parental rights" means that, pursuant to a court order, all rights,
187 powers, privileges, immunities, duties and obligations existing between parent and child
188 are permanently severed.
189 (uu) "Treatment plan" means a plan or set of conditions ordered by the Court identifying
190 concerns and behaviors of a parent, guardian or legal custodian that resulted in a child to
191 be in need of protection or services, and the treatment services, goals and objectives to
192 address and remedy the concerns and behaviors of the parent, guardian or legal custodian.
193 (vv) "Warrant" means an order issued by a court commanding a law enforcement officer
194 to perform some act incident to the administration of justice.
195 (ww) "WICWA" means the Wisconsin Indian Child Welfare Act, a codification of
196 ICWA into state law.

197
198 **708.4. Scope**

199 708.4-1. This law shall apply to all child welfare cases and legal proceedings in which the
200 Nation has jurisdiction. Nothing in this law is meant to restrict or limit another court of
201 competent jurisdiction from hearing a matter involving an Indian child.

202 708.4-3. The Nation shall intervene in all ICWA/WICWA cases involving a child that is
203 enrolled or eligible for enrollment unless such intervention would be impracticable under the
204 circumstances of the case as determined by the Department.

205

206 **708.5. Jurisdiction**

207 708.5-1. *Personal Jurisdiction.* The Court shall have personal jurisdiction over the following
208 individuals:

209 (a) *Jurisdiction over an Oneida Child.* The Court shall have personal jurisdiction over
210 any child who is present or resides within the boundaries of Brown and Outagamie
211 County and is enrolled or eligible for enrollment in the Nation.

212 (b) *Jurisdiction over a Non-Oneida Child.* The Court shall have personal jurisdiction
213 over any child not enrolled or eligible for enrollment in the Nation who is present or
214 resides within the boundaries of the Reservation and is a sibling of a child that is enrolled
215 or eligible for enrollment in the Nation if the child's parent(s), guardian or legal
216 custodian consents to the jurisdiction of the Court. Consent to the jurisdiction of the
217 Court can be given by any of the following:

218 (1) The parent(s), guardian or legal custodian knowingly and voluntarily provides
219 the Court with written consent to the jurisdiction of the Court; or

220 (2) The Court establishes on the record that the parent(s), guardian or legal
221 custodian knowingly and voluntarily provides the Court with verbal consent to the
222 jurisdiction of the Court.

223 708.5-2. *Jurisdiction over Children Alleged to be in Need of Protection or Services.* The Court
224 shall have jurisdiction over a child alleged to be in need of protection or services if personal
225 jurisdiction has been established and the child:

226 (a) is without a parent or guardian;

227 (b) has been abandoned;

228 (c) has a parent that relinquished custody of the child pursuant to the Nation's laws or
229 state law and has no other parent available to provide necessary care;

230 (d) has been the victim of abuse, including injury that is self-inflicted or inflicted by
231 another;

232 (e) is at substantial risk of becoming the victim of abuse, including injury that is self-
233 inflicted or inflicted by another, based on reliable and credible information that another
234 child in the home has been the victim of such abuse;

235 (f) has a parent or guardian who signs the petition requesting jurisdiction under this
236 subsection and is unable or needs assistance to care for or provide necessary special
237 treatment or care for the child, and the child has no other parent available to provide
238 necessary care;

239 (g) has a guardian who is unable or needs assistance to care for or provide necessary
240 special treatment or care for the child, but is unwilling or unable to sign the petition
241 requesting jurisdiction under this subsection;

242 (h) has been placed for care or adoption in violation of the Nation's laws or state law;

243 (i) is receiving inadequate care during the period of time a parent is missing,
244 incarcerated, hospitalized or institutionalized;

245 (j) is at least twelve (12) years of age, signs the petition requesting jurisdiction under this
246 subsection and is in need of special treatment or care which the parent, guardian or legal
247 custodian is unwilling, neglecting, unable or needs assistance to provide;

248 (k) has a parent, guardian or legal custodian neglects, refuses or is unable for reasons
249 other than poverty to provide necessary care, food, clothing, medical or dental care or
250 shelter so as to seriously endanger the physical health of the child;

- 251 (l) has a parent, guardian or legal custodian is at substantial risk of neglecting, refusing
252 or being unable for reasons other than poverty to provide necessary care, food, clothing,
253 medical or dental care or shelter so as to endanger seriously the physical health of the
254 child, based on reliable and credible information that the child's parent, guardian or legal
255 custodian has neglected, refused or been unable for reasons other than poverty to provide
256 necessary care, food, clothing, medical or dental care or shelter so as to endanger
257 seriously the physical health of another child in the home;
258 (m) is suffering emotional damage for which the parent, guardian or legal custodian has
259 neglected, refused or been unable and is neglecting, refusing or unable, for reasons other
260 than poverty, to obtain necessary treatment or to take necessary steps to improve the
261 symptoms;
262 (n) is suffering from an alcohol and other drug abuse impairment, exhibited to a severe
263 degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable
264 to provide treatment; or
265 (o) is non-compliant with the Nation's or State's immunization laws.

266 708.5-3. *Jurisdiction over other Matters Relating to Children.* If personal jurisdiction over the
267 child has been established the Court may:

- 268 (a) terminate parental rights to a child;
269 (b) appoint, revise, and/or remove a guardian; and
270 (c) hold adoption proceedings.

271 708.5-4. *Transfer of Cases from other Courts.* If personal jurisdiction has been established the
272 Court has jurisdiction over any action transferred to the Court from any court of competent
273 jurisdiction.

- 274 (a) While a case is being transferred to the Court from another court, any time limits
275 established by this law shall be tolled until the next hearing on the matter before the
276 Court.

277 708.5-5. *Transfer of Cases to other Courts.* The Court may transfer a case under this law to a
278 court of competent jurisdiction where the other court has a significant interest in the child and the
279 transfer would be in the best interest of the child.

280

281 **708.6. Nation's Child Welfare Attorney**

282 708.6-1. A Child Welfare attorney shall represent the Nation in all proceedings under this law.
283 The Child Welfare attorney shall be one of the following:

- 284 (a) An attorney from the Oneida Law Office;
285 (b) An attorney contracted by the Oneida Law Office; or
286 (c) An attorney contracted by the Department.

287

288 **708.7. Indian Child Welfare Department Duties and Responsibilities**

289 708.7-1. *Indian Child Welfare Worker.* The Indian Child Welfare Worker shall carry out the
290 duties and responsibilities set forth in this law which include, but are not limited to the
291 following:

- 292 (a) Receive, examine, and investigate complaints and allegations that a child is in need of
293 protection or services for the purpose of determining the appropriate response under this
294 law, which may include notifying law enforcement;
295 (b) Receive referral information, conduct intake inquiries, and determine whether to
296 initiate child welfare proceedings;

- 297 (c) Determine whether a child should be held pursuant to the emergency provisions of
298 this law;
- 299 (d) Make appropriate referrals of cases to other agencies when appropriate, and share
300 information with other agencies if their assistance appears to be needed or desirable;
- 301 (e) Maintain records;
- 302 (f) Enter into informal dispositions with families;
- 303 (g) Refer counseling or any other functions or services to the child and/or family as
304 designated by the Court;
- 305 (h) Identify and develop resources within the community that may be utilized by the
306 Department and Court;
- 307 (i) Make reasonable efforts to obtain necessary services for the child and family and
308 investigate and develop resources for the child and family to utilize;
- 309 (j) Accept legal custody of children when ordered by the Court;
- 310 (k) Make reports and recommendations to the Court;
- 311 (l) Make recommendations to the Nation's Child Welfare attorney;
- 312 (m) Request transfer from state court to the Nation's court when appropriate;
- 313 (n) Perform any other functions ordered by the Court within the limitations of the law;
- 314 (o) Develop appropriate plans and conduct reviews;
- 315 (p) Negotiate agreements for services, record sharing, referral, and funding for child
316 family service records within the Department;
- 317 (q) Provide measures and procedures for preserving the confidential nature of child and
318 family service records within the Department;
- 319 (r) Participate in continuing training, conferences and workshops pertinent to child
320 welfare issues; and
- 321 (s) Maintain a knowledge and understanding of all relevant laws and regulations.

322 708.7-2. *Department.* In performing the duties set forth in this law, the Department shall:

- 323 (a) Identify and refer parties to resources in the community calculated to resolve the
324 problems presented in petitions filed in Court, such as the various psychiatric,
325 psychological therapeutic, counseling and other social services available within and
326 outside the Nation when necessary;
- 327 (b) Identify and refer parties to resources in the community designed to enhance the
328 child's potential as a member of the Nation;
- 329 (c) Investigate, inspect, and license foster homes, and monitor and supervise foster
330 homes and children in foster care;
- 331 (d) Adhere to the placement preference order stated in section 708.10; and
- 332 (e) Enter into a memorandum of understanding with the appropriate departments in order
333 to carry out the provisions of this law;
- 334 (f) Share information with other social service and law enforcement agencies; and other
335 entities of the Nation as it pertains to children under the jurisdiction of this law.
- 336

337 **708.8. Guardian ad litem**

338 708.8-1. *Appointment.* The appointment of a guardian ad litem shall be as follows:

- 339 (a) The Court may appoint a guardian ad litem for any child who is the subject of a child
340 in need of protection or services proceeding;
- 341 (b) The Court shall appoint a guardian ad litem for any child who is the subject of a
342 proceeding to terminate parental rights, whether voluntary or involuntary, for a child who

343 is the subject of a contested adoption proceeding, and for a child who is the subject of a
344 contested guardianship proceeding;

345 (c) The Court shall appoint a guardian ad litem for a minor parent petitioning for the
346 voluntary termination of their parental rights; and

347 (d) A guardian ad litem may be appointed for any other circumstance the Court deems
348 necessary.

349 708.8-2. *Qualifications.*

350 (a) A guardian ad litem shall be an adult who:

351 (1) is at least twenty one (21) years of age;

352 (2) is currently certified as a guardian ad litem and in good standing;

353 (2) has never been convicted of a felony unless the person received a pardon or
354 forgiveness; and

355 (3) has never been convicted of any crime against a child.

356 (b) No person shall be appointed guardian ad litem in that proceeding who is:

357 (1) an interested party;

358 (2) appearing as counsel in the proceeding on behalf of any party; or

359 (3) related to an interested party, an actual party, the Judge for the proceeding, or
360 an appointing Judge by blood, marriage, adoption or related by a social tie that
361 could be reasonable interpreted as a conflict of interest.

362 (c) A guardian ad litem may be recognized as certified by the Court if he or she:

363 (1) has completed guardian ad litem training provided by the Court, another
364 Indian tribe, or a state; or

365 (2) is recognized as a certified guardian ad litem by another jurisdiction.

366 708.8-3. *Responsibilities.* The guardian ad litem has none of the rights or duties of a general
367 guardian. The guardian ad litem shall:

368 (a) investigate and review all relevant information, records and documents, as well as
369 interview the child, parent(s), social workers, teachers and all other relevant persons to
370 gather facts when appropriate;

371 (b) consider the importance of the child's culture, heritage and traditions;

372 (c) consider, but shall not be bound by, the wishes of the child or the positions of others
373 as to the best interests of the child;

374 (d) explain the role of the guardian ad litem and the court proceedings to the child in
375 language and terms appropriate to the child's age and maturity level;

376 (e) provide a written or oral report to the Court regarding the best interests of the child,
377 including conclusions and recommendations and the facts upon which they are based;

378
379 (f) recommend evaluations, assessments, services and treatment of the child and the
380 child's family when appropriate;

381 (g) inform the court of any concerns or possible issues regard the child or the child's
382 family;

383 (h) represent the best interests of the child;

384 (i) perform other duties as directed by the Court; and

385 (j) comply with all laws, policies and rules of the Nation governing the conduct of a
386 guardian ad litem.

387 708.8-4. *Compensation.* The guardian ad litem shall be compensated at a rate that the Court
388 determines is reasonable. The Court shall compensate the guardian ad litem for his or her fees.

389 The parties shall reimburse the Court for the guardian ad litem fees. The Court may apportion
390 the amount of reimbursement each party shall pay based on the ability to pay or assess the cost
391 equally between the parties. The Court may determine an appropriate time frame for the
392 reimbursement to occur. The Court may waive the guardian ad litem expense if the cost of the
393 guardian ad litem will impose an immediate and substantial hardship on the parties.
394

395 **708.9. Advocate**

396 708.9-1. The parent, guardian and legal custodian of a child has the right to obtain an advocate to
397 represent and advise him or her throughout any proceeding under this law at his or her own
398 expense.

399 708.9-2. *Qualifications.*

400 (a) An advocate shall be an adult who:

401 (1) is at least twenty one (21) years of age;

402 (2) is admitted to practice before the Oneida Judiciary;

403 (2) has never been convicted of a felony unless the person received a pardon or
404 forgiveness; and

405 (3) has never been convicted of any crime against a child.

406 708.9-3. An advocate shall comply with all laws, rules and policies of the Nation governing
407 advocates.
408

409 **708.10. Order of Placement Preferences**

410 708.10-1. The following order of placement preferences shall be followed when it is necessary to
411 place a child outside of the home under this law:

412 (a) A member of the child's immediate or extended family;

413 (b) A family clan member;

414 (c) A member of the Nation;

415 (d) Descendants of the Nation;

416 (e) A member of another federally recognized tribe;

417 (f) Fictive kin within the Nation community;

418 (g) Fictive kin outside the Nation community; or

419 (h) Any other person or persons not listed above.

420 708.10-2. The order of placement preferences listed in section 708.10-1. are prioritized from the
421 most preference given to a child placed in a home in accordance with section 708.10-1(a) and the
422 least amount of preference given to a child placed in a home in accordance with section 708.10-
423 1(h).

424 708.10-3. In order to deviate from the placement preferences listed in section 708.10-1, the Court
425 shall consider the best interest of the child when determining whether there is good cause to go
426 outside the placement preference.

427 (a) Good cause to go outside the placement preferences shall be determined based on any
428 of the following:

429 (1) When appropriate, the request from the child's parent or the child, when the
430 child is age twelve (12) or older;

431 (2) Any extraordinary physical, mental or emotional health needs of the child
432 requiring highly specialized treatment services as established by an expert; or

433 (3) The unavailability of a suitable placement after diligent efforts have been
434 made to place the child in the placement preference listed in section 708.10-1.

435 (b) The party requesting to deviate from the placement preferences listed in 708.10-1 has
436 the burden of establishing good cause.

437

438 **708.11. Notice of Petition**

439 708.11-1. Petitions alleging that a child is in need of protection or services may be given to the
440 parties directly by the Nation's Child Welfare attorney or the Indian Child Welfare Worker or
441 served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

442 708.11-2. Petitions for termination of parental rights, guardianship, and adoption shall be served
443 on all other parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

444 708.11-3. All parties shall be notified of all subsequent hearings under this law by first-class
445 mail to the recently verified last-known address of the party with the purpose of providing the
446 parties an opportunity to be heard.

447

448 **708.12. Hearings (General)**

449 708.12-1. If the Court finds that it is in the best interest of the child, the Court may exclude the
450 child from participating in a hearing conducted in accordance with this law.

451 708.12-2. The Oneida Judiciary Rules of Evidence are not binding at emergency custody
452 hearings, dispositional hearings, or a hearing about changes in placement, revision of
453 dispositional orders, extension of dispositional orders, or termination of guardianship orders. At
454 those hearings, the Court shall admit all testimony having reasonable probative value, but shall
455 exclude immaterial, irrelevant, or unduly repetitious testimony. Hearsay evidence may be
456 admitted if it has demonstrable circumstantial guarantees of trustworthiness. The Court shall
457 give effect to the rules of privilege recognized by laws of the Nation. The Court shall apply the
458 basic principles of relevancy, materiality, and probative value to proof of all questions of fact.

459 708.12-3. If an alleged father appears at a hearing under this law, the Court may refer the matter
460 to the Oneida Nation Child Support Agency to adjudicate paternity. While paternity is being
461 established, the Court shall enter an order finding good cause to suspend the time limits
462 established under this law.

463

464 **708.13. Discovery and Records**

465 708.13-1. Upon written request, the parties and their counsel shall have the right to inspect, copy
466 or photograph social, psychiatric, psychological, medical, and school reports, and records
467 concerning the child including reports of preliminary inquiries, predisposition studies and
468 supervision records relating to the child which are in the possession of the Nation's Child
469 Welfare attorney or the Department that pertain to any case under this law.

470 708.13-2. If a request for discovery is refused, the person may submit an application to the Court
471 requesting an order granting discovery. Motions for discovery shall certify that a request for
472 discovery has been made and refused.

473 708.13-3. If the discovery violates a privileged communication or a work product rule, the Court
474 may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

475 708.13-4. The identity of the individual that initiated the investigation by contacting the
476 Department, shall be redacted in all documents that are made available to the parties.

477 708.13-5. In addition to the discovery procedures permitted under this law, the discovery
478 procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all
479 proceedings under this law.

- 480
481 **708.14. Taking a Child into Custody**
482 708.14-1. *Grounds for Taking a Child into Custody.* A child may be taken into custody without
483 a Court order by an Indian Child Welfare Worker or law enforcement officer if there are
484 reasonable grounds to believe:
- 485 (a) A warrant for the child's apprehension has been issued by the Court or another court
486 of competent jurisdiction to take the child into custody;
 - 487 (b) The child is suffering from illness or injury or is in immediate danger from his or her
488 surroundings and removal from those surroundings is necessary; and/or
 - 489 (c) The child has violated the conditions of an order issued pursuant to this law.
- 490 708.14-2. The Court may enter an order directing that a child be taken into custody upon a
491 showing satisfactory to the judge that the welfare of the child demands that the child be
492 immediately removed from his or her present custody.
- 493 708.14-3. A person taking the child into custody, under this section, shall immediately attempt
494 to notify the parent(s), guardian(s), and legal custodian(s) of the child by the most practical
495 means. Attempts to satisfy notification shall continue until either the parent(s), guardian(s), and
496 legal custodian(s) of the child is notified, or the child is delivered to an Indian Child Welfare
497 Worker, whichever occurs first. If the child is delivered to the Indian Child Welfare Worker
498 before the parent(s), guardian(s), and legal custodian(s) is notified, the Indian Child Welfare
499 Worker, or another person at his or her direction, shall continue the attempt to notify until the
500 parent(s), guardian(s), and legal custodian(s) of the child is notified.
- 501 708.14-4. Once the child is taken into custody and turned over to the care of the Department, the
502 Department shall make every effort to release the child immediately to the child's parent(s),
503 guardian(s), and legal custodian(s), so long as it is in the child's best interest and the parent(s),
504 guardian(s), and legal custodian(s) is willing to receive the child.
- 505 708.14-5. *Probable Cause for Taking a Child into Custody.* A child may be held in custody if
506 the Indian Child Welfare Worker determines the child is within the jurisdiction of the Court and
507 probable cause exists to believe any of the following if the child is not held in custody:
- 508 (a) The child will cause injury to himself or herself or be subject to injury by others;
 - 509 (b) The child will be subject to injury by others, based on a determination that if another
510 child in the home is not held that child will be subject to injury by others;
 - 511 (c) The parent, guardian or legal custodian of the child or other responsible adult is
512 neglecting, refusing, unable or unavailable to provide adequate supervision and care, and
513 that services to ensure the child's safety and well-being are not available or would be
514 inadequate;
 - 515 (d) The child meets the criteria for probable cause for taking a child into custody
516 specified in section 708.14-5(c), based on a determination that another child in the home
517 meets any of the criteria; or
 - 518 (e) The child will run away or be taken away so as to be unavailable for proceedings of
519 the Court.
- 520 708.14-6. *Holding a Child in Custody.* A child held in custody may be held in any of the
521 following places as long as the places are in the child's best interest and all people residing or
522 regularly visiting the premises have cleared a background check:
- 523 (a) The home of a relative, except that a child may not be held in the home of a relative
524 that has been convicted of the first-degree intentional homicide or the second-degree
525 intentional homicide of a parent of the child, or any crime against a child, and the

526 conviction has not been pardoned, forgiven, reversed, set aside or vacated, unless the
527 person making the custody decision determines by clear and convincing evidence that the
528 placement would be in the best interests of the child. The person making the custody
529 decision shall consider the wishes of the child in making that determination;

530 (b) A foster home;

531 (c) A licensed group home;

532 (d) A non-secure facility operated by a licensed child welfare agency;

533 (e) A licensed private or public shelter care facility; or

534 (f) The home of a person not a relative, if the placement does not exceed thirty (30) days,
535 though the placement may be extended for up to an additional thirty (30) days by the
536 Indian Child Welfare Worker, and if the person has not had a child care license refused,
537 revoked, or suspended within the last two (2) years.

538 708.14-7. When holding a child in custody for emergency placement the use of the preferences
539 for placement stated in section 708.10-1 are preferred, but not mandatory. If the preferences for
540 placement are not followed, the Department shall try to transition that child into a home that fits
541 the order of preferences for placement as quickly as deemed appropriate by the Department.

542 708.14-8. If a child is held in custody, the Indian Child Welfare Worker shall notify the child's
543 parent(s), guardian(s), and legal custodian(s) of the reasons for holding the child and of the
544 child's whereabouts except when the Indian Child Welfare Worker believes that notice would
545 present imminent danger to the child. If the parent, guardian, or legal custodian is not
546 immediately available, the Indian Child Welfare Worker or another person designated by the
547 worker shall provide notice as soon as possible.

548 708.14-9. The Indian Child Welfare Worker shall also notify the parent, guardian, and legal
549 custodian of the following:

550 (a) the date, time and place of the emergency custody hearing;

551 (b) the nature and possible outcomes of the hearing;

552 (c) the right to present and cross-examine witnesses; and

553 (d) the right to retain counsel at his or her own expense.

554 708.14-10. When the child is age twelve (12) or older, the Indian Child Welfare Worker shall
555 notify the child of the date, time, and place and the nature and possible outcomes of the
556 emergency custody hearing.

557

558 **708.15. Emergency Custody Hearing**

559 708.15-1. If a child who has been taken into custody under section 708.14-5 is not released, a
560 hearing to determine whether the child shall continue to be held in custody under the criteria of
561 probable cause for taking a child into custody under section 708.14-5(a)-(e) shall be conducted
562 by Court as soon as possible but no later than seventy-two (72) hours of the time the decision to
563 hold the child was made, excluding Saturdays, Sundays, and holidays. By the time of the
564 hearing, a petition for a child in need of protection or services under section 708.16 shall be filed
565 unless the Department seeks and receives an extension pursuant to section 708.15-2. The child
566 shall be released from custody if a hearing is not held within the specified timelines.

567 708.15-2. If no petition has been filed by the time of the hearing, a child may be held in custody
568 with approval of the Court for an additional seventy-two (72) hours from the time of the hearing,
569 excluding Saturdays, Sundays, and holidays, only if, as a result of the facts brought forth at the
570 hearing, the Court determines that probable cause exists to believe any of the following:

571 (a) That additional time is required to determine whether the filing of a petition initiating
572 proceedings under this law is necessary;

573 (b) That the child is an imminent danger to himself or herself or to others; or

574 (c) The parent, guardian, and legal custodian of the child or other responsible adult is
575 neglecting, refusing, unable, or unavailable to provide adequate supervision and care.

576 708.15-3. The Court may grant a one-time extension under section 708.15-2 for a petition. In
577 the event a petition is not filed within the extension period, the Court shall order the child's
578 immediate release from custody.

579 708.15-4. Prior to the start of the hearing, the Court shall provide a copy of the petition to the
580 parent, guardian, and legal custodian if present, and to the child if he or she is twelve (12) years
581 of age or older.

582 708.15-5. Prior to the start of the hearing, the Court shall inform the parent, guardian, or legal
583 custodian of the following:

584 (a) allegations that have been made or may be made;

585 (b) the nature and possible outcomes of the hearing and possible future hearings;

586 (c) the right to present and cross-examine witnesses; and

587 (d) the right to retain counsel at his or her own expense.

588 708.15-6. If present at the hearing, the Court may permit the parent to provide the names and
589 other identifying information of three (3) relatives of the child or other individuals eighteen (18)
590 years of age or older whose homes the parent wishes the Court to consider as placements for the
591 child. If the parent does not provide this information at the hearing, the Department shall permit
592 the parent to provide the information at a later date.

593 708.15-7. All orders to hold a child in custody shall be in writing and shall include all of the
594 following:

595 (a) A finding that continued placement of the child in his or her home would be contrary
596 to the best interests of the child;

597 (b) A finding that the Department and/or anyone else providing services to the child had
598 reasonable grounds to remove the child from the home based on the child's best interest;

599 (c) A finding that the Department has made reasonable efforts to prevent the removal of
600 the child from the home, while assuring that the child's best interest are the paramount
601 concerns;

602 (d) The Department made reasonable efforts to make it possible for the child to return
603 safely home; and

604 (e) If the child has one (1) or more siblings, who have also been removed from the home,
605 a finding as to whether the Department has made reasonable efforts to place the child in a
606 placement that enables the sibling group to remain together, unless the Court determines
607 that a joint placement would be contrary to the safety or well-being of the child or any of
608 those siblings, in which case the Court shall order the Department make reasonable
609 efforts to provide for frequent visitation or other ongoing interaction between the child
610 and the siblings, unless the Court determines that such visitation or interaction would be
611 contrary to the safety or well-being of the child or any of those siblings.

612 708.15-8. An order to hold a child in custody remains in effect until a dispositional order is
613 granted, the petition is withdrawn or dismissed, or the order is modified or terminated by further
614 order of the Court.

615 708.15-9. An order to hold a child in custody may be re-heard if, in the Court's discretion, good
616 cause is found, whether or not counsel was present.

617

618 **708.16. Petition for a Child in Need of Protection or Services**

619 708.16-1. The Nation's Child Welfare attorney or the Department shall initiate proceedings
620 under this section by filing a petition with the Court, signed by a person who has knowledge of
621 the facts alleged or is informed of them and believes them to be true.

622 708.16-2. The petition shall include the following:

623 (a) The name, birth date, address, and tribal affiliation of the child;

624 (b) The names, birth dates, addresses, and tribal affiliation of the child's parent, guardian,
625 legal custodian or spouse, if any; or if no such person can be identified, the name and
626 address of the nearest relative;

627 (c) Whether the child is in custody, and, if so, the place where the child is being held and
628 the date and time he or she was taken into custody unless there is reasonable cause to
629 believe that such disclosure would result in imminent danger to the child or legal
630 custodian;

631 (d) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit;

632 (e) A plain and concise statement of facts upon which the allegations are based, including
633 the dates, times, and location at which the alleged acts occurred. If the child is being held
634 in custody outside his or her home, the statement shall include information showing that
635 continued placement of the child in the home would be contrary to the welfare of the
636 child and the efforts that were made to prevent the removal of the child, while assuring
637 that the child's health, welfare, and safety are the paramount concerns; and

638 (f) Any other information as deemed necessary by the Court.

639 708.16-3. The petition shall state if any of the facts required for a petition are not known or
640 cannot be ascertained by the petitioner.

641 708.16-4. A petition may be amended at any time at the discretion of the Court.

642

643 **708.17. Plea Hearing for a Child in Need of Protection or Services**

644 708.17-1. A plea hearing shall take place on a date which allows reasonable time for the parties
645 to prepare but is within forty-five (45) days after the filing of a petition, unless the Court enters
646 an order finding good cause to go outside of the time limits.

647 708.17-2. If a petition is not contested, the Court shall set a date for the dispositional hearing
648 which allows reasonable time for the parties to prepare but is within forty-five (45) days after the
649 plea hearing, unless the Court enters an order finding good cause to go outside the time limits. If
650 all the parties agree and the Department has submitted a court report pursuant to section 708.19,
651 the Court may proceed immediately with the dispositional hearing.

652 708.17-3. If the petition is contested, the Court shall set a date for the fact-finding hearing which
653 allows reasonable time for the parties to prepare but is within sixty (60) days after the plea
654 hearing, unless the Court enters an order finding good cause to go outside the time limits.

655 708.17-4. Before accepting an admission or plea of no contest of the alleged facts in a petition,
656 the Court shall:

657 (a) Address the parties present and determine that the plea or admission is made
658 voluntarily with understanding of the nature of the acts alleged in the petition and the
659 potential outcomes;

660 (b) Establish whether any promises or threats were made to elicit the plea or admission;
661 and

662 (c) Make inquiries that establish a factual basis for the plea or admission.

663
664 **708.18. Fact finding Hearing for a Child in Need of Protection or Services**
665 708.18-1. The fact-finding hearing is a hearing conducted by the Court to determine whether
666 there is clear and convincing evidence to establish that the child is in need of protection or
667 services.

668 708.18-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules
669 of Civil Procedure except that the Court may exclude the child from the hearing.

670 708.18-3. At the close of the fact-finding hearing, the Court shall set a date for the dispositional
671 hearing which allows a reasonable time for the parties to prepare but is no more than forty-five
672 (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go
673 outside the time limits. If all the parties agree and the Department has submitted court report
674 pursuant to section 708.19., the Court may proceed immediately with the dispositional hearing.
675

676 **708.19. Department's Disposition Report for a Child in Need of Protection or Services**

677 708.19-1. Before the dispositional hearing, the Department shall submit a written report to the
678 Court, with a copy to the parties at least seven (7) calendar days prior to the hearing, which shall
679 contain all of the following:

- 680 (a) The social history of the child and family;
681 (b) A strategic plan for the care of and assistance to the child and family calculated to
682 resolve the concerns presented in the petition;
683 (c) A detailed explanation showing the necessity for the proposed plan of disposition and
684 the benefits to the child and family under the proposed plan; and
685 (d) If an out-of-home placement is being recommended, specific reasons for
686 recommending that placement.

687 708.19-2. If the Department is recommending out-of-home placement, the written report shall
688 include all of the following:

- 689 (a) The location of the placement and where it fits within the placement preferences.
690 (b) A recommendation as to whether the Court should establish a child support obligation
691 for the parents;
692 (c) Specific information showing that continued placement of the child in his or her
693 home would be contrary to the best interests of the child and specific information
694 showing that the Department has made reasonable efforts to prevent the removal of the
695 child from the home, while assuring that the child's best interests are the paramount
696 concerns;
697 (d) If the child has one (1) or more siblings who have been removed from the home or for
698 whom an out-of-home placement is recommended, specific information showing that
699 Department has made reasonable efforts to place the child in a placement that enables the
700 sibling group to remain together, unless the Department recommends that the child and
701 his or her siblings not be placed together, in which case the report shall include specific
702 information showing that placement of the children together would be contrary to the best
703 interests of the child or any of those siblings; and
704 (e) If a recommendation is made that the child and his or her siblings not be placed
705 together specific information showing that the Department has made reasonable efforts to
706 provide for frequent visitation or other ongoing interaction between the child and the
707 siblings, unless the Department recommends that such visitation or interaction not be
708 provided, in which case the report shall include specific information showing that such

709 visitation or interaction would be contrary to best interests of the child or any of those
710 siblings;

711 708.19-3. The Department may request the Court to withhold identifying information from the
712 child's parent, guardian or legal custodian if there are reasonable grounds to believe that
713 disclosure would result in imminent danger to the child or anyone else.

714

715 **708.20. Dispositional Hearing for a Child in Need of Protection or Services**

716 708.20-1. At a dispositional hearing, any party may present evidence relevant to the issue of
717 disposition, including expert testimony, and may make alternative dispositional
718 recommendations.

719 708.20-2. During a dispositional hearing, if the Department is recommending placement of the
720 child outside of the child's home in accordance with the placement preferences in section
721 708.10-1, the Department shall present as evidence specific information showing all of the
722 following:

723 (a) That continued placement of the child in his or her home would be contrary to the
724 best interests of the child;

725 (b) That the Department has made reasonable efforts to prevent the removal of the child
726 from the home, while assuring that the child's best interests are the paramount concerns;

727 (c) If the child has one (1) or more siblings who have been removed from the home or for
728 whom an out-of-home placement is recommended, that the Department has made
729 reasonable efforts to place the child in a placement that enables the sibling group to
730 remain together, unless the Department recommends that the child and his or her siblings
731 not be placed together, in which case the Department shall present as evidence specific
732 information showing that placement of the children together would be contrary to the best
733 interests of the child or any of those siblings; and

734 (d) If a recommendation is made that the child and his or her siblings not be placed
735 together, that the Department has made reasonable efforts to provide for frequent
736 visitation or other ongoing interaction between the child and the siblings, unless the
737 Department recommends that such visitation or interaction not be provided, in which case
738 the Department shall present as evidence specific information showing that such
739 visitation or interaction would be contrary to the best interests of the child or any of those
740 siblings.

741 708.20-3. During a dispositional hearing, a parent of the child may present evidence relevant to
742 the amount of child support to be paid by either or both parents.

743 708.20-4. The Court's dispositional order shall employ those means necessary to maintain and
744 protect the best interests of the child which are the least restrictive of the rights of the parent and
745 child and which assure the care, treatment or rehabilitation of the child and the family consistent
746 with the protection of the public. When appropriate, and, in cases of child abuse or neglect when
747 it is consistent with the best interest of the child in terms of physical safety and physical health,
748 the family unit shall be preserved and there shall be a policy of transferring custody of a child
749 from the parent only when there is no less drastic alternative. If there is no less drastic
750 alternative for a child than transferring custody from the parent, the Court shall consider
751 transferring custody pursuant to the preferences for placement set forth in section 708.10-1.

752 708.20-5. *Dispositional Orders*. The Court's dispositional order shall be in writing and shall
753 contain:

- 754 (a) The treatment plan and specific services to be provided to the child and family, and if
755 custody of the child is to be transferred to effect the treatment plan, the identity of the
756 legal custodian;
- 757 (b) If the child is placed outside the home, where the child will be placed. If the Court
758 finds that disclosing identifying information related to placement of the child would
759 result in imminent danger to the child or anyone else, the Court may order the name and
760 address of whom the child is placed with withheld from the parent or guardian;
- 761 (c) The date of the expiration of the court's order;
- 762 (1) A dispositional order made before the child reaches eighteen (18) years of age
763 that places or continues the placement of the child in his or her home shall
764 terminate one (1) year after the date on which the order is granted unless the
765 Court specifies a shorter period of time or the Court terminates the order sooner.
- 766 (2) A dispositional order made before the child reaches eighteen (18) years of age
767 that places or continues the placement of the child outside of the home shall
768 terminate on the latest of the following dates, unless the Court specifies a shorter
769 period or the Court terminates the order sooner:
- 770 (A) The date on which the child attains eighteen (18) years of age;
- 771 (B) The date that is one (1) year after the date on which the order is
772 granted; and
- 773 (C) The date on which the child is granted a high school or high school
774 equivalency diploma or the date on which the child reaches nineteen (19)
775 years of age, whichever occurs first, if the child is a full-time student at a
776 secondary school or its vocational or technical equivalent and is
777 reasonably expected to complete the program before reaching nineteen
778 (19) years of age.
- 779 (d) If the child is placed outside the home of his or her parent, guardian, or legal
780 custodian, a designation of the amount of child support, if any, to be paid;
- 781 (e) If the child is placed outside the home, a finding that continued placement of the child
782 in his or her home would be contrary to the welfare of the child and a finding as to
783 whether the Department has made reasonable efforts to prevent the removal of the child
784 from the home, while assuring that the child's best interests are the paramount concerns.
785 The Court shall make the findings specified in this subdivision on a case-by-case basis
786 based on circumstances specific to the child;
- 787 (f) If the child is placed outside the home under the supervision of the Department, an
788 order ordering the child into the placement and care responsibility of the Department and
789 assigning the Department primary responsibility for providing services to the child and
790 family;
- 791 (g) If the child is placed outside the home and if the child has one (1) or more siblings
792 who have also been placed outside the home, a finding as to whether the Department has
793 made reasonable efforts to place the child in a placement that enables the sibling group to
794 remain together, unless the Court determines that placement of the children together
795 would be contrary to the best interests of the child or any of those siblings, in which case
796 the Court shall order the Department to make reasonable efforts to provide for frequent
797 visitation or other ongoing interaction between the child and the siblings, unless the Court
798 determines that such visitation or interaction would be contrary to the best interests of the
799 child or any of those siblings;

800 (h) A statement of the conditions with which the parties are required to comply; and
801 (i) If the Court finds that it would be in the best interest of the child, the Court may set
802 reasonable rules of parental visitation.

803 (1) If the Court denies a parent visitation, the Court shall enter conditions that
804 shall be met by the parent in order for the parent to be granted visitation.

805 708.20-6. *Treatment Plans and Conditions.* In a proceeding in which a child has been found to
806 be in need of protection or services, the Court may order the child's parent, guardian and legal
807 custodian to comply with any conditions and/or treatment plan determined by the Court to be
808 necessary for the child's welfare.

809 (a) The treatment plan or conditions ordered by the Court shall contain the following
810 information:

811 (1) The identification of the problems or conditions that resulted in the abuse or
812 neglect of a child;

813 (2) The treatment goals and objectives for each condition or requirement
814 established in the plan. If the child has been removed from the home, the
815 treatment plan must include, but is not limited to, the conditions or requirements
816 that must be established for the safe return of the child to the family;

817 (3) The specific treatment objectives that clearly identify the separate roles and
818 responsibilities of all parties addressed in the treatment plan, including the
819 Department's specific responsibilities to make reasonable efforts to assist the
820 parent, guardian or legal custodian in their efforts toward reunification with the
821 child; and

822 (4) A notice that completion of a treatment plan does not guarantee the return of a
823 child and that completion of a treatment plan without a change in behavior that
824 caused removal in the first instance may result in the child remaining outside the
825 home.

826 (b) A treatment plan may include recommendations and the dispositional order may
827 require the child's parent, guardian and legal custodian to participate in:

828 (1) Outpatient mental health treatment;

829 (2) Substance abuse treatment;

830 (3) Anger management;

831 (4) Individual or family counseling;

832 (5) Parent training and education; and/or

833 (6) Any other treatment as deemed appropriate by the Court.

834 708.20-7. If the Court finds that the parent was convicted of committing a crime against the life
835 and bodily security of a child or a crime against a child, contained within Chapters 940 and 948
836 of the Wisconsin Statutes or another similar law in another jurisdiction, the Court may find that
837 the Department is not required to make reasonable efforts with respect to the parent to make it
838 possible for the child to return safely to his or her home.

839 708.20-8. The Court shall provide a copy of the dispositional order to the child's parent,
840 guardian, and legal custodian, other parties to the action, and the child if the child is age twelve
841 (12) or older.

842 708.20-9. Whenever the Court orders a child to be placed outside his or her home or denies a
843 parent visitation because the child is in need of protection or services, the Court shall orally
844 inform the parent who appears in Court of any grounds for termination of parental rights which
845 may be applicable and of the conditions necessary for the child to be returned to the home or for

846 the parent to be granted visitation. The Court shall also include this information in the written
847 dispositional order provided to the parent.

848

849 **708.21. Permanency Plans**

850 708.21-1. The Department shall prepare a written permanency plan anytime a child is placed
851 outside the home pursuant to dispositional order that finds the child is in need of protection or
852 services. The permanency plan shall include all of the following:

- 853 (a) The name, birth date, address, and tribal affiliation of the child;
- 854 (b) The names, birth dates, addresses, and tribal affiliation of the child's parent(s),
855 guardian(s), and legal custodian(s);
- 856 (c) The date on which the child was removed from the home;
- 857 (d) A statement as to the availability of a safe and appropriate placement with an
858 extended family member;
- 859 (e) The goal(s) of the permanency plan which may include one or more of the following:
860 reunification, adoption, guardianship, placement with a fit and willing relative, or long-
861 term foster care;
- 862 (f) Date by which it is likely the goal(s) of the permanency plan will likely be achieved;
- 863 (g) A description of the services offered and any services provided in an effort to prevent
864 removal of the child from the home or to return the child to the home, while assuring that
865 the best interests of the child are the paramount concerns;
- 866 (h) If the child has one (1) or more siblings who have been removed from the home, a
867 description of the efforts made to place the child in a placement that enables the sibling
868 group to remain together. If a decision is made to not place the siblings together, a
869 description of the efforts made to provide for frequent and ongoing visitation or other
870 ongoing interaction between the child and siblings;
- 871 (i) Information about the child's education; and
- 872 (j) Any other appropriate information as deemed necessary by the Court or the
873 Department.

874 708.21-2. The Department shall file the initial permanency plan with the Court within sixty (60)
875 days after the date the child was first removed from the home unless the child is returned to the
876 home within that time period.

877 708.21-3. The Court shall hold a hearing to review the permanency plan no later than six (6)
878 months after the date on which the child was first removed from the home and every six months
879 thereafter for as long as the child is placed outside the home and if found to be in need of
880 protection or services.

881 (a) At least five (5) calendar days before the date of the hearing, the Department shall
882 provide a copy of the updated permanency plan to the Court and the parties.

883 (b) All parties, including foster parent(s) shall have a right to be heard at the permanency
884 plan hearing. Any party may submit written comments to the Court no less than three (3)
885 calendar days prior to the hearing date.

886 708.21-4. After the hearing, the Court shall enter a written order addressing the following:

- 887 (a) The continuing necessity for and the safety and appropriateness of the placement;
- 888 (b) The compliance with the permanency plan by the Department and any other service
889 providers, the child's parent(s), and the child;
- 890 (c) Efforts taken to involve appropriate service providers and Department staff in
891 meeting the special needs of the child and the child's parent(s);

- 892 (d) The progress toward eliminating the causes for the child's placement outside the
893 home and returning the child safely to the home or obtaining a permanent placement for
894 the child;
- 895 (e) The date by which it is likely that the child will be returned to the home or placed for
896 adoption, with a guardian, with a fit and willing relative, or in some other permanent
897 living arrangement;
- 898 (f) Whether reasonable efforts were made by the Department to achieve the permanency
899 plan goal(s);
- 900 (g) Whether reasonable efforts were made by the Department to place the child in a
901 placement that enables the sibling group to remain together or have frequent visitation or
902 other ongoing interaction; and
- 903 (h) The date of the next review hearing, if appropriate.
- 904

905 **708.22. Change in Placement**

906 708.22-1. The Department, the Nation's Child Welfare attorney, or a party to the dispositional
907 order may request a change in the placement of the child who is the subject of the dispositional
908 order.

909 708.22-2. The request for a change in placement shall contain the name and address of the new
910 placement requested and shall state what new information is available that affects the
911 advisability of the current placement.

912 708.22-3. If the proposed change in placement moves the child outside of his or her home, the
913 request shall contain specific information showing that continued placement of the child in the
914 home would be contrary to the best interests of the child and if the Department is making the
915 request, specific information showing that the Department has made reasonable efforts to prevent
916 the removal of the child from the home, while assuring that the child's best interests are the
917 paramount concerns.

918 708.22-4. The request for a change in placement shall be submitted to the Court. The Court may
919 propose a change in placement on its own motion.

920 708.22-5. Written notice of the proposed change in placement shall be sent to all of the parties
921 pursuant to the Oneida Judiciary Rules of Civil Procedure.

922 (a) The Department shall schedule a hearing prior to placing the child outside of the
923 home, unless emergency conditions that necessitate an immediate change in the
924 placement of a child apply.

925 (b) A hearing is not required when the child currently placed outside the home transfers
926 to another out-of-home placement.

927 (1) A party may request a hearing when the child is transferred to a different out-
928 of-home placement by submitting a written request to the Court within ten (10)
929 calendar days of being served with the notice of the proposed change.

930 708.22-6. If a hearing is held, any party may present evidence relevant to the issue of the change
931 in placement. In addition, the Court shall give a foster parent or other legal custodian a right to
932 be heard at the hearing by permitting the foster parent or other legal custodian to make a written
933 or oral statement during the hearing, or to submit a written statement prior to the hearing,
934 relevant to the issue of change in placement.

935 708.22-7. *Emergency Change in Placement.* If emergency conditions necessitate an immediate
936 change in the placement of a child, the Department may remove the child to a new placement,
937 whether or not authorized by the existing dispositional order. Notice of the emergency change in

938 placement shall be sent to the parties as soon as possible but no later than seventy-two (72) hours
939 after the emergency change in placement excluding Saturdays, Sundays, and holidays. If the
940 emergency conditions necessitate an immediate change in placement of a child placed in the
941 home to a placement outside the home, the Department shall schedule the matter for a hearing as
942 soon as possible but no later than seventy-two (72) hours after the emergency change in
943 placement is made, excluding Saturdays, Sundays, and holidays.

944 708.22-8. The parties may agree to a change in placement by signing a stipulation and filing it
945 with the Court for approval.

946 708.22-9. No change in placement may extend the expiration date of the original dispositional
947 order, except that if the change in placement is from a placement in the child's home to a
948 placement outside the home the Court may extend the expiration date of the original
949 dispositional order to the latest of the following dates, unless the Court specifies a shorter period:

- 950 (a) The date on which the child reaches eighteen (18) years of age;
951 (b) The date that is one (1) year after the date on which the change-in-placement order is
952 granted; or
953 (c) The date on which the child is granted a high school or high school equivalency
954 diploma or the date on which the child reaches nineteen (19) years of age, whichever
955 occurs first, if the child is a full-time student at a secondary school or its vocational or
956 technical equivalent and is reasonably expected to complete the program before reaching
957 nineteen (19) years of age.

958 708.22-10. If the change in placement is from a placement outside the home to a placement in
959 the child's home and if the expiration date of the original dispositional order is more than one (1)
960 year after the date on which the change-in-placement order is granted, the Court shall shorten the
961 expiration date of the original dispositional order to the date that is one (1) year after the date on
962 which the change-in-placement order is granted or to an earlier date as specified by the Court.

963

964 **708.23. Revision of Dispositional Orders**

965 708.23-1. A party, or the Court on its own motion, may request a revision in the dispositional
966 order that does not involve a change in placement, including a revision with respect to the
967 amount of child support to be paid by a parent.

968 708.23-2. The request or Court proposal shall set forth in detail the nature of the proposed
969 revision and what new information is available that affects the advisability of the Court's
970 disposition. The request for revision shall be filed with the Court with notice provided by the
971 parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

972 708.23-3. The Court shall hold a hearing on the matter prior to any revision of the dispositional
973 order if the request or Court proposal indicates that new information is available that affects the
974 advisability of the Court's dispositional order, unless the parties file a signed stipulation and the
975 Court approves.

976 708.23-4. If a hearing is held, any party may present evidence relevant to the issue of revision of
977 the dispositional order. In addition, the Court shall give a foster parent or other legal custodian a
978 right to be heard at the hearing by permitting the foster parent or other legal custodian to make a
979 written or oral statement during the hearing, or to submit a written statement prior to the hearing,
980 relevant to the issue of revision.

981

982 **708.24. Extension of Dispositional Orders**

983 708.24-1. A party, or the Court on its own motion, may request an extension of a dispositional
984 order. The request shall be filed with the Court with notice to the parties pursuant to the Oneida
985 Judiciary Rules of Civil Procedure.

986 708.24-2. No order may be extended without a hearing, unless the parties file a signed
987 stipulation and the Court approves.

988 708.24-3. Any party may present evidence relevant to the issue of extension. If the child is
989 placed outside of his or her home, the Department shall present as evidence specific information
990 showing that the Department has made reasonable efforts to achieve the permanency goal of the
991 child's permanency plan. In addition, the Court shall give a foster parent or other legal custodian
992 a right to be heard at the hearing by permitting the foster parent or other legal custodian to make
993 a written or oral statement during the hearing, or to submit a written statement prior to the
994 hearing, relevant to the issue of extension.

995 708.24-4. The Court shall make findings of fact and conclusions of law based on the evidence.
996 The findings of fact shall include a finding as to whether reasonable efforts were made by the
997 Department to achieve the permanency goal of the child's permanency plan.

998 708.24-5. If a request to extend a dispositional order is made prior to the termination of the
999 order, but the Court is unable to conduct a hearing on the request prior to the termination date,
1000 the order shall remain in effect until such time as an extension hearing is conducted.

1001

1002 **708.25. Continuation of Dispositional Orders**

1003 708.25-1. If a petition for termination of parental rights or guardianship is filed or an appeal
1004 from a termination of parental rights or guardianship judgment is filed during the year in which a
1005 child in need of protection or services dispositional order is in effect, the dispositional order shall
1006 remain in effect until all proceedings related to the petition or appeal are concluded.

1007

1008 **708.26. Guardianship for Certain Children in Need of Protection or Services**

1009 708.26-1. *Conditions for Guardianship.* The Court may appoint a guardian for a child if the
1010 Court finds all of the following:

1011 (a) That the child has been found to be in need of protection or services under this law
1012 and has been placed outside of his or her home pursuant to one (1) or more Court orders,
1013 or that the child has been found to be in need of protection or services and placement of
1014 the child in the home of a guardian under this section has been recommended by the
1015 Department at the dispositional hearing;

1016 (b) That the person nominated as the guardian of the child is a person with whom the
1017 child has been placed or in whose home placement of the child is recommended by the
1018 Department and that it is likely that the child will continue to be placed with that person
1019 for an extended period of time or until the child attains the age of eighteen (18) years;

1020 (c) That, if appointed, it is likely that the person would be willing and able to serve as the
1021 child's guardian for an extended period of time or until the child attains the age of
1022 eighteen (18) years;

1023 (d) That it is not in the best interests of the child that a petition to terminate parental
1024 rights be filed with respect to the child;

1025 (e) That the child's parents are neglecting, refusing or unable to carry out the duties of a
1026 guardian; and

1027 (f) That the Department has made reasonable efforts to make it possible for the child to
1028 return to his or her home, while assuring that the child's best interests are the paramount
1029 concerns, but that reunification of the child with the child's parent(s) is unlikely or
1030 contrary to the best interests of the child and that further reunification efforts are unlikely
1031 to be made or are contrary to the best interests of the child or that the Department has
1032 made reasonable efforts to prevent the removal of the child from his or her home, while
1033 assuring the child's best interests, but that continued placement of the child in the home
1034 would be contrary to the best interests of the child.

1035 708.26-2. *Who May File a Petition for Guardianship.* Any of the following persons may file a
1036 petition for the appointment of a guardian for a child under this section:

- 1037 (a) The child;
- 1038 (b) The child's guardian ad litem;
- 1039 (c) The child's parent;
- 1040 (d) The person with whom the child is placed or in whose home placement of the child is
1041 recommended by the Department;
- 1042 (e) The Department; or
- 1043 (f) The Nation's Child Welfare attorney.

1044 708.26-3. *Petition for Guardianship.* A proceeding for the appointment of a guardian for a child
1045 shall be initiated by a petition which shall include the following:

- 1046 (a) The name, birth date, address, and tribal affiliation of the child;
- 1047 (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- 1048 (c) A copy of the order adjudicating the child to be in need of protection or services and
1049 the order placing the child outside of the parental home; and
- 1050 (d) A statement of the facts and circumstances which the petitioner alleges establish that
1051 the conditions for guardianship specified in section 708.26-1(a)-(f) are met.

1052 708.26-4. *Plea Hearing for Guardianship.* A plea hearing to determine whether any party
1053 wishes to contest a petition for guardianship shall take place no sooner than ten (10) days after
1054 the filing of the petition. At the hearing, the non-petitioning parties shall state whether they wish
1055 to contest the petition. Before accepting an admission or a plea of no contest to the allegations in
1056 the petition, the Court shall do all of the following:

- 1057 (a) Address the parties present and determine that the admission or plea is made
1058 voluntarily and with understanding of the nature of the facts alleged in the petition, the
1059 nature of the potential outcomes and possible dispositions by the Court and the nature of
1060 the legal consequences of that disposition;
- 1061 (b) Establish whether any promises or threats were made to elicit the admission or plea of
1062 no contest; and
- 1063 (c) Make inquiries to establish to the satisfaction of the Court that there is a factual basis
1064 for the admission or plea of no contest.

1065 708.26-5. If the petition is not contested and if the Court accepts the admission or plea of no
1066 contest, the Court may immediately proceed to a dispositional hearing unless an adjournment is
1067 requested.

1068 708.26-6. If the petition is contested or if the Court does not accept the admission or plea of no
1069 contest, the Court shall set a date for a fact-finding hearing which allows reasonable time for the
1070 parties to prepare but is not more than sixty (60) days after the plea hearing, unless the Court
1071 enters an order finding good cause to go outside the time limits.

1072 (a) If the petition is contested, the Court shall order the Department to file with the Court
1073 a report containing as much information relating to the appointment of a guardian as is
1074 reasonably ascertainable, including an assessment of the conditions for guardianship
1075 specified in section 708.26-1(a)-(f). The Department shall file its report with the Court
1076 prior to the fact-finding hearing and shall provide the parties with a copy of the report at
1077 least three (3) calendar days prior to the hearing.

1078 *708.26-7. Fact Finding Hearing for Guardianship.* The Court shall hold a fact-finding hearing
1079 on the petition at which any party may present evidence relevant to the issue of whether the
1080 conditions for guardianship have been met. If the Court, at the conclusion of the fact-finding
1081 hearing, finds by clear and convincing evidence that the conditions for guardianship specified in
1082 section 708.26-1(a)-(f) have been met, the Court shall immediately proceed to a dispositional
1083 hearing unless an adjournment is requested.

1084 *708.26-8. Dispositional Hearing for Guardianship.* The Court shall hold a dispositional hearing
1085 at which any party may present evidence, including expert testimony, relevant to the disposition.
1086 In determining the appropriate disposition for guardianship, the Court shall use the best interests
1087 of the child as the prevailing factor to be considered by the Court. In making a decision about
1088 the appropriate disposition, the Court shall consider any report submitted by the Department and
1089 shall consider, but not be limited to, all of the following:

- 1090 (a) Whether the person would be a suitable guardian of the child;
- 1091 (b) The willingness and ability of the person to serve as the child's guardian for an
1092 extended period of time or until the child reaches the age of eighteen (18) years; and
- 1093 (c) The wishes of the child.

1094 *708.26-9. Disposition Order for Guardianship.* After receiving any evidence relating to the
1095 disposition, the Court shall enter one of the following dispositions and issue a written decision
1096 consistent the Oneida Judiciary Rules of Civil Procedure:

- 1097 (a) A disposition dismissing the petition if the Court determines that appointment of the
1098 person as the child's guardian is not in the best interests of the child; or
- 1099 (b) A disposition ordering that the proposed guardian be appointed as the child's guardian
1100 if the Court determines that such an appointment is in the best interests of the child.

1101 *708.26-10.* If the Court appoints a guardian for the child, the Court may dismiss the
1102 dispositional order finding that the child is in need of protection or services.

1103
1104 **708.27. Revisions of Guardianship Order**

1105 *708.27-1.* Any person authorized to file a guardianship petition or the Court, on its own motion
1106 may request a revision in a guardianship order.

1107 *708.27-2.* The motion or Court proposal shall set forth in detail the nature of the proposed
1108 revision, shall allege facts sufficient to show that there has been a substantial change in
1109 circumstances since the last order affecting the guardianship was entered and that the proposed
1110 revision would be in the best interests of the child and shall allege any other information that
1111 affects the advisability of the Court's disposition. The motion for the revision shall be filed with
1112 the Court with notice provided by the parties pursuant to the Oneida Judiciary Rules of Civil
1113 Procedure.

- 1114 (a) The Court may order the Department to file with the Court a report containing as
1115 much information relating to the revision of the guardianship as is reasonably
1116 ascertainable. The Department shall file its report with the Court prior to the hearing on

1117 the revision of guardianship and shall provide the parties with a copy of the report at least
1118 three (3) calendar days prior to the hearing.

1119 708.27-3. The Court shall hold a hearing on the matter prior to any revision of the guardianship
1120 order if the motion or Court proposal indicates that new information is available which affects
1121 the advisability of the Court's guardianship order, unless the parties file a signed stipulation and
1122 the Court approves.

1123

1124 **708.28. Termination of Guardianship**

1125 708.28-1. A guardianship under this law shall continue until any of the following are met,
1126 whichever occurs earlier:

- 1127 (a) The date on which the child attains eighteen (18) years of age;
- 1128 (b) The date on which the child is granted a high school or high school equivalency
1129 diploma or the date on which the child reaches nineteen (19) years of age, whichever
1130 occurs first, if the child is a full-time student at a secondary school or its vocational or
1131 technical equivalent and is reasonably expected to complete the program before reaching
1132 nineteen (19) years of age; or
- 1133 (c) The date on which the Court terminates the guardianship order.

1134 708.28-2. A parent of the child may request that a guardianship order be terminated. The
1135 request shall allege facts sufficient to show that there has been a substantial change in
1136 circumstances since the last order affecting the guardianship was entered, that the parent is
1137 willing and able to carry out the duties of a guardian and that the proposed termination of
1138 guardianship would be in the best interests of the child. The Court shall hold a hearing on the
1139 matter unless the parties file a signed stipulation and the Court approves.

1140 (a) The Court may order the Department to file with the Court a report containing as
1141 much information relating to the termination of the guardianship as is reasonably
1142 ascertainable, including a re-assessment of the conditions for guardianship specified in
1143 section 708.26-1(a)-(f). The Department shall file its report with the Court prior to the
1144 hearing on the termination of guardianship and shall provide the parties with a copy of
1145 the report at least three (3) calendar days prior to the hearing.

1146 708.28-3. Any person authorized to file a petition under for guardianship may request that a
1147 appointed guardian be removed for cause or the Court may, on its own motion, propose such a
1148 removal. The request or Court proposal shall allege facts sufficient to show that the guardian is
1149 or has been neglecting, is or has been refusing or is or has been unable to discharge the
1150 guardian's trust and may allege facts relating to any other information that affects the advisability
1151 of the Court's disposition. The Court shall hold a hearing on the matter.

1152 708.28-4. A guardian appointed under this law may resign at any time if the resignation is
1153 accepted by the Court.

1154

1155 **708.29. Termination of Parental Rights**

1156 708.29-1. It is the philosophy of the Nation that a united and complete family unit is of the
1157 utmost value to the community and the individual family members, and that the parent-child
1158 relationship is of such vital importance that it should be terminated only as a last resort when all
1159 efforts have failed to avoid termination and it is in the best interests of the child concerned to
1160 proceed with termination of parental rights.

1161 708.29-2. The Court may terminate a parent's rights on a voluntary or involuntary basis.

1162 708.29-3. An order terminating parental rights permanently severs all legal rights and duties
1163 between the parent whose parental rights are terminated and the child.

1164 (a) An order terminating parental rights does not affect a child's relationship with the
1165 child's extended biological family unless the Court expressly finds that it is in the child's
1166 best interest to terminate the child's relationship with his or her extended biological
1167 family.

1168 708.29-4. The termination of parental rights shall not adversely affect the child's rights and
1169 privileges as a member of the Nation, nor as a member of any tribe to which the child is entitled
1170 to membership, nor shall it affect the child's enrollment status with the Nation, nor shall it
1171 interfere with the child's cultural level and traditional and spiritual growth as a member of the
1172 Nation.

1173

1174 **708.30. Voluntary Termination of Parental Rights**

1175 708.30-1. The Court may terminate the parental rights of a parent after the parent has given his
1176 or her consent. When such voluntary consent is given and the Department has submitted a court
1177 report pursuant to section 708.35, the Court may proceed immediately to a dispositional hearing.

1178 708.30-2. The Court may accept a voluntary consent to termination of parental rights only if the
1179 parent appears personally at the hearing and gives his or her consent to the termination of his or
1180 her parental rights. The Court may accept the consent only after the judge has explained the
1181 effect of termination of parental rights and has questioned the parent, and/or has permitted
1182 counsel who represents any of the parties to question the parent, and is satisfied that the consent
1183 is informed and voluntary. If the Court finds that it would be difficult or impossible for the
1184 parent to appear in person at the hearing, the Court may allow the parent to appear by telephone
1185 or live audiovisual means.

1186 708.30-3. If in any proceeding to terminate parental rights voluntarily any party has reason to
1187 doubt the capacity of a parent to give informed and voluntary consent to the termination, he or
1188 she shall so inform the Court. The Court shall then inquire into the capacity of that parent in any
1189 appropriate way and shall make a finding as to whether or not the parent is capable of giving
1190 informed and voluntary consent to the termination. If in the Court's discretion a person is found
1191 incapable of knowingly and voluntarily consenting to the termination of their parental rights, the
1192 Court shall dismiss the voluntary proceedings without prejudice. That dismissal shall not
1193 preclude an involuntary termination of the parent's rights.

1194 708.30-4. A parent who has executed a consent under this section may withdraw the consent for
1195 any reason at any time prior to the entry of a final order terminating parental rights.

1196 708.30-5. Any consent given under this section prior to or within ten (10) calendar days after the
1197 birth of the child is not valid.

1198 708.30-6. The parties may agree to attend peacemaking to establish an agreement regarding post-
1199 voluntary termination of parental rights contact with a birth parent, birth sibling, or other birth
1200 relative of the child.

1201 (a) Any party to a post-voluntary termination contact agreement may petition the
1202 Court that approved the agreement to compel any person who is bound by the
1203 agreement to comply with the agreement. The petition shall allege facts sufficient to
1204 show that a person who is bound by the agreement is not in compliance with the
1205 agreement and that the petitioner, before filing the petition, attempted in good faith to
1206 resolve the dispute giving rise to the filing of the petition. The petition may also
1207 allege facts showing that the noncompliance with the agreement is not in the best
1208 interests of the child.

1209 (b) After receiving a petition for action regarding a post-voluntary termination
1210 contact agreement the Court shall set a date and time for a hearing on the petition and
1211 shall provide notice of the hearing to all parties to the agreement and may reappoint a
1212 guardian ad litem for the child.

1213 (c) If the Court finds, after hearing, that any person bound by the agreement is not in
1214 compliance with the agreement and that the petitioner, before filing the petition,
1215 attempted in good faith to resolve the dispute giving rise to the filing of the petition,
1216 the Court shall issue an order requiring the person to comply with the agreement and
1217 may find a party in contempt.

1218 (d) The Court may not revoke a termination of parental rights order or an order of
1219 adoption because an adoptive parent or other custodian of the child or a birth parent,
1220 birth sibling, or other birth relative of the child fails to comply with a post-voluntary
1221 termination contact agreement.
1222

1223 **708.31. Grounds for Involuntary Termination of Parental Rights**

1224 708.31-1. Grounds for termination of parental rights shall be any of the following:

1225 (a) *Abandonment.* Abandonment occurs when a parent either deserts a child without any
1226 regard for the child's physical health, safety or welfare and with the intention of wholly
1227 abandoning the child, or in some instances, fails to provide necessary care for their child.

1228 (1) Abandonment shall be established by proving any of the following:

1229 (A) That the child has been left without provision for the child's care or
1230 support, the petitioner has investigated the circumstances surrounding the
1231 matter and for sixty (60) consecutive days the petitioner has been unable
1232 to find either parent;

1233 (B) That the child has been left by the parent without provision for the
1234 child's care or support in a place or manner that exposes the child to
1235 substantial risk of great bodily harm or death;

1236 (C) That a court of competent jurisdiction has found any of the
1237 following:

1238 (i) That a child has been abandoned under Wis. Stat. 48.13 (2) or
1239 under a law of any other state or a federal law that is comparable to
1240 the state law;

1241 (ii) That the child was abandoned when the child was under one
1242 (1) year of age or has found that the parent abandoned the child
1243 when the child was under one (1) year of age in violation of Wis.
1244 Stat. 948.20 or in violation of the law of any other state or federal
1245 law, if that violation would be a violation of abandonment of a
1246 child under Wis. Stat. 948.20 if committed in this state;

- 1247 (D) That the child has been placed, or continued in a placement, outside
1248 the parent's home by a Court order containing the required notice and the
1249 parent has failed to visit or communicate with the child for a period of
1250 three (3) months or longer; or
1251 (E) The child has been left by the parent with any person, the parent
1252 knows or could discover the whereabouts of the child and the parent has
1253 failed to visit or communicate with the child for a period of six (6)
1254 consecutive months or longer.
- 1255 (2) Incidental contact between parent and child shall not preclude the Court from
1256 finding that the parent has failed to visit or communicate with the child. The time
1257 periods under sections 708.31-1(a)(1)(D) and 708.31-1(a)(1)(E) shall not include
1258 any periods during which the parent has been prohibited by Court order from
1259 visiting or communicating with the child.
- 1260 (3) Abandonment is not established under sections 708.31-1(a)(1)(D) and 708.31-
1261 1(a)(1)(E) if the parent proves all of the following by clear and convincing
1262 evidence:
- 1263 (A) That the parent had good cause for having failed to visit with the child
1264 throughout the three (3) or six (6) month time period alleged in the
1265 petition.
- 1266 (B) That the parent had good cause for having failed to communicate with
1267 the child throughout the three (3) or six (6) month time period alleged in
1268 the petition.
- 1269 (C) If the parent proves good cause under section 708.31-1(a)(3)(B),
1270 including good cause based on evidence that the child's age or condition
1271 would have rendered any communication with the child meaningless, that
1272 one (1) of the following occurred:
- 1273 (i) The parent communicated about the child with the person or
1274 persons who had physical custody of the child during the three (3) or
1275 six (6) month time period alleged in the petition, whichever is
1276 applicable, or, with the Department during the three (3) month time
1277 period alleged in the petition.
- 1278 (ii) The parent had good cause for having failed to communicate
1279 about the child with the person or persons who had physical custody
1280 of the child or the Department throughout the three (3) or six (6)
1281 month time period alleged in the petition.
- 1282 (b) *Relinquishment.* Relinquishment occurs when a parent gives up or abandons their
1283 child and all rights to their child. Relinquishment shall be established by proving that a
1284 court of competent jurisdiction has found that the parent has relinquished custody of the
1285 child when the child was seventy-two (72) hours old or younger.
- 1286 (c) *Continuing Need of Protection or Services.* Continuing need of protection or services
1287 shall be established by proving any of the following:
- 1288 (1) That the child has been found to be in need of protection or services and
1289 placed, or continued in a placement, outside his or her home pursuant to one (1)
1290 or more dispositional orders containing the notice required by section 708.20-8;
- 1291 (2) That the Department has made a reasonable effort to provide the services
1292 ordered by the Court;

1293 (3) That the child has been outside the home for a cumulative total period of six
1294 (6) months or longer pursuant to such orders; and that the parent has failed to
1295 meet the conditions established for the safe return of the child to the home and
1296 there is a substantial likelihood that the parent will not meet these conditions
1297 within the nine (9) month period following the termination of parental rights fact-
1298 finding hearing.

1299 (d) *Continuing Parental Disability.* Continuing parental disability shall be established by
1300 proving that:

- 1301 (1) The parent is presently, and for a cumulative total period of at least two (2)
1302 years within the five (5) years immediately prior to the filing of the petition has
1303 been, an inpatient at one (1) or more hospitals as defined in either the Nation's
1304 laws or state law;
1305 (2) The condition of the parent is likely to continue indefinitely; and
1306 (3) The child is not being provided with adequate care by a relative who has legal
1307 custody of the child, or by a parent or a guardian.

1308 (e) *Continuing Denial of Periods of Physical Placement or Visitation.* Continuing denial
1309 of periods of physical placement or visitation shall be established by proving all of the
1310 following:

- 1311 (1) The parent has been denied periods of physical placement by Court order in
1312 an action affecting the family or has been denied visitation under a dispositional
1313 order containing the notice required by section 708.20-8, Wis. Stat. 48.356 (2), or
1314 Wis. Stat. 938.356 (2); and
1315 (2) A Court order has denied the parent periods of physical placement or
1316 visitation for at least one (1) year.

1317 (f) *Child Abuse.* Child abuse shall be established by proving that the parent has
1318 committed child abuse against the child who is the subject of the petition and proving
1319 either of the following:

- 1320 (1) That the parent has caused death or injury to a child resulting in a felony
1321 conviction; or
1322 (2) That a child has previously been removed from the parent's home pursuant to
1323 a dispositional order after an adjudication that the child is in need of protection or
1324 services.

1325 (g) *Failure to Assume Parental Responsibility.* Failure to assume parental responsibility
1326 shall be established by proving that the parent or the person(s) who may be the parent of
1327 the child have not had a substantial parental relationship with the child.

1328 (1) In evaluating whether the person has had a substantial parental relationship
1329 with the child, the Court may consider such factors, including, but not limited to,
1330 the following:

- 1331 (A) Whether the person has expressed concern for or interest in the support,
1332 care or well-being of the child;
1333 (B) Whether the person has neglected or refused to provide care or support
1334 for the child; and
1335 (C) Whether, with respect to a person who is or may be the father of the
1336 child, the person has expressed concern for or interest in the support, care or
1337 well-being of the mother during her pregnancy.

1338 (h) *Incestuous Parenthood.* Incestuous parenthood shall be established by proving that
1339 the person whose parental rights are sought to be terminated is also related, either by
1340 blood or adoption, to the child's other parent in a degree of kinship closer than 2nd
1341 cousin.

1342 (i) *Homicide or Solicitation to Commit Homicide of a Parent.* Homicide or solicitation
1343 to commit homicide of a parent, which shall be established by proving that a parent of the
1344 child has been a victim of first-degree intentional homicide, first-degree reckless
1345 homicide or 2nd-degree intentional homicide or a crime under federal law or the law of
1346 any other state that is comparable to any of those crimes, or has been the intended victim
1347 of a solicitation to commit first-degree intentional homicide or a crime under federal law
1348 or the law of any other state that is comparable to that crime, and that the person whose
1349 parental rights are sought to be terminated has been convicted of that intentional or
1350 reckless homicide, solicitation or crime as evidenced by a final judgment of conviction.

1351 (j) *Parenthood as a Result of Sexual Assault.*

1352 (1) Parenthood as a result of sexual assault shall be established by proving that
1353 the child was conceived as a result of one of the following:

1354 (A) First degree sexual assault [under Wis. Stats. 940.225(1)];

1355 (B) Second degree sexual assault [under Wis. Stat. 940.225 (2)];

1356 (C) Third degree sexual assault [under Wis. Stat. 940.225(3)];

1357 (D) First degree sexual assault of a child [under Wis. Stat. 948.02(1)];

1358 (E) Second degree sexual assault of a child [under Wis. Stat. 948.02 (2)];

1359 (F) Engaging in repeated acts of sexual assault of the same child [under Wis.
1360 Stat. 948.025]; or

1361 (G) Sexual assault of a child placed in substitute care [under Wis. Stat.
1362 948.085].

1363 (2) Conception as a result of sexual assault may be proved by a final judgment of
1364 conviction or other evidence produced at a termination of parental rights fact-
1365 finding hearing indicating that the person who may be the parent of the child
1366 committed, during a possible time of conception, a sexual assault as specified in
1367 this section against the other parent of the child.

1368 (3) If the conviction or other evidence indicates that the child was conceived as a
1369 result of a sexual assault in violation of Wis. Stat. 948.02 (1) or (2) or 948.085,
1370 the parent of the child may be heard on his or her desire for the termination of the
1371 other parent's parental rights.

1372 (k) *Commission of a Felony Against a Child.*

1373 (1) Commission of a serious felony against the child, shall be established by
1374 proving that the child was the victim of a serious felony and parent was convicted
1375 of that serious felony.

1376 (2) Commission of a violation of trafficking of a child under Wis. Stat. 948.051
1377 involving any child or a violation of the law of any other state or federal law, if
1378 that violation would be a violation of Wis. Stat. 948.051 involving any child if
1379 committed in this state.

1380 (3) In this subsection, "serious felony" means any of the following:

1381 (A) The commission of, the aiding or abetting of, or the solicitation,
1382 conspiracy or attempt to commit, a violation of any of the following:

1383 (i) First degree intentional homicide [under Wis. Stat. 940.01];

- 1384 (ii) First degree reckless homicide [under Wis. Stat. 940.02];
1385 (iii) Felony murder [under Wis. Stat. 940.03];
1386 (iv) Second-degree intentional homicide [under Wis. Stat. 940.05]; or
1387 (v) A violation of the law of any other state or federal law, if that
1388 violation would be a violation of the above mentioned felonies if
1389 committed in Wisconsin.
- 1390 (B) The commission of a violation of any of the following:
1391 (i) Battery, substantial battery, aggravated battery [under Wis. Stat.
1392 940.19 (3), 1708 stats., or Wis. Stats. 940.19 (2), (4) or (5)];
1393 (ii) Sexual assault [under Wis. Stat. 940.225 (1) or (2)];
1394 (iii) Sexual assault of a child [under Wis. Stat. 948.02 (1) or (2)];
1395 (iv) Engaging in repeated acts of sexual assault of the same child
1396 [under Wis. Stat. 948.025];
1397 (v) Physical abuse of a child [under Wis. Stats. 948.03 (2) (a), (3) (a),
1398 or (5) (a) 1., 2., or 3.];
1399 (vi) Sexual exploration of a child [under Wis. Stat. 948.05];
1400 (vii) Trafficking of a child [under Wis. Stat. 948.051];
1401 (viii) Incest with a child [under Wis. Stat. 948.06];
1402 (ix) Soliciting a child for prostitution [under Wis. Stat. 948.08];
1403 (x), Human trafficking [under Wis. Stat. 940.302 (2) if Wis. Stat.
1404 940.302 (2) (a) 1. b. applies]; or
1405 (xi) A violation of the law of any other state or federal law, if that
1406 violation would be a violation listed under the above listed felonies if
1407 committed in Wisconsin.
- 1408 (C) The commission of a violation of neglecting a child under Wis. Stat.
1409 948.21 or a violation of the law of any other state or federal law, if that
1410 violation would be a violation of Wis. Stat. 948.21 if committed in this
1411 state, that resulted in the death of the victim.
- 1412 (l) *Prior Involuntary Termination of Parental Rights of Another Child.* Prior involuntary
1413 termination of parental rights to another child shall be established by proving all of the
1414 following:
- 1415 (1) That the child who is the subject of the petition is in need of protection or
1416 services under section 708.5-2(b), (d), or (k); or that the child who is the subject
1417 of the petition was born after the filing of a petition under this subsection whose
1418 subject is a sibling of the child; and
- 1419 (2) That, within three (3) years prior to the date the Court determined the child to
1420 be in need of protection or services as specified in section 708.31-1 (l) (1) or, in
1421 the case of a child born after the filing of a petition as specified in section 708.31-
1422 1 (l) (1), within three (3) years prior to the date of birth of the child, a Court has
1423 ordered the termination of parental rights with respect to another child of the
1424 person whose parental rights are sought to be terminated on one or more of the
1425 grounds specified in this section.
1426

1427 **708.32. Petition for Termination of Parental Rights**

1428 708.32-1. *Who May File a Petition for Termination of Parental Rights.* A petition for
1429 termination of parental rights shall be filed by the Nation's Child Welfare attorney, the
1430 Department, or the child's parent in the case of a step-parent adoption.

1431 708.32-2. A petition for the termination of parental rights may be filed when the child has been
1432 placed outside of his or her home for fifteen (15) of the most recent twenty-two (22) months
1433 unless any of the following applies:

- 1434 (a) The child is being cared for by a fit and willing relative of the child;
- 1435 (b) The child's permanency plan indicates and provides documentation that termination
1436 of parental rights to the child is not in the best interests of the child;
- 1437 (c) The Department, if required by a dispositional order, failed to make reasonable efforts
1438 to make it possible for the child to return safely to his or her home, did not provide or
1439 refer services to the family of the child for the safe return of the child to his or her home
1440 that were consistent with the time period in the child's permanency plan; or
- 1441 (d) Grounds for an involuntary termination of parental rights do not exist.

1442 708.32-3. A petition for the termination of parental rights shall include the following
1443 information:

- 1444 (a) The name, birth date, address, and tribal affiliation of the child;
- 1445 (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- 1446 (c) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit; and
- 1447 (d) One (1) of the following:
 - 1448 (1) A statement that consent will be given to voluntary termination of parental
1449 rights as provided in section 708.30; or
 - 1450 (2) A statement of the grounds for involuntary termination of parental rights
1451 under section 708.31 and a statement of the facts and circumstances which the
1452 petitioner alleges establish these grounds.

1453 708.32-4. *Temporary Order and Injunction Prohibiting Contact.* If the petition includes a
1454 statement of the grounds for involuntary termination of parental rights, the petitioner may, at the
1455 time the petition is filed, also petition the Court for a temporary order and an injunction
1456 prohibiting the person whose parental rights are sought to be terminated from visiting or
1457 contacting the child who is the subject of the petition. Any petition under this section shall
1458 allege facts sufficient to show that prohibiting visitation or contact would be in the best interests
1459 of the child.

- 1460 (a) The Court may grant an injunction prohibiting the respondent from visiting or
1461 contacting the child if the Court determines that the prohibition would be in the best
1462 interests of the child. An injunction under this subsection is effective according to its
1463 terms but may not remain in effect beyond the date the Court dismisses the petition for
1464 termination of parental rights or issues an order terminating parental rights.

1465 708.32-5. The petitioner shall ensure the summons and petition are served upon the following
1466 persons pursuant to the Oneida Judiciary Rules of Civil Procedure:

- 1467 (a) The parent(s) of the child, including an alleged father if paternity has not been
1468 established;
- 1469 (b) The child's foster parent, guardian or legal custodian, if applicable. If the address has
1470 been marked confidential by the Court, the Court shall send a copy of the summons and
1471 petition to the home in which the child is placed via first-class U.S. mail; and

1472 (c) The Nation's Child Welfare attorney and the Department, if the petition is filed by
1473 anyone other than the Nation's Child Welfare attorney or the Department.
1474

1475 **708.33. Initial Hearing on the Termination of Parental Rights Petition**

1476 708.33-1. The initial hearing on the petition to terminate parental rights shall be held within
1477 forty-five (45) days after the petition is filed. At the hearing the Court shall determine whether
1478 any party wishes to contest the petition and inform the parties of their rights.

1479 708.33-2. If the petition is contested, the Court shall set a date for a fact-finding hearing to be
1480 held within sixty (60) days after the hearing on the petition, unless the Court enters an order
1481 finding good cause to go outside the time limits.

1482 708.33-3. If the petition is not contested, the Court shall hear testimony in support of the
1483 allegations in the petition and may proceed immediately with a dispositional hearing if the
1484 parties agree. Before accepting an admission of the alleged facts in a petition, the Court shall:

1485 (a) Address the parties present and determine that the admission is made voluntarily with
1486 understanding of the nature of the acts alleged in the petition and the potential outcomes
1487 and possible dispositions by the Court;

1488 (b) Establish whether any promises or threats were made to elicit an admission; and

1489 (c) Make such inquiries to establish a factual basis for the admission.

1490 708.33-4. If paternity has not been established and an alleged father appears at the initial
1491 hearing, the Court may delay the termination of parental rights proceeding to examine the issue
1492 of paternity. While the paternity action is pending, the Court shall enter an order finding good
1493 cause to suspend the time limits established under this law.
1494

1495 **708.34. Fact Finding Hearing for a Termination of Parental Rights**

1496 708.34-1. The fact-finding hearing is a hearing conducted by the Court to determine whether
1497 there is clear and convincing evidence to establish that grounds exist for the termination of
1498 parental rights.

1499 708.34-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules
1500 of Civil Procedure except that the Court may exclude the child from the hearing.

1501 708.34-3. If grounds for the termination of parental rights are found by the Court, the Court shall
1502 find the parent(s) unfit. A finding of unfitness shall not prevent a dismissal of a termination of
1503 parental rights petition. Unless the parties agree to proceed immediately with the dispositional
1504 hearing and the Court accepts, the Court shall set a date for a dispositional hearing no later than
1505 forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good
1506 cause to go outside the time limits.
1507

1508 **708.35. Department's Termination of Parental Rights Report**

1509 708.35-1. In any case that the Department is a party, the Department shall submit a written
1510 report to the Court prior to any dispositional hearing, with a copy to the parties no later than
1511 seven (7) calendar days prior to the hearing, which shall contain all of the following:

1512 (a) The social history of the child and family, including any relevant medical conditions;

1513 (b) A statement of the facts supporting the need for termination of parental rights;

1514 (c) If the child has been previously adjudicated to be in need of protection or services, a
1515 statement of the steps the Department has taken to remedy the conditions responsible for
1516 Court intervention and the parent's response to and cooperation with these services. If the
1517 child has been removed from the home, the report shall also include a statement of the

1518 reasons why the child cannot be returned safely to the family and the steps the
1519 Department has taken to effect this return;

1520 (d) A statement applying the standards and factors identified in sections 708.36-2 and
1521 708.36-3 regarding the case before the Court; and

1522 (e) If the report recommends that the parental rights of both of the child's parents or the
1523 child's only living or known parent are to be terminated, the report shall contain a
1524 statement of the likelihood that the child will be adopted. This statement shall include a
1525 presentation of the factors that might prevent adoption, those that may facilitate adoption,
1526 and the Department shall be responsible for accomplishing the adoption.

1527 (1) If the Department determines that it is unlikely that the child will be adopted,
1528 or if adoption would not be in the best interests of the child, the report shall
1529 include a plan for placing the child in a permanent family setting. The plan shall
1530 include a recommendation for the appointment of guardian for the child.

1531 708.35-2. The Court may order a report as specified under this section to be prepared by the
1532 Department in those cases where the Department is not a party.

1533
1534 **708.36. Standards and Factors**

1535 708.36-1. In making a decision about the appropriate disposition for termination of parental
1536 rights, the Court shall consider the standards and factors enumerated in this section and any
1537 report submitted by the Department.

1538 708.36-2. The best interests of the child shall be the prevailing standard considered by the Court
1539 in determining the disposition of all termination of parental rights proceedings.

1540 708.36-3. In considering the best interests of the child the Court shall also consider, but not be
1541 limited to, the following factors:

- 1542 (a) The likelihood of the child's adoption after termination;
- 1543 (b) Whether the child will be raised in an environment that is respectful of the child's
1544 race(s), culture(s), and heritage(s);
- 1545 (c) The age and health of the child, both at the time of the disposition and, if applicable,
1546 at the time the child was removed from the home;
- 1547 (d) Whether the child has substantial relationships with the parent or other family
1548 members, and whether it would be harmful to the child to sever these relationships;
- 1549 (e) The wishes of the child;
- 1550 (f) The duration of the separation of the parent from the child; and
- 1551 (g) Whether the child will be able to enter into a more stable and permanent family
1552 relationship as a result of the termination, taking into account the conditions of the child's
1553 current placement, the likelihood of future placements and the results of prior placements.
- 1554

1555 **708.37. Dispositional Hearings for Termination of Parental Rights**

1556 708.37-1. Any party may present evidence relevant to the issue of disposition, including expert
1557 testimony, and may make alternative dispositional recommendations to the Court. After
1558 receiving any evidence related to the disposition, the Court shall enter a disposition and issue a
1559 written decision consistent with the Oneida Judiciary Rules of Civil Procedure.

1560 (a) The Court shall give the foster parent or other legal custodian a right to be heard at
1561 the dispositional hearing by permitting the foster parent or other legal custodian to make
1562 a written or oral statement during the dispositional hearing, or to submit a written
1563 statement prior to disposition, relevant to the issue of disposition.

- 1564 708.37-2. The Court shall enter one (1) of the following dispositions:
1565 (a) The Court may dismiss the petition if it finds the evidence does not warrant the
1566 termination of parental rights or if the Court finds that a parent is attempting to
1567 voluntarily terminate their parental rights for the sole purpose of avoiding a child support
1568 obligation; or
1569 (b) The Court may enter an order terminating the parental rights of one or both parents.
- 1570 708.37-3. If the rights of both parents, or of the only living parent, are terminated and if a
1571 guardian has not been appointed, the Court shall do one (1) of the following while adhering to
1572 the placement preferences pursuant to section 708.10-1 when possible:
1573 (a) Transfer guardianship and custody of the child pending adoptive placement to:
1574 (1) A tribal or county department authorized to accept guardianship;
1575 (2) A child welfare agency licensed to accept guardianship;
1576 (3) The State of Wisconsin upon written confirmation from the State that they are
1577 willing to accept guardianship;
1578 (4) A relative with whom the child resides, if the relative has filed a petition to
1579 adopt the child or if the relative is a kinship care relative or is receiving payments
1580 for providing care and maintenance for the child; or
1581 (5) An individual who has been appointed guardian of the child by a court of a
1582 competent jurisdiction; or
1583 (b) Appoint a guardian and transfer guardianship and custody of the child to the guardian.
- 1584 708.37-4. The written Court order shall include the following:
1585 (a) If the Court dismisses the petition, the order shall contain the reasons for dismissal; or
1586 (b) If the disposition is for the termination of parental rights, the order shall contain all of
1587 the following:
1588 (1) The identity of any agency, department, or individual that has received
1589 guardianship of the child;
1590 (2) If an agency or department receives guardianship and custody of the child, an
1591 order ordering the child into the placement and care responsibility of the agency
1592 or department and assigning the agency or department primary responsibility for
1593 providing services to the child; and
1594 (3) A finding that the termination of parental rights is in the best interests of the
1595 child.
- 1596 708.37-5. If an order is entered to terminate a parent's rights, the Court shall orally inform the
1597 parent(s) who appear in Court or place in the written order the ground(s) for termination of
1598 parental rights specified in section 708.31.
- 1599 708.37-6. If the Court terminates parental rights, the Department, or the Court if the Department
1600 is not a party to the action, shall forward the following information to the State of Wisconsin:
1601 (a) The name, date of birth, and tribal affiliation of the child whose birth parent's rights
1602 have been terminated;
1603 (b) The names and current addresses of the child's birth parents, guardian and legal
1604 custodian; and
1605 (c) Any medical or genetic information received by the Department.
- 1606 708.37-7. If only one parent consents for a voluntary termination of parental rights or if the
1607 grounds for involuntary termination of parental rights are found to exist as to only one parent, the
1608 rights of only that parent may be terminated without affecting the rights of the other parent if the
1609 Court finds such termination to be in the best interest of the child.

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708.38. Adoption

708.38-1. Adoptions under this law shall take the form of customary adoptions unless the Court determines there is good cause for the adoption to be closed.

708.38-2. *Customary Adoptions.* The purpose of customary adoption is not to permanently deprive the child of connections to, or knowledge of, the child's biological family, but to provide the child a permanent home. The following shall apply to all customary adoptions and shall be contained in all adoptive orders and decrees:

(a) The relationship between an adoptive parent and adoptive child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and his or her Oneida heritage, if applicable;

(c) Adoption shall not prevent an adoptive child from inheriting from a biological parent in the same manner as any other biological child. The biological parents shall not be entitled to inherit from an adoptive child in the same manner as parents would otherwise be entitled to inherit. An adoptive child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as if biological parents and child;

(d) Although parental rights have been terminated, the biological parent may retain certain residual parental rights when appropriate as determined by agreement between the adoptive parent and biological parent made through peacemaking, or by order of the Court. Such residual parental rights may include:

- (1) The right to communication;
- (2) The right to visitation;
- (3) The right or obligation to contribute to support or education;
- (4) The right to be consulted regarding the child's religious affiliation, major medical treatment, marriage, or other matters of major importance in the child's life; and/or
- (5) Such other residual rights the Court may deem appropriate, considering the circumstances.

(e) Adoption does not extinguish the relationships between the child and the child's extended biological family. The child's extended biological family retains the right to reasonable communication and visitation with the child, subject to reasonable controls of the adoptive parents.

708.38-3. *Closed Adoptions.* Closed adoptions occur in situations where a child needs a permanent home and it is necessary to sever all ties between the child and his or her biological family. The following shall apply to all closed adoptions:

(a) The relationship between an adoptive parent and adoptive child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The relationship between the adopted child and all persons whose relationship to the adopted child is derived through the biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist;

(c) The child's biological family shall not be entitled to or have access to any information regarding said child;

- 1656 (d) The child shall be entitled to information and knowledge regarding his or her culture
1657 and heritage; and
1658 (d) The child shall be entitled to information regarding his or her biological family upon
1659 reaching the age of majority.
1660

1661 **708.39. Adoption Criteria and Eligibility**

1662 708.39-1. *Criteria for Adoption.* Any child who is subject to this law may be adopted if any of
1663 the following criteria are met:

- 1664 (a) Both of the child's parents are deceased;
1665 (b) The parental rights of both of the child's parents with respect to the child have been
1666 terminated;
1667 (c) The parental rights of one of the child's parents with respect to the child have been
1668 terminated and the child's other parent is deceased; or
1669 (d) The person filing the petition for adoption is the spouse of the child's parent and
1670 either of the following applies:
1671 (1) The child's other parent is deceased; or
1672 (2) The parental rights of the child's other parent with respect to the child have
1673 been terminated.

1674 708.39-2. *Eligibility.* The following persons are eligible to adopt a child who falls under the
1675 jurisdiction of this law pending the successful clearing of a background check:

- 1676 (a) A married adult couple;
1677 (b) Either spouse if the other spouse is a parent of the child; or
1678 (c) An unmarried adult.

1679 708.39-3. If the person proposing to adopt the child cannot successfully clear a background
1680 check, and any convictions the person may possess have not been pardoned, forgiven, reversed,
1681 set aside or vacated, the Court may still deem the person eligible to adopt if the Court determines
1682 by clear and convincing evidence that the adoption would be in the best interests of the child.
1683

1684 **708.40. Adoption Procedure**

1685 708.40-1. *Petition for Adoption.* A person proposing to adopt shall initiate a proceeding for the
1686 adoption of a child by filing a petition with the Court. The petition shall include the following
1687 information:

- 1688 (a) The name, birth date, address, and tribal affiliation of the petitioner;
1689 (b) The name, birth date, address, and tribal affiliation of the child;
1690 (c) The names, birth dates, addresses, and tribal affiliation of the child's biological
1691 parents;
1692 (d) The name by which the child shall be known if the petition is granted;
1693 (e) The relationship of the petitioner to the child; and
1694 (f) A copy of the order terminating parental rights of the child's biological parent(s).

1695 708.40-2. Upon the filing of a petition for adoption, the Court shall schedule a hearing within
1696 sixty (60) days. Notice of the hearing shall be served on the parties pursuant to the Oneida
1697 Judiciary Rules of Civil Procedure.

1698 708.40-3. When a petition for adoption is filed, the Court shall order an investigation to
1699 determine whether the child is a proper subject for adoption and whether the petitioner's home is
1700 suitable for the child. The Court shall order one (1) of the following to conduct the investigation:

1701 (a) If the Department, or another agency or department, has guardianship of the child, the
1702 agency or department that has guardianship; or

1703 (b) If no agency or department has guardianship of the child and a relative, including a
1704 stepparent, has filed the petition for adoption, the Department.

1705 708.40-4. The Department or other agency or department making the investigation shall file its
1706 report with the Court prior to the hearing on the petition and shall provide the parties with a copy
1707 of the report at least three (3) calendar days prior to the hearing.

1708 708.40-5. If the report of the investigation is unfavorable or if it discloses a situation which, in
1709 the opinion of the Court, raises a serious question as to the suitability of the proposed adoption,
1710 the Court may appoint a guardian ad litem for the child whose adoption is proposed.

1711 708.40-6. During the hearing the parties may agree to attend peacemaking to establish an
1712 agreement regarding residual rights of a birth parent, birth sibling, or other birth relative of the
1713 child.

1714 708.40-7. If after the hearing and a study of the report required by section 708.40-3 the Court is
1715 satisfied that the adoption is in the best interests of the child, the Court shall make an order
1716 granting the adoption. The order may change the name of the child to that requested by
1717 petitioners.

1718 708.40-8. After the order of adoption is entered the relation of parent and child and all the rights,
1719 duties and other legal consequences of the natural relation of child and parent thereafter exists
1720 between the adopted child and the adoptive parents. The relationship between the adopted child
1721 and biological parents shall be completely altered and all the rights, duties, and other legal
1722 consequences of those relationships shall cease to exist, excluding any residual rights granted to
1723 the biological parents and extended family through customary adoption. If the biological parent
1724 is the spouse of the adoptive parent, the relationship shall be completely altered and those rights,
1725 duties, and other legal consequences shall cease to exist only with respect to the biological parent
1726 who is not the spouse of the adoptive parent.

1727 708.40-9. After entry of the order granting the adoption, the Department shall promptly mail a
1728 copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any additional
1729 data needed for the issuance of a new birth certificate.

1730

1731 **708.41. Non-Compliance with a Residual Rights Agreement**

1732 708.41-1. Any party to a residual rights agreement may petition the Court that approved the
1733 agreement to compel any person who is bound by the agreement to comply with the agreement.
1734 The petition shall allege facts sufficient to show that a person who is bound by the agreement is
1735 not in compliance with the agreement and that the petitioner, before filing the petition, attempted
1736 in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also
1737 allege facts showing that the noncompliance with the agreement is not in the best interests of the
1738 child.

1739 708.41-2. After receiving a petition for action regarding a residual rights contact agreement the
1740 Court shall set a date and time for a hearing on the petition and shall provide notice of the
1741 hearing to all parties to the agreement and may reappoint a guardian ad litem for the child.

1742 708.41-3. If the Court finds, after hearing, that any person bound by the agreement is not in
1743 compliance with the agreement and that the petitioner, before filing the petition, attempted in
1744 good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an
1745 order requiring the person to comply with the agreement and may find a party in contempt.

1746 708.41-4. The Court may not revoke a termination of parental rights order or an order of
1747 customary adoption because an adoptive parent or other custodian of the child or a birth parent,
1748 birth sibling, or other birth relative of the child fails to comply with a residual rights agreement.
1749

1750 **708.42. Peacemaking and Mediation**

1751 708.42-1. The Court may refer the parties to peacemaking or mediation if the parties agree to
1752 attend peacemaking or mediation. The Court shall not refer the parties to peacemaking or
1753 mediation if attending the session will cause undue hardship or would endanger the health or
1754 safety of a party. When the parties attend peacemaking or mediation based on a referral from the
1755 Court, the Court shall enter an order finding good cause to suspend the time limits established
1756 under this law.
1757

1758 **708.43. Appeals**

1759 708.43-1. Appeals of all orders issued under this law shall be heard by the Nation's Court of
1760 Appeals in accordance with the Rules of Appellate Procedure.
1761

1762 **708.44. Liability**

1763 708.44-1. No liability shall attach to the Department, Indian Child Welfare Worker, the Nation's
1764 Child Welfare Attorney or any person acting under their authority for statements, acts or
1765 omissions made in good faith while in the course of activities taken under this law.
1766

1767 *End.*

1768

Adopted – BC- _____



Legislative Operating Committee
April 5, 2017

Drug and Alcohol Free Workplace Amendments

Submission Date: 10/05/16	Public Meeting: 03/02/17
LOC Sponsor: Fawn Billie and Jennifer Webster	Emergency Enacted: 10/26/16 Expires: 04/26/17

Summary: These emergency amendments were requested by the OLO to comply with OSHA regulations.

10/20/16 LOC: Motion by Fawn Billie to add Drug and Alcohol Free Workplace Policy Amendments to the active files list with Fawn Billie and Jennifer Webster as co-sponsors; Seconded by David P. Jordan. Motion Carried unanimously.

Motion by Fawn Billie to approve the emergency adoption packet and forward to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.

10/26/16 OBC: Motion by Brandon Stevens to adopt resolution 10-26-16-D Drug and Alcohol Free Workplace Policy Emergency Amendments, seconded by Jennifer Webster. Motion carried unanimously.

Motion by Lisa Summers to request that a similar policy for appointed and elected officials also be developed and provided by the LOC, seconded by Davis Jordan. Motion carried unanimously.

12/2/16: *Work Meeting held.* Present: Cathy Bachhuber, Bob Keck, Jenny Webster, Maureen Perkins, Geraldine Danforth, Mary Corneliusson, Clorissa Santiago, Fawn Billie. Drafting attorney will make changes to draft based on discussion and there will be another work meeting.

1/5/17: *Work Meeting held.* Present: Clorissa Santiago, Maureen Perkins, Jennifer Webster, Fawn Billie, Matthew Denny, Geraldine Danforth, Mary Corneliusson, Robert Keck. Drafting attorney will make changes to draft based on discussion.

1/18/17 LOC: Motion by David P. Jordan to forward the Drug and Alcohol Free Workplace Policy Amendments to the Legislative Reference Office for a legislative analysis; seconded by Fawn Billie. Motion carried unanimously.

1/19/17: *Quarterly Meeting.* Present: Jennifer Webster, Jennifer Falck, Clorissa Santiago, Candice Skenandore, Tani Thurner, Maureen Perkins.

2/1/17 LOC: Motion by Fawn Billie to approve the meeting packet including the fiscal impact statement when complete and forward the Drug and Alcohol Free Workplace Policy Amendments to a public meeting to be held on March 2, 2017; seconded by David P. Jordan. Motion carried unanimously.

3/2/17: Public meeting held.

Next Steps:

- Review and accept public meeting comments;
- Approve the adoption packet and forward to the Oneida Business Committee for consideration.



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney
DATE: April 5, 2017
RE: Drug and Alcohol Free Workplace Amendments: Public Meeting Comment Review

On March 2, 2017, a public meeting was held regarding amendments to the Drug and Alcohol Free Workplace Policy. This memorandum is submitted as a review of the oral comments received within the public meeting. There were no written comments submitted during the public comment period, which ended on March 9, 2017. The public meeting draft and public meeting transcript are attached to this memorandum for review.

Comment 1 – General Comment Regarding Fiscal Analysis:

Raeann Skenandore: Yes I am the only one on the list. Just for the record, yes the fiscal impact statement was included. The savings were to be determined. We did receive the numbers this morning. I will update the fiscal. The savings are about \$20,000 annually. Just for the record.

Response

The commenter is discussing an update to the fiscal analysis. There is no recommended revision based on this comment.

Comment 2 – General Comment Regarding Risk Management Perspective:

Robert Keck: From a risk management perspective I would like to add some comments on this. The post-accident drug testing had very few positives as I understand the numbers to be. I don't believe it was as effective as what the perception and the thought may have been at the outset. Quite candidly, in terms of accidents here, we have had a significant downturn in the number of employee injuries that have resulted in medical payments and/or lost time work. A few years ago we were close to 300 injuries reported to our administrator. In the last two years, those numbers have dropped to 91 and 88. For an organization that works as many hours as we do with 24/7 operations, that is a significantly low number and one that I believe we've achieved, not because of the thought of being drug tested, but more so for the fact that we've made a concerted effort to talk with various departments across the tribe and engage them in discussions and provide information to them with respect to keeping workers safe. I think we've done a fairly good job of that, the numbers bear that out. I think post-accident drug testing has had an impact and from my perspective that impact has been, I don't think people in some cases are going for treatment. I believe in the past, if they were hurt, without post-accident drug testing and again this comes from experience, it goes back many years because I'm old, but some people in the past probably would have said, "Ok, I'm going to go to the doctor because I smashed my finger in the file

drawer and get an x-ray” because it probably got them the rest of their shift off and they didn’t have to pay for that visit. And again that is something that I’ve seen done in years past in my career. Now that they were going to get drug tested, I believe, for minor type of injuries like that, in some cases I’m reasonably certain they have forgone going for that treatment because of the drug test. So I believe it’s helped impact our costs and our number of claims, but I believe those situations are on the minor side of injuries and not a big cost driver either. To eliminate this I don’t believe is going to create a situation where we’re going to see a rapid increase in the number of injuries workers may incur. Nor do I think it’s going to increase the cost a great deal. I think we are taking other measures to impact those in a positive way. Drug testing in my career and what I’ve seen in other places, post-accident drug testing and my peer networking folks that I talk with, there aren’t many risk managers that say yes, you should absolutely do that. Most of them feel that the bigger deterrent to prevent and to have a drug free workforce is the institution of random drug testing. Thank you.

Response

The commenter provides general comments through the perspective of risk management, and possible effects of implementing the amendments. There is no recommended revision based on this comment.

Comment 3 – General:

JoAnne House: Bob shouldn’t have stood up. I apologize for my voice. I would request that the Legislative Operating Committee consider another alternative or at least a follow up study regarding the post-accident drug testing and removing it from the Drug and Alcohol Free Workplace policy. While I would tend to agree that someone is not likely to report an accident because they don’t want to take drug testing. I would be concerned that we would see a steady increase over time of the accidents being reported and that we should be prepared to address those before it gets out of control. So as a part of this particular action, the LOC should also recommend that that study be conducted and the information be presented on an annual basis so we can tackle this from a policy as well as a risk management point of view. Thank you.

Response

The commenter provides general comments and requests that the LOC conduct a follow up study to be presented on an annual basis regarding the post-accident drug testing and removing it from the Drug and Alcohol Free Workplace policy. The removal of the mandatory drug and alcohol testing after a workplace accident provision was in response to a change in federal Occupational Safety and Health Administration (OSHA) rule requirements so that our law could remain in compliance with OSHA requirements.

It is up to the LOC to determine if a follow up study and annual presentation of information regarding the removal of post-accident drug and alcohol testing. There is no recommended revision based on this comment.

Title 2. Employment – Chapter 202
DRUG AND ALCOHOL FREE WORKPLACE

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202.1. Purpose and Policy

202.1-1. *Purpose.* The Nation is committed to protecting the safety, health and well-being of all employees, and other individuals in the workplace. The Nation recognizes that alcohol abuse and drug use pose a significant health and safety threat to our customers and other employees. The Nation also recognizes that alcohol and drug abuse and addiction are treatable illnesses. The Nation realizes that early intervention and support may improve the success of rehabilitation.

202.1-2. *Policy.* It is the policy of the Nation to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. The Nation encourages employees to voluntarily seek help for their personal drug and alcohol-related problems.

202.2. Adoption, Amendment, Repeal

202.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-25-95-A and amended by BC-10-20-99-A, BC-12-05-07-B, BC-12-11-13-F and BC_____.

202.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

202.2-3. 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.

202.2-4. 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.

202.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

202.3. Definitions

202.3-1. This section shall govern the definitions of words or phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Appropriate authority” means the Human Resources Department hiring representative, immediate supervisor, EHN, MRO, and/or ONEAP who requests the drug and/or alcohol testing for reasons of pre-employment, reasonable suspicion, and/or follow-up testing.

(b) “Confirmed positive test result” means a lab-confirmed drug test that is verified by the MRO that exceeds the cut-off levels established by this law (levels established by the United States Department of Health and Human Services), confirmed saliva testing, confirmed evidential breath alcohol test results of 0.02 or greater; and/or refusal to test.

(c) “EHN” means the Oneida Employee Health Nursing Department.

(d) “Employee” means any individual who is employed by the Nation and is subject to the direction and control of the Nation with respect to the material details of the work

58 performed, or who has the status of an employee under the usual common law rules
 59 applicable to determining the employer-employee relationship. “Employee” includes, but
 60 is not limited to; an individual employed by any program or enterprise of the Nation, but
 61 does not include elected or appointed officials, or individuals employed by a Tribally
 62 Chartered Corporation. For purposes of this law, individuals employed under an
 63 employment contract as a limited term employee are employees of the Nation, not
 64 consultants.

65 (e) “External applicant” means a person who is applying for a position and not currently
 66 employed by the Nation.

67 (f) “HRD” shall mean the Human Resources Department and/or representatives
 68 performing Human Resources functions applicable to this law.

69 (g) “Internal applicant” means a person who is applying for a position who is currently
 70 employed by the Nation, this shall include those employed under a temporary status.

71 (h) “MRO” means Medical Review Officer who is a licensed physician who is responsible
 72 for receiving and reviewing laboratory test results generated by an employer’s drug testing
 73 program and evaluating medical explanations for certain drug test results.

74 (i) “Nation” means the Oneida Nation.

75 (j) “NHTSA” means the National Highway Traffic Safety Administration.

76 (j) “ONEAP” means the Oneida Nation Employee Assistance Program which is a
 77 professional counseling program staffed by clinical social workers licensed by the State of
 78 Wisconsin which offers services to the Nation’s employees and family members.

79 (k) “Prohibited drug(s)” means marijuana, cocaine, opiates, amphetamines, phencyclidine
 80 (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance
 81 included in Schedules I through V, as defined by Section 812 of Title 21 of the United
 82 States Code. This shall also include prescription medication or over-the-counter medicine
 83 used in an unauthorized or unlawful manner.

84 (l) “Return-to-Work Agreement” means an agreement, developed by an ONEAP counselor
 85 and signed by the employee and the ONEAP counselor, and the referring supervisor, which
 86 sets out the actions the employee needs to complete in order to return to work and remain
 87 employed.

88 (m) “Supervisor” means the immediate supervisor, or person who has taken on the role of
 89 supervisor due to an absence that is responsible for performance review, corrective action,
 90 and day-to-day assignments of duties.

91 (n) “Work-related accident” means an unexpected event involving an employee that occurs
 92 in the employee’s working environment or during an activity related to work, that:

93 (1) results in an injury to the employee or another person that may require medical
 94 intervention by a police officer or emergency medical technician, or treatment at a
 95 medical facility,

96 (2) results in death of the employee or another person, or

97 (3) involves any property damage.

98 **202.4. Application**

99 202.4-1. This law applies to all applicants for employment, whether external or internal, and all
 100 employees during working hours, when on-call, and when operating a vehicle owned by the Nation
 101 or a vehicle rented by the Nation.
 102

- 103 202.4-2. An employee is prohibited from the use of prohibited drugs at all times.
 104 202.4-3. An employee is prohibited from the use of intoxicants while on official business travel
 105 while the conference or meeting is in session.
 106 202.4-4. An employee is not exempted from this law if they travel to another state, territory or
 107 country where the use of certain drugs is legal.

- 108
 109 **202.5. Shared Responsibility**
 110 202.5-1. A safe and productive drug and alcohol free workplace is achieved through cooperation
 111 and shared responsibility between the employer and an employee.
 112 202.5-2. *Employee*. It is the employee's responsibility to:
 113 (a) Be free from the effects of prohibited drugs, and/or alcohol during working hours,
 114 and/or when scheduled to be on-call.
 115 (b) Refrain from the unlawful manufacture, distribution, dispensation or possession of any
 116 prohibited drugs while working.
 117 (c) Comply with drug and alcohol testing if directed to do so upon the request of an
 118 appropriate authority.
 119 (d) Confidentially report suspicious behavior of an employee immediately to the
 120 supervisor of the employee in question.
 121 (e) Cooperate with the requests made by EHN and the MRO. The employee shall return
 122 the call of the MRO within twenty-four (24) hours of the call being made to the employee.
 123 An employee who fails to cooperate and does not contact the MRO within twenty-four (24)
 124 hours of receiving contact shall not receive back pay for any time between the date the
 125 MRO placed the call until the time the employee does return the call of the MRO.
 126 (f) Sign a consent form to be tested for alcohol and drugs when requested by an
 127 appropriate authority.
 128 (g) Provide the appropriate information to EHN in the event a medical condition prevents
 129 the employee from properly completing drug and alcohol testing so alternative drug and
 130 alcohol testing measures can be taken by EHN.
 131 202.5-3. *Supervisor*. It is the supervisor's responsibility to:
 132 (a) Be familiar with this law and any related policies and procedures.
 133 (b) Investigate reported suspicious behaviors while maintaining the confidentiality of the
 134 person who reported the suspicious behavior.
 135 (c) Promptly intervene with an employee who is believed to be under the influence of
 136 prohibited drugs and/or alcohol.
 137 (d) Monitor the employee under the influence of prescription and/or over-the-counter
 138 medications that could compromise the safety of the employee, fellow employees, or the
 139 public.
 140 (e) Send the employee through the contracted transportation service for reasonable
 141 suspicion drug and alcohol testing.
 142 (f) Take appropriate action as outlined by this law.
 143 (g) Sign the Return to Work Agreement along with the employee and ONEAP counselor
 144 that was developed by ONEAP.
 145 (h) Send a copy of the consent to submit to drug and alcohol testing form signed by the
 146 employee to EHN.

147 202.5-4. *Supervisor and Employee.* A supervisor or an employee that fails to adhere to the
 148 responsibilities of the supervisor or employee under this law may be subject to disciplinary action
 149 or other consequences as explained in section 202.13.

150 202.5-5. *Off-duty Use of Prohibited Drugs or Alcohol.* Off-duty use of prohibited drugs or
 151 alcohol may result in continued impairment during on-duty hours, which shall then constitute a
 152 violation of this law. It is the employee's responsibility to understand the consequences of off-
 153 duty use, and take steps to avoid the possibility of on-duty impairment. An employee who is
 154 called in for emergency or unplanned work, excluding those on-call, and has been using
 155 prohibited drugs or drinking alcoholic beverages prior to such a call, shall inform the employee's
 156 supervisor they cannot report, and shall continue to decline to report until the effects of the
 157 prohibited drugs or alcohol have left the employee's system. Such refusal to report shall not be
 158 viewed as improper, and disciplinary action shall not arise from such refusal.

159 202.5-6. *Use of Controlled Substances That May Affect Safety or Performance.* An employee
 160 who is taking or is under the influence of any controlled substances during working hours,
 161 including prescription medication or over the counter medication, which may affect the
 162 employee's job performance or safety of the employee, fellow employees, public, or assets of the
 163 Nation have the following obligations:

- 164 (a) The employee shall notify the employee's immediate supervisor about the use of the
 165 substance and possible work-related effects prior to commencing work.
- 166 (b) Upon request, the employee may be required to obtain a written statement of any work
 167 restrictions or impact on performance or safety relating to the legal substances from the
 168 employee's physician or pharmacist.
- 169 (c) An employee shall not sell or share his or her prescribed medications with any other
 170 person, and shall not take medications that are prescribed to another person.
- 171 (d) It may be necessary for the employee's supervisor, area manager or EHN to consult
 172 with the employee's personal physician, pharmacist or an MRO, with the employee's
 173 approval or written authorization, to determine if the medication might impact the
 174 employee's ability to perform the employee's job, or pose a hazard to other employees
 175 or to the general public.
- 176 (e) The employee's duties may be temporarily modified for up to one hundred eighty (180)
 177 days. Any modification of duties shall result in the appropriate modification of pay as
 178 established by the Human Resources Department.

179

180 **202.6. Prohibited Behavior**

181 202.6-1. An applicant or employee of the Nation is in violation of this law if he or she:

- 182 (a) Uses, possesses, and/or sells prohibited drugs, or is under the influence of prohibited
 183 drugs or alcohol while on duty. Notwithstanding section 202.11, any employee who is caught
 184 using, possessing or selling prohibited drugs shall be immediately terminated from employment
 185 with the Nation.
- 186 (b) Fails to inform his or her supervisor of being under the influence of prescription
 187 medication and/or over-the-counter medication(s) which may affect the employee's job
 188 performance or safety of the employee, fellow employees, public, or assets of the Nation.
- 189 (c) Uses unauthorized prescription drugs or intentionally misuses and/or abuses
 190 prescription medications.
- 191 (d) Refuses to test.

- 192 (e) Has a confirmed positive test after completing a drug and/or alcohol test through EHN
 193 or a medical facility, or has a confirmatory test come back as positive.
 194

195 **202.7. Reasonable Suspicion**

196 202.7-1. Establishing reasonable suspicion begins when the supervisor becomes aware either by
 197 personal observation and/or secondary reported observation that an employee may be under the
 198 influence of drugs and/or alcohol: this may include seeing or receiving a report that the employee
 199 has taken or possess prohibited drugs or prescription medication that is not specifically prescribed
 200 to that employee. In order to make a reasonable suspicion determination, the supervisor shall
 201 evaluate the following:

202 (a) Specific observations concerning appearance, behavior, speech, or body odors of the
 203 employee consistent with possible drug use or alcohol misuse.

204 (b) The observations may include indications of the chronic and withdrawal effects of
 205 prohibited drugs or alcohol.

206 202.7-2. The supervisor shall document his or her observations and discuss the matter with the
 207 employee. During this discussion, the supervisor may ask the employee for proof of a prescription.
 208 The employee shall comply with this request. If after a discussion with the employee, the
 209 supervisor continues to suspect the employee may currently still be under the influence or
 210 reasonable suspicion is otherwise established, the supervisor shall refer the employee for
 211 reasonable suspicion drug and alcohol testing.

212 202.7-3. A supervisor's decision made in regard to the reasonable suspicion drug and alcohol
 213 testing of an employee is final. An employee cannot appeal or challenge a supervisor's
 214 determination for reasonable suspicion drug and alcohol testing.
 215

216 **202.8. Drug and Alcohol Testing**

217 202.8-1. Drug and alcohol tests are forensic in nature, meaning they are performed to formalize
 218 conditions of employment as described in this law. To ensure the accuracy and fairness of this
 219 law, all drug and alcohol testing shall be conducted according to the United States Department of
 220 Health and Human Services, Substance Abuse and Mental Health Services Administration
 221 (SAMSHA) guidelines for Federal Workplace Drug Testing Programs.

222 202.8-2. EHN or its designee shall use Federal Drug Administration approved urine tests and
 223 National Highway Transportation Safety Administration (NHTSA) certified evidential breath
 224 testing devices or NHTSA certified saliva-screening devices, operated by technicians whose
 225 training terminology, procedures, methods, equipment, forms, and quality assurance comply with
 226 best practices.

227 (a) Confirmation drug testing done on urine specimens shall be conducted by a laboratory
 228 which is certified by the U.S. Department of Health and Human Services using its
 229 confirmation methods and established cut-off levels. Laboratory-confirmed results shall
 230 undergo the verification process by a MRO.

231 (b) Confirmation breath alcohol testing shall be performed using an NHTSA certified
 232 evidential breath testing device.

233 (c) Confirmation drug testing done by saliva testing shall be performed using an NHTSA
 234 certified saliva test.

235 202.8-3. If an employee is involved in a work-related accident, he or she shall immediately inform
 236 his or her supervisor of the accident.

237 202.8-4. Each employee, as a condition of employment, is required to participate in pre-
 238 employment, reasonable suspicion, and follow-up testing upon the request of an appropriate
 239 authority.

240 202.8-5. A negative test result is required for employment eligibility.

241 202.8-6. *Dilution of Test Results*. In cases where a drug test result is diluted, a positive dilute of
 242 the test result requires that the applicant or employee shall be given a confirmed positive test
 243 result, while a negative dilute of the test result requires retesting. EHN shall notify the applicant or
 244 employee of the required retesting.

245 (a) If the re-test results in a negative-dilute, the applicant or employee shall be given a
 246 negative test result.

247 (b) If the re-test results in a positive-dilute, then the applicant or employee shall be given a
 248 positive test result.

249

250 **202.9. Refusal to Test**

251 202.9-1. Refusal to test is prohibited behavior as defined in section 202.6. Refusal to test carries
 252 the same consequences as a confirmed positive test result. Examples of refusal to test include, but
 253 are not limited to:

254 (a) Substituting, adulterating (falsifying), or diluting the specimen.

255 (b) Refusal to sign the required forms .

256 (c) Refusal to cooperate in the testing process in such a way that prevents completion of
 257 accurate testing and as directed by the collector.

258 (d) Failing to remain at the testing site until the testing process is complete.

259 (e) Providing an insufficient sample of urine or breath

260 (f) Failing to test or to re-test.

261 (g) Failing to appear within two (2) hours after an order or request is made for testing or
 262 re-testing.

263 (h) Behaving in a confrontational or discourteous manner that disrupts the collection
 264 process.

265

266 **202.10. Reasonable Suspicion Testing Waiting Period**

267 202.10-1. This section applies only to current employees who meet the reasonable suspicion
 268 standard. It does not apply to applicants of the Nation.

269 202.10-2 During drug and alcohol testing for reasonable suspicion, an employee shall be
 270 immediately removed from duty without pay at the time of initiation of the reasonable suspicion
 271 drug and alcohol testing and specimen collection until the employer is notified by EHN of negative
 272 results on both the drug and alcohol tests, or MRO-verified negative test results.

273 202.10-3. When confirmation of test results are made available to the employer, the supervisor
 274 shall notify the employee by telephone and by certified mail using the contact information
 275 provided by the employee. The notice to the employee shall identify a reinstatement date if the
 276 test was confirmed negative, or applicable consequences if the test was confirmed positive. If the
 277 employee is reinstated, back pay shall be provided in accordance with the Back Pay law .
 278 However, if the employee fails to return to work on the assigned reinstatement date as instructed in
 279 the notice from the supervisor, the supervisor shall discipline the employee in accordance with the
 280 Nation's laws, rules and policies governing employment, unless an extension is granted in writing
 281 by the supervisor along with the reason for the extension. An employee who is ultimately

282 terminated for failure to return to work on his or her assigned reinstatement date shall not be
 283 eligible for employment for one (1) year after the date of termination.

284

285 **202.11. Consequences for Prohibited Behavior**

286 202.11-1. Either an internal applicant or an external applicant may decline the position at any time
 287 before being directed to EHN or other designated testing site for the applicant's drug and alcohol
 288 testing.

289 202.11-2. *External Applicant.* If an external applicant fails to show at the testing site within the
 290 time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at
 291 section 202.6 that has been documented, the employment offer shall be withdrawn. An external
 292 applicant shall not be eligible for hiring consideration for one hundred eighty (180) days from the
 293 date of the urine drug screening test.

294 202.11-3. *Internal Applicant.* If an internal applicant fails to show at the testing site within the
 295 time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at
 296 section 202.6, the employment offer shall be withdrawn. The applicant shall be removed from
 297 duty and subject to respective consequences of this law. The applicant shall not be eligible for
 298 hiring consideration in a different position for one hundred eighty (180) days from the date of the
 299 urine drug screening test.

300 202.11-4. *Employee.* If an employee has engaged in prohibited behavior as listed in section
 301 202.6-1, and/or fails to cooperate by not responding to contact from the MRO within ten (10)
 302 business days (which shall be deemed thereafter as a definite positive test), the employee shall be
 303 removed from duty and subject to the respective consequences of this law.

304 202.11-5. *Consequences.*

305 (a) *First Violation.*

306 (1) Any employee who engages in prohibited behavior as defined in section 202.6
 307 for the first time shall be removed from duty without pay and shall receive a
 308 mandatory referral to ONEAP for an assessment. The ONEAP shall also determine
 309 if the employee shall be subject to return-to-duty/follow-up testing. If follow-up
 310 testing is required, the testing shall be at the employee's expense.

311 (2) The employee shall be required to sign an ONEAP Return-to-Work Agreement
 312 and submit the agreement to his or her supervisor within ten (10) calendar days or
 313 the employee shall be terminated and ineligible for re-hire for one (1) year.

314 (A) When the supervisor signs the Return-to-Work Agreement the
 315 employee shall be placed back on the work schedule by the next regularly
 316 scheduled workday.

317 (3) Failure to comply with the signed Return-to-Work Agreement shall result in the
 318 employee being terminated and ineligible for re-hire for one (1) year.

319 (b) *Second Violation.*

320 (1) Any employee who engages in prohibited behavior as defined in section 202.6 a
 321 second time within his or her lifetime of employment with the Nation shall be
 322 removed from duty without pay and shall receive a mandatory referral to ONEAP
 323 for an assessment.

324 (2) The employee shall be required to sign an ONEAP Return-to-Work Agreement
 325 and submit it to the employee's supervisor for signature within ten (10) calendar
 326 days or the employee shall be terminated and ineligible for re-hire for one (1) year.

327 After a second violation the employee shall not be placed back on the work
328 schedule until:

329 (A) The employee receives approval from the ONEAP that they have
330 demonstrated sufficient progress in a treatment program that would indicate
331 the employee is drug and alcohol free within thirty (30) days of the
332 employee being removed from duty; and

333 (B) The employee completes a return-to-duty drug screening and alcohol
334 test at a SAMHSA-certified facility at their own expense, which shall be
335 negative within thirty (30) days of the employee being removed from duty;

336 (C) The ONEAP notifies the supervisor of the employee's eligibility to
337 return to work.

338 (3) As a condition of continuing employment, the employee shall participate in
339 follow-up testing with continued negative results as directed by the ONEAP and
340 listed in the Return-to-Work Agreement. All follow-up testing shall be at the
341 employee's expense.

342 (4) Failure to comply with the Return-to-Work agreement or follow up testing shall
343 result in the employee being terminated and ineligible for re-hire for one (1) year.

344 (c) *Third Violation.*

345 (1) Any employee who engages in prohibited behavior as defined in section 202.6 a
346 third time in his or her lifetime of employment with the Nation shall be terminated.
347 The employee shall not be eligible for employment unless he or she receives a
348 forgiveness pursuant to the Pardon and Forgiveness law. An employee that receives
349 forgiveness shall not be eligible for re-hire for one (1) year after the date of
350 termination.

351 **202.12. Re-hire**

352 202.12-1. A former employee that was terminated due to violations of this law shall provide,
353 along with the former employee's application for employment, the following:

354 (a) Proof of completion of a certified Alcohol and Other Drug Abuse program; and

355 (b) A negative drug screening and alcohol test at a SAMHSA-certified facility completed
356 within the last thirty (30) days. This drug screening and alcohol test shall be done at the
357 former employee's own expense.

358
359 **202.13. Other Potential Consequences**

360 202.13-1. The violation of this law may result in consequences to the employee beyond any
361 discipline or corrective action that may be taken. Other potential consequences include the
362 following:

363 (a) *Disqualification of Unemployment Benefits:* An employee who is terminated as a
364 result of a violation of this law may be ineligible for unemployment benefits.

365 (b) *Reduction of Workers Compensation Benefits:* An employee who incurs an injury in a
366 work-related accident that occurred while engaged in a violation of this law may have any
367 workers compensation benefits reduced.

368 (c) *Criminal Penalties:* An employee whose conduct violates state or federal criminal
369 laws may be referred to appropriate law enforcement for criminal prosecution.

370 (d) *Liability for Accidents:* An employee whose conduct in violation of this law causes an
 371 accident may be held personally responsible for losses associated with the accident, and the
 372 employee may be required to pay for those losses.
 373

374 **202.14. Confidentiality**

375 202.14-1. Information related to the application of this law is confidential. Access to this
 376 information is limited to those who have a legitimate “need to know” in compliance with relevant
 377 laws and personnel policies and procedures.

378 202.14-2. All drug and alcohol testing information shall be maintained at EHN in confidential
 379 records which are separate from the employee’s clinical and personnel files. The employee may
 380 request a copy of the employee’s records. The records may be requested by a third party in
 381 accordance with the Oneida Nation’s laws, rules and policies governing employment.
 382

383 **202.15. Communication**

384 202.15-1. HRD shall communicate this law to all employees to ensure all employees are aware of
 385 their role in supporting this law:

386 (a) All employees shall be given information on how to access this law.

387 (b) This law shall be reviewed in new employee orientation and other means, as deemed
 388 appropriate by HRD.

389 (c) All employees shall sign an acknowledgment form stating they have received a copy of
 390 this law, have read and understand it, and agree to follow this law.
 391

392 *End.*
 393

394 See GTC-01-31-94-B

395 Adopted by the OBC on 08-17-94

396 Emergency Amendments BC-04-20-95-C

397 Adopted BC-10-25-95-A (repealed previous versions)

398 Amended BC-10-20-99-A

399 Amended BC-12-05-07-B

400 Amended BC-12-11-13-F

401 Amended BC-10-26-16-D
 402



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING
Drug and Alcohol Free Workplace Amendments**
Business Committee Conference Room-2nd Floor Norbert Hill Center
March 2, 2017 12:15 p.m.

Present: Jennifer Webster, Clorissa Santiago, Candice Skenandore, Maureen Perkins, Rae Skenandore, Jo Ann House, Robert Keck, Danelle Wilson, Cathy Bachhuber, Larry Smith, Tani Thurner.

Jennifer Webster : Greetings. The time is 12:15 p.m. and today's date is March, 2017. I will now call the public meeting of the Drug and Alcohol Free Workplace Amendments to order.

The Legislative Operating Committee is hosting the public meeting to gather feedback from the community regarding this legislative proposal.

All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room.

Written comments may be submitted to the Secretary's Office or the Legislative Reference Office in person, by U.S. mail, inter-office mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Thursday, March 9, 2017.

In attendance from the LOC is Jennifer Webster.

We will begin today's public meeting for the Drug and Alcohol Free Workplace Amendments. This is a proposal for amendments that would:

- Permanently adopt emergency amendments which removed the requirement of post-accident drug and alcohol testing for all instances of work-related injuries and accidents so that DAFWP complied with the requirements of the Occupational Safety and Health Act;
- Refer to the Policy as a law, aligning with the Legislative Operating Committee's directive that all legislation is to be classified as laws moving forward;
- Expand the application of the Drug and Alcohol Free Workplace policy so the law applies to all applicants and employees during times the applicant or employee is operating a vehicle owned by the Nation or a vehicle rented by the Nation;
- Clarify that an employee is prohibited from the use of prohibited drugs at all times;
- Add an additional responsibility to the employee to provide appropriate information to Employee Health Nursing in the event a medical condition prevents the employee from properly completing drug and alcohol testing;

A good mind. A good heart. A strong fire.

- Clarify that supervisor's determination to use reasonable suspicion drug and alcohol testing is non-appealable;

The LOC may impose a time limit for all speakers pursuant to Section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a five minute time limit. The time limit shall be applied equally to all persons.

Is there anyone signed in to speak? Are you the only one on the list?

Raeann Skenandore: Yes I am the only one on the list. Just for the record, yes the fiscal impact statement was included. The savings were to be determined. We did receive the numbers this morning. I will update the fiscal. The savings are about \$20,000 annually. Just for the record.

Jenny Webster: Ok thank you. Is there anyone else signed in to speak? Should we wait the five minutes? Just in case.

Robert Keck: From a risk management perspective I would like to add some comments on this. The post-accident drug testing had very few positives as I understand the numbers to be. I don't believe it was as effective as what the perception and the thought may have been at the outset. Quite candidly, in terms of accidents here, we have had a significant downturn in the number of employee injuries that have resulted in medical payments and/or lost time work. A few years ago we were close to 300 injuries reported to our administrator. In the last two years, those numbers have dropped to 91 and 88. For an organization that works as many hours as we do with 24/7 operations, that is a significantly low number and one that I believe we've achieved, not because of the thought of being drug tested, but more so for the fact that we've made a concerted effort to talk with various departments across the tribe and engage them in discussions and provide information to them with respect to keeping workers safe. I think we've done a fairly good job of that, the numbers bear (6:57) that out. I think post-accident drug testing has had an impact and from my perspective that impact has been, I don't think people in some cases are going for treatment. I believe in the past, if they were hurt, without post-accident drug testing and again this comes from experience, it goes back many years because I'm old, but some people in the past probably would have said, "Ok, I'm going to go to the doctor because I smashed my finger in the file drawer and get an x-ray" because it probably got them the rest of their shift off and they didn't have to pay for that visit. And again that is something that I've seen done in years past in my career. Now that they were going to get drug tested, I believe, for minor type of injuries like that, in some cases I'm reasonably certain they have forgone going for that treatment because of the drug test. So I believe it's helped impact our costs and our number of claims, but I believe those situations are on the minor side of injuries and not a big cost driver either. To eliminate this I don't believe is going to create a situation where we're going to see a rapid increase in the number of injuries workers may incur. Nor do I think it's going to increase the cost a great deal. I think we are taking other measures to impact those in a positive way. Drug testing in my career and what I've seen in other places, post-accident drug testing and my peer networking folks that I talk with, there aren't many risk managers that say yes, you should absolutely do that. Most of them feel that the bigger deterrent to prevent and to have a drug free workforce is the institution of random drug testing. Thank you.

Jennifer Webster: Thank you Bob. JoAnne?

JoAnne House: JoAnne House and Bob shouldn't have stood up. I apologize for my voice. I would request that the Legislative Operating Committee consider another alternative or at least a follow up study regarding the post-accident drug testing and removing it from the Drug and Alcohol Free Workplace policy. While I would tend to agree that someone is not likely to report an accident because they don't want to take drug testing. I would be concerned that we would see a steady increase over time of the accidents being reported and that we should be prepared to address those before it gets out of control. So as a part of this particular action, the LOC should also recommend that that study be conducted and the information be presented on an annual basis so we can tackle this from a policy as well as a risk management point of view. Thank you.

Jennifer Webster: With there being no more speakers registered, the public meeting for Drug and Alcohol Free Workplace amendments_is now closed at 12:28 p.m.

Written comments may be submitted until close of business on Thursday March 9, 2017.

-End of Meeting-



TO: Oneida Business Committee
FROM: Brandon Stevens, LOC Chairperson *BS*
DATE: April 12, 2017
RE: Drug and Alcohol Free Workplace Law Amendments

Please find the following attached backup documentation for your consideration of the Drug and Alcohol Free Workplace Law Amendments:

1. Resolution: Drug and Alcohol Free Workplace Law Amendments
2. Statement of Effect: Drug and Alcohol Free Workplace Law Amendments
3. Drug and Alcohol Free Workplace Law Amendments Legislative Analysis
4. Drug and Alcohol Free Workplace (Redline)
5. Drug and Alcohol Free Workplace (Clean)
6. Drug and Alcohol Free Workplace Law Amendments Fiscal Impact Statement

Overview

The attached Resolution will adopt permanent amendments to the current Drug and Alcohol Free Workplace Policy (“the Policy”) that are necessary in order to keep the Policy compliant with requirements of a new final rule (29 CFR 1904) concerning the Occupational Health and Safety Act. Amendments to the Policy were adopted by the Oneida Business Committee (OBC) on an emergency basis through Resolution BC-10-26-16-D. The emergency amendments expire on April 26, 2017.

The permanent amendments:

- Permanently adopt the emergency amendments which brought the Policy into compliance with OSHA by removing the requirement that an employee submit to mandatory drug and alcohol testing immediately following a work-related accident;
- Refer to the Policy as the Drug and Alcohol Free Workplace law (the “Law”) moving forward;
- Clarify that the Law applies to all employees when operating a vehicle owned by the Nation or a vehicle rented by the Nation in addition to during working hours and when on-call. *[see section 202.4-1]*;
- Add the responsibility of providing the appropriate information to EHN in the event a medical condition prevents the employee from properly completing drug and alcohol testing so alternative drug and alcohol testing measures can be taken by EHN. *[see section 202.5-2(g)]*;
- Clarify that a supervisor’s decision made in regard to reasonable suspicion drug and alcohol testing of an employee is final and non-appealable. *[see section 202.7-3]*;

- Clarify how diluted drug test results will be handled. [*see section 202.8-6*]; and
- Update the language to ensure compliance with drafting style and formatting requirements.

In accordance with the Legislative Procedures Act, a public meeting was held regarding the Drug and Alcohol Free Workplace amendments on March 2, 2017, with a comment period closing on March 9, 2017. Those comments were accepted and considered by the Legislative Operating Committee at the April 5, 2017, Legislative Operating Committee meeting.

Requested Action

Approve the Resolution: Drug and Alcohol Free Workplace Law Amendments

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Drug and Alcohol Free Workplace Law Amendments

- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Drug and Alcohol Free Workplace Policy (the “Policy”) was adopted by the Oneida Business Committee by resolution BC-10-25-95-A and amended by BC-12-11-13-F; and
- WHEREAS,** the federal Occupational Safety and Health Administration (OSHA) adopted amendments to 29 CFR 1904, a final rule which became effective on November 1, 2016, and which prohibited employers from retaliating against workers who report work-related injuries and illnesses; and
- WHEREAS,** the prohibition of retaliation against workers who report work-related injuries and illnesses includes limiting post-incident drug and alcohol testing to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use; and
- WHEREAS,** the Oneida Business Committee adopted emergency amendments to the Policy pursuant to Resolution BC-10-26-16-D in accordance with the emergency adoption process set forth in the Legislative Procedures Act (LPA); and
- WHEREAS,** the emergency amendments brought the Policy into compliance with OSHA requirements by removing the requirement that all employees must immediately undergo mandatory drug and alcohol testing following a workplace accident; and
- WHEREAS,** the emergency amendments to the Policy expire April 26, 2017; and
- WHEREAS,** the adoption of the emergency amendments to the Policy on a permanent basis are necessary to remain compliant with OSHA requirements; and
- WHEREAS,** although the permanent amendments contain the removal of mandatory drug and alcohol testing requirements following a workplace accident, employees are still required to immediately report all workplace accidents to their supervisor and can undergo drug and alcohol testing at any time if there is reasonable suspicion that the employee is under the influence of alcohol or drugs; and
- WHEREAS,** additional permanent amendments include changing the Policy to a law to align with the Legislative Operating Committee’s directive that all legislation is to be classified as laws moving forward; and

WHEREAS, amendments clarify that the Law applies to all employees when operating a vehicle owned by the Nation or a vehicle rented by the Nation in addition to during working hours and when on-call; and

WHEREAS, amendments add the responsibility of providing the appropriate information to EHN in the event a medical condition prevents the employee from properly completing drug and alcohol testing so alternative drug and alcohol testing measures can be taken by EHN; and

WHEREAS, amendments clarify that a supervisor's decision made in regard to reasonable suspicion drug and alcohol testing of an employee is final and non-appealable; and

WHEREAS, amendments clarify how diluted drug test results will be handled; and

WHEREAS, in accordance with the LPA, a public meeting was held regarding the Drug and Alcohol Free Workplace law amendments on March 2, 2017, with a comment period closing on March 9, 2017. Those comments were accepted and considered by the Legislative Operating Committee at the April 5, 2017, Legislative Operating Committee meeting.

NOW THEREFORE BE IT RESOLVED, that the amendments to the Drug and Alcohol Free Workplace law are hereby adopted and are effective immediately.



Statement of Effect
Drug and Alcohol Free Workplace Law Amendments

Summary

This Resolution adopts permanent amendments to the Drug and Alcohol Free Workplace law (the “Law”).

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

This resolution adopts permanent amendments to the Drug and Alcohol Free Workplace Policy (the “Policy”).

The federal Occupational Safety and Health Administration (OSHA) adopted amendments to 29 CFR 1904, a final rule which became effective on November 1, 2016, and which prohibited employers from retaliating against workers who report work-related injuries and illnesses. The prohibition of retaliation against workers who report work-related injuries and illnesses includes limiting post-incident drug and alcohol testing to situations in which employee drug use is likely to have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use. The Policy requires all employees to immediately undergo drug and alcohol testing following a workplace accident. These requirements in the Policy conflict with the requirements under federal law.

The Legislative Procedures Act (LPA) allows the Oneida Business Committee (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. [see LPA section 16.9-5]. Through Resolution BC-10-26-16-D, the OBC enacted emergency amendments to the Policy to obtain compliance with OSHA’s regulations.

The emergency amendments brought the Policy into compliance by removing the requirement that an employee submit to mandatory drug and alcohol testing immediately following a work-related accident.

In order for the Policy to remain compliant with OSHA’s rule, the emergency amendments must be permanently adopted. The Policy’s emergency amendments expire April 26, 2017.

Since the emergency amendments were adopted on October 26, 2016, additional amendments to the Policy have been proposed. The proposed amendments now refer the Policy as a law. This aligns with the Legislative Operating Committee’s directive that all legislation is to be classified as laws moving forward.

Additional proposed amendments to the Law:

- Clarify that the Law applies to all employees when operating a vehicle owned by the Nation or a vehicle rented by the Nation in addition to during working hours and when on-call. *[see section 202.4-1]*;
- Add the responsibility of providing the appropriate information to EHN in the event a medical condition prevents the employee from properly completing drug and alcohol testing so alternative drug and alcohol testing measures can be taken by EHN. *[see section 202.5-2(g)]*;
- Clarify that a supervisor's decision made in regard to reasonable suspicion drug and alcohol testing of an employee is final and non-appealable. *[see section 202.7-3]*;
- Clarify how diluted drug test results will be handled. *[see section 202.8-6]*; and
- Update the language to ensure compliance with drafting style and formatting requirements.

In accordance with the Legislative Procedures Act, a public meeting was held regarding the Drug and Alcohol Free Workplace amendments on March 2, 2017, with a comment period closing on March 9, 2017. Those comments were accepted and considered by the Legislative Operating Committee at the April 5, 2017, Legislative Operating Committee meeting.

Conclusion

Adoption of this Resolution would not conflict with any of the Nation's laws.



Drug and Alcohol Free Workplace Amendments Legislative Analysis

<i>Analysis by the Legislative Reference Office</i>					
Title	Drug and Alcohol-Free Workplace (law)				
Sponsors	Fawn Billie and Jennifer Webster	Drafter	Clorissa N. Santiago	Analyst	Maureen Perkins
Requester & Reason for Request	The Oneida Law Office has requested these changes due to a recently adopted change to federal law. Additional minor changes were made. The current amendments permanently adopt the emergency amendments in effect since October 26, 2016.				
Purpose	This law governs drug/alcohol testing of employees of the Nation.				
Authorized/ Affected Entities	HRD, Employee Health Nursing, Oneida Nation Employee Assistance Program, Medical Review Officer (MRO), all employees of the Nation and applicants for employment with the Nation				
Related Legislation	Personnel Policies and Procedures; Workers Compensation Law				
Enforcement & Due Process	The law identifies how reasonable suspicion can be established, such that an employee can be sent for drug and/or alcohol testing [see 202.7]. Employee's cannot appeal or challenge this determination [see 202.7-3].				
Public Meeting Status	A public meeting was held March 2, 2017. The LOC has considered all comments and accepted changes are reflected in the current draft.				

Overview

1 The Drug and Alcohol Free Workplace Policy was adopted as a tool to establish a
 2 workplace free of the influence of drugs and alcohol. Applicants for employment must pass a
 3 drug screen to be eligible for employment. Current employees can be sent for drug and alcohol
 4 testing based upon reasonable suspicion of their immediate supervisor. The overall goal of the
 5 law is to assist employees who are experiencing issues with drugs and/or alcohol with getting
 6 help to promote rehabilitation and improve the health and safety of employees and customers.
 7 The OBC adopted emergency amendments to the Drug and Alcohol Free Workplace Policy
 8 (law) to comply with a change to federal law (29 CFR 1904) pursuant to resolution BC-10-26-
 9 16-D. Although the federal rule went into effect August 10, 2016, it was not enforced until
 10 November 1, 2016. These proposed amendments are being considered for permanent adoption.
 11 The federal rule is intended to prevent employers from discouraging employees from reporting
 12 workplace injuries and illnesses. The change to federal law more clearly prohibits employers
 13 from using drug testing, or the threat of it, as a form of retaliation against employees who report
 14 injuries or illnesses. The comments for the Final Rule, published on the Federal Register, states:

15
 16 “[t]he final rule does prohibit employers from using drug testing (or the threat of drug
 17 testing) as a form of adverse action against employees who report injuries or illnesses. To
 18 strike the appropriate balance here, drug testing policies should limit post-incident testing
 19 to situations in which employee drug use is likely to have contributed to the incident, and
 20 for which the drug test can accurately identify impairment caused by drug use.”

21
22 The emergency amendments adopted October 26, 2017 removed the requirement for
23 employees to undergo alcohol and drug testing every time they are involved in a work-related
24 accident [see 202.3-1(m) and 202.8-3 of current policy previous to emergency amendments]. The
25 amendments also removed the provision that treated a failure to do so as refusal to test [see
26 202.9-1(i) of current policy previous to emergency amendments]. References were deleted
27 related to work-related accidents when identifying what refusal to test entails [see 202.9-1(i) of
28 current policy previous to emergency amendments].

29 These changes mean that employees of the Nation will no longer be subject to mandatory
30 drug and alcohol testing for every work-related accident. The law will not identify any situations
31 where an employee is subject to mandatory post-accident testing. However, employees may still
32 be subject to drug and alcohol testing if their supervisor has reasonable suspicion that the
33 employee may be under the influence. Standards/processes for how supervisors can establish
34 reasonable suspicion are still contained in the amended law [see 202.7].

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Additional Amendments

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- The amended law now states that employees a supervisor's decision made in regard to
38 reasonable suspicion of drug and alcohol testing is final and not appealable [see 202.7-3].
- 39

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Other

- The Oneida Tribe of Indians of Wisconsin was updated to Nation throughout the law in
42 accordance with the approved constitutional amendments.
 - The law was changed from a policy to a law in accordance with the current LOC's
43 directive that all policies become laws.
 - Minor language and formatting changes have been made to improve the clarity of the law
44 without affecting the content.
 - Refer to the fiscal impact statement for any financial impacts.
 - The emergency amendments are currently effective and will remain in effect for up to six
45 months (expire 4/26/2017), with the possibility of a one-time extension of up to an
46 additional six months [see *Legislative Procedures Act, 16.9-5(b)*]. The proposed
47 amendments are being considered for permanent adoption.
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Title 2. Employment – Chapter 202
DRUG AND ALCOHOL FREE WORKPLACE POLICY

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~~202.1. Purpose and Policy~~
~~202.2. Adoption, Amendment, Repeal~~
~~202.3. Definitions~~
~~202.4. Application~~
~~202.5. Shared Responsibility~~
~~202.6. Prohibited Behavior~~
~~202.7. Reasonable Suspicion~~
~~202.8. Drug and Alcohol Testing~~
~~202.9. Refusal to Test~~
~~202.10. Waiting Period~~
~~202.11. Consequences for Prohibited Behavior~~
~~202.1. Purpose and Policy~~
~~202.2. Adoption, Amendment, Repeal~~
~~202.3. Definitions~~

18 ~~202.4. Application~~
19 ~~202.5. Shared Responsibility~~
20 ~~202.6. Prohibited Behavior~~
21 ~~202.7. Reasonable Suspicion~~
22 ~~202.8. Drug and Alcohol Testing~~
23 ~~202.9. Refusal to Test~~
24 ~~202.10. Reasonable Suspicion Testing Waiting Period~~
25 ~~202.11. Consequences for Prohibited Behavior~~
26 ~~202.12. Re-hire~~
27 ~~202.13. Other Potential Consequences~~
28 ~~202.14. Confidentiality~~
29 ~~202.15. Communication~~
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202.1. Purpose and Policy

202.1-1. *Purpose.* The TribeNation is committed to protecting the safety, health and well-being of all employees, and other individuals in the workplace. The TribeNation recognizes that alcohol abuse and drug use pose a significant health and safety threat to our customers and other employees. The TribeNation also recognizes that alcohol and drug abuse and addiction are treatable illnesses. The TribeNation realizes that early intervention and support may improve the success of rehabilitation.

202.1-2. *Policy.* It is the policy of the TribeNation to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. The TribeNation encourages employees to voluntarily seek help for their personal drug and alcohol-related problems.

202.2. Adoption, Amendment, Repeal

202.2-1. ~~_____ This policylaw was adopted by the Oneida Business Committee by resolution BC-10-25-95-A and amended by BC-10-20-99-A, BC-12-05-07-B, BC-12-11-13-F and BC-~~10-26-16-D.~~~~

202.2-2. ~~_____ This policylaw may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.~~

202.2-3. ~~_____ Should a provision of this policylaw or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this policylaw which are considered to have legal force without the invalid portions.~~

202.2-4. ~~_____ In the event of a conflict between a provision of this policylaw and a provision of another Policylaw, the provisions of this Policylaw shall control.~~

202.2-5. ~~_____ This policylaw is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.Nation.~~

202.3. Definitions

202.3-1. ~~_____ This section shall govern the definitions of words or phrases as used hereinwithin this law. All words not defined herein shall be used in their ordinary and everyday sense.~~

(a) “Appropriate authority” ~~shall mean~~ means the Human ResourceResources Department hiring representative, immediate supervisor, EHN, MRO, and/or EAPONEAP who requests

64 the drug and/or alcohol testing for reasons of pre-employment, reasonable suspicion, and/or
65 follow-up testing.

66 (b) “Business day” means Monday through Friday from 8:00am-4:30pm, excluding
67 holidays recognized by the Nation.

68 ~~(bc)~~ “Confirmed positive test result” ~~shall mean~~means a lab-confirmed drug test that is
69 verified by the MRO that exceeds the cut-off levels established by this ~~Policy~~law (levels
70 established by the ~~US~~United States Department of Health and Human Services), confirmed
71 saliva testing, confirmed evidential breath alcohol test results of 0.02 or greater; and/or
72 refusal to test.

73 ~~(ed)~~ “EHN” ~~means the Oneida Employee~~ ~~shall mean~~ Health Nursing Department.

74 (e) “Employee” means any individual who is employed by the ~~Tribe~~Nation and is subject
75 to the direction and control of the ~~Tribe~~Nation with respect to the material details of the
76 work performed, or who has the status of an employee under the usual common law rules
77 applicable to determining the employer-employee relationship. “Employee” includes, but
78 is not limited to; an individual employed by any program or enterprise of the ~~Tribe~~Nation,
79 but does not include elected or appointed officials, or individuals employed by a Tribally
80 Chartered Corporation. For purposes of this ~~Policy~~law, individuals employed under an
81 employment contract as a limited term employee are employees of the ~~Tribe~~Nation, not
82 consultants.

83 ~~(df)~~ “External applicant” ~~shall mean~~means a person who is applying for a position and not
84 currently employed by the ~~Tribe~~Nation.

85 ~~(eg)~~ “HRD” ~~shall mean~~means the Human Resources Department and/or representatives
86 performing Human Resources functions applicable to this ~~Policy~~law.

87 ~~(fh)~~ “Internal applicant” ~~shall mean~~means a person who is applying for a position who is
88 currently employed by the ~~Tribe~~Nation, this ~~shall include~~includes those employed under a
89 temporary status.

90 ~~(gi)~~ “MRO” ~~shall mean~~means Medical Review Officer who is a licensed physician who is
91 responsible for receiving and reviewing laboratory test results generated by an employer’s
92 drug testing program and evaluating medical explanations for certain drug test results.

93 ~~(hj)~~ “Nation” ~~means the Oneida Nation.~~

94 (k) “NHTSA” means the National Highway Traffic Safety Administration.

95 (l) “ONEAP” shall meanmeans the Oneida Nation Employee Assistance Program which is
96 a professional counseling program staffed by clinical social workers licensed by the State
97 of Wisconsin which offers services to ~~Tribal~~the Nation’s employees and family members.

98 ~~(im)~~ “Prohibited drug(s)” ~~shall mean~~means marijuana, cocaine, opiates, amphetamines,
99 phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other
100 substance included in Schedules I through V, as defined by Section 812 of Title 21 of the
101 United States Code. This ~~shall~~ also ~~include~~includes prescription medication or over-the-
102 counter medicine used in an unauthorized or unlawful manner.

103 ~~(jn)~~ “Return-to-Work Agreement” ~~shall mean~~means an agreement, developed by an
104 ONEAP counselor and signed by the employee and the ONEAP counselor, and the
105 referring supervisor, which sets out the actions the employee needs to complete in order to
106 return to work and remain employed.

107 (o) “SAMHSA” means the United States Department of Health and Human Services,
108 Substance Abuse and Mental Health Services Administration.

(kp) “Supervisor” ~~shall mean~~ means the immediate supervisor, or person who has taken on the role of supervisor due to an absence that is responsible for performance review, corrective action, and day-to-day assignments of duties.

~~(l) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.~~

(mq) “Work-related accident” ~~shall mean~~ means an unexpected event involving an employee that occurs in the employee’s working environment or during an activity related to work, that:

(1) results in an injury to the employee ~~and requires~~ or another person that may require medical intervention by a police officer or emergency medical technician, or treatment at a medical facility,

(2) results in death of the employee or another person, or

(3) involves any property damage.

202.4. Application

202.4-1. — This ~~Policy~~ law applies to all applicants for employment, whether external or internal, and all employees during working hours ~~and when on-call~~, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation.

202.4-2. — ~~Employees are~~ An employee is prohibited from the use of prohibited drugs and alcohol during working hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation.

202.4-3. An employee is prohibited from the use of intoxicants ~~and prohibited drugs~~ while on official business travel while the conference or meeting is in session.

~~202.4-3.~~ 4. An employee is not exempted from this ~~Policy~~ law if they travel to another state, territory or country where the use of certain drugs is legal.

202.5. Shared Responsibility

202.5-1. — A safe and productive drug and alcohol free workplace is achieved through cooperation and shared responsibility between the employer and ~~employees~~ an employee.

202.5-2. — ~~Employee~~. It is the employee’s responsibility to:

(a) Be free from the effects of prohibited drugs, and/or alcohol during working hours, and/or when scheduled to be on-call.

(b) Refrain from the unlawful manufacture, distribution, dispensation or possession of any prohibited drugs while working.

(c) Comply with drug and alcohol testing if directed to do so upon the request of an appropriate authority.

(d) Confidentially report suspicious behavior of an employee immediately to the supervisor of the employee in question.

(e) Cooperate with the requests made by EHN and the MRO ~~and~~. The employee shall return the call of the MRO within twenty-four (24) hours of the call being made to the employee. ~~Employees~~ An employee who ~~fail~~ fails to cooperate and ~~do~~ does not contact the MRO within twenty-four (24) hours of receiving contact shall not receive back pay for any time between the date the MRO placed the call until the time the employee does return the call of the MRO.

152 (f) Sign a consent form to be tested for alcohol and drugs when requested by ~~a supervisor,~~
153 ~~EHN, a certified drug and alcohol technician, or police personnel in accordance with this~~
154 ~~Policy.~~ an appropriate authority.

155 (g) Provide the appropriate information to EHN in the event a medical condition prevents
156 the employee from properly completing drug and alcohol testing so alternative drug and
157 alcohol testing measures can be taken by EHN.

158 202.5-3. ~~Supervisor.~~ Supervisor. It is the supervisor's responsibility to:

159 (a) Be familiar with this Policy and any related policies and procedures.

160 (b) Investigate reported suspicious behaviors while maintaining the confidentiality of the
161 person who reported the suspicious behavior.

162 (c) Promptly intervene with ~~employees~~ an employee who ~~are~~ is believed to be under the
163 influence of prohibited drugs and/or alcohol.

164 (d) Monitor the employee under the influence of prescription and/or over-the-counter
165 medications that could compromise the safety of the employee, fellow employees, or the
166 public.

167 (e) Send the employee through the contracted transportation service for reasonable
168 suspicion drug and alcohol ~~forensic~~ testing.

169 (f) Take appropriate action as outlined by this Policy.

170 (g) Sign the Return-to-Work Agreement along with the employee and ONEAP counselor
171 that was developed by ONEAP.

172 (h) Send a copy of the consent to submit to drug and alcohol testing form signed by the
173 employee to EHN.

174 202.5-4. *Supervisor and Employee.* ~~Supervisors and employees~~ A supervisor or an employee that
175 ~~fail~~ fails to adhere to ~~their~~ the responsibilities of the supervisor or employee under this Policy
176 may be subject to disciplinary action or other consequences as explained in section 202.13.

177 202.5-5. ~~Off-duty Use of Prohibited Drugs or Alcohol.~~ Off-duty Use of Prohibited Drugs or Alcohol. Off-duty use of prohibited drugs or
178 alcohol may result in continued impairment during on-duty hours, which shall then constitute a
179 violation of this Policy. It is the employee's responsibility to understand the consequences of
180 off-duty use, and take steps to avoid the possibility of on-duty impairment. ~~In the case where~~ An
181 employee who is called in for ~~an~~ emergency or unplanned work ~~(this does not include, excluding~~
182 ~~those on-call),~~ and he or she has been using prohibited drugs or drinking alcoholic beverages prior
183 to such a call, ~~such employee should~~ shall inform the employee's supervisor they cannot report, and
184 shall continue to decline to report until the effects of the prohibited drugs or alcohol have left ~~his~~
185 ~~or her~~ the employee's system. Such refusal to report shall not be viewed as improper, and
186 disciplinary action shall not arise ~~specifically~~ from such refusal.

187 202.5-6. ~~Use of Controlled Substances That May Affect Safety or Performance.~~ Use of Controlled Substances That May Affect Safety or Performance.
188 Employees An employee who ~~are~~ is taking or ~~are~~ is under the influence of any controlled substances
189 during working hours ~~(such as, including~~ prescription medication or over the counter medication),
190 which may affect the employee's job performance or safety of the employee, fellow employees,
191 public, or assets of the Tribe Nation have the following obligations:

192 (a) The employee shall notify the employee's immediate supervisor about the use of the
193 substance and possible work-related effects prior to commencing work.

194 (b) Upon request, the employee may be required to obtain a written statement of any work
195 restrictions or impact on performance or safety relating to the legal substances from ~~his~~
196 ~~or her~~ the employee's physician or pharmacist.

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- 197 (c) An employee shall not sell or share his or her prescribed medications with any other
198 person, and shall not take medications that are prescribed to another person.
- 199 (d) It may be necessary for the employee's supervisor, area manager or ~~Employee Health~~
200 ~~Nursing (EHN)~~ to consult with the employee's personal physician, pharmacist or an
201 MRO, with the employee's approval or written authorization, to determine if the
202 medication might impact the employee's ability to perform ~~his or her~~the employee's
203 job, or pose a hazard to other employees or to the general public.
- 204 (e) The employee's duties may be temporarily modified for up to one hundred eighty (180)
205 days. Any modification of duties shall result in the appropriate modification of pay as
206 established by the Human Resources Department.

208 **202.6. Prohibited Behavior**

- 209 202.6-1. An applicant or employee of the TribeNation is in violation of this Policylaw if he or she:
- 210 (a) Uses, possesses, and/or sells prohibited drugs, or is under the influence of prohibited
211 drugs or alcohol while on duty. Notwithstanding section 202.11, any employee who is caught
212 using, possessing or selling prohibited drugs shall be immediately terminated from employment
213 with the TribeNation.
- 214 (b) Fails to inform his or her supervisor of being under the influence of prescription
215 medication and/or over-the-counter medication(s) which may affect the employee's job
216 performance or safety of the employee, fellow employees, public, or assets of the
217 TribeNation.
- 218 (c) Uses unauthorized prescription drugs or intentionally misuses and/or abuses
219 prescription medications.
- 220 (d) Refuses to test.
- 221 (e) Has a confirmed positive test result after completing a drug and/or alcohol ~~forensic~~-test
222 through EHN or ~~its designee~~a medical facility, or has a confirmatory test come back as
223 positive.

225 **202.7. Reasonable Suspicion**

226 202.7-1. Establishing reasonable suspicion begins when the supervisor becomes aware either by
227 personal observation and/or secondary reported observation that an employee may be under the
228 influence of drugs and/or alcohol: this may include seeing or receiving a report that the employee
229 has taken or possess prohibited drugs or prescription medication that is not specifically prescribed
230 to that employee. In order to make a reasonable suspicion determination, the supervisor shall
231 evaluate the following:

- 232 (a) Specific, contemporaneous and articulable observations concerning appearance,
233 behavior, speech, or body odors of the employee consistent with possible drug use or
234 alcohol misuse.
- 235 (b) The observations may include indications of the chronic and withdrawal effects of
236 prohibited drugs or alcohol.

237 202.7-2. ——— The supervisor shall document his or her observations and discuss the matter with
238 the employee. —During this discussion, the supervisor may ask the employee for proof of a
239 prescription.— The employee shall comply with this request. If after a discussion with the
240 employee, the supervisor continues to suspect the employee may currently still be under the

241 influence or reasonable suspicion is otherwise established, the supervisor shall refer the employee
242 for reasonable suspicion drug and alcohol-forensic testing.

243
244 202.7-3. A supervisor's decision made in regard to the reasonable suspicion drug and alcohol
245 testing of an employee is final. An employee shall not appeal or challenge a supervisor's
246 determination for reasonable suspicion drug and alcohol testing.

247 **202.8. Drug and Alcohol Testing**

248
249 202.8-1.— Drug and alcohol tests are forensic in nature, meaning they are performed to
250 formalize conditions of employment as described in this Policylaw. To ensure the accuracy and
251 fairness of this Policylaw, all forensic drug and alcohol testing shall be conducted according to the
252 Department of Health and Human Services, Substance Abuse and Mental Health Services
253 Administration (SAMSHA/SAMHSA) guidelines for Federal Workplace Drug testing/Testing
254 Programs.

255 202.8-2. — The Employee Health Nursing Department/EHN or its designee shall use Federal
256 Drug Administration approved urine tests and National Highway Transportation Safety
257 Administration (NHTSA) certified evidential breath testing devices or NHTSA certified saliva-
258 screening devices, operated by technicians whose training terminology, procedures, methods,
259 equipment, forms, and quality assurance comply with best practices.

260 (a) Confirmation drug testing done on urine specimens shall be conducted by a laboratory
261 which is certified by the U.S. Department of Health and Human Services using its
262 confirmation methods and established cut-off levels. Laboratory-confirmed results shall
263 undergo the verification process by a MRO.

264 (b) Confirmation breath alcohol testing shall be performed using an NHTSA certified
265 evidential breath testing device.

266 (c) Confirmation drug testing done by saliva testing shall be performed using an NHTSA
267 certified saliva test.

268 202.8-3.— If an employee is involved in a work-related accident, he or she shall immediately
269 inform his or her supervisor of the accident.

270 202.8-4. Each employee, as a condition of employment, is required to shall participate in pre-
271 employment, reasonable suspicion, and follow-up testing upon the request of an appropriate
272 authority.

273 202.8-5.— A negative test result is required for employment eligibility. In cases where a test
274 result is diluted or the test was cancelled, retesting urine for drugs is required. If the re-test results
275 in a negative dilute, the applicant shall be given a negative test result. If the re-test results in a
276 positive dilute, then the applicant shall be given a positive test result. Other retesting may also be
277 required at the direction of the MRO. A negative test result is required for employment eligibility.

278 **202.9 Refusal to Test**

279 202.9-1.— 202.8-6. Dilution of Test Results. In cases where a drug test result is diluted, a
280 positive dilute of the test result requires that the applicant or employee shall be given a confirmed
281 positive test result, while a negative dilute of the test result requires retesting. EHN shall notify the
282 applicant or employee of the required retesting.

283
284 (a) If the re-test results in a negative-dilute, the applicant or employee shall be given a
285 negative test result.

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(b) If the re-test results in a positive-dilute, then the applicant or employee shall be given a positive test result.

202.9. Refusal to Test

202.9-1. Refusal to test is prohibited behavior as defined in section 202.6. Refusal to test carries the same consequences as a ~~non-negative and/or~~ confirmed positive test result. Examples of refusal to test include, but are not limited to:

- (a) Substituting, adulterating (falsifying), or diluting the specimen.
- (b) Refusal to sign the required forms.
- (c) Refusal to cooperate in the testing process in such a way that prevents completion of accurate testing and as directed by the collector.
- (d) Failing to remain at the testing site until the testing process is complete.
- (e) Providing an insufficient sample of urine or breath.
- (f) Failing to test or to re-test.
- (g) Failing to appear within two (2) hours after an order or request is made for testing or re-testing.
- (h) Behaving in a confrontational or discourteous manner that disrupts the collection process.

202.10. Reasonable Suspicion Testing **Waiting Period**

202.10-1. ~~This section applies only to current employees who meet the reasonable suspicion standard.~~ ~~—An~~ It does not apply to applicants of the Nation.

202.10-2 During drug and alcohol testing for reasonable suspicion, an employee shall be immediately removed from duty without pay ~~during the waiting period between~~ at the time of initiation of the reasonable suspicion drug and alcohol testing and specimen collection ~~and~~ until the ~~employer's notification~~ employer is notified by EHN of negative results on both the drug and alcohol tests, ~~alcohol and drugs,~~ or MRO-verified negative test results.

202.10-2. ~~3.~~ When negative confirmation of test results are made available to the employer, the supervisor shall notify the employee by telephone and by certified mail using the contact information provided by the employee. The notice to the employee shall identify a reinstatement date. ~~Back~~ if the test was confirmed negative, or applicable consequences if the test was confirmed positive. If the employee is reinstated, back pay shall be provided in accordance with the Back Pay ~~Policy~~ law. However, if the employee fails to return to work on the assigned reinstatement date as instructed in the notice from the supervisor, the supervisor shall discipline the employee in accordance with the ~~Personnel Policies and Procedures~~ Nation's laws, rules and policies governing employment, unless an extension is granted in writing by the supervisor along with the reason for the extension. An employee who is ultimately terminated for failure to return to work on his or her assigned reinstatement date shall not be eligible for employment for one (1) year after the date of termination.

~~202.10-3. This section applies only to current employees who meet the reasonable suspicion standard. It does not apply to applicants.~~

328 **202.11. Consequences for Prohibited Behavior**

329 202.11-1. — Either an internal applicant or an external applicant may decline the position at any
330 time before being directed to ~~the Employee Health Nursing Department~~ EHN or other designated
331 testing site for ~~his or her~~ the applicant's drug and alcohol testing.

332 202.11-2. *External Applicant.* If an external applicant fails to show at the testing site within the
333 time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at
334 section 202.6-1(e) that has been documented, the employment offer shall be withdrawn. An
335 external applicant shall not be eligible for hiring consideration for one hundred eighty (180) days
336 from the date of the urine drug screening test.

337 202.11-3. — *Internal Applicant.* If an internal applicant fails to show at the testing site within
338 the time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as
339 listed at section 202.6-1, the employment offer shall be withdrawn. The applicant shall be
340 removed from duty and subject to respective consequences of this Policylaw. The applicant shall
341 not be eligible for hiring consideration in a different position for one hundred eighty (180) days
342 from the date of the urine drug screening test.

343 202.11-4. *Employee.* If an employee has engaged in prohibited behavior as listed in section
344 202.6-1, and/or fails to cooperate by not responding to contact from the MRO within ten (10)
345 business days (which shall be deemed thereafter as a definite positive test), ~~he or she~~ the employee
346 shall be removed from duty and subject to the respective consequences of this Policylaw.

347 202.11-5. *Consequences.*

348 (a) *First Violation.*

349 (1) Any employee who engages in prohibited behavior as defined in section 202.6
350 for the first time shall be removed from duty without pay and shall receive a
351 mandatory referral to ONEAP for an assessment. The ONEAP shall also determine
352 if the employee shall be subject to return-to-duty/follow-up testing. If follow-up
353 testing is required, the testing shall be at the employee's expense.

354 (2) The employee shall ~~be required to sign~~ aa -Return-to-Work Agreement and
355 submit ~~it~~ the agreement to his or her supervisor within ten (10) ~~calendar~~ days or the
356 employee shall be terminated and ineligible for re-hire for one (1) year.

357 (A) When the supervisor signs the Return-to-Work Agreement the
358 employee shall be placed back on the work schedule by the next regularly
359 scheduled workday.

360 (3) Failure to comply with the signed Return-to-Work Agreement shall result in the
361 employee being terminated and ineligible for re-hire for one (1) year.

362 (b) *Second Violation.*

363 (1) Any employee who engages in prohibited behavior as defined in section 202.6 a
364 second time within his or her lifetime of employment with the TribeNation shall be
365 removed from duty without pay and shall receive a mandatory referral to ONEAP
366 for an assessment.

367 (2) The employee shall ~~be required to sign~~ aa -Return-to-Work Agreement and
368 submit it to ~~their~~ the employee's supervisor for signature within ten (10) ~~calendar~~
369 days or the employee shall be terminated and ineligible for re-hire for one (1) year.
370 After a second violation the employee shall not be placed back on the work
371 schedule until:

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(A) The employee receives approval from the ONEAP that they have demonstrated sufficient progress in a treatment program that would indicate the employee is drug and alcohol free within thirty (30) days of the employee being removed from duty; and

(B) The employee completes a return-to-duty drug screening and alcohol test at a SAMHSA-certified facility at their own expense, which shall be negative within thirty (30) days of the employee being removed from duty;

(C) The ONEAP notifies the supervisor of the employee's eligibility to return to work.

(3) As a condition of continuing employment, the employee shall participate in follow-up testing with continued negative results as directed by the ONEAP and listed in the Return-to-Work Agreement. All follow-up testing shall be at the employee's expense.

(4) Failure to comply with the Return-to-Work agreement or follow up testing shall result in the employee being terminated and ineligible for re-hire for one (1) year.

(c) *Third Violation.*

(1) Any employee who engages in prohibited behavior as defined in section 202.6; a third time in his or her lifetime of employment with the TribeNation shall be terminated. The employee shall not be eligible for employment unless he or she receives a forgiveness pursuant to the Pardon and Forgiveness Lawlaw. An employee that receives a forgiveness shall not be eligible for re-hire for one (1) year after the date of termination.

202.12. Re-hire

202.12-1. ~~Former employees~~ A former employee that ~~were~~was terminated due to violations of this Policylaw shall provide, along with ~~their~~the former employee's application for employment, the following:

(a) Proof of completion of a certified Alcohol and Other Drug Abuse program; and

(b) A negative drug screening and alcohol test at a SAMHSA-certified facility completed within the last thirty (30) days. This drug screening and alcohol test shall be done at ~~their~~the former employee's own expense.

202.13. Other Potential Consequences

202.13-1. — The violation of this Policylaw may result in consequences to the employee beyond any discipline or corrective action that may be taken. Other potential consequences include the following:

(a) *Disqualification of Unemployment Benefits.*: ~~Employees~~An employee who ~~are~~is terminated as a result of a violation of this Policylaw may be ineligible for unemployment benefits.

(b) *Reduction of Workers Compensation Benefits.*: ~~Employees~~An employee who ~~suffer~~incurs an injury in a work-related accident that occurred while engaged in a violation of this Policylaw may have any workers compensation benefits reduced.

(c) *Criminal Penalties.*: ~~Employees~~An employee whose conduct violates state or federal criminal laws may be referred to appropriate law enforcement for criminal prosecution.

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(d) *Liability for Accidents.* ~~Employees~~An employee whose conduct in violation of this Policy law causes an accident may be held personally responsible for losses associated with the accident, and the employee may be required to pay for those losses.

202.14. Confidentiality

202.14-1. Information related to the application of this Policy law is confidential. Access to this information is limited to those who have a legitimate “need to know” in compliance with relevant laws and personnel policies and procedures.

202.14-2. All drug and alcohol testing information shall be maintained at EHN in confidential records; which are separate from the employee’s clinical and personnel files. The employee may request a copy of ~~his or her~~the employee’s records. The records may be requested by a third party in accordance with the Oneida ~~Personnel Policies~~Nation’s laws, rules and ~~Procedures~~policies governing employment.

202.15. Communication

202.15-1. HRD shall communicate this Policy law to all employees to ensure all employees are aware of their role in supporting this Policy law:

(a) All employees shall be given information on how to access this Policy law.

(b) This Policy law shall be reviewed in new employee orientation and other means, as deemed appropriate by HRD.

(c) All employees shall sign an acknowledgment form stating they have received a copy of this Policy law, have read and understand it, and agree to follow this Policy law.

End.

See GTC-~~01~~-31-94-B

Adopted by the OBC on ~~808~~-17-94

Emergency Amendments BC-04-20-95-C

Adopted BC-10-25-95-A (repealed previous versions)

Amended BC-10-20-99-A

Amended BC-12-05-07-B

Amended BC-12-11-13-F

Emergency Amended BC-10-26-16-D

Amended BC-

**Title 2. Employment – Chapter 202
DRUG AND ALCOHOL FREE WORKPLACE**

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202.1. Purpose and Policy

202.1-1. *Purpose.* The Nation is committed to protecting the safety, health and well-being of all employees, and other individuals in the workplace. The Nation recognizes that alcohol abuse and drug use pose a significant health and safety threat to our customers and other employees. The Nation also recognizes that alcohol and drug abuse and addiction are treatable illnesses. The Nation realizes that early intervention and support may improve the success of rehabilitation.

202.1-2. *Policy.* It is the policy of the Nation to establish a drug and alcohol-free workplace program that balances respect for individuals with the need to maintain an alcohol and drug-free environment. The Nation encourages employees to voluntarily seek help for their personal drug and alcohol-related problems.

202.2. Adoption, Amendment, Repeal

202.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-25-95-A and amended by BC-10-20-99-A, BC-12-05-07-B, BC-12-11-13-F and BC_____.

202.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

202.2-3. 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.

202.2-4. 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.

202.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

202.3. Definitions

202.3-1. This section shall govern the definitions of words or phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Appropriate authority” means the Human Resources Department hiring representative, immediate supervisor, EHN, MRO, and/or ONEAP who requests the drug and/or alcohol testing for reasons of pre-employment, reasonable suspicion, and/or follow-up testing.

(b) “Business day” means Monday through Friday from 8:00am-4:30pm, excluding holidays recognized by the Nation.

(c) “Confirmed positive test result” means a lab-confirmed drug test that is verified by the MRO that exceeds the cut-off levels established by this law (levels established by the United States Department of Health and Human Services), confirmed saliva testing, confirmed evidential breath alcohol test results of 0.02 or greater; and/or refusal to test.

(d) “EHN” means the Oneida Employee Health Nursing Department.

58 (e) "Employee" means any individual who is employed by the Nation and is subject to the
59 direction and control of the Nation with respect to the material details of the work
60 performed, or who has the status of an employee under the usual common law rules
61 applicable to determining the employer-employee relationship. "Employee" includes, but
62 is not limited to; an individual employed by any program or enterprise of the Nation, but
63 does not include elected or appointed officials, or individuals employed by a Tribally
64 Chartered Corporation. For purposes of this law, individuals employed under an
65 employment contract as a limited term employee are employees of the Nation, not
66 consultants.

67 (f) "External applicant" means a person who is applying for a position and not currently
68 employed by the Nation.

69 (g) "HRD" means the Human Resources Department and/or representatives performing
70 Human Resources functions applicable to this law.

71 (h) "Internal applicant" means a person who is applying for a position who is currently
72 employed by the Nation, this includes those employed under a temporary status.

73 (i) "MRO" means Medical Review Officer who is a licensed physician who is responsible
74 for receiving and reviewing laboratory test results generated by an employer's drug testing
75 program and evaluating medical explanations for certain drug test results.

76 (j) "Nation" means the Oneida Nation.

77 (k) "NHTSA" means the National Highway Traffic Safety Administration.

78 (l) "ONEAP" means the Oneida Nation Employee Assistance Program which is a
79 professional counseling program staffed by clinical social workers licensed by the State of
80 Wisconsin which offers services to the Nation's employees and family members.

81 (m) "Prohibited drug(s)" means marijuana, cocaine, opiates, amphetamines, phencyclidine
82 (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance
83 included in Schedules I through V, as defined by Section 812 of Title 21 of the United
84 States Code. This also includes prescription medication or over-the-counter medicine used
85 in an unauthorized or unlawful manner.

86 (n) "Return-to-Work Agreement" means an agreement, developed by an ONEAP counselor
87 and signed by the employee and the ONEAP counselor, and the referring supervisor, which
88 sets out the actions the employee needs to complete in order to return to work and remain
89 employed.

90 (o) "SAMHSA" means the United States Department of Health and Human Services,
91 Substance Abuse and Mental Health Services Administration.

92 (p) "Supervisor" means the immediate supervisor, or person who has taken on the role of
93 supervisor due to an absence that is responsible for performance review, corrective action,
94 and day-to-day assignments of duties.

95 (q) "Work-related accident" means an unexpected event involving an employee that occurs
96 in the employee's working environment or during an activity related to work, that:

97 (1) results in an injury to the employee or another person that may require medical
98 intervention by a police officer or emergency medical technician, or treatment at a
99 medical facility,

100 (2) results in death of the employee or another person, or

101 (3) involves any property damage.
102

202.4. Application

202.4-1. This law applies to all applicants for employment, whether external or internal, and all employees during working hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation.

202.4-2. An employee is prohibited from the use of prohibited drugs and alcohol during working hours, when on-call, and when operating a vehicle owned by the Nation or a vehicle rented by the Nation.

202.4-3. An employee is prohibited from the use of intoxicants while on official business travel while the conference or meeting is in session.

202.4-4. An employee is not exempted from this law if they travel to another state, territory or country where the use of certain drugs is legal.

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202.5. Shared Responsibility

202.5-1. A safe and productive drug and alcohol free workplace is achieved through cooperation and shared responsibility between the employer and an employee.

202.5-2. *Employee.* It is the employee's responsibility to:

(a) Be free from the effects of prohibited drugs, and/or alcohol during working hours, and/or when scheduled to be on-call.

(b) Refrain from the unlawful manufacture, distribution, dispensation or possession of any prohibited drugs while working.

(c) Comply with drug and alcohol testing if directed to do so upon the request of an appropriate authority.

(d) Confidentially report suspicious behavior of an employee immediately to the supervisor of the employee in question.

(e) Cooperate with the requests made by EHN and the MRO. The employee shall return the call of the MRO within twenty-four (24) hours of the call being made to the employee. An employee who fails to cooperate and does not contact the MRO within twenty-four (24) hours of receiving contact shall not receive back pay for any time between the date the MRO placed the call until the time the employee does return the call of the MRO.

(f) Sign a consent form to be tested for alcohol and drugs when requested by an appropriate authority.

(g) Provide the appropriate information to EHN in the event a medical condition prevents the employee from properly completing drug and alcohol testing so alternative drug and alcohol testing measures can be taken by EHN.

202.5-3. *Supervisor.* It is the supervisor's responsibility to:

(a) Be familiar with this law and any related policies and procedures.

(b) Investigate reported suspicious behaviors while maintaining the confidentiality of the person who reported the suspicious behavior.

(c) Promptly intervene with an employee who is believed to be under the influence of prohibited drugs and/or alcohol.

(d) Monitor the employee under the influence of prescription and/or over-the-counter medications that could compromise the safety of the employee, fellow employees, or the public.

(e) Send the employee through the contracted transportation service for reasonable suspicion drug and alcohol testing.

147

- 148 (f) Take appropriate action as outlined by this law.
149 (g) Sign the Return-to-Work Agreement along with the employee and ONEAP counselor
150 that was developed by ONEAP.
151 (h) Send a copy of the consent to submit to drug and alcohol testing form signed by the
152 employee to EHN.

153 202.5-4. *Supervisor and Employee.* A supervisor or an employee that fails to adhere to the
154 responsibilities of the supervisor or employee under this law may be subject to disciplinary action
155 or other consequences as explained in section 202.13.

156 202.5-5. *Off-duty Use of Prohibited Drugs or Alcohol.* Off-duty use of prohibited drugs or
157 alcohol may result in continued impairment during on-duty hours, which shall then constitute a
158 violation of this law. It is the employee's responsibility to understand the consequences of off-
159 duty use, and take steps to avoid the possibility of on-duty impairment. An employee who is called
160 in for emergency or unplanned work, excluding those on-call, and has been using prohibited drugs
161 or drinking alcoholic beverages prior to such a call, shall inform the employee's supervisor they
162 cannot report, and shall continue to decline to report until the effects of the prohibited drugs or
163 alcohol have left the employee's system. Such refusal to report shall not be viewed as improper,
164 and disciplinary action shall not arise from such refusal.

165 202.5-6. *Use of Controlled Substances That May Affect Safety or Performance.* An employee
166 who is taking or is under the influence of any controlled substances during working hours,
167 including prescription medication or over the counter medication, which may affect the
168 employee's job performance or safety of the employee, fellow employees, public, or assets of the
169 Nation have the following obligations:

- 170 (a) The employee shall notify the employee's immediate supervisor about the use of the
171 substance and possible work-related effects prior to commencing work.
172 (b) Upon request, the employee may be required to obtain a written statement of any work
173 restrictions or impact on performance or safety relating to the legal substances from the
174 employee's physician or pharmacist.
175 (c) An employee shall not sell or share his or her prescribed medications with any other
176 person, and shall not take medications that are prescribed to another person.
177 (d) It may be necessary for the employee's supervisor, area manager or EHN to consult
178 with the employee's personal physician, pharmacist or an MRO, with the employee's
179 approval or written authorization, to determine if the medication might impact the
180 employee's ability to perform the employee's job, or pose a hazard to other employees
181 or to the general public.
182 (e) The employee's duties may be temporarily modified for up to one hundred eighty (180)
183 days. Any modification of duties shall result in the appropriate modification of pay as
184 established by the Human Resources Department.
185

186 **202.6. Prohibited Behavior**

187 202.6-1. An applicant or employee of the Nation is in violation of this law if he or she:

- 188 (a) Uses, possesses, and/or sells prohibited drugs, or is under the influence of prohibited
189 drugs or alcohol while on duty. Notwithstanding section 202.11, any employee who is caught
190 using, possessing or selling prohibited drugs shall be immediately terminated from employment
191 with the Nation.

192 (b) Fails to inform his or her supervisor of being under the influence of prescription
193 medication and/or over-the-counter medication(s) which may affect the employee's job
194 performance or safety of the employee, fellow employees, public, or assets of the Nation.

195 (c) Uses unauthorized prescription drugs or intentionally misuses and/or abuses
196 prescription medications.

197 (d) Refuses to test.

198 (e) Has a confirmed positive test result after completing a drug and/or alcohol test through
199 EHN or a medical facility, or has a confirmatory test come back as positive.

201 **202.7. Reasonable Suspicion**

202 202.7-1. Establishing reasonable suspicion begins when the supervisor becomes aware either by
203 personal observation and/or secondary reported observation that an employee may be under the
204 influence of drugs and/or alcohol: this may include seeing or receiving a report that the employee
205 has taken or possess prohibited drugs or prescription medication that is not specifically prescribed
206 to that employee. In order to make a reasonable suspicion determination, the supervisor shall
207 evaluate the following:

208 (a) Specific observations concerning appearance, behavior, speech, or body odors of the
209 employee consistent with possible drug use or alcohol misuse.

210 (b) The observations may include indications of the chronic and withdrawal effects of
211 prohibited drugs or alcohol.

212 202.7-2. The supervisor shall document his or her observations and discuss the matter with the
213 employee. During this discussion, the supervisor may ask the employee for proof of a prescription.
214 The employee shall comply with this request. If after a discussion with the employee, the
215 supervisor continues to suspect the employee may currently still be under the influence or
216 reasonable suspicion is otherwise established, the supervisor shall refer the employee for
217 reasonable suspicion drug and alcohol testing.

218 202.7-3. A supervisor's decision made in regard to the reasonable suspicion drug and alcohol
219 testing of an employee is final. An employee shall not appeal or challenge a supervisor's
220 determination for reasonable suspicion drug and alcohol testing.

222 **202.8. Drug and Alcohol Testing**

223 202.8-1. Drug and alcohol tests are forensic in nature, meaning they are performed to formalize
224 conditions of employment as described in this law. To ensure the accuracy and fairness of this
225 law, all drug and alcohol testing shall be conducted according to SAMHSA guidelines for Federal
226 Workplace Drug Testing Programs.

227 202.8-2. EHN or its designee shall use Federal Drug Administration approved urine tests and
228 NHTSA certified evidential breath testing devices or NHTSA certified saliva-screening devices,
229 operated by technicians whose training terminology, procedures, methods, equipment, forms, and
230 quality assurance comply with best practices.

231 (a) Confirmation drug testing done on urine specimens shall be conducted by a laboratory
232 which is certified by the U.S. Department of Health and Human Services using its
233 confirmation methods and established cut-off levels. Laboratory-confirmed results shall
234 undergo the verification process by a MRO.

235 (b) Confirmation breath alcohol testing shall be performed using an NHTSA certified
236 evidential breath testing device.

237 (c) Confirmation drug testing done by saliva testing shall be performed using an NHTSA
238 certified saliva test.

239 202.8-3. If an employee is involved in a work-related accident, he or she shall immediately inform
240 his or her supervisor of the accident.

241 202.8-4. Each employee, as a condition of employment, shall participate in pre-employment,
242 reasonable suspicion, and follow-up testing upon the request of an appropriate authority.

243 202.8-5. A negative test result is required for employment eligibility.

244 202.8-6. *Dilution of Test Results*. In cases where a drug test result is diluted, a positive dilute of
245 the test result requires that the applicant or employee shall be given a confirmed positive test
246 result, while a negative dilute of the test result requires retesting. EHN shall notify the applicant or
247 employee of the required retesting.

248 (a) If the re-test results in a negative-dilute, the applicant or employee shall be given a
249 negative test result.

250 (b) If the re-test results in a positive-dilute, then the applicant or employee shall be given a
251 positive test result.

252

253 **202.9. Refusal to Test**

254 202.9-1. Refusal to test is prohibited behavior as defined in section 202.6. Refusal to test carries
255 the same consequences as a confirmed positive test result. Examples of refusal to test include, but
256 are not limited to:

257 (a) Substituting, adulterating (falsifying), or diluting the specimen.

258 (b) Refusal to sign the required forms.

259 (c) Refusal to cooperate in the testing process in such a way that prevents completion of
260 accurate testing and as directed by the collector.

261 (d) Failing to remain at the testing site until the testing process is complete.

262 (e) Providing an insufficient sample of urine or breath.

263 (f) Failing to test or to re-test.

264 (g) Failing to appear within two (2) hours after an order or request is made for testing or
265 re-testing.

266 (h) Behaving in a confrontational or discourteous manner that disrupts the collection
267 process.

268

269 **202.10. Reasonable Suspicion Testing Waiting Period**

270 202.10-1. This section applies only to current employees who meet the reasonable suspicion
271 standard. It does not apply to applicants of the Nation.

272 202.10-2 During drug and alcohol testing for reasonable suspicion, an employee shall be
273 immediately removed from duty without pay at the time of initiation of the reasonable suspicion
274 drug and alcohol testing and specimen collection until the employer is notified by EHN of negative
275 results on both the drug and alcohol tests, or MRO-verified negative test results.

276 202.10-3. When confirmation of test results are made available to the employer, the supervisor
277 shall notify the employee by telephone and by certified mail using the contact information
278 provided by the employee. The notice to the employee shall identify a reinstatement date if the
279 test was confirmed negative, or applicable consequences if the test was confirmed positive. If the
280 employee is reinstated, back pay shall be provided in accordance with the Back Pay law.
281 However, if the employee fails to return to work on the assigned reinstatement date as instructed in

282 the notice from the supervisor, the supervisor shall discipline the employee in accordance with the
283 Nation's laws, rules and policies governing employment, unless an extension is granted in writing
284 by the supervisor along with the reason for the extension. An employee who is ultimately
285 terminated for failure to return to work on his or her assigned reinstatement date shall not be
286 eligible for employment for one (1) year after the date of termination.

287

288 **202.11. Consequences for Prohibited Behavior**

289 202.11-1. Either an internal applicant or an external applicant may decline the position at any time
290 before being directed to EHN or other designated testing site for the applicant's drug and alcohol
291 testing.

292 202.11-2. *External Applicant.* If an external applicant fails to show at the testing site within the
293 time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at
294 section 202.6 that has been documented, the employment offer shall be withdrawn. An external
295 applicant shall not be eligible for hiring consideration for one hundred eighty (180) days from the
296 date of the urine drug screening test.

297 202.11-3. *Internal Applicant.* If an internal applicant fails to show at the testing site within the
298 time allotted, or on the date of the scheduled test, or has engaged in prohibited behavior as listed at
299 section 202.6, the employment offer shall be withdrawn. The applicant shall be removed from
300 duty and subject to respective consequences of this law. The applicant shall not be eligible for
301 hiring consideration in a different position for one hundred eighty (180) days from the date of the
302 urine drug screening test.

303 202.11-4. *Employee.* If an employee has engaged in prohibited behavior as listed in section
304 202.6-1, and/or fails to cooperate by not responding to contact from the MRO within ten (10)
305 business days (which shall be deemed thereafter as a definite positive test), the employee shall be
306 removed from duty and subject to the respective consequences of this law.

307 202.11-5. *Consequences.*

308 (a) *First Violation.*

309 (1) Any employee who engages in prohibited behavior as defined in section 202.6
310 for the first time shall be removed from duty without pay and shall receive a
311 mandatory referral to ONEAP for an assessment. The ONEAP shall also determine
312 if the employee shall be subject to return-to-duty/follow-up testing. If follow-up
313 testing is required, the testing shall be at the employee's expense.

314 (2) The employee shall sign a Return-to-Work Agreement and submit the
315 agreement to his or her supervisor within ten (10) days or the employee shall be
316 terminated and ineligible for re-hire for one (1) year.

317 (A) When the supervisor signs the Return-to-Work Agreement the
318 employee shall be placed back on the work schedule by the next regularly
319 scheduled workday.

320 (3) Failure to comply with the signed Return-to-Work Agreement shall result in the
321 employee being terminated and ineligible for re-hire for one (1) year.

322 (b) *Second Violation.*

323 (1) Any employee who engages in prohibited behavior as defined in section 202.6 a
324 second time within his or her lifetime of employment with the Nation shall be
325 removed from duty without pay and shall receive a mandatory referral to ONEAP
326 for an assessment.

327 (2) The employee shall sign a Return-to-Work Agreement and submit it to the
328 employee's supervisor for signature within ten (10) days or the employee shall be
329 terminated and ineligible for re-hire for one (1) year. After a second violation the
330 employee shall not be placed back on the work schedule until:

331 (A) The employee receives approval from the ONEAP that they have
332 demonstrated sufficient progress in a treatment program that would indicate
333 the employee is drug and alcohol free within thirty (30) days of the
334 employee being removed from duty; and

335 (B) The employee completes a return-to-duty drug screening and alcohol
336 test at a SAMHSA-certified facility at their own expense, which shall be
337 negative within thirty (30) days of the employee being removed from duty;

338 (C) The ONEAP notifies the supervisor of the employee's eligibility to
339 return to work.

340 (3) As a condition of continuing employment, the employee shall participate in
341 follow-up testing with continued negative results as directed by the ONEAP and
342 listed in the Return-to-Work Agreement. All follow-up testing shall be at the
343 employee's expense.

344 (4) Failure to comply with the Return-to-Work agreement or follow up testing shall
345 result in the employee being terminated and ineligible for re-hire for one (1) year.

346 (c) *Third Violation.*

347 (1) Any employee who engages in prohibited behavior as defined in section 202.6 a
348 third time in his or her lifetime of employment with the Nation shall be terminated.
349 The employee shall not be eligible for employment unless he or she receives a
350 forgiveness pursuant to the Pardon and Forgiveness law. An employee that receives
351 forgiveness shall not be eligible for re-hire for one (1) year after the date of
352 termination.

353
354 **202.12. Re-hire**

355 202.12-1. A former employee that was terminated due to violations of this law shall provide,
356 along with the former employee's application for employment, the following:

357 (a) Proof of completion of a certified Alcohol and Other Drug Abuse program; and

358 (b) A negative drug screening and alcohol test at a SAMHSA-certified facility completed
359 within the last thirty (30) days. This drug screening and alcohol test shall be done at the
360 former employee's own expense.

361
362 **202.13. Other Potential Consequences**

363 202.13-1. The violation of this law may result in consequences to the employee beyond any
364 discipline or corrective action that may be taken. Other potential consequences include the
365 following:

366 (a) *Disqualification of Unemployment Benefits.* An employee who is terminated as a result
367 of a violation of this law may be ineligible for unemployment benefits.

368 (b) *Reduction of Workers Compensation Benefits.* An employee who incurs an injury in a
369 work-related accident that occurred while engaged in a violation of this law may have any
370 workers compensation benefits reduced.

- 371 (c) *Criminal Penalties.* An employee whose conduct violates state or federal criminal laws
372 may be referred to appropriate law enforcement for criminal prosecution.
373 (d) *Liability for Accidents.* An employee whose conduct in violation of this law causes an
374 accident may be held personally responsible for losses associated with the accident, and the
375 employee may be required to pay for those losses.
376

377 **202.14. Confidentiality**

378 202.14-1. Information related to the application of this law is confidential. Access to this
379 information is limited to those who have a legitimate “need to know” in compliance with relevant
380 laws and personnel policies and procedures.

381 202.14-2. All drug and alcohol testing information shall be maintained at EHN in confidential
382 records which are separate from the employee’s clinical and personnel files. The employee may
383 request a copy of the employee’s records. The records may be requested by a third party in
384 accordance with the Oneida Nation’s laws, rules and policies governing employment.
385

386 **202.15. Communication**

387 202.15-1. HRD shall communicate this law to all employees to ensure all employees are aware of
388 their role in supporting this law:

- 389 (a) All employees shall be given information on how to access this law.
390 (b) This law shall be reviewed in new employee orientation and other means, as deemed
391 appropriate by HRD.
392 (c) All employees shall sign an acknowledgment form stating they have received a copy of
393 this law, have read and understand it, and agree to follow this law.
394

395 *End.*
396

397 See GTC-01-31-94-B
398 Adopted by the OBC on 08-17-94
399 Emergency Amendments BC-04-20-95-C
400 Adopted BC-10-25-95-A (repealed previous versions)
401 Amended BC-10-20-99-A
402 Amended BC-12-05-07-B
403 Amended BC-12-11-13-F
404 Emergency Amended BC-10-26-16-D
405 Amended BC-
406

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

DATE: February 27, 2017

FROM: Rae Skenandore, Project Manager

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

RE: **Fiscal Impact of Amendments - Drug and Alcohol Free Workplace (DAFWP)**

I. Estimated Fiscal Impact Summary

Law: Drug and Alcohol Free Workplace (DAFWP)		Draft 1
Implementing Agency	Employee Health Nursing (EHN) Human Resources Department (HRD)	
Estimated time to comply	Upon Approval	
Estimated Impact	Current Fiscal Year	10 Year Estimate
Start up	\$0	
Personnel	\$0	
Office	\$0	
Documentation Costs	\$20,797	\$207,970
Total Estimated Fiscal Impact	\$20,797 Savings	\$207,970 Savings
Revenue and cost considerations	None	
Uncertainties and Unknowns	None	

II. Background

A. Legislative History

This Law was originally adopted as a policy by the Oneida Business Committee by resolution BC-10-25-95-A and amended by BC-10-20-99-A, BC-12-05-07-B and BC-12-11-13-F.

B. Summary of Content

1. Permanently adopt emergency amendments which removed the requirement of post-accident drug and alcohol testing for all instances of work-related injuries and accidents so that DAFWP complied with the requirements of the Occupational Safety and Health Act (OSHA);
2. Expand the application of the DAFWP so the Law applies to all applicants and employees during times the applicant or employee is operating a motor vehicle owned by the Nation or a vehicle rented by the Nation;
3. Clarify that an employee is prohibited from the use of prohibited drugs at all times;
4. Add an additional responsibility to the employee to provide appropriate information to Employee Health Nursing in the event a medical condition prevents the employee from properly completing drug and alcohol testing;
5. Clarify that supervisor's determination to use reasonable suspicion drug and alcohol testing is non-appealable;

C. Methodology and Assumptions

1. A "Fiscal Impact Statement" means an estimate of the total fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the law after implementation.
2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

II. Agency Response

According to the Area Manager of the Human Resources Department, there will be no financial impact of the amendments. The Manager of Employee Health Nursing (EHN) estimated the following cost savings. In Fiscal Year 2014, prior to the mandatory post-accident testing, EHN paid \$9,384 for supplies, lab testing and taxi costs for drug testing. In Fiscal Year 2016 all associated testing costs which included post-accident and property damage testing was \$30,181. A difference of \$20,797 annually or an estimated savings of \$207,970 over 10 years. The amendments can be implemented immediately upon approval.

III. Financial Impact

\$20,797 annual anticipated savings.

IV. Recommendation

Finance 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 the Oneida Business Committee and General Tribal Council has the information with which to render a decision.



TO: Oneida Business Committee
FROM: Legislative Operating Committee
DATE: April 12, 2017
RE: March 19, 2017 GTC: Employment Law Action- Next Steps

BACKGROUND

At the March 19, 2017 General Tribal Council (GTC) Meeting, during discussion regarding the Employment Law, Madelyn Genskow made a motion to;

*Table this item [Employment Law] until the next Business Committee has been elected; the next Business Committee has the chance to review it, and that the Oneida Personnel Commission has an opportunity to provide input. **Seconded by Nancy Cook. Motion carried by show of hands.***

The Legislative Operating Committee (LOC) would like the incoming Oneida Business Committee (OBC) to be able to review the Employment Law relatively soon after the OBC is sworn in.

In an effort to work efficiently and be able to prepare the incoming Business Committee to discuss and review the Employment Law, the Legislative Operating Committee would like to receive any input from the Oneida Personnel Commission this spring.

REQUEST

The Legislative Operating Committee (LOC) would like to request that the Business Committee direct the Oneida Personnel Commission to submit input regarding the Employment Law to the Business Committee by May 17, 2017.



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54255-0365
Oneida-nsn.gov



TO: Legislative Operating Committee
FROM: Jennifer Falck, LRO Director
DATE: April 5, 2017
RE: Change the Priority for the Higher Education law

BACKGROUND

In a March 14, 2017 LOC work meeting, the LOC discussed the Active Files List, the amount of time left in the 2014-2017 LOC term, timelines for getting items completed, and LRO work assignments. In that discussion, the LOC decided to move the Higher Education law from a high to medium priority.

REQUESTED ACTION

Move the Higher Education item from a high to medium priority on the Active Files List.



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
 Oneida-nsn.gov



TO: Oneida Business Committee
 FROM: Brandon Stevens, LOC Chairperson *BS*
 DATE: April 12, 2017
 RE: Extending the Effective Date of the Community Support Fund Law

Please find the following attached backup documentation for your consideration:

1. Resolution: Extending the Effective Date of the Community Support Fund Law
2. Statement of Effect: Extending the Effective Date of the Community Support Fund Law

Overview

The Community Support Fund law (“the Law”) was adopted by the Oneida Business Committee pursuant to resolution BC-05-15-96-A, and amended by resolution BC-01-08-97-G, BC-12-01-13-D, and most recently with BC-01-11-17-B. The most recent amendments to the Law will become effective on May 11, 2017.

The Law states that the Social Services Area of Governmental Services Division is responsible for operation of the Community Support Fund (“the Fund”) but that the Social Services Area may designate the operation of the Fund to a department within its control. The Law also delegates rulemaking authority to the operators of the Fund to create rules to manage the Fund including the list of categories the Fund covers and funding caps.

The Fund operator has not yet created and prepared rules regarding the management of the Fund. The Community Support rules will not be completed in time for the Law to become effective. The Fund operator needs additional time to develop and make effective the rules regarding management of the Fund in accordance with the process set forth in the Administrative Rulemaking law. Due to the fact that the Law is so dependent on the development and use of Community Support Fund Rules, the Law cannot become effective until the rules are created and prepared.

The attached Resolution will extend the effective date of the law, as stated in resolution BC-01-11-17-B, an additional one hundred and twenty (120) calendar days from May 11, 2017, to September 8, 2017. The attached Resolution also provides the Fund operator until September 8, 2017, when the law becomes effective to create and make effective rules in accordance with the Law.

Requested Action

Approve the Resolution: Extending the Effective Date of the Community Support Fund Law

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____
Extending the Effective Date of the Community Support Fund Law

- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Oneida Business Committee originally adopted the Community Support Fund law ("the Law") pursuant to resolution BC-05-15-96-A, and made amendments pursuant to resolution BC-01-08-97-G, BC-12-01-13-D, and most recently with BC-01-11-17-B; and
- WHEREAS,** the most recent amendments will become effective on May 11, 2017; and
- WHEREAS,** the Law states that the Social Services Area of Governmental Services Division is responsible for operation of the Community Support Fund ("the Fund") but may designate the operation of the Fund to a department within its control; and
- WHEREAS,** the Law delegates rulemaking authority to the operators of the Fund to create rules to manage the Fund including the list of categories the Fund covers and funding caps; and
- WHEREAS,** the Fund operator needs additional time to develop and make effective the rules regarding management of the Fund in accordance with the process set forth in the Administrative Rulemaking law; and
- WHEREAS,** the Law is so dependent on the development and use of Community Support Fund rules that the Law cannot become effective until the rules are created and prepared.

NOW THEREFORE BE IT RESOLVED, the effective date of the Community Support Fund law as stated in resolution BC-01-11-17-B is extended an additional 120 calendar days from May 11, 2017, to September 8, 2017.

NOW THEREFORE BE IT FURTHER RESOLVED, that the Fund operator shall have until September 8, 2017, when the law becomes effective to create and make effective rules in accordance with the Law.



Statement of Effect

Extending the Effective Date of the Community Support Fund Law

Summary

This Resolution extends the effective date of the Community Support Fund law.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

This Resolution extends the effective date of the Community Support Fund law, as stated in resolution BC-01-11-17-B, an additional one hundred and twenty (120) days from May 11, 2017, to September 8, 2017.

This Resolution also requires that the Fund operator shall have until the law becomes effective on September 8, 2017, to create and make effective rules in accordance with the Community Support Fund law.

Conclusion

Adoption of this Resolution would not conflict with any of the Nation's laws.



Legislative Operating Committee
April 5, 2017

Conflict of Interest Emergency Amendments

Submission Date: 3/15/17	Public Meeting: None
LOC Sponsor: Brandon Stevens	Emergency Enacted: Expires:

Summary: An emergency amendment to the Conflict of Interest law in regards to the HUD Site Monitoring Review Finding #2.

3/15/17 LOC: Motion by Jennifer Webster to add the Conflict of Interest Emergency Amendments to the Active Files List as a high priority and assign Brandon Stevens as the sponsor seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

- Accept the Conflict of Interest emergency amendments draft and analysis and direct the LRO to prepare an adoption packet for an e-poll if HUD responds approving the draft prior to the 04/12/2017 OBC meeting.



Conflict of Interest Emergency Amendments Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: Oneida Law Office	SPONSOR: Brandon Stevens	DRAFTER: Krystal L. John	ANALYST: Maureen Perkins
Intent of the Amendments	Adopt emergency amendments which bring this legislation in compliance with HUD requirements regarding organizational conflicts of interest including provisions related to businesses owned by the Nation that compete for federally funded contracts.		
Purpose	Ensure that anyone that has access to confidential information be subject to specific limitations in order to protect the interests of the Nation <i>[see 217.1-1]</i> .		
Affected Entities	The Nation’s agents; contractors; elected officials; employees; the entities; members who serve on a board, committee or commission; OBC officers, political appointees and any person that is associated with the above persons in personal, martial, familial, business, financial or other relationships. The Law does not pertain to insurance providers seeking to enter into third party payment agreements with the Pharmacy <i>[see 217.3-1(m) & 217.8-2]</i> . The HRD and the Secretary’s Office are responsible for maintaining and distributing/collecting annual Conflict of Interest disclosure forms <i>[see 217.4-3 (a) & (b)]</i> .		
Affected Legislation	Investigative Leave Policy, Personnel Policies and Procedures, Comprehensive Policy Governing Boards, Committees and Commissions, Removal Law, Independent Contractor Policy.		
Enforcement/Due Process	<ul style="list-style-type: none"> ▪ Employees who fail to disclose a conflict of interest will be placed on leave pursuant to the Investigative Leave Policy; except that this Law requires the investigation to be concluded within 7 days <i>[see 217.7-1]</i>. If an employee receives an adverse employment action due to failing to disclose a conflict of interest, the employee can appeal the adverse employment action pursuant to the Nation’s personnel policies and procedures. ▪ Elected officials or officers who fail to disclose a conflict of interest may be subject to removal or face penalties pursuant to the Nation’s laws regarding penalties <i>[see 217.7-2]</i>. ▪ Members of a board, committee or commission may be subject to removal pursuant to Removal Law or have their appointment terminated by the OBC pursuant to the Comprehensive Policy Governing Boards, Committees and Commissions. Members may also face penalties pursuant to the Nation’s laws regarding penalties <i>[see 217.7-3]</i>. ▪ Political appointees that fail to disclose a conflict may be subject to discipline at the discretion of the elected official they serve <i>[see 217.7-4]</i>. ▪ A person or organization that contracts with the Nation may have their contracts terminated for failing to disclose a conflict <i>[see 217.7-5]</i>. 		
Public Meeting	A public meeting is not required for emergency legislation <i>[see Legislative Procedures Act, 109.9-5(a)]</i> .		

1 **SECTION 2. LEGISLATIVE DEVELOPMENT**

- 2 A. The Oneida Law Office (OLO) requested the Legislative Operating Committee (LOC) to
- 3 develop a second set of emergency amendments to the Conflict of Interest (Law) to
- 4 address mandatory organizational conflicts of interest. This request stemmed from an

5 audit completed by the U.S. Department of Housing and Urban Development (HUD) on
6 June 12, 2016, which found that the Law was not in compliance with certain HUD
7 requirements. One of the findings was addressed through previous amendments to the
8 law, but the finding regarding a lack of an organizational conflict of interest policy was
9 left out of those amendments. The HUD Final Monitoring Report of March 1, 2017 gave
10 the Oneida Nation (Nation) 60 days to become compliant (March 5, 2017). A lack of
11 organizational conflict of interest policy means that the Nation currently lacks a policy to
12 ensure that the Nation maintains objectivity, fairness and equal access to information
13 when businesses owned by the Nation compete for contracts with the Nation. The
14 amendments fill this gap by establishing measures and processes to mitigate the potential
15 for organizational conflicts of interest when any of the Nation's businesses compete to
16 contract with the Nation.
17

18 **SECTION 3. CONSULTATION**

- 19 A. The following departments/divisions were consulted when developing the revisions to
20 this Law: Oneida Law Office, Development Division, Engineering Department, Oneida
21 Housing Authority, Oneida Purchasing Department, and Indian Preference Office,
22 Finance Department.
23 B. In developing these amendments, the drafting attorney reviewed the applicable Federal
24 Acquisition Regulations, federal contracting training materials and sample organizational
25 conflict of interest mitigation plans submitted when bidding on federal contracts.
26 C. The proposed emergency amendments were submitted to HUD for preliminary approval.
27 The Law Office has not yet received a response.
28

29 **SECTION 4. PROCESS**

- 30 A. The developmental process of this Law is in compliance with the process set forth in the
31 Legislative Procedures Act regarding emergency legislation.
32 B. March 15, 2017: This item was added to the Active Files List.
33 C. The proposed amendments must be in place by May 5, 2017 to comply with HUD's
34 established deadline.
35

36 **SECTION 5. PROPOSED AMENDMENTS TO LEGISLATION**

37 Proposed amendments to the Law include the following:

- 38 A. Expand the definition section to include a term for contractor *[see 217.2(c)]* to include
39 businesses. Eliminate the definition for consultant which is not broad enough to cover
40 the Nation's businesses and considering that consultants are actually contractors because
41 they work under contract with the Nation.
42 B. Include a definition for organizational conflict of interest *[see 217.3-1(k)]* required by
43 HUD. Organization conflict of interests occur when due to activities or relationships
44 with other parties a potential contract or contractor is unable to render impartial
45 assistance or advice, is not objective or has an unfair competitive advantage with respect
46 to their business with the Nation.
47 C. Include a section regarding organizational conflict of interest which applies to businesses
48 owned by the Nation and establishes the presumption of a conflict of interest any time a
49 business owned by the nation seeks to contract directly with the Nation *[see 217.5-1]*.
50 Amendments establish objectivity in contracting by providing potential and actual
51 contractors with equal access to information *[see 217.5-2]*. Restricting an employee of
52 the Nation who has knowledge and experience that is critical to a contract from

53 participation in a contract unless there is a mitigation plan in place [see 217.5-2(a)].
54 Requirements for an organizational conflict of interest mitigation plan include limited
55 participation from employees with a conflict to specific components of the
56 project/contract that requires the employee's knowledge and/or expertise [see 217.5-
57 2(b)]. If the Nation contracts with a business it owns to prepare ground rules for a
58 subsequent project/contract including specifications or work statements, the business may
59 not compete for the subsequent project/contract [see 217.5-3].
60

61 **SECTION 6. EFFECT ON EXISTING LEGISLATION, ENFORCEMENT, & DUE** 62 **PROCESS**

63 A. Personnel Policies and Procedures

64 ▪ An employee can have his/her employment terminated for failing to disclose a
65 conflict of interest. However, he/she can appeal the adverse employment action
66 pursuant to the Nation's laws, rules and policies governing employment [see
67 217.6-1].

68 B. Removal Law and Comprehensive Policy Governing Boards, Committees and 69 Commissions

70 ▪ If an officer, elected official, or elected member fails to disclose a conflict of
71 interest, he/she may be subject to removal pursuant to the Removal Law and if an
72 appointed member of an entity fails to disclose a conflict of interest, the OBC
73 may terminate his/her appointment in accordance with the law governing boards,
74 committees and commissions for appointed officials [see 217.6-2 & 217.6-3].

75 C. Nation's laws regarding penalties

76 ▪ If an elected official, officer, or elected/appointed member of a board, committee
77 or commission fails to disclose a conflict of interest, he/she may be subject to
78 penalties pursuant to laws of the Nation regarding penalties [see 217.6-2 & 217.6-
79 3]. The Nation currently does not have legislation regarding penalties but if in the
80 future such a law is adopted, elected officials, officers, and elected/appointed
81 members that violate this Law may face penalties/sanctions.

82 D. Penalties for Non-Disclosure of a Conflict of Interest for Contractors

83 ▪ An organization or person who does not disclose conflicts of interest may be
84 subject to termination of their contracts [see 217.6-5].
85

86 **SECTION 7. OTHER CONSIDERATIONS**

87 A. Section 109.9-5 of the Legislative Procedures Act authorizes the OBC to temporarily
88 enact an emergency law where legislation is necessary for the immediate preservation of
89 the public health, safety or general welfare of the reservation population and the
90 enactment or amendment of legislation is required sooner than would be possible by
91 utilizing the standard legislative process [see *Legislative Procedures Act, 109.9-5(b)*]. In
92 this situation, there would not be time to amend the policy through the standard
93 legislative process prior to the required effective date set by HUD. A failure to comply
94 with HUDs timeline would result in OHA being ineligible to compete for grants until the
95 policy is brought into compliance.

96 B. If adopted on an emergency basis, these amendments will become effective immediately,
97 and will remain in effect for up to six months, with the possibility of a one-time extension
98 of up to an additional six months [see *Legislative Procedures Act, 109.9-5(b)*].

99 C. A fiscal impact statement is not required for emergency legislation [see *Legislative*
100 *Procedures Act, 109.9-5(a)*].

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**Title 2. Employment – Chapter 217
CONFLICT OF INTEREST**

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217.1. Purpose and Policy	9	217.6. Penalties for Non-Disclosure of a Conflict of Interest
217.2. Adoption, Amendment, Repeal	10	217.67. Prohibited Activities Resulting from a Disclosed Conflict of Interest
217.3. Definitions	11	
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217.5. <u>Organizational Conflicts of Interest</u>		

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217.1. Purpose and Policy

217.1-1 Purpose. The purpose of this law is for the Nation to ensure that all employees, ~~consultants~~contractors, elected officials, officers, political appointees, appointed and elected members and all others who may have access to information or materials that are confidential or may be used by competitors of the Nation’s enterprises or interests be subject to specific limitations to which such information and materials may be used in order to protect the interests of the Nation.

217.1-2. Policy. It is the policy of the Nation to assert its proprietary rights to client lists, trade secrets and any other confidential data generated, developed or commissioned for the Nation in the course of an employee’s duties and responsibilities and that all employees, and prospective employees, be made aware of their obligation to uphold such rights. The Nation asserts that no persons who work for the Nation or are responsible for safeguarding its interests nor their relatives, associates, partners, or anyone connected with such persons should in any way benefit against or in competition with the Nation’s interests without full and complete prior disclosure to the Nation.

217.2. Adoption, Amendment, Repeal

217.2-1. This law was adopted by the Oneida Business Committee by Resolution BC-06-10-98-C and amended by BC-02-08-17-B.

217.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

217.2-3. 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.

217.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provision of this law shall control.

217.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

217.3. Definitions

217.3-1. 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) ~~“Agent”~~ “Agent” -means a person who is authorized to act for or in place of ~~of~~ another, which may include an employee, ~~consultant~~contractor, elected official, officer, political appointee, and appointed ~~-or~~ elected member of the Nation.

(b) “Conflict of interest” means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, ~~consultant~~contractor, or appointed or elected member, or their immediate

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52 family members, friends or associates, or any other person with whom they have contact,
 53 have that conflicts with any right of the Nation to property, information, or any other
 54 right to own and operate activities free from undisclosed competition or other violation of
 55 such rights of the Nation. In addition, conflict of interest also means any financial or
 56 familial interest an elected official, officer, political appointee, employee,
 57 ~~consultant~~contractor, or appointed or elected member or their immediate family members
 58 may have in any transaction between the Nation and an outside party.

59 (c) ~~“Consultant”~~ “Contractor” means a person ~~who provides~~ or business providing
 60 expertise, services, goods or guidance to the Nation.

61 (d) ~~“Elected official”~~ means a person elected to the Oneida Business Committee
 62 who does not hold an officer position.

63 (e) ~~“Employee”~~ means anyone employed by the Oneida Nation in one of the
 64 following employed capacities: full-time, part-time, emergency temporary, limited term
 65 or on a contractual basis.

66 (f) ~~“Entity”~~ means a department, program or service of the Nation.

67 (g) ~~“Immediate family member”~~ means an individual’s husband, wife, mother, father,
 68 step mother, step father, son, daughter, step son, step daughter, brother, sister, step
 69 brother, step sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-
 70 law, son-in-law, brother-in-law or sister-in-law and any of the these relations attained
 71 through legal adoption.

72 (h) ~~“Member”~~ means a person who serves on a board, committee, or commission of
 73 the Nation. It does not include the Oneida Business Committee or the governing body of
 74 a Tribally Chartered Corporation.

75 (i) ~~“Nation”~~ means the Oneida Nation.

76 (j) ~~“Officer”~~ means a person elected to the Oneida Business Committee holding the
 77 Chairperson, Vice Chairperson, Secretary, or Treasurer position.

78 (k) “Organizational conflict of interest” means that because of other activities or
 79 relationships with other parties, a potential contract or contractor is:

80 (1) unable to render impartial assistance or advice to the Nation;

81 (2) cannot perform a contract with the Nation in an objective way; or

82 (3) has an unfair competitive advantage compared to others.

83 (l) ~~“Political appointee”~~ means a person who assists an elected member of the Oneida
 84 Business Committee in their daily activities and operations.

85 (m) ~~“Third party agreement”~~ means any agreement with the Pharmacy in which an
 86 insurance provider agrees to reimburse the Pharmacy for drugs and supplies sold to
 87 subscribers of a valid health plan of that insurance provider.

89 **217.4. General:**

90 217.4-1. Scope.

91 (a) ~~“This law shall apply to agents, elected officials, officers, political appointees,~~
 92 ~~employees, consultants~~contractors, appointed or elected members or any other persons
 93 with whom they may be associated in personal, marital, familial, business, financial or
 94 other relationships.

95 (b) ~~“Under the protection of this law are the resources of the Nation, its enterprises,~~
 96 ~~programs, business interests, financial information, trade secrets and any other~~
 97 ~~information that could be used against the Nation or those duly authorized to represent its~~

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98 interests.

99 | 217.4-2. Amendment of Documents. The following documents shall be amended as required in
100 order to implement this law:

101 | (a) The Nation's laws, rules and policies governing employment.

102 | (1) Prospective employees shall disclose whether or not they have any conflicts
103 of interest as defined in this law.

104 | (2) Current employees shall disclose existing conflicts of interest, if any.

105 | (b) Persons or organizations contracting with the Nation shall include a provision in
106 their contract reciting the prohibition against undisclosed conflicts of interest.

107 | (c) The Oneida Nation Secretary shall inform all elected officials, officers, political
108 appointees, and elected or appointed members of the existence of this law in writing. All
109 elected officials, officers, political appointees, and elected or appointed members shall
110 disclose any conflicts of interest.

111 | 217.4-3. Forms. Forms shall be prepared upon which disclosures of conflicts which exist may
112 be listed and returned to the Oneida Business Committee for action as indicated in this law. The
113 Oneida Law Office shall be responsible for creating a standard form and any specialized forms
114 required by this law. The Nation's Human Resource Department and the Office of the Oneida
115 Nation Secretary shall be responsible for distributing and maintaining conflict of interest
116 disclosure forms.

117 | (a) The Nation's Human Resource Department shall collect conflict of interest disclosure
118 forms from all employees on an annual basis. Additionally, an employee shall disclose a
119 conflict of interest as soon as the conflict arises.

120 | (b) The Office of the Nation's Secretary shall collect conflict of interest disclosure forms
121 from all elected officials, officers, political appointees, and elected and appointed
122 members on an annual basis. Additionally, an elected official, officer, political appointee,
123 or elected or appointed member shall disclose a conflict of interest as soon as the conflict
124 arises.

125

126 | **217.5. Penalties for Non-Disclosure of a Conflict Organizational Conflicts of Interest**

127 | ~~217.5-1. Employees.~~ 217.5-1. Presumed Organizational Conflict of Interest. It is presumed that
128 there is an organizational conflict of interest any time that a business owed by the Nation seeks
129 to contract directly with the Nation.

130 | 217.5-2. Maintaining Objectivity and Equal Access to Information. The Nation shall maintain
131 objectivity in contracting and shall provide all potential and actual contractors with equal access
132 to information. Should an employee of the Nation also be an employee, officer, director, or
133 agent of any business owned by the Nation, the said employee shall be restricted from
134 participating in any part of the contract process, including but not limited to the bidding,
135 selection, award and administration, for that business.

136 | (a) In the event that an employee has knowledge and experience that is critical to a
137 contract and is restricted from participation based on an organizational conflict of
138 interest, the said employee may only participate if the Nation and the contractor execute a
139 conflict of interest mitigation plan.

140 | (b) An organizational conflict of interest mitigation plan shall require the conflicted
141 employee's participation be limited to the specific components of the project/contract that
142 require the employee's knowledge and/or experience.

143 | 217.5-3. Biased Ground Rules. Should the Nation contract with a business it owns to

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144 | prepare ground rules for a subsequent project/contract, including but not limited to
 145 | preparing/writing specifications or work statements, said business may not compete for the
 146 | subsequent project/contract.

147 |
 148 | **217.6. Penalties for Non-Disclosure of a Conflict of Interest**

149 | 217.6-1. Employees. If a supervisor is provided credible evidence that an employee has failed
 150 | to disclose a conflict of interest, the employee shall be placed on leave pursuant to the Nation's
 151 | Investigative Leave Policy, except that the duration of the investigation for an alleged conflict of
 152 | interest shall be concluded within seven (7) days of the employee being placed on leave. A
 153 | supervisor shall terminate an employee from his or her employment with the Nation when an
 154 | investigation substantiates that the employee failed to disclose a conflict of interest.

155 | 217.56-2. Elected Officials and Officers. An elected official or officer who fails to disclose a
 156 | conflict of interest may be subject to removal pursuant to the Removal Law or penalties pursuant
 157 | to laws of the Nation regarding penalties.

158 | 217.56-3. Elected or Appointed Members. A member who fails to disclose a conflict of interest
 159 | may be subject to penalties pursuant to laws of the Nation regarding penalties, and subject to
 160 | removal pursuant to the Removal Law for elected members, or have their appointment
 161 | terminated by the Oneida Business Committee pursuant to the law governing board, committees
 162 | and commissions for appointed members.

163 | 217.56-4. Political Appointees. A political appointee that fails to disclose a conflict of interest
 164 | may be subject to discipline at the discretion of the elected official the political appointee serves.

165 | 217.6-5-5-. Contracts. An organization or a person who does not disclose conflicts of interest
 166 | may be subject to termination of their contracts.

167 |
 168 | **217.6-7. Prohibited Activities Resulting from a Disclosed Conflict of Interest**

169 | 217.67-1. When an existing conflict of interest is disclosed, no employee, ~~consultant~~contractor,
 170 | elected official, political appointee, officer, agent, or appointed or elected member may
 171 | participate in:

172 | (a) ~~the~~ selection, award, or administration of a contract, including contracts supported
 173 | by a Federal award; and/or

174 | (b) ~~any~~ other prohibited activities identified in any other law, policy or rule of the
 175 | Nation.

176 | 217.67-2. Entities of the Nation shall develop standard operating procedures and/or work
 177 | standards outlining further prohibited activities resulting from disclosed conflicts of interest and
 178 | means by which a party can alleviate or mitigate the conflict of interest.

179 | (a) In the event arrangements are made to alleviate or mitigate the conflict of interest, it
 180 | may become permissible for a party to participate under section 217.67-1(b) at the
 181 | discretion of the division director and to the extent permitted by any applicable law,
 182 | policy or rule. However, in all circumstances, such parties shall remain prohibited from
 183 | participating under section 217.67-1(a).

184 |
 185 | **217.7-8. Exemptions**

186 | 217.78-1. Exemptions to this law are for the purpose of excluding activities of the Nation for
 187 | which no conflict of interest can exist. These activities generally occur when the Nation is acting
 188 | as a provider of services for which another will be making payments or reimbursing costs of
 189 | providing the services. Exemptions shall be specifically identified within this law.

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190 | 217.78-2. *Pharmacy*. This exemption shall be designed to relieve the Pharmacy and insurance
191 providers from the requirements of the Conflict of Interest law while recognizing the unique
192 relationship between the Pharmacy and insurance providers in third party payment agreements
193 where no proprietary information of the Nation is provided to the insurance providers, and there
194 is little or no opportunity for a conflict of interest between the insurance providers and the
195 Nation. This exemption shall be designed to increase the attractiveness of the Pharmacy to
196 subscribers of multiple insurance providers. This exemption shall apply solely to insurance
197 providers seeking to enter into third party payment agreements with the Pharmacy.

198
199 *End.*

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201

202 Adopted - BC-06-10-98-C

203 Emergency Amended - BC-04-12-06-JJ

204 Emergency Amended - BC-09-27-06-E

205 Emergency Amended – BC-08-10-16-M

206 Amended - BC-02-08-17-B

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**Title 2. Employment – Chapter 217
CONFLICT OF INTEREST**

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217.1. Purpose and Policy
217.2. Adoption, Amendment, Repeal
217.3. Definitions
217.4. General
217.5. Organizational Conflicts of Interest

9	217.6. Penalties for Non-Disclosure of a Conflict of Interest
10	217.7. Prohibited Activities Resulting from a Disclosed Conflict
11	of Interest
12	217.8. Exemptions

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217.1. Purpose and Policy

217.1-1 *Purpose.* The purpose of this law is for the Nation to ensure that all employees, contractors, elected officials, officers, political appointees, appointed and elected members and all others who may have access to information or materials that are confidential or may be used by competitors of the Nation’s enterprises or interests be subject to specific limitations to which such information and materials may be used in order to protect the interests of the Nation.

217.1-2. *Policy.* It is the policy of the Nation to assert its proprietary rights to client lists, trade secrets and any other confidential data generated, developed or commissioned for the Nation in the course of an employee’s duties and responsibilities and that all employees, and prospective employees, be made aware of their obligation to uphold such rights. The Nation asserts that no persons who work for the Nation or are responsible for safeguarding its interests nor their relatives, associates, partners, or anyone connected with such persons should in any way benefit against or in competition with the Nation’s interests without full and complete prior disclosure to the Nation.

217.2. Adoption, Amendment, Repeal

217.2-1. This law was adopted by the Oneida Business Committee by Resolution BC-06-10-98-C and amended by BC-02-08-17-B.

217.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

217.2-3. 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.

217.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provision of this law shall control.

217.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

217.3. Definitions

217.3-1. 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) “Agent” means a person who is authorized to act for or in place of another, which may include an employee, contractor, elected official, officer, political appointee, and appointed or elected member of the Nation.

(b) “Conflict of interest” means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have

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52 that conflicts with any right of the Nation to property, information, or any other right to
 53 own and operate activities free from undisclosed competition or other violation of such
 54 rights of the Nation. In addition, conflict of interest also means any financial or familial
 55 interest an elected official, officer, political appointee, employee, contractor, or appointed
 56 or elected member or their immediate family members may have in any transaction
 57 between the Nation and an outside party.

58 (c) “Contractor” means a person or business providing expertise, services, goods or
 59 guidance to the Nation.

60 (d) “Elected official” means a person elected to the Oneida Business Committee who
 61 does not hold an officer position.

62 (e) “Employee” means anyone employed by the Oneida Nation in one of the following
 63 employed capacities: full-time, part-time, emergency temporary, limited term or on a
 64 contractual basis.

65 (f) “Entity” means a department, program or service of the Nation.

66 (g) “Immediate family member” means an individual’s husband, wife, mother, father,
 67 step mother, step father, son, daughter, step son, step daughter, brother, sister, step
 68 brother, step sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-
 69 law, son-in-law, brother-in-law or sister-in-law and any of the these relations attained
 70 through legal adoption.

71 (h) “Member” means a person who serves on a board, committee, or commission of the
 72 Nation. It does not include the Oneida Business Committee or the governing body of a
 73 Tribally Chartered Corporation.

74 (i) “Nation” means the Oneida Nation.

75 (j) “Officer” means a person elected to the Oneida Business Committee holding the
 76 Chairperson, Vice Chairperson, Secretary, or Treasurer position.

77 (k) “Organizational conflict of interest” means that because of other activities or
 78 relationships with other parties, a potential contract or contractor is:

79 (1) unable to render impartial assistance or advice to the Nation;

80 (2) cannot perform a contract with the Nation in an objective way; or

81 (3) has an unfair competitive advantage compared to others.

82 (l) “Political appointee” means a person who assists an elected member of the Oneida
 83 Business Committee in their daily activities and operations.

84 (m) “Third party agreement” means any agreement with the Pharmacy in which an
 85 insurance provider agrees to reimburse the Pharmacy for drugs and supplies sold to
 86 subscribers of a valid health plan of that insurance provider.

87
 88 **217.4. General**

89 **217.4-1. Scope.**

90 (a) This law shall apply to agents, elected officials, officers, political appointees,
 91 employees, contractors, appointed or elected members or any other persons with whom
 92 they may be associated in personal, marital, familial, business, financial or other
 93 relationships.

94 (b) Under the protection of this law are the resources of the Nation, its enterprises,
 95 programs, business interests, financial information, trade secrets and any other
 96 information that could be used against the Nation or those duly authorized to represent its
 97 interests.

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98 217.4-2. *Amendment of Documents.* The following documents shall be amended as required in
99 order to implement this law:

100 (a) The Nation's laws, rules and policies governing employment.

101 (1) Prospective employees shall disclose whether or not they have any conflicts
102 of interest as defined in this law.

103 (2) Current employees shall disclose existing conflicts of interest, if any.

104 (b) Persons or organizations contracting with the Nation shall include a provision in their
105 contract reciting the prohibition against undisclosed conflicts of interest.

106 (c) The Oneida Nation Secretary shall inform all elected officials, officers, political
107 appointees, and elected or appointed members of the existence of this law in writing. All
108 elected officials, officers, political appointees, and elected or appointed members shall
109 disclose any conflicts of interest.

110 217.4-3. *Forms.* Forms shall be prepared upon which disclosures of conflicts which exist may
111 be listed and returned to the Oneida Business Committee for action as indicated in this law. The
112 Oneida Law Office shall be responsible for creating a standard form and any specialized forms
113 required by this law. The Nation's Human Resource Department and the Office of the Oneida
114 Nation Secretary shall be responsible for distributing and maintaining conflict of interest
115 disclosure forms.

116 (a) The Nation's Human Resource Department shall collect conflict of interest disclosure
117 forms from all employees on an annual basis. Additionally, an employee shall disclose a
118 conflict of interest as soon as the conflict arises.

119 (b) The Office of the Nation's Secretary shall collect conflict of interest disclosure forms
120 from all elected officials, officers, political appointees, and elected and appointed
121 members on an annual basis. Additionally, an elected official, officer, political appointee,
122 or elected or appointed member shall disclose a conflict of interest as soon as the conflict
123 arises.

124 **217.5. Organizational Conflicts of Interest**

125 217.5-1. *Presumed Organizational Conflict of Interest.* It is presumed that there is an
126 organizational conflict of interest any time that a business owned by the Nation seeks to contract
127 directly with the Nation.

128 217.5-2. *Maintaining Objectivity and Equal Access to Information.* The Nation shall maintain
129 objectivity in contracting and shall provide all potential and actual contractors with equal access
130 to information. Should an employee of the Nation also be an employee, officer, director, or
131 agent of any business owned by the Nation, the said employee shall be restricted from
132 participating in any part of the contract process, including but not limited to the bidding,
133 selection, award and administration, for that business.

134 (a) In the event that an employee has knowledge and experience that is critical to a
135 contract and is restricted from participation based on an organizational conflict of
136 interest, the said employee may only participate if the Nation and the contractor execute a
137 conflict of interest mitigation plan.

138 (b) An organizational conflict of interest mitigation plan shall require the conflicted
139 employee's participation be limited to the specific components of the project/contract that
140 require the employee's knowledge and/or experience.

141 217.5-3. *Biased Ground Rules.* Should the Nation contract with a business it owns to
142 prepare ground rules for a subsequent project/contract, including but not limited to
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144 preparing/writing specifications or work statements, said business may not compete for the
145 subsequent project/contract.

146

147 **217.6. Penalties for Non-Disclosure of a Conflict of Interest**

148 217.6-1. *Employees.* If a supervisor is provided credible evidence that an employee has failed
149 to disclose a conflict of interest, the employee shall be placed on leave pursuant to the Nation's
150 Investigative Leave Policy, except that the duration of the investigation for an alleged conflict of
151 interest shall be concluded within seven (7) days of the employee being placed on leave. A
152 supervisor shall terminate an employee from his or her employment with the Nation when an
153 investigation substantiates that the employee failed to disclose a conflict of interest.

154 217.6-2. *Elected Officials and Officers.* An elected official or officer who fails to disclose a
155 conflict of interest may be subject to removal pursuant to the Removal Law or penalties pursuant
156 to laws of the Nation regarding penalties.

157 217.6-3. *Elected or Appointed Members.* A member who fails to disclose a conflict of interest
158 may be subject to penalties pursuant to laws of the Nation regarding penalties, and subject to
159 removal pursuant to the Removal Law for elected members, or have their appointment
160 terminated by the Oneida Business Committee pursuant to the law governing board, committees
161 and commissions for appointed members.

162 217.6-4. *Political Appointees.* A political appointee that fails to disclose a conflict of interest
163 may be subject to discipline at the discretion of the elected official the political appointee serves.

164 217.6-5. *Contracts.* An organization or a person who does not disclose conflicts of interest
165 may be subject to termination of their contracts.

166

167 **217.7. Prohibited Activities Resulting from a Disclosed Conflict of Interest**

168 217.7-1. When an existing conflict of interest is disclosed, no employee, contractor, elected
169 official, political appointee, officer, agent, or appointed or elected member may participate in:

170 (a) the selection, award, or administration of a contract, including contracts supported by
171 a Federal award; and/or

172 (b) any other prohibited activities identified in any other law, policy or rule of the Nation.

173 217.7-2. Entities of the Nation shall develop standard operating procedures and/or work
174 standards outlining further prohibited activities resulting from disclosed conflicts of interest and
175 means by which a party can alleviate or mitigate the conflict of interest.

176 (a) In the event arrangements are made to alleviate or mitigate the conflict of interest, it
177 may become permissible for a party to participate under section 217.7-1(b) at the
178 discretion of the division director and to the extent permitted by any applicable law,
179 policy or rule. However, in all circumstances, such parties shall remain prohibited from
180 participating under section 217.7-1(a).

181

182 **217.8. Exemptions**

183 217.8-1. Exemptions to this law are for the purpose of excluding activities of the Nation for
184 which no conflict of interest can exist. These activities generally occur when the Nation is acting
185 as a provider of services for which another will be making payments or reimbursing costs of
186 providing the services. Exemptions shall be specifically identified within this law.

187 217.8-2. *Pharmacy.* This exemption shall be designed to relieve the Pharmacy and insurance
188 providers from the requirements of the Conflict of Interest law while recognizing the unique
189 relationship between the Pharmacy and insurance providers in third party payment agreements

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190 where no proprietary information of the Nation is provided to the insurance providers, and there
191 is little or no opportunity for a conflict of interest between the insurance providers and the
192 Nation. This exemption shall be designed to increase the attractiveness of the Pharmacy to
193 subscribers of multiple insurance providers. This exemption shall apply solely to insurance
194 providers seeking to enter into third party payment agreements with the Pharmacy.

195

196 *End.*

197

198

199 Adopted - BC-06-10-98-C

200 Emergency Amended - BC-04-12-06-JJ

201 Emergency Amended - BC-09-27-06-E

202 Emergency Amended - BC-08-10-16-M

203 Amended - BC-02-08-17-B



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney
DATE: April 5, 2017
RE: Certification of Landlord-Tenant Law Rule No.2 – Income Based Rental Program Eligibility, Selection and Other Requirements

The Legislative Reference Office has reviewed the certification packet provided by the Oneida Housing Authority (OHA) for the Landlord-Tenant law Rule No. 2 – Income Based Rental Program Eligibility, Selection and Other Requirements (the “Rule”).

If certified by the Legislative Operating Committee, the Rule would become effective on April 13, 2017.

Administrative Record

The certification packet provided by the OHA contains all documentation required by the Administrative Rulemaking law for a complete administrative record.

The certification packet contains:

- A memorandum containing the Rule’s procedural timeline;
- Updated draft of the Rule;
- Memorandum from Dale Wheelock, Executive Director of the Oneida Housing Authority approving the draft Rule;
- Summary Report;
- Public Meeting Notice;
- Copy of Public Meeting Notice as it appeared in the Kalihwisaks;
- Public Meeting Sign In Sheet;
- Public Meeting Transcript; and
- Draft of the Rule considered at the public meeting.

Procedural Requirements

The certification packet illustrates that the promulgation of the rule complies with the procedural requirements contained in the Administrative Rulemaking law.

In accordance with the Administrative Rulemaking law:

- A public meeting notice for the Rule was published in the Kalihwisaks on December 15, 2016; and
- A public meeting for the Rule was held on January 3, 2017; and

- The public comment period was held open until January 10, 2017; and
- There were no oral or written comments received during the public meeting or the public meeting comment period; and
- The Executive Director of the Oneida Housing Authority approved the Rule on March 24, 2017.

Rulemaking Authority

The Rule did not exceed the rulemaking authority granted under the law for which the Rule is being promulgated.

Conclusion

Promulgation of the Landlord-Tenant Rule No. 2 – Income Based Rental Program Eligibility, Selection and Other Requirements Rule complies with all requirements of the Administrative Rulemaking law.

Legislative Operating Committee



Agenda Request Form

- 1) Request Date: April 5, 2017
- 2) Contact Person(s): Krystal John Dept: Law Office
 Phone Number: x4375 Email: kjohn4@oneidanation.org
- 3) Agenda Title: Certification of Rule No. 2 - Income Based Rental Program Eligibility, Selection and Other Requirements
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
OHA is seeking LOC certification of Rule No. 2 as OHA complies with Landlord Tenant Law
and develops program operational rules.

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

- 1) Rule No. 2
- 2) Summary Report
- 3) Public Meeting Notice
- 4) Public Meeting Sign-in and Transcript

- 5) Please List any laws, ordinances or resolution that might be affected:
Landlord-Tenant law
- 6) Please List all other departments or person(s) you have brought your concern to:
N/A
- 7) Do you consider this request urgent? Yes No
 If yes, please indicate why: _____

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

Signature of Requester: _____

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



MEMORANDUM

TO: Legislative Operating Committee

FROM: Krystal L. John, Staff Attorney

DATE: April 5, 2017

SUBJECT: Request for Certification of Procedural Compliance
Landlord Tenant Rule No. 2 – Income Based Rental Program Eligibility, Selection and Other Requirements

The Oneida Housing Authority is exercising its rulemaking authority to further define sections of Title 6 Property and Land – Chapter 611; Landlord Tenant.

This rule is newly drafted and is not a revision of a prior rule.

In accordance with the Administrative Rulemaking law, a public meeting was held for this rule on January 3, 2017 for which the comment period expired on January 10, 2017. There were no community members in attendance and no written comments were submitted during the comment period. The chart below provides a timeline outlining compliance with the Administrative Rulemaking process.

Rulemaking Timeline	
Required Action	Date Completed
Received Oneida Housing Authority Executive Director approval of DRAFT rule and direction to proceed with holding a public meeting	December 8, 2016
Public Meeting notice for the rule is posted in the Kalihwisaks (see page 33) and on the Oneida Register	December 15, 2016
Public Meeting held	January 3, 2017
Public Comment Period closed; there were no comments received	January 10, 2017

The following attachments are included for your review:

1. Rule No. 2 – Income Based Rental Program Eligibility, Selection, and Other Requirements
2. OHA Director Approval
3. Summary Report
4. Public Meeting Notice
5. Copy of Public Meeting Published in the Kalihwisaks – Page 33 of the December 15, 2016 issue
6. Sign in sheet from the January 3, 2017 Public Meeting
7. Public meeting transcription from the January 3, 2017 Public Meeting

Following certification, this rule shall become effective on April 13, 2017.



8

Title 6. Property and Land – Chapter 611

LANDLORD-TENANT

Rule # 2 – Income Based Rental Program Eligibility, Selection and Other Requirements

- 2.1. Purpose and Delegation
- 2.2. Adoption, Amendment and Repeal
- 2.3. Definitions
- 2.4. Eligibility Requirements
- 2.5. Application Process and Wait List
- 2.6. Tenant Selection
- 2.7. Rental Unit Catalog, Setting Rents and Security Deposits
- 2.8. Annual Inspection and Rental Agreement Renewal
- 2.9. Rental Agreement Cancellation

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2.1. Purpose and Delegation

2.1-1. *Purpose.* The purpose of this rule is to provide additional eligibility requirements, selection procedures and general requirements that govern the Comprehensive Housing Division's income-based rental programs. The mission of the income-based housing program is to develop, maintain, and operate affordable housing in safe, sanitary and healthy environments within the reservation.

2.1-2. *Authority.* The Landlord-Tenant law delegated the Comprehensive Housing Division and Land Commission joint rulemaking authority pursuant to the Administrative Rulemaking law. However that delegation excluded the Land Commission from having joint authority where the rules relate solely to premises administered pursuant to federal funding. Accordingly, the Comprehensive Housing Division has sole rulemaking authority for these rules.

2.2. Adoption, Amendment and Repeal

2.2-1. This rule was adopted by the Comprehensive Housing Division in accordance with the procedures of the Administrative Rulemaking law.

2.2-2. This rule may be amended or repealed by the approval of the Comprehensive Housing Division pursuant to the procedures set out in the Administrative Rulemaking law.

2.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

2.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure or other regulation, the provisions of this rule control.

2.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Landlord-Tenant law.

2.3. Definitions

2.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

- 44 (a) “Comprehensive Housing Division” means the entity responsible for housing matters
45 specifically related to rental agreements as defined by Oneida Business Committee
46 Resolution.¹
47 (b) “Household” means all persons residing within the income-based rental unit.
48 (c) “HUD” means the United States Department of Housing and Urban Development.
49 (b) “Landlord” means the Nation in its capacity to rent real property subject to a rental
50 agreement.
51 (c) “Nation” means the Oneida Nation.
52 (d) “Premises” means the property covered by a rental agreement, including not only the
53 real property and fixtures, but also any personal property furnished by the landlord
54 pursuant to a rental agreement.
55 (e) “Rental Agreement” means a written contract between a landlord and a tenant,
56 whereby the tenant is granted the right to use or occupy the premises for a residential
57 purpose for one (1) year or less.
58 (f) “Tenant” means the person granted the right to use or occupy a premises pursuant to a
59 rental agreement.
60 (g) “Tribal member” means an enrolled member of the Nation.
61 (h) “Security Deposit” means a payment made to the landlord by the tenant to ensure that
62 rent will be paid and other responsibilities of the rental agreement performed.
63

64 **2.4. Eligibility Requirements**

65 2.4-1. *Tribal Member Status.* At least one (1) of the household members listed in the household
66 composition is required to be a Tribal member. Comprehensive Housing Division staff shall
67 verify enrollment status by either requiring a copy of the Tribal Identification Card or requesting
68 verification from the Trust Enrollment Department.

69 2.4-2. *Maximum Income.* Pursuant to the Native American Housing Assistance and Self
70 Determination Act (NAHASDA), in order to be eligible for an income-based rental agreement,
71 the household must qualify as low income at the time of initial occupancy. In order to qualify as
72 low-income, applicants’ household income may not exceed eighty percent (80%) of the regional
73 gross annual income based on the data from Outagamie County.² For the purposes of this
74 section, gross annual income is all income from any and all sources of income from all adult
75 members of the household anticipated to be received in an upcoming twelve (12) month period
76 unless specifically excluded from income in this section. Applicants shall provide
77 Comprehensive Housing Division staff written verification of income.

78 (a) For purposes of calculating income to determine eligibility, the Comprehensive
79 Housing Division staff shall include per capita payments to the extent that receipt of per
80 capita payment may be verified for the prior year based on the tax return.

81 (b) For the purpose of calculating income to determine eligibility, the Comprehensive
82 Housing Division staff shall include in annual income net income from household assets

¹ See BC Resolution 10-12-16-D providing that for purposes of the Landlord-Tenant law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

² Pursuant to resolution BC-01-25-12-A, Outagamie County is designated as the data source for collecting regional gross income for determining low-income housing eligibility because the income in that area is generally higher than Brown County’s and results in more persons being eligible based on the income requirements.

83 where net household assets are defined in accordance with 24 CFR 5.603.³

84 (b) For purposes of calculating income to determine eligibility, the Comprehensive
85 Housing Division staff may not include the following:

86 (1) Income from employment of any household minors;

87 (2) Payments received for the care of foster children and/or handicapped/mentally
88 incompetent adults;

89 (3) Lump-sum additions to household assets including, but not limited to,
90 inheritances, insurance payments, capital gains, and settlements for personal
91 and/or property losses, excluding payments in lieu of earnings, such as
92 unemployment, disability compensation, worker's compensation, and severance
93 pay, which are included in income;

94 (4) Amounts received by the household that is specifically for, or in
95 reimbursement of, the cost of medical expenses for any member of the household;

96 (5) Income of a live-in medical aide;

97 (6) Any amounts received as student financial assistance;

98 (7) Income of any adult household members that are students, other than the head
99 of household, in excess of \$480 annually; the first \$480 of annual income
100 received by an adult student household member shall be included as income;

101 (8) Payments made to any member of the household serving in the armed forces
102 for exposure to hostile fire;

103 (9) Amounts received under training programs funded by HUD;

104 (10) Amounts received by persons with disabilities, which amounts are
105 disregarded for a limited time for purposes of Supplemental Security Income
106 eligibility and benefits because such amounts are set aside for use under a Plan for
107 Achieving Self-Support;

108 (11) Temporary, nonrecurring and/or sporadic income (including gifts);

109 (12) Adoption assistance payments that exceed \$480 annually; the first \$480 of
110 annual adoption assistance payments shall be included as income;

111 (13) Deferred periodic amounts from supplemental security income and social
112 security benefits that are received in a lump sum amount or in prospective
113 monthly amounts.

114 (14) Amounts paid by a state agency to a member of the household with a
115 developmental disability to offset the cost of services and/or equipment needed to
116 keep the developmentally disabled member living in the household; and

117 (15) Amounts specifically excluded from income by any applicable federal statute
118 and/or regulation, specifically those identified in the Federal Register.⁴

119 2.4-3. *Minimum Income.* Applicants shall meet a minimum household income of \$7,800 per
120 year.

121 2.4-4. *Outstanding Debts.* Applicants for a rental agreement may not have a past due balance
122 greater than two hundred dollars (\$200) owed to any utility provider and may not have any prior
123 debt owed to the Comprehensive Housing Division.

124 2.4-5. *Prior Comprehensive Housing Division Eviction.* Applicants that have had a rental
125 agreement with the Comprehensive Housing Division subject to an eviction and termination

³ See HUD Occupancy Handbook, Exhibit 5-2: Assets.

⁴ The most recent notice of federally required exclusions was published on December 14, 2012 and can be found in the Federal Register at 77 FR 74495.

126 within two (2) years from the date of the application are not eligible to participate in the income-
127 based rental program.

128 2.4-6. *Criminal Convictions.* Applicants with any of the following types of convictions are not
129 eligible for participation in the income-based rental program, provided that the Pardon and
130 Forgiveness law may provide an exception to the conditions contained in this section:

- 131 (a) A drug conviction within three (3) years from the date of application;
- 132 (b) A felony conviction within five (5) years from the date of application; and/or
- 133 (c) A criminal conviction based upon an act of violence within two (2) years from the
134 date of the application.

135 2.4-7. *Pardon and Forgiveness.* A grant of a pardon or forgiveness pursuant to the Nation’s
136 Pardon and Forgiveness law may result in an otherwise ineligible tenant becoming eligible.

137

138 **2.5. Application Process and Wait List**

139 2.5-1. *Applying.* Persons wishing to participate in the income-based housing program shall
140 complete the Comprehensive Housing Division rental agreement application and any other
141 accompanying forms required based on the income-based program eligibility requirements. The
142 Comprehensive Housing Division staff may not consider any applications for selection and/or
143 placement on the wait list until the application and all accompanying forms are complete. Upon
144 receipt of a completed application, including all supplementary forms, Comprehensive Housing
145 Division staff shall date and time stamp the application. If, regardless of a complete application
146 submittal, additional information is required to determine eligibility, the Comprehensive Housing
147 Division staff shall request such information and maintain the application submittal date
148 provided that the applicant responds to the information requests in a reasonably timely fashion.

149 (a) *Household Composition Form.* The Comprehensive Housing Division staff shall
150 require applicants to the income-based housing program to complete a Household
151 Composition Form which provides the full name, age and date of birth of each person
152 contemplated to reside in the income-based rental unit. In order to verify such
153 information, the Comprehensive Housing Division staff shall require that applicants
154 submit the following with the Household Composition Form:

- 155 (1) Copies of social security cards for each person contemplated to reside in the
156 income-based rental unit, provided that for newly born babies that have not yet
157 been issued a social security card a birth certificate is sufficient;
- 158 (2) A copy of a picture identification card for each adult contemplated to reside in
159 the income-based rental unit;
- 160 (3) If any adults in the home are enrolled in post-secondary education,
161 verification of enrollment in the form of a financial aid award letter or other
162 documentation directly from the school; and
- 163 (4) If an adult in the household is the custodial parent/guardian of a minor, a copy
164 of the court documents which awarded such placement.

165 (b) *Background Checks.* In order to ensure compliance with the eligibility requirements
166 of the Landlord-Tenant law and these rules, Comprehensive Housing Division staff shall
167 perform a background check on each adult in the household. Household adults are also
168 subject to annual background checks upon annual rental agreement renewal pursuant to
169 2.8-5 and as may be determined to be necessary to maintain the safety of the community
170 by the Comprehensive Housing Division staff.

171 2.5-2. *Notification of Eligibility, Placement on the Wait List.* When Comprehensive Housing

172 Division staff completes its review of an application and determines the applicant(s) eligible for
173 the income-based rental program, the staff shall:

174 (a) Place the applicant(s) into one (1) of the following categories of renters based on the
175 household size and needs as provided below:

176 (1) Single Adult/Adult Couple – A maximum of two (2) adults in the household,
177 no children.

178 (2) Small Household – A maximum four (4) household members in the
179 household.

180 (3) Large Household – A household of five (5) or more household members.

181 (4) Elder – A household with a maximum of two (2) adults and no children
182 wherein at least one (1) adult is sixty-two (62) years old or older at the time of
183 application.

184 (5) Minimum Handicap Accessibility Required – For each of the category types
185 provided in subsections (1)-(4) above, there shall be an additional category for
186 each requiring minimum handicap accessibility. This category shall be reserved
187 for households with at least one (1) household member requiring permanent and
188 minimal handicap accessibility (i.e. permanent use of a walker); this category
189 includes all handicap needs that do not amount to full wheelchair accessibility.

190 (6) Maximum Handicap Accessibility Required – For each of the category types
191 provided in subsections (1)-(4) above, there shall be an additional category for
192 each in which as least one (1) household member requires full wheelchair
193 handicap accessibility.

194 (b) Determine whether there is a wait list for the type of rental unit required based on the
195 applicant’s category of renter.

196 (1) If there is a wait list established, place the applicant on the wait list based on
197 the date and time stamp of the application. At such time, Comprehensive
198 Housing Division staff shall provide the applicant with notice of their placement
199 on the wait list and the requirement to update their application should anything
200 change prior to their designated use of rental unit becoming available. An
201 applicant may request to be removed from the wait list at any time.

202 (2) If there is not a wait list established and there are available rental units
203 available for the applicant’s renter category, move to the tenant selection process
204 provided in sections 2.6-3 and 2.6-4.

205 2.5-3. *Notification of Ineligibility.* If review of a complete submitted application and/or annual
206 renewal reveals that an applicant is ineligible to participate in the income-based rental program
207 based on the Landlord-Tenant law and/or rules, the Comprehensive Housing Division staff shall
208 notify the applicant of the cause of the ineligibility and how the applicant may become eligible in
209 the future. At such time, Comprehensive Housing Division staff shall also inform the applicant
210 of other housing opportunities offered by the Nation for which the applicant may be eligible, if
211 applicable.

212 2.5-4. *Required Application Updates.* Applicants on the wait list are required to update the
213 application, at a minimum, annually, but also whenever information submitted on the application
214 has changed. Applicants that fail to complete the application update within the allotted
215 timeframe will be removed from the wait list and required to re-apply for future consideration
216 absent proof of extenuating circumstances, for which Comprehensive Housing Division staff
217 may provide a grace period of a maximum of ten (10) calendar days. For any updated

218 application that reveals an applicant has become ineligible, Comprehensive Housing Division
219 staff shall remove the applicant from the wait list and provide the applicant notice of the cause
220 for ineligibility.

221

222 **2.6. Tenant Selection**

223 2.6-1. *Household Size and Available Units.* When a rental premise becomes available, the
224 Comprehensive Housing Division staff shall preliminarily select a tenant based on the first
225 applicant on the wait list for the said unit type based on the corresponding renter and unit
226 categorization. In the event that a handicap accessible unit becomes available and there are no
227 applicants on the wait list for the said type of handicap accessible unit, an applicant from the
228 same renter category that does not require handicap accessibility may be selected for the said
229 unit.

230 2.6-2. *Notice of Tenant Selection.* When an applicant is selected for a rental unit in accordance
231 with this section, the Comprehensive Housing Division staff shall provide the applicant with
232 notice of tenant selection. The notice, at a minimum, shall include the address of the rental
233 premise, the required security deposit and monthly rent, and a requirement that the applicant
234 respond within fifteen (15) calendar days to accept/reject the rental premise noting that the
235 security deposit is due at the time of acceptance. Applicants that pay a security deposit and fail
236 to complete the selection process to actually take occupancy forfeit the security deposit to the
237 Comprehensive Housing Division as consideration for holding the unit. Comprehensive Housing
238 Division shall return the security deposit to the applicant only in circumstances where the
239 applicant is prevented from entering the rental agreement based on a loss of eligibility due to
240 circumstances outside of the applicant's control (i.e. death of a Tribal member that made the
241 household eligible for the income-based rental program).

242 (a) *Failure to Respond or Rejecting a Rental Premise.* If a rental premise is rejected for
243 any reason or the applicant fails to respond to the notice, Comprehensive Housing
244 Division staff shall remove the applicant from the wait list; in such circumstances the
245 applicant may re-apply for the income-based rental program following a ninety (90)
246 calendar day period of ineligibility.

247 (b) *Accepting a Rental Premise.* In order for an applicant's acceptance of a rental
248 premise to be complete, the applicant shall submit along with the acceptance a payment
249 for the full security deposit. Prior to accepting a security deposit payment,
250 Comprehensive Housing Department staff shall verify that the applicant remains eligible
251 for the income-based rental program and the rental unit type based on the household's
252 categorization.

253 (1) *Standard Timeframe for Completing the Rental Agreement and Taking*
254 *Occupancy.* Except as provided in subsection (2) below, applicants that have
255 accepted a rental premise from the income-based rental program have five (5)
256 calendar days from the date of acceptance and payment of the security deposit to:

257 (A) Reconfirm that they remain eligible for the income-based rental
258 program and remain in the same category of renters;

259 (B) Pay the first month's rent; and

260 (C) Execute the rental agreement and all required supplemental forms,
261 provided that the agreement may not be executed until (A) and (B) are
262 complete.

263 (2) *Extended Timeframe for Completing the Rental Agreement for Applicants*

264 *Providing Termination Notice to Another Landlord or Housing Program.* The
265 Comprehensive Housing Division offers an extended timeframe for applicants
266 required to provide thirty (30) or more calendar or business days' notice of
267 termination of a rental agreement to a current landlord or housing program. In
268 such circumstances, in order to qualify for the extended timeframe, the applicant
269 shall provide proof of the notice requirement in his/her current rental agreement
270 by submitting the signed rental agreement to the Comprehensive Housing
271 Division. Upon submittal of such proof, the applicant shall have thirty (30)
272 calendar days from the date of acceptance and payment of the security deposit to:

273 (A) Reconfirm that they remain eligible for the income-based rental
274 program and remain in the same category of renters;

275 (B) Pay the first month's rent; and

276 (C) Execute the rental agreement and all required supplemental forms,
277 provided that the agreement may not be executed until (A) and (B) are
278 complete.

279 (3) *Taking Occupancy.* The Comprehensive Housing Division shall provide the
280 tenant with keys to the rental premises upon execution of the rental agreement.
281 As such time, the Comprehensive Housing Division staff shall provide the tenant
282 with a check-in sheet and notice the tenant that he/she has seven (7) calendar days
283 from the date the tenant takes occupancy to complete the check-in sheet and
284 submit it to the Comprehensive Housing Division.

285 **2.7. Rental Unit Catalog, Setting Rents and Security Deposits**

287 2.7-1. *Rental Unit Catalog.* The Comprehensive Housing Division shall maintain a catalog of
288 all rental units included in the income-based rental program. Said catalog shall categorize each
289 rental unit based on designated use for the type of renter in accordance with the types of renters
290 established in section 2.5-2(a).

291 2.7-2. *Setting Rents.* The Comprehensive Housing Division shall determine the required
292 monthly rent for each household based on the household's income in accordance with the
293 following:

294 (a) Rent may not exceed thirty percent (30%) of the household's adjusted gross income
295 based on the income calculation requirements provided in section 2.4-3. Adjusted gross
296 income means the annual household income remaining after the Comprehensive Housing
297 Division staff applies the following deductions:

298 (1) *Dependent Deduction.* A deduction of \$480.00 from annual income for each
299 household minor dependent or adult dependent where the adult dependent is
300 either a full-time student or a person with disabilities.

301 (2) *Elder and/or Disabled Deduction.* A total deduction of \$400.00 from annual
302 income for a household in which:

303 (A) A household member is sixty-two (62) years of age or older; and/or

304 (B) A household member is a person with a disability.

305 (3) *Medical and Attendant Expenses.* For a household qualifying under 2.7-
306 2(a)(2), a deduction for medical expenses⁵ that are in excess of three percent (3%)
307 of annual income and all expenses for live-in periodic attendant care assistance or
308 apparatus to the extent necessary to enable a member of the family to be

⁵ Medical expenses are those identified in Title VII, Section IV of NAHASDA.

- 309 employed.
- 310 (4) *Child Care Expenses*. A deduction for reasonable child care expenses from
311 annual income if the child care:
- 312 (A) Enables an adult household member to seek employment activity, be
313 gainfully employed, or further his/her education; and
- 314 (B) Expenses are not reimbursed.
- 315 (5) *Child Support for a Household Minor*. A deduction for the full amount of
316 child support paid by a household member for a household minor (i.e. when the
317 parent paying child support lives in the same household as the child for which the
318 parent is paying child support).
- 319 (6) *Earned Income of Minors*. A deduction in the amount of any earned income
320 of any minor household member.
- 321 (7) *Travel Expenses for Employment or Education-Related Travel*. A maximum
322 deduction of \$25.00 per week for travel expenses for employment or education
323 related travel.
- 324 (b) Monthly rent may not exceed the fair market rents of the rental premise as determined
325 by the data for Outagamie County.
- 326 (c) Households with any member that qualifies as a party listed below shall receive
327 preferential rent wherein the Comprehensive Housing Division may not charge rent that
328 exceeds twenty percent (20%) of the household's adjusted gross income based on the
329 income calculation requirements provided in section 2.4-3.
- 330 (1) Elder Tribal Member – A Tribal member that is sixty-two (62) years old or
331 older.
- 332 (2) Handicapped Tribal Member – A Tribal member that has a physical disability
333 as documented by a medical provider/or proof of disability payments.
- 334 (3) Legally Incompetent Adult Tribal Member – A Tribal member that has been
335 determined to be a legally incompetent adult based on the findings of a court of
336 competent jurisdiction.
- 337 (4) Mentally Disabled Minor Tribal Member – A Tribal member under the age of
338 eighteen (18) years old that has a mental disability as documented by a medical
339 provider.
- 340 2.7-3. *Standard Security Deposit*. Comprehensive Housing Division staff shall set the standard
341 security deposit required for each rental premise in the income-based rental program at \$350.00.
- 342 2.7-4. *Increased Security Deposit for Pets*. Tenants in the Comprehensive Housing Division's
343 general rental program may have pets in accordance with the Domestic Animal Ordinance,
344 provided that an increased security deposit is required.
- 345 (a) The standard security deposit does not apply to tenants with pets. Comprehensive
346 Housing Division staff shall set the increased security deposit required for households
347 with pets at a rate of \$350.00 plus an additional \$200.00 per pet.
- 348 (b) In the event that a tenant wishes to acquire a pet after the rental agreement has been
349 signed, the tenant shall notify the Comprehensive Housing Division and shall pay the
350 difference between the increased security deposit for pets and the standard security
351 deposit. Tenants that fail to report a pet in the household may be assessed charges for an
352 increased security deposit for pets if such pets are reported to the Comprehensive
353 Housing Division and/or discovered at the time of an inspection.
- 354

355 **2.8. Annual Inspection and Rental Agreement Renewal**

356 2.8-1. *Scheduling Annual Inspections.* Comprehensive Housing Division staff shall schedule
357 tenants' annual inspections for a date that is within ninety (90) calendar days of the expiration of
358 the tenants' rental agreement.

359 2.8-2. *Inspection Checklist.* Comprehensive Housing Division staff completing the annual
360 inspection shall use the checklist that is approved by the Comprehensive Housing Division
361 director. Upon completion of the inspection, Comprehensive Housing Division staff shall
362 request that the tenant(s) sign the completed checklist.

363 2.8-3. *Damages.* Tenants are required to pay costs to repair any damages to the rental premises
364 discovered during the annual inspection that do not amount to normal wear and tear. Payment for
365 such costs must be received by the Comprehensive Housing Division prior to signing a rental
366 agreement renewal, provided that the Comprehensive Housing Division may offer the tenant a
367 payment agreement in for the damages, in which case the repayment agreement shall be signed
368 prior to the rental agreement renewal.

369 2.8-4. *Immediate Notice of Change in Household Composition and/or Income.* Tenants shall
370 immediately notify the Comprehensive Housing Division of any change in the tenant's
371 household composition and/or income, regardless of the date scheduled for the annual renewal.

372 (a) *Change in Household Composition.* If a change in the household composition
373 changes the tenant's category of renter based on section 2.5-2(a), the Comprehensive
374 Housing Division staff shall work to transfer the household to a rental unit of
375 corresponding category as soon as possible. If no such units are currently available,
376 Comprehensive Housing Division staff shall move the tenant to the top of the waiting list.
377 In order to be transferred or placed on a wait list, the tenant shall demonstrate that they
378 remain eligible for the income-based rental program and are current with rent and utility
379 payments. Tenants are only eligible for rental unit transfers within their current category
380 of renter if, in the Comprehensive Housing Division's discretion, the transfer is needed to
381 better accommodate the household composition.

382 (b) *Change in Household Income.* A change in household income may cause a change in
383 the amount of monthly rent required, accordingly, any change in household income that
384 is not reported within thirty (30) calendar days of the change shall result in a retroactive
385 adjustment of the rent if the change results in an increase of rent payments. Retroactive
386 rent shall be applied for each month there was a change in income that was not reported,
387 excluding the initial thirty (30) calendar days provided to the tenant to report the change.
388 The tenant is responsible for payment of all current and retroactive adjustments of rent
389 and may be eligible for a repayment agreement, provided that in all circumstances and
390 retroactive rental arrears shall be paid in full within one (1) year.

391 (c) *Rental Agreement Amendment.* Should a change in household size and/or income
392 cause a change in the terms of the tenant's rental agreement, an amendment to the rental
393 agreement is required to be executed.

394 2.8-5. *Rental Agreement Renewal.* Each rental agreement is limited to a twelve (12) month
395 term. Tenants wishing to remain in the property are required to complete the annual rental
396 agreement renewal by verifying that the household continues to meet all eligibility requirements
397 contained in the Landlord-Tenant law and rules excluding the maximum income requirement
398 provided in article 2.4-2. Once continued eligibility is verified, tenants that remain eligible are
399 required to sign a rental agreement renewal.

400 (a) The Comprehensive Housing Division may, in its discretion, decline renewal of a

401 rental agreement if it determines that the renewal is not in the best interest of the Nation.
402 (b) In the event a tenant fails to enter a rental agreement renewal and has not vacated the
403 rental premises within thirty (30) calendar days of the expiration of the rental agreement,
404 the Comprehensive Housing Division shall initiate the eviction process pursuant to the
405 Eviction and Termination law.

406 2.8-6. *Ineligibility Due to Renewal or an Update of Household Information.* Comprehensive
407 Housing Division staff shall provide tenants that become ineligible to participate in the income-
408 based rental program based on a renewal or update of household information with notice
409 specifying the cause of the ineligibility and, if possible, how the household may reinstate
410 eligibility.

411 (a) *Ineligibility Due to Renewal.* In circumstances where the tenant learns of ineligibility
412 as part of the annual renewal, Comprehensive Housing Division staff shall include in the
413 notice of ineligibility that renewal of the rental agreement is not available at such time
414 and that the tenant is entitled to a minimum of a thirty (30) day notice to cure, by
415 reinstating eligibility, or vacate.

416 (b) *Ineligibility Due to an Update of Household Information.* In circumstances where the
417 tenant learns of ineligibility as part of an update of household information,
418 Comprehensive Housing Division staff shall include in the notice of ineligibility the
419 warning of potential termination in accordance with the rental agreement. In the event
420 the tenant is unable to or fails to reinstate their eligibility in accordance with the timeline
421 provided in the notice, the Comprehensive Housing Division shall permit the tenant to
422 remain in the unit for the longer of the duration of the rental agreement or ninety (90)
423 calendar days from the date of the notice of ineligibility.

424 (1) If the tenants' circumstances result in the tenant completing the term of the
425 rental agreement, eligibility shall be reconsidered at the time of the annual
426 renewal. If the tenant remains ineligible at the time of renewal, article 2.8-6(a)
427 applies.

428 (2) If the tenants' circumstances result in the tenant receiving a thirty (30)
429 calendar day notice to cure or ninety (90) calendar day notice to vacate, the tenant
430 shall enter a limited term rental agreement to cover any time which exceeds the
431 current rental agreement.

432 (c) *Limited Term Rental Agreements.* Limited term rental agreements are available in
433 accordance with article 2.8-6(a) and (b) of these rules and section 611.9-4 of the
434 Landlord-Tenant law. At a minimum, limited term rental agreement shall include:

435 (1) The date of the original notice of ineligibility;

436 (2) An explanation that the tenant has thirty (30) calendar days to reinstate
437 eligibility;

438 (3) As applicable, an explanation that if eligibility is not timely reinstated, that the
439 limited term rental agreement takes the place of the thirty (30) calendar day notice
440 to cure or vacate required by the Eviction and Termination law; and

441 (4) An explanation that if eligibility is not timely reinstated, the rental unit will
442 be reclaimed including the date the locks will be changed.

443

444 **2.9. Rental Agreement Cancellation**

445 2.9-1. *Two Week Notice Required.* Tenant wishing to cancel a rental agreement in the general
446 rental program are requested to provide the Comprehensive Housing Division with a minimum

447 of two (2) weeks of notice.

448 2.9-2. *Prorated Rent.* In the event of cancellation of a rental agreement or abandonment of the
449 rental premises, the Comprehensive Housing Division staff shall prorate the required last
450 month's rent payment based upon the greater of the following:

451 (a) The number of calendar days the unit was occupied in the last month; or

452 (b) Two (2) weeks from the date of cancellation or the date the Comprehensive Housing
453 Division learns of abandonment.

454

455 *End.*

456

457 _____
Original effective date:

458



Memorandum

To: Legislative Operating Committee
From: Dale Wheelock, Executive Director Housing
Date: March 24, 2017
Subject: Rule 2 –Income Based Rental Program
Eligibility, Selection, and Other Requirements.

As Executive Director of the Housing Department, I am approving the proposed Rule #2-Income Based Rental Program, Eligibility, Selection, and Other Requirements. This approval is in context as it relates to Title 6 Property and Land – Chapter 611 Landlord – Tenant Law (Administrative Rulemaking 106.10-1. (a)(4)).

Signature Approval

Dale P. Wheelock Date 03/24/17

Dale Wheelock

Executive Director Oneida Housing Authority



Statement of Effect

Landlord-Tenant Rule No.2 – Income Based Rental Program Eligibility, Selection and Other Requirements

Summary

This rule provides additional eligibility requirements, selection procedures and general requirements that govern the Comprehensive Housing Division’s income-based rental program.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

The Landlord-Tenant law (“the Law”) confers administrative rulemaking authority to the Comprehensive Housing Division and the Oneida Land Commission as authorized by the Administrative Rulemaking law. [see *Landlord-Tenant law section 611.4*]. The Law states that the Comprehensive Housing Division shall provide residential rental programs to low-income members of the Nation and their families. [see *Landlord-Tenant law section 611.4-1*]. The Oneida Land Commission and the Comprehensive Housing Division are required to jointly establish rules naming said programs and providing the specific requirements and regulations that apply to each program. [see *Landlord-Tenant law section 611.4-1*]. Additionally, the Land Commission and the Comprehensive Housing Division are required to jointly develop rules governing the selection of applicants for the issuance of rental agreements. [see *Landlord-Tenant law section 611.4-3*]. Oneida Business Committee Resolution BC-10-12-16-D provides that for purposes of this law, the Comprehensive Housing Division means the Oneida Housing Authority for income-based rental agreements. The Law also provides where such rental requirements relate solely to premises administered pursuant to federal funding, the Comprehensive Housing Division has sole authority. Accordingly, the Comprehensive Housing Division has sole rulemaking authority for these rules.

Landlord-Tenant Rule No. 2 - Income Based Rental Program Eligibility, Selection and Other Requirements (“the Rule”) provides additional eligibility requirements, selection procedures and general requirements that govern the Comprehensive Housing Division’s income-based rental programs. The mission of the income-based housing program is to develop, maintain, and operate affordable housing in safe, sanitary and healthy environments within the reservation.

Conclusion

There are no legal bars to adopting Landlord-Tenant Rule No.4 – Income Based Rental Program Eligibility, Selection and Other Requirements.

Summary Report for: Income Based Rental Program Eligibility, Selection, and Other Requirements

Original effective date: N/A

Amendment effective date: N/A

Name of Rule: Income Based Rental Program Eligibility, Selection, and Other Requirements

Name of law being interpreted: Title 7. Property and Land – Chapter 710 Landlord-Tenant

Rule Number: 2

Other Laws or Rules that may be affected: N/A

Brief Summary of the proposed rule: Rule No. 2 identifies the following:

- Eligibility Requirements for the Income Based Renting
- Tenant Selection
- Rental Unit Catalog, Setting Rents, and Security Deposits
- Annual Inspection and Rental Agreement Renewal
- Rental Agreement Cancellation

Statement of Effect: Obtained after requesting from the Legislative Reference Office.

Financial Analysis: See Attached.

Financial Analysis for: Income Based Rental Program Eligibility, Selection, and Other Requirements

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs		\$0.00
Personnel		\$0.00
Office		\$0.00
Documentation Costs		\$0.00
Estimate of time necessary for an individual or agency to comply with the rule after implementation		N/A
Other, please explain	<p>Rule No. 2, Section 2.6-2 Notice of Tenant Selection – Line 226.</p> <p>Applicants paying security deposit and fail to complete selection process forfeit security deposit.</p> <p>The anticipation is some increased revenue may occur with forfeited security deposits.</p> <p>In general, currently limited applicants turn down a unit once a security deposit is paid.</p>	Unknown
Total	Annual Net Revenue	

NOTICE OF
PUBLIC MEETING

TO BE HELD
January 3, 2016 at 1:15 PM
IN THE
OBC Conference Room
2nd Floor Norbert Hill Center
N7210 Seminary Road, Oneida, WI 54155

In accordance with the Administrative Rulemaking Law, the Oneida Housing Authority (OHA) is hosting this Public Meeting to gather feedback from the community regarding the following rules.

TOPIC:

- Income Based Rental Program Eligibility, Selection and Other Requirements Rule

The Income Based Rental Program Eligibility, Selection and Other Requirements Rule Identifies:

- Eligibility Requirements for the Income Based Renting
- Tenant Selection
- Rental Unit Catalog, Setting Rents, and Security Deposits
- Annual Inspection and Rental Agreement Renewal
- Rental Agreement Cancellation

To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

PUBLIC COMMENT PERIOD
OPEN UNTIL Tuesday, January 10, 2016

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to OHA by U.S. mail, interoffice mail, e-mail or fax.

Oneida Housing Authority
2913 Commissioner Street, Oneida, WI 54155
jhill7@oneidanation.org
Phone: 920-869-2227
Fax: 920-869-2836

Oneida Arts Board**One (1) of vacancy****Qualifications:**

- A majority of the members shall be enrolled members of the Oneida Tribe.
- Any vacancies which cause non-Tribal members to make up the majority of the Board shall be filled within three (3) months. If such vacancies are not filled within three (3) months, a sufficient number of non-Tribal board members shall be re-designated as alternates until Tribal members again make up a majority of the Board.
- When non-Tribal board members are to be re-designated as alternates, all such non-Tribal members shall first be invited to volunteer to serve as an alternate. If there are not sufficient volunteers, then the members that have served the shortest time on the Board shall be selected first.

Deadline: 4:30pm, Friday, January 13, 2017**Oneida Personnel Commission****One (1) vacancy****Qualifications:**

- Must be enrolled members of the Oneida Nation.
- The entire combined commission may not consist of more than two (2) members from any one division of the Oneida Tribe, or less than seven (7) community members who are not employed by the Tribe.
- Be free of any and all direct conflicts of interest or appearances of conflict as defined under various laws and policies of the Tribe, including but not limited to the oath of office, the OPPP, the Ethic Code, the Judicial Code and the Oneida Rules of Civil Procedure.
- A member may not be and employee of the Human Resources Department, any advocacy group (department), or any other recognized hearing body within the Oneida Tribe, e.g. Personnel Relations Officers and Paralegals.
- Commissioners shall be available for meetings, trainings, interviews, pre-screenings, reassignments, grievance hearings and other duties as needed. Three (3) unexcused absences to attend to such duties may be reported to the OBC, if deemed appropriate by the OPC.
- Both formal and informal communications with any entity by any commissioner on behalf of the OPC will be as directed by the Commission, or as routinely required by Officers. Specific policy governing all communications of the OPC may be set forth in an OPC Communications SOP which shall provide procedural guidance on determining when, how and by whom OPC communications are made.

Deadline: 4:30pm Friday, January 13, 2017**SEOTS****SEOTS**

Two (2) vacancies (1 to finish a term until 11/12/17 and 1 to finish a term until 2/28/19)

Qualifications:

- Applicants who wish to be considered for membership shall be enrolled Oneida Tribal members who are eighteen (18) years of age or older.
- Board members shall reside within one of the six (6) Southeastern Wisconsin counties of Milwaukee, Racine, Kenosha, Waukesha, Ozaukee and Washington.
- Appointments to the Board shall be made in accordance with the Comprehensive Policy Governing Boards, Committees and Commissions.
- Board members shall agree to firm commitments for attending the Board's meetings and General Tribal Council meetings, as well as, training, functions and other events as established by the Board, SEOTS office or the Tribe.

Deadline: 4:30pm, Friday, January 13, 2017

To submit an application by email sent to: TribalSecretary@oneidanation.org

To submit an application by mail send to: Tribal Secretary's Office, PO Box 365 Oneida WI 54155. To submit an application in person go to N7210 Seminary Road.

NOTICE OF

PUBLIC MEETING

TO BE HELD

January 3, 2016 at 1:15 PM

IN THE

OBC Conference Room**2nd Floor Norbert Hill Center****N7210 Seminary Road, Oneida, WI 54155**

In accordance with the Administrative Rulemaking Law, the Oneida Housing Authority (OHA) is hosting this Public Meeting to gather feedback from the community regarding the following rules.

TOPIC:

- Income Based Rental Program Eligibility, Selection and Other Requirements Rule

The Income Based Rental Program Eligibility, Selection and Other Requirements Rule Identifies:

- Eligibility Requirements for the Income Based Renting
- Tenant Selection
- Rental Unit Catalog, Setting Rents, and Security Deposits
- Annual Inspection and Rental Agreement Renewal
- Rental Agreement Cancellation

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PUBLIC COMMENT PERIOD
OPEN UNTIL Tuesday, January 10, 2016

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to OHA by U.S. mail, interoffice mail, e-mail or fax.

Oneida Housing Authority
2913 Commissioner Street, Oneida, WI 54155

jhill7@oneidanation.org

Phone: 920-869-2227

Fax: 920-869-2836




Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
 Oneida-nsn.gov



LEGISLATIVE OPERATING COMMITTEE PUBLIC MEETING
 Business Committee Conference Room-2nd Floor Norbert Hill Center
 January 3, 2017 1:15p.m.

OHA Public Meeting - Rule No. 2 Income Based Program Eligibility, Selection, and Other Requirements
PUBLIC MEETING SIGN IN SHEET

	Name: (Print clearly)	Email Address / Phone #	Department/Roll #	Oral Testimony (Y) or (N)
1.	Dale Wheelock	869-6198	Housing	
2.		869-6193	OHA	
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				



ONEIDA HOUSING AUTHORITY
P. O. BOX 68
ONEIDA, WISCONSIN 54155
(920) 869-2227
(920) 869-2836 FAX



Page 1 of 269

**Oneida Housing Authority
Public Meeting**

Rule No.2 – Income Based Rental Program Eligibility, Selection and Other Requirements
Business Committee Conference Room-2nd Floor Norbert Hill Center
January 3, 2017 1:15 p.m.

Present: Dale Wheelock, Oneida Housing Authority; Scott Denny, Oneida Housing Authority

Scott Denny : Good Afternoon, the time is 1:25 pm, and today's date is Tuesday, January 3, 2016*. I will now call the public meeting for the Rule No. 2 Income Based Rental Program Eligibility, Selection and Other Requirements to order. The Housing Authority is hosting this public meeting to gather feedback from the community regarding these legislative proposals, well actually my bad, to get feedback regarding the rule and impacts on the community. All persons who wish to present oral testimony need to register on the sign-in sheet in the back of the room. Written comments may be submitted to the Tribal Secretary's Office or the Legislative Reference Office in person, by US mail, interoffice mail, email, or fax as provided on the Public Meeting Notice. These comments must be received by Tuesday, January 10, 2017. In attendance from Housing Authority is Scott Denny and Dale Wheelock. We will begin today's public meeting for Rule No. 2 the Income Based Rental Program Eligibility, Selection, and Other Requirements at this time.

*Speaker made a mistake by stating the incorrect year. The year is 2017

Scott Denny: With there being no speakers registered the public meeting for Rule No 2 the Income Based Rental Program Eligibility, Selection and Other Requirements is now closed at 12, I'm sorry, 1:40 pm. Written comments may be submitted until close of business day on Tuesday, January 10, 2017.

-End of Meeting-



8

Title 7. Property and Land – Chapter 710

LANDLORD-TENANT

Rule # 2 – Income Based Rental Program Eligibility, Selection and Other Requirements

- 2.1. Purpose and Delegation
- 2.2. Adoption, Amendment and Repeal
- 2.3. Definitions
- 2.4. Eligibility Requirements
- 2.5. Application Process and Wait List
- 2.6. Tenant Selection
- 2.7. Rental Unit Catalog, Setting Rents and Security Deposits
- 2.8. Annual Inspection and Rental Agreement Renewal
- 2.9. Rental Agreement Cancellation

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2.1. Purpose and Delegation

2.1-1. *Purpose.* The purpose of this rule is to provide additional eligibility requirements, selection procedures and general requirements that govern the Comprehensive Housing Division's income-based rental programs. The mission of the income-based housing program is to develop, maintain, and operate affordable housing in safe, sanitary and healthy environments within the reservation.

2.1-2. *Authority.* The Landlord-Tenant law delegated the Comprehensive Housing Division and Land Commission joint rulemaking authority pursuant to the Administrative Rulemaking law. However that delegation excluded the Land Commission from having joint authority where the rules relate solely to premises administered pursuant to federal funding. Accordingly, the Comprehensive Housing Division has sole rulemaking authority for these rules.

2.2. Adoption, Amendment and Repeal

2.2-1. This rule was adopted by the Comprehensive Housing Division in accordance with the procedures of the Administrative Rulemaking law.

2.2-2. This rule may be amended or repealed by the approval of the Comprehensive Housing Division pursuant to the procedures set out in the Administrative Rulemaking law.

2.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

2.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure or other regulation, the provisions of this rule control.

2.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Landlord-Tenant law.

2.3. Definitions

2.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

- 44 (a) "Comprehensive Housing Division" means the entity responsible for housing matters
45 specifically related to rental agreements as defined by Oneida Business Committee
46 Resolution.¹
47 (b) "Household" means all persons residing within the income-based rental unit.
48 (c) "HUD" means the United States Department of Housing and Urban Development.
49 (b) "Landlord" means the Nation in its capacity to rent real property subject to a rental
50 agreement.
51 (c) "Nation" means the Oneida Nation.
52 (d) "Premises" means the property covered by a rental agreement, including not only the
53 real property and fixtures, but also any personal property furnished by the landlord
54 pursuant to a rental agreement.
55 (e) "Rental Agreement" means a written contract between a landlord and a tenant,
56 whereby the tenant is granted the right to use or occupy the premises for a residential
57 purpose for one (1) year or less.
58 (f) "Tenant" means the person granted the right to use or occupy a premises pursuant to a
59 rental agreement.
60 (g) "Tribal member" means an enrolled member of the Nation.
61 (h) "Security Deposit" means a payment made to the landlord by the tenant to ensure that
62 rent will be paid and other responsibilities of the rental agreement performed.
63

64 **2.4. Eligibility Requirements**

65 2.4-1. *Tribal Member Status.* At least one (1) of the heads of household required to sign the
66 rental agreement is required to be a Tribal member. Households that do not meet this
67 requirement which are current tenants shall be grandfathered into continual eligibility for one (1)
68 full rental agreement term following adoption of these rules based on the Tribal member
69 requirement so long as one (1) household member is a Tribal member. Comprehensive Housing
70 Division staff shall verify enrollment status by either requiring a copy of the Tribal Identification
71 Card or requesting verification from the Trust Enrollment Department.

72 2.4-2. *Maximum Income.* Pursuant to the Native American Housing Assistance and Self
73 Determination Act (NAHASDA), in order to be eligible for an income-based rental agreement,
74 the household must qualify as low income at the time of initial occupancy. In order to qualify as
75 low-income, applicants' household income may not exceed eighty percent (80%) of the regional
76 gross annual income based on the data from Outagamie County.² For the purposes of this
77 section, gross annual income is all income from any and all sources of income from all adult
78 members of the household anticipated to be received in an upcoming twelve (12) month period
79 unless specifically excluded from income in this section. Applicants shall provide
80 Comprehensive Housing Division staff written verification of income.

- 81 (a) For purposes of calculating income to determine eligibility, the Comprehensive
82 Housing Division staff shall include per capita payments to the extent that receipt of per
83 capita payment may be verified for the prior year based on the tax return.

¹ See BC Resolution 10-12-16-D providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

² Pursuant to resolution BC-01-25-12-A, Outagamie County is designated as the data source for collecting regional gross income for determining low-income housing eligibility because the income in that area is generally higher than Brown County's and results in more persons being eligible based on the income requirements.

84 (b) For the purpose of calculating income to determine eligibility, the Comprehensive
85 Housing Division staff shall include in annual income net income from household assets
86 where net household assets are defined in accordance with 24 CFR 5.603.³

87 (b) For purposes of calculating income to determine eligibility, the Comprehensive
88 Housing Division staff may not include the following:

89 (1) Income from employment of any household minors;

90 (2) Payments received for the care of foster children and/or handicapped/mentally
91 incompetent adults;

92 (3) Lump-sum additions to household assets including, but not limited to,
93 inheritances, insurance payments, capital gains, and settlements for personal
94 and/or property losses, excluding payments in lieu of earnings, such as
95 unemployment, disability compensation, worker's compensation, and severance
96 pay, which are included in income;

97 (4) Amounts received by the household that is specifically for, or in
98 reimbursement of, the cost of medical expenses for any member of the household;

99 (5) Income of a live-in medical aide;

100 (6) Any amounts received as student financial assistance;

101 (7) Income of any adult household members that are students, other than the head
102 of household, in excess of \$480 annually; the first \$480 of annual income
103 received by an adult student household member shall be included as income;

104 (8) Payments made to any member of the household serving in the armed forces
105 for exposure to hostile fire;

106 (9) Amounts received under training programs funded by HUD;

107 (10) Amounts received by persons with disabilities, which amounts are
108 disregarded for a limited time for purposes of Supplemental Security Income
109 eligibility and benefits because such amounts are set aside for use under a Plan for
110 Achieving Self-Support;

111 (11) Temporary, nonrecurring and/or sporadic income (including gifts);

112 (12) Adoption assistance payments that exceed \$480 annually; the first \$480 of
113 annual adoption assistance payments shall be included as income;

114 (13) Deferred periodic amounts from supplemental security income and social
115 security benefits that are received in a lump sum amount or in prospective
116 monthly amounts.

117 (14) Amounts paid by a state agency to a member of the household with a
118 developmental disability to offset the cost of services and/or equipment needed to
119 keep the developmentally disabled member living in the household; and

120 (15) Amounts specifically excluded from income by any applicable federal statute
121 and/or regulation, specifically those identified in the Federal Register.⁴

122 2.4-3. *Minimum Income.* Applicants shall meet a minimum household income of \$7,800 per
123 year.

124 2.4-4. *Outstanding Debts.* Applicants for a rental agreement may not have any outstanding
125 balance owed to a utility provider, for any previous housing (which includes prior landlords
126 other than Nation and/or federal housing assistance programs) and/or the Comprehensive

³ See HUD Occupancy Handbook, Exhibit 5-2: Assets.

⁴ The most recent notice of federally required exclusions was published on December 14, 2012 and can be found in the Federal Register at 77 FR 74495.

127 Housing Division.

128 2.4-5. *Prior Comprehensive Housing Division Eviction.* Applicants that have had a rental
129 agreement with the Comprehensive Housing Division subject to an eviction and termination
130 within two (2) years from the date of the application are not eligible to participate in the income-
131 based rental program.

132 2.4-6. *Criminal Convictions.* Applicants with any of the following types of convictions are not
133 eligible for participation in the income-based rental program, provided that the Pardon and
134 Forgiveness law may provide an exception to the conditions contained in this section:

- 135 (a) A drug conviction within three (3) years from the date of application;
- 136 (b) A felony conviction within five (5) years from the date of application; and/or
- 137 (c) A criminal conviction based upon an act of violence within two (2) years from the
138 date of the application.

139

140 **2.5. Application Process and Wait List**

141 2.5-1. *Applying.* Persons wishing to participate in the income-based housing program shall
142 complete the Comprehensive Housing Division rental agreement application and any other
143 accompanying forms required based on the income-based program eligibility requirements. The
144 Comprehensive Housing Division staff may not consider any applications for selection and/or
145 placement on the wait list until the application and all accompanying forms are complete. Upon
146 receipt of a completed application, including all supplementary forms, Comprehensive Housing
147 Division staff shall date and time stamp the application. If, regardless of a complete application
148 submittal, additional information is required to determine eligibility, the Comprehensive Housing
149 Division staff shall request such information and maintain the application submittal date
150 provided that the applicant responds to the information requests in a reasonably timely fashion.

151 (a) *Household Composition Form.* The Comprehensive Housing Division staff shall
152 require applicants to the income-based housing program to complete a Household
153 Composition Form which provides the full name, age and date of birth of each person
154 contemplated to reside in the income-based rental unit. In order to verify such
155 information, the Comprehensive Housing Division staff shall require that applicants
156 submit the following with the Household Composition Form:

157 (1) Copies of social security cards for each person contemplated to reside in the
158 income-based rental unit, provided that for newly born babies that have not yet
159 been issued a social security card a birth certificate is sufficient;

160 (2) A copy of a picture identification card for each adult contemplated to reside in
161 the income-based rental unit;

162 (3) If any adults in the home are enrolled in post-secondary education,
163 verification of enrollment in the form of a financial aid award letter or other
164 documentation directly from the school; and

165 (4) If an adult in the household is the custodial parent/guardian of a minor, a copy
166 of the court documents which awarded such placement.

167 (b) *Background Checks.* In order to ensure compliance with the eligibility requirements
168 of the Landlord-Tenant law and these rules, Comprehensive Housing Division staff shall
169 perform a background check on each adult in the household. Household adults are also
170 subject to annual background checks upon annual rental agreement renewal pursuant to
171 2.8-5 and as may be determined to be necessary to maintain the safety of the community
172 by the Comprehensive Housing Division staff.

173 2.5-2. *Notification of Eligibility, Placement on the Wait List.* When Comprehensive Housing
174 Division staff completes its review of an application and determines the applicant(s) eligible for
175 the income-based rental program, the staff shall:

176 (a) Place the applicant(s) into one (1) of the following categories of renters based on the
177 household size and needs as provided below:

178 (1) Single Adult/Adult Couple – A maximum of two (2) adults in the household,
179 no children.

180 (2) Small Household – A maximum four (4) household members in the
181 household.

182 (3) Large Household – A household of five (5) or more household members.

183 (4) Elder – A household with a maximum of two (2) adults and no children
184 wherein at least one (1) adult is sixty-two (62) years old or older at the time of
185 application.

186 (5) Minimum Handicap Accessibility Required – For each of the category types
187 provided in subsections (1)-(4) above, there shall be an additional category for
188 each requiring minimum handicap accessibility. This category shall be reserved
189 for households with at least one (1) household member requiring permanent and
190 minimal handicap accessibility (i.e. permanent use of a walker); this category
191 includes all handicap needs that do not amount to full wheelchair accessibility.

192 (6) Maximum Handicap Accessibility Required – For each of the category types
193 provided in subsections (1)-(4) above, there shall be an additional category for
194 each in which at least one (1) household member requires full wheelchair
195 handicap accessibility.

196 (b) Determine whether there is a wait list for the type of rental unit required based on the
197 applicant's category of renter.

198 (1) If there is a wait list established, place the applicant on the wait list based on
199 the date and time stamp of the application. At such time, Comprehensive
200 Housing Division staff shall provide the applicant with notice of their placement
201 on the wait list and the requirement to update their application should anything
202 change prior to their designated use of rental unit becoming available. An
203 applicant may request to be removed from the wait list at any time.

204 (2) If there is not a wait list established and there are available rental units
205 available for the applicant's renter category, move to the tenant selection process
206 provided in sections 2.6-3 and 2.6-4.

207 2.5-3. *Notification of Ineligibility.* If review of a complete submitted application and/or annual
208 renewal reveals that an applicant is ineligible to participate in the income-based rental program
209 based on the Landlord-Tenant law and/or rules, the Comprehensive Housing Division staff shall
210 notify the applicant of the cause of the ineligibility and how the applicant may become eligible in
211 the future. At such time, Comprehensive Housing Division staff shall also inform the applicant
212 of other housing opportunities offered by the Nation for which the applicant may be eligible, if
213 applicable.

214 2.5-4. *Required Application Updates.* Applicants on the wait list are required to update the
215 application, at a minimum, annually, but also whenever information submitted on the application
216 has changed. Applicants that fail to complete the application update within the allotted
217 timeframe will be removed from the wait list and required to re-apply for future consideration
218 absent proof of extenuating circumstances, for which Comprehensive Housing Division staff

219 may provide a grace period of a maximum of ten (10) calendar days. For any updated
220 application that reveals an applicant has become ineligible, Comprehensive Housing Division
221 staff shall remove the applicant from the wait list and provide the applicant notice of the cause
222 for ineligibility.
223

224 **2.6. Tenant Selection**

225 2.6-1. *Household Size and Available Units.* When a rental premise becomes available, the
226 Comprehensive Housing Division staff shall preliminarily select a tenant based on the first
227 applicant on the wait list for the said unit type based on the corresponding renter and unit
228 categorization. In the event that a handicap accessible unit becomes available and there are no
229 applicants on the wait list for the said type of handicap accessible unit, an applicant from the
230 same renter category that does not require handicap accessibility may be selected for the said
231 unit.

232 2.6-2. *Notice of Tenant Selection.* When an applicant is selected for a rental unit in accordance
233 with this section, the Comprehensive Housing Division staff shall provide the applicant with
234 notice of tenant selection. The notice, at a minimum, shall include the address of the rental
235 premise, the required security deposit and monthly rent, and a requirement that the applicant
236 respond within fifteen (15) calendar days to accept/reject the rental premise noting that the
237 security deposit is due at the time of acceptance. Applicants that pay a security deposit and fail
238 to complete the selection process to actually take occupancy forfeit the security deposit to the
239 Comprehensive Housing Division as consideration for holding the unit. Comprehensive Housing
240 Division shall return the security deposit to the applicant only in circumstances where the
241 applicant is prevented from entering the rental agreement based on a loss of eligibility due to
242 circumstances outside of the applicant's control (i.e. death of a Tribal member that made the
243 household eligible for the income-based rental program).

244 (a) *Failure to Respond or Rejecting a Rental Premise.* If a rental premise is rejected for
245 any reason or the applicant fails to respond to the notice, Comprehensive Housing
246 Division staff shall remove the applicant from the wait list; in such circumstances the
247 applicant may re-apply for the income-based rental program following a ninety (90)
248 calendar day period of ineligibility.

249 (b) *Accepting a Rental Premise.* In order for an applicant's acceptance of a rental
250 premise to be complete, the applicant shall submit along with the acceptance a payment
251 for the full security deposit. Prior to accepting a security deposit payment,
252 Comprehensive Housing Department staff shall verify that the applicant remains eligible
253 for the income-based rental program and the rental unit type based on the household's
254 categorization.

255 (1) *Standard Timeframe for Completing the Rental Agreement and Taking*
256 *Occupancy.* Except as provided in subsection (2) below, applicants that have
257 accepted a rental premise from the income-based rental program have five (5)
258 calendar days from the date of acceptance and payment of the security deposit to:

- 259 (A) Reconfirm that they remain eligible for the income-based rental
260 program and remain in the same category of renters;
261 (B) Pay the first month's rent; and
262 (C) Execute the rental agreement and all required supplemental forms,
263 provided that the agreement may not be executed until (A) and (B) are
264 complete.

265 (2) *Extended Timeframe for Completing the Rental Agreement for Applicants*
266 *Providing Termination Notice to Another Landlord or Housing Program.* The
267 Comprehensive Housing Division offers an extended timeframe for applicants
268 required to provide thirty (30) or more calendar or business days' notice of
269 termination of a rental agreement to a current landlord or housing program. In
270 such circumstances, in order to qualify for the extended timeframe, the applicant
271 shall provide proof of the notice requirement in his/her current rental agreement
272 by submitting the signed rental agreement to the Comprehensive Housing
273 Division. Upon submittal of such proof, the applicant shall have thirty (30)
274 calendar days from the date of acceptance and payment of the security deposit to:

275 (A) Reconfirm that they remain eligible for the income-based rental
276 program and remain in the same category of renters;

277 (B) Pay the first month's rent; and

278 (C) Execute the rental agreement and all required supplemental forms,
279 provided that the agreement may not be executed until (A) and (B) are
280 complete.

281 (3) *Taking Occupancy.* The Comprehensive Housing Division shall provide the
282 tenant with keys to the rental premises upon execution of the rental agreement.
283 As such time, the Comprehensive Housing Division staff shall provide the tenant
284 with a check-in sheet and notice the tenant that he/she has seven (7) calendar days
285 from the date the tenant takes occupancy to complete the check-in sheet and
286 submit it to the Comprehensive Housing Division.
287

288 **2.7. Rental Unit Catalog, Setting Rents and Security Deposits**

289 2.7-1. *Rental Unit Catalog.* The Comprehensive Housing Division shall maintain a catalog of
290 all rental units included in the income-based rental program. Said catalog shall categorize each
291 rental unit based on designated use for the type of renter in accordance with the types of renters
292 established in section 2.5-2(a).

293 2.7-2. *Setting Rents.* The Comprehensive Housing Division shall determine the required
294 monthly rent for each household based on the household's income in accordance with the
295 following:

296 (a) Rent may not exceed thirty percent (30%) of the household's adjusted gross income
297 based on the income calculation requirements provided in section 2.4-3. Adjusted gross
298 income means the annual household income remaining after the Comprehensive Housing
299 Division staff applies the following deductions:

300 (1) *Dependent Deduction.* A deduction of \$480.00 from annual income for each
301 household minor dependent or adult dependent where the adult dependent is
302 either a full-time student or a person with disabilities.

303 (2) *Elder and/or Disabled Deduction.* A total deduction of \$400.00 from annual
304 income for a household in which:

305 (A) A household member is sixty-two (62) years of age or older; and/or

306 (B) A household member is a person with a disability.

307 (3) *Medical and Attendant Expenses.* For a household qualifying under 2.7-
308 2(a)(2), a deduction for medical expenses⁵ that are in excess of three percent (3%)
309 of annual income and all expenses for live-in periodic attendant care assistance or

⁵ Medical expenses are those identified in Title VII, Section IV of NAHASDA.

310 apparatus to the extent necessary to enable a member of the family to be
311 employed.

312 (4) *Child Care Expenses.* A deduction for reasonable child care expenses from
313 annual income if the child care:

314 (A) Enables an adult household member to seek employment activity, be
315 gainfully employed, or further his/her education; and

316 (B) Expenses are not reimbursed.

317 (5) *Child Support for a Household Minor.* A deduction for the full amount of
318 child support paid by a household member for a household minor (i.e. when the
319 parent paying child support lives in the same household as the child for which the
320 parent is paying child support).

321 (6) *Earned Income of Minors.* A deduction in the amount of any earned income
322 of any minor household member.

323 (7) *Travel Expenses for Employment or Education-Related Travel.* A maximum
324 deduction of \$25.00 per week for travel expenses for employment or education
325 related travel.

326 (b) Monthly rent may not exceed the fair market rents of the rental premise as determined
327 by the data for Outagamie County.

328 (c) Households with any member that qualifies as a party listed below shall receive
329 preferential rent wherein the Comprehensive Housing Division may not charge rent that
330 exceeds twenty percent (20%) of the household's adjusted gross income based on the
331 income calculation requirements provided in section 2.4-3.

332 (1) Elder Tribal Member – A Tribal member that is sixty-two (62) years old or
333 older.

334 (2) Handicapped Tribal Member – A Tribal member that has a physical disability
335 as documented by a medical provider/or proof of disability payments.

336 (3) Legally Incompetent Adult Tribal Member – A Tribal member that has been
337 determined to be a legally incompetent adult based on the findings of a court of
338 competent jurisdiction.

339 (4) Mentally Disabled Minor Tribal Member – A Tribal member under the age of
340 eighteen (18) years old that has a mental disability as documented by a medical
341 provider.

342 2.7-3. *Standard Security Deposit.* Comprehensive Housing Division staff shall set the standard
343 security deposit required for each rental premise in the income-based rental program at \$350.00.

344 2.7-4. *Increased Security Deposit for Pets.* Tenants in the Comprehensive Housing Division's
345 general rental program may have pets in accordance with the Domestic Animal Ordinance,
346 provided that an increased security deposit is required.

347 (a) The standard security deposit does not apply to tenants with pets. Comprehensive
348 Housing Division staff shall set the increased security deposit required for households
349 with pets at a rate of \$350.00 plus an additional \$200.00 per pet.

350 (b) In the event that a tenant wishes to acquire a pet after the rental agreement has been
351 signed, the tenant shall notify the Comprehensive Housing Division and shall pay the
352 difference between the increased security deposit for pets and the standard security
353 deposit. Tenants that fail to report a pet in the household may be assessed charges for an
354 increased security deposit for pets if such pets are reported to the Comprehensive
355 Housing Division and/or discovered at the time of an inspection.

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2.8. Annual Inspection and Rental Agreement Renewal

2.8-1. *Scheduling Annual Inspections.* Comprehensive Housing Division staff shall schedule tenants' annual inspections for a date that is within ninety (90) calendar days of the expiration of the tenants' rental agreement.

2.8-2. *Inspection Checklist.* Comprehensive Housing Division staff completing the annual inspection shall use the checklist that is approved by the Comprehensive Housing Division director. Upon completion of the inspection, Comprehensive Housing Division staff shall request that the tenant(s) sign the completed checklist.

2.8-3. *Damages.* Tenants are required to pay costs to repair any damages to the rental premises discovered during the annual inspection that do not amount to normal wear and tear. Payment for such costs must be received by the Comprehensive Housing Division prior to signing a rental agreement renewal, provided that the Comprehensive Housing Division may offer the tenant a payment agreement in for the damages, in which case the repayment agreement shall be signed prior to the rental agreement renewal.

2.8-4. *Immediate Notice of Change in Household Composition and/or Income.* Tenants shall immediately notify the Comprehensive Housing Division of any change in the tenant's household composition and/or income, regardless of the date scheduled for the annual renewal.

(a) *Change in Household Composition.* If a change in the household composition changes the tenant's category of renter based on section 2.5-2(a), the Comprehensive Housing Division staff shall work to transfer the household to a rental unit of corresponding category as soon as possible. If no such units are currently available, Comprehensive Housing Division staff shall move the tenant to the top of the waiting list. In order to be transferred or placed on a wait list, the tenant shall demonstrate that they remain eligible for the income-based rental program and are current with rent and utility payments. Tenants are only eligible for rental unit transfers within their current category of renter if, in the Comprehensive Housing Division's discretion, the transfer is needed to better accommodate the household composition.

(b) *Change in Household Income.* A change in household income may cause a change in the amount of monthly rent required, accordingly, any change in household income that is not reported within thirty (30) calendar days of the change shall result in a retroactive adjustment of the rent if the change results in an increase of rent payments. Retroactive rent shall be applied for each month there was a change in income that was not reported, excluding the initial thirty (30) calendar days provided to the tenant to report the change. The tenant is responsible for payment of all current and retroactive adjustments of rent and may be eligible for a repayment agreement, provided that in all circumstances and retroactive rental arrears shall be paid in full within one (1) year.

(c) *Rental Agreement Amendment.* Should a change in household size and/or income cause a change in the terms of the tenant's rental agreement, an amendment to the rental agreement is required to be executed.

2.8-5. *Rental Agreement Renewal.* Each rental agreement is limited to a twelve (12) month term. Tenants wishing to remain in the property are required to complete the annual rental agreement renewal by verifying that the household continues to meet all eligibility requirements contained in the Landlord-Tenant law and rules. Once continued eligibility is verified, tenants that remain eligible are required to sign a rental agreement renewal.

(a) The Comprehensive Housing Division may, in its discretion, decline renewal of a

402 rental agreement if it determines that the renewal is not in the best interest of the Nation.
403 (b) In the event a tenant fails to enter a rental agreement renewal and has not vacated the
404 rental premises within thirty (30) calendar days of the expiration of the rental agreement,
405 the Comprehensive Housing Division shall initiate the eviction process pursuant to the
406 Eviction and Termination law.

407 2.8-6. *Ineligibility Due to Renewal or an Update of Household Information.* Comprehensive
408 Housing Division staff shall provide tenants that become ineligible to participate in the income-
409 based rental program based on a renewal or update of household information with notice
410 specifying the cause of the ineligibility and, if possible, how the household may reinstate
411 eligibility.

412 (a) *Ineligibility Due to Renewal.* In circumstances where the tenant learns of ineligibility
413 as part of the annual renewal, Comprehensive Housing Division staff shall include in the
414 notice of ineligibility that renewal of the rental agreement is not available at such time
415 and that the tenant is entitled to a minimum of a thirty (30) day notice to cure, by
416 reinstating eligibility, or vacate.

417 (1) In circumstances where ineligibility is due to the tenants' increased income,
418 the Comprehensive Housing Division recognizes such change to be an
419 achievement of the tenant and not a fault based ineligibility. Accordingly, under
420 these limited circumstances, the Comprehensive Housing Division staff shall
421 continue to offer the tenant thirty (30) calendar days to cure by reinstating
422 eligibility, but shall provide the tenant with an additional sixty (60) days to vacate
423 which amounts to ninety (90) calendar days from the date of the notice of
424 ineligibility.

425 (2) The extended vacate period requires the tenant to enter a limited term rental
426 agreement for the ninety (90) calendar days.

427 (b) *Ineligibility Due to an Update of Household Information.* In circumstances where the
428 tenant learns of ineligibility as part of an update of household information,
429 Comprehensive Housing Division staff shall include in the notice of ineligibility the
430 warning of potential termination in accordance with the rental agreement. In the event
431 the tenant is unable to or fails to reinstate their eligibility in accordance with the timeline
432 provided in the notice, the Comprehensive Housing Division shall permit the tenant to
433 remain in the unit for the longer of the duration of the rental agreement or ninety (90)
434 calendar days from the date of the notice of ineligibility.

435 (1) If the tenants' circumstances result in the tenant completing the term of the
436 rental agreement, eligibility shall be reconsidered at the time of the annual
437 renewal. If the tenant remains ineligible at the time of renewal, article 2.8-6(a)
438 applies, excluding 2.8-6(a)(1).

439 (2) If the tenants' circumstances result in the tenant receiving a thirty (30)
440 calendar day notice to cure or ninety (90) calendar day notice to vacate, the tenant
441 shall enter a limited term rental agreement to cover any time which exceeds the
442 current rental agreement.

443 (c) *Limited Term Rental Agreements.* Limited term rental agreements are available in
444 accordance with article 2.8-6(a)(1) and 2.8-6(b)(2) of these rules and section 710.9-4 of
445 the Landlord-Tenant law. At a minimum, limited term rental agreement shall include:

446 (1) The date of the original notice of ineligibility;

447 (2) An explanation that the tenant has thirty (30) calendar days to reinstate

- 448 eligibility;
- 449 (3) As applicable, an explanation that if eligibility is not timely reinstated, that the
- 450 limited term rental agreement takes the place of the thirty (30) calendar day notice
- 451 to cure or vacate required by the Eviction and Termination law; and
- 452 (4) An explanation that if eligibility is not timely reinstated, the rental unit will
- 453 be reclaimed with locks being changed on the ninety-first (91st) day from the date
- 454 of the original notice of ineligibility.
- 455

456 **2.9. Rental Agreement Cancellation**

457 2.9-1. *Two Week Notice Required.* Tenant wishing to cancel a rental agreement in the general

458 rental program are requested to provide the Comprehensive Housing Division with a minimum

459 of two (2) weeks of notice.

460 2.9-2. *Prorated Rent.* In the event of cancellation of a rental agreement or abandonment of the

461 rental premises, the Comprehensive Housing Division staff shall prorate the required last

462 month's rent payment based upon the greater of the following:

- 463 (a) The number of calendar days the unit was occupied in the last month; or
- 464 (b) Two (2) weeks from the date of cancellation or the date the Comprehensive Housing
- 465 Division learns of abandonment.
- 466

467 *End.*

468

469 Original effective date:

470



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney
DATE: April 5, 2017
RE: Certification of Landlord-Tenant Law Rule No. 3 – Elder Rental Program Eligibility, Selection and Other Requirements Rule

The Legislative Reference Office has reviewed the certification packet provided by the Elder Services Department for Landlord-Tenant law Rule No. 3 – Elder Rental Program Eligibility, Selection, and Other Requirements (“the Rule”).

If certified by the Legislative Operating Committee, the Rule would become effective on April 5, 2017.

Administrative Record

The certification packet provided by the Elder Services Department contains all documentation required by the Administrative Rulemaking law for a complete administrative record.

The certification packet contains:

- A memorandum provided by Tsyoshaat C. Delgado, Elder Services Program Manager, containing the Rule’s procedural timeline;
- Updated Draft of the Rule;
- Summary Report;
- Memorandum containing the public comments that were received and the Agency’s response to each comment;
- Public Meeting sign-in sheets;
- Copy of Public Meeting Notice as it appeared in the Kalihwisaks;
- Draft of the Rule considered at the public meeting; and
- Minutes from the Land Commission’s meeting during which the proposed rule was considered as an agenda item.

Procedural Requirements

The certification packet demonstrates that the promulgation of the Rule complies with the procedural requirements contained in the Administrative Rulemaking law.

In accordance with the Administrative Rulemaking law:

- A public meeting notice for the Rule was published in the Kalihwisaks and on the Oneida Register on February 2, 2017; and

- A public meeting for the Rule was held on February 16, 2017; and
- The public comment period was held open until February 23, 2017; and
- Public Comments were considered on March 2, 2017 and March 10, 2017; and
- The Land Commission considered and approved the Rule on March 13, 2017.

Rulemaking Authority

The Rule does not exceed the rulemaking authority granted under the law for which the Rule is being promulgated.

Conclusion

Promulgation of the Landlord-Tenant Rule No. 3 – Elder Rental Program Eligibility, Selection and Other Requirements Rule complies with all requirements of the Administrative Rulemaking law.



Oneida Nation
Elder Services Department
PO Box 365 • Oneida, WI 54155-0365
oneida-nsn.gov



TO: Legislative Operating Committee (LOC)
FROM: Tsyoshaht C. Delgado, Elder Services Program Manager *TCD*
DATE: March 13, 2017
RE: Elder Rental Program Eligibility, Selection and Other Requirements Rule

This memorandum is being provided by the Elder Services Department to outline the dates that the procedural timelines outlined in the Administrative Rulemaking law were complied with. Those dates are as follows:

- Notice published in Kaliwisaks and on the Oneida Register: February 2, 2017.
- Public meeting: February 16, 2017.
- Close of public comment period: February 23, 2017.
- Agency considered public comments: March 2, 2017 and March 10, 2017.
- Land Commission considered and approved rule: March 13, 2017.

The supporting documents included with this memorandum include:

- Updated draft of the rule.
- Summary Report.
- Statement of Effect.
- Financial Analysis.
- Memorandum containing the public comments that were received and the Agency's response to each comment.
- Public meeting sign-in sheets.
- Public meeting notice.
- Draft of the rule considered at the public meeting.
- Minutes from the Land Commission's meeting during which the proposed rule was considered as an agenda item.

I am requesting that the effective date of the rule be the date the Legislative Operating Committee certifies the rule pursuant to section 106.7-2(a) of the Administrative Rulemaking law.



Title 6. Property and Land – Chapter 611

LANDLORD-TENANT

Rule No. 3 – Elder Rental Program Eligibility, Selection and Other Requirements

- 3.1. Purpose and Delegation
- 3.2. Adoption, Amendment and Repeal
- 3.3. Definitions
- 3.4. Eligibility Requirements
- 3.5. Applications and Tenant Selection
- 3.6. Security Deposits and Pets
- 3.7. Annual Inspection and Rental Agreement Renewal
- 3.8. Rental Agreement Cancellation

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3.1. Purpose and Delegation

3.1-1. *Purpose.* The purpose of this rule is to provide additional eligibility requirements, selection procedures and general requirements that govern the Comprehensive Housing Division's Elder Rental Program.

3.1-2. *Authority.* The Landlord-Tenant law delegated the Comprehensive Housing Division and Land Commission joint rulemaking authority pursuant to the Administrative Rulemaking law.

3.2. Adoption, Amendment and Repeal

3.2-1. This rule was jointly adopted by the Comprehensive Housing Division and Land Commission in accordance with the procedures of the Administrative Rulemaking law.

3.2-2. This rule may be amended or repealed by the joint approval of the Comprehensive Housing Division and Land Commission pursuant to the procedures set out in the Administrative Rulemaking law.

3.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

3.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule control.

3.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Landlord-Tenant law.

3.3. Definitions

3.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

(a) "Comprehensive Housing Division" means the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution.¹

(b) "Landlord" means the Nation in its capacity to rent real property subject to a rental agreement.

(c) "Nation" means the Oneida Nation.

¹ See BC Resolution 10-12-16-D providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

43 (d) "Premises" means the property covered by a rental agreement, including not only the
44 real property and fixtures, but also any personal property furnished by the landlord
45 pursuant to a rental agreement.

46 (e) "Rental Agreement" means a written contract between a landlord and a tenant,
47 whereby the tenant is granted the right to use or occupy the premises for a residential
48 purpose for one (1) year or less.

49 (f) "Tenant" means the person granted the right to use or occupy a premise pursuant to a
50 rental agreement.

51 (g) "Tribal Member" means an individual who is an enrolled member of the Nation.

52 (h) "Security Deposit" means a payment made to the landlord by the tenant to ensure that
53 rent will be paid and other responsibilities of the rental agreement performed.
54

55 3.4. Eligibility Requirements

56 3.4-1. *Tribal Member Status.* At least one (1) of the tenants named as a party to the rental
57 agreement is required to be a Tribal member fifty-five (55) years of age or older.

58 3.4-2. *Other Occupants.* All tenants of the rental unit shall satisfy the eligibility requirements
59 outlined in sections 710.4-2(b) and (c) of the Landlord-Tenant law and shall not have been
60 convicted of a criminal offense against an elder unless pardoned or forgiven pursuant to
61 applicable law.

62 3.4-3. *Income Requirements.* In order to be eligible for the Elder Rental Program, applicants
63 must demonstrate that they can meet the financial requirements of the rental agreement,
64 including through the use of financial assistance.

65 (a) When assessing the income requirements for the elder rental agreements, the
66 Comprehensive Housing Division staff:

67 (1) May not include child support payments;

68 (2) May not include education grants/scholarships;

69 (3) May not include medical bills; and

70 (4) Shall include per capita payments to the extent that receipt of per capita
71 payment may be verified for each of the five (5) years prior to rental agreement
72 application.

73 (A) For per capita payments paid by the Nation, the Comprehensive
74 Housing Division staff shall verify with the Trust Enrollment Department
75 that the applicant received the full eligible amount of the per capita
76 payments for each of the five (5) years prior to rental agreement
77 application.

78 (B) For per capita payments paid by other tribes the Comprehensive
79 Housing Division staff shall verify that the applicant received per capita
80 payments for each of the five (5) years prior to rental agreement
81 application using the applicant's tax return.

82 (C) When per capita payments qualify to be considered as part of the
83 income assessment and it appears that prior per capita payments are
84 inconsistent or have been attached, Comprehensive Housing Division staff
85 shall use an average of the payments the applicant received for the five (5)
86 years prior to rental agreement application.

87 3.4-4. *Utility Bills.* Applicants for a rental agreement may not have any outstanding balance
88 owed to a utility provider.

89 3.4-5. *Past Due Accounts.* Applicants for a rental agreement are ineligible if a review of the
 90 applicant's credit report reveals more than five (5) accounts that are past due and/or in
 91 collections that are based on debts incurred within the past five (5) years, provided that medical
 92 bills may not be included in this consideration.
 93

94 **3.5. Applications and Tenant Selection**

95 3.5-1. *Application Period.* Tribal members wishing to rent a property in the Comprehensive
 96 Housing Division's Elder Rental Program may submit a rental application at the Comprehensive
 97 Housing Division², in person or via e-mail,³ using the rental application form available on the
 98 Nation's website and at the Comprehensive Housing Division, which includes any requirements
 99 for supplemental information required to verify eligibility. Rental applications submitted using
 100 any form other than the Nation will be considered ineligible by the Comprehensive Housing
 101 Division.

102 (a) The Comprehensive Housing Division staff shall date and time stamp all rental
 103 applications upon receipt.

104 (b) In the event that multiple parties arrive at the same time to submit a rental application
 105 (i.e. if parties are waiting to submit prior to business hours), Comprehensive Housing
 106 Division staff shall determine the order of receipt through a lottery system in which each
 107 party receives a number by chance. Comprehensive Housing Division staff shall number
 108 the offers having the same date and time stamps by from lowest drawn number to highest
 109 drawn number.

110 3.5-2. *Tenant Selection.* Upon receipt of submitted rental applications, Comprehensive Housing
 111 Division staff shall determine which applicants are eligible and place tenants in available units
 112 on a first-come first-serve basis and shall maintain a waitlist of eligible applicants when there are
 113 no rental premises currently available. When a rental premises becomes available,
 114 Comprehensive Housing Division staff shall select a tenant from the waitlist based on the
 115 eligible rental application that was received earliest based on the date and time stamp.
 116

117 **3.6. Security Deposits and Pets**

118 3.6-1. *Standard Security Deposit.* Prior to providing a selected tenant with keys to the property,
 119 Comprehensive Housing Division staff shall ensure that the standard security deposit equal to
 120 one (1) month's rent payment has been paid by the tenant.

121 3.6-2. *Pets.* Tenants in the Comprehensive Housing Division's elder rental program may not
 122 have pets in the rental premises under any circumstances.
 123

124 **3.7. Annual Inspection and Rental Agreement Renewal**

125 3.7-1. *Scheduling Annual Inspections.* Comprehensive Housing Division staff shall schedule
 126 tenants' annual inspections for a date that is within thirty (30) calendar days of the expiration of
 127 the tenants' rental agreement.

128 3.7-2. *Inspection Checklist.* Comprehensive Housing Division staff completing the annual
 129 inspection shall use the checklist that is approved by the Comprehensive Housing Division
 130 Director. Upon completion of the inspection, Comprehensive Housing Division staff shall
 131 request that the tenant(s) sign the completed checklist.

² Until such time as the services offered by the Comprehensive Division are consolidated into one central location, rental applications for rental premises in the elder program shall be submitted at the Elder Services Building.

³ The e-mail address for submitting applications for an elder based rental unit is cskenan2@oneidation.org.

132 3.7-3. *Inspection Findings.* In the event that an inspection reveals conditions that may affect the
133 health and safety of the tenant and/or the community or the integrity and condition of the rental
134 premises, the Comprehensive Housing Division shall implement a follow up schedule to ensure
135 the issue is adequately remedied. If the issue is not adequately remedied based on the schedule
136 determined by the Comprehensive Housing Division, termination and eviction may be necessary.

137 3.7-4. *Damages.* Tenants may be required to pay costs to repair any damages to the rental
138 premises discovered during the annual inspection. Payment for such costs must be received by
139 the Comprehensive Housing Division prior to signing a rental agreement renewal.

140 3.7-5. *Rental Agreement Renewal.* Each rental agreement is limited to a twelve (12) month
141 term. Tenants wishing to remain in the property are required to sign a renewal rental agreement
142 annually. The Comprehensive Housing Division may, in its discretion, decline renewal of a
143 rental agreement if it determines that the renewal is not in the best interest of the Nation. In the
144 event a tenant fails to enter a rental agreement renewal and has not vacated the rental premises
145 within thirty (30) calendar days of the expiration of the rental agreement, the Comprehensive
146 Housing Division shall initiate the eviction process pursuant to the Eviction and Termination
147 law.

148
149 **3.8. Rental Agreement Cancellation**

150 3.8-1. *Two Week Notice Required.* Tenant wishing to cancel a rental agreement in the Elder
151 Rental Program are requested to provide the Comprehensive Housing Division with a minimum
152 of two (2) weeks of notice.

153 3.8-2. *Prorated Rent.* In the event of cancellation of a rental agreement, the Comprehensive
154 Housing Division staff shall prorate the last month's rent payment requirement based upon the
155 greater of the following:

- 156 (a) The number of calendar days the unit was occupied in the last month; or
157 (b) Two (2) weeks, which is the minimum allowable notice.

158
159 *End.*

160
161 _____
Original effective date:

Summary Report for Elder Rental Program Eligibility, Selection and Other Requirements

Original effective date: N/A

Amendment effective date: N/A

Name of Rule: Elder Rental Program Eligibility, Selection and Other Requirements

Name of law being interpreted: Landlord-Tenant

Rule Number: 3

Other Laws or Rules that may be affected: None

Brief Summary of the proposed rule: Rules required for tenants renting from Elder Services apartments, including eligibility, application, and other requirements.

On March 2, 2017 and March 10, 2017, the public comments were reviewed and considered. Based on the public comments and the meeting following the receipt of the public comments, the following revisions were made:

- "Tribal Member" was defined as an individual who is an enrolled member of the Oneida Nation.
- The debt to income ratio was removed and replaced with a requirement that the applicant demonstrate that they can meet the financial requirements of the elder rental agreement, including through the use of financial assistance.
- All tenants of the rental unit shall satisfy the eligibility requirements outlined in sections 710.4-2(b) and (c) of the Landlord-Tenant law and shall not have been convicted of a criminal offense against an elder unless pardoned or forgiven pursuant to applicable law.
- A formatting error in section 3.4-3 was corrected.

Statement of Effect: See Attached.

Financial Analysis: See Attached.

Note: In addition- the agency must send a written request to each entity which may be affected by the rule- asking that they provide information about how the rule would financially affect them. The agency must include each entity's response in the financial analysis. If the agency does not receive a response within 10 business days after the request is made, the financial analysis can note which entities did not provide a response.



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
 Oneida-nsn.gov



Statement of Effect

Landlord-Tenant Rule No. 3 – Elder Rental Program Eligibility, Selection and Other Requirements

Summary

This rule provides additional eligibility requirements, selection procedures, and general requirements that govern the Comprehensive Housing Division's elder rental programs.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

The Landlord-Tenant law (Section 710.4) delegates administrative rulemaking authority to the Comprehensive Housing Division and the Oneida Land Commission as authorized by the Administrative Rulemaking Law. The Landlord-Tenant law (Section 710.4-1) states that the Comprehensive Housing Division shall provide residential rental programs that provide housing to tenants that are elder tribal members. The Landlord-Tenant law further states that the Oneida Land Commission and the Comprehensive Housing Division shall jointly establish rules naming said programs and providing the specific requirements and regulations that apply to each program. Oneida Business Committee Resolution BC-10-12-16-D provides that for purposes of this law, the Comprehensive Housing Division means Elder Services for rental agreements through the Elder Services program.

The Landlord-Tenant law (Section 710.4-2) requires that in order to be eligible for a rental agreement, the applicants shall meet any eligibility requirements set by the rental program's rules. The Landlord-Tenant law (Section 710.4-3) then goes on to state that the Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of rental agreements.

Landlord-Tenant Law Rule No. 3 provides additional eligibility requirements, selection procedures, and general requirements that govern the Comprehensive Housing Division's elder rental programs.

Conclusion

There are no legal bars to adopting Landlord-Tenant Law Rule No. 3 – Elder Rental Program Eligibility, Selection, and Other Requirements.

Financial Analysis for Elder Rental Program Eligibility, Selection and Other Requirements

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	N/A	\$0
Personnel	N/A	\$0
Office	N/A	\$0
Documentation Costs	N/A	\$0
Estimate of time necessary for an individual or agency to comply with the rule after implementation	N/A	\$0
Other, please explain	N/A	\$0
Total	Annual Net Revenue	\$0

Jo Anne House, PhD | Chief Counsel
James R. Bittorf | Deputy Chief Counsel

Patricia M. Stevens Garvey
Kelly M. McAndrews
Michelle L. Gordon
Krystal L. John
Robert J. Collins, II

Law Office



TO: Legislative Operating Committee (LOC) ^{RJC}
FROM: Robert J. Collins II, Oneida Law Office
DATE: March 13, 2017
RE: Elder Rental Program Eligibility, Selection and Other Requirements: Public Meeting Comment Review

On February 16, 2017, a public meeting was held regarding the proposed Elder Rental Program Eligibility, Selection and Other Requirements rule. This memorandum is submitted as a review of the oral and written comments that were presented at the public meeting and submitted within the public comment period.

Many of the comments received were in regard to issues that did not directly relate to the proposed rule. While these comments are not directly addressed in this memorandum, the Elder Services Department will attempt to follow up with those individuals to provide additional information.

Comment 1.

Mike Denny – Oral Comment: In regards to standard security deposit, is this for future references and future elders, or is this to be set back to current people who are now in housing for a security deposit.

Response: Section 3.6-1 of the rule states that “[p]rior to providing a selected tenant with keys to the property, Comprehensive Housing Division staff shall ensure that the standard security deposit equal to one (1) month’s rent payment has been paid by the tenant.” If the rule is adopted, this section will govern security deposits for rental agreements that are entered after the effective date of the rule. Prior security deposits are governed pursuant to section 611.5-2(a)(2) of the Landlord-Tenant law.

There are no recommended changes to the rule based on this comment.

Comment 2.

Alan King – Oral Comment: They said that you have to have 30% income. Is that of the gross income or the net income?

Response: Section 3.4-2 of the initial draft of the rule stated that “[i]n order to be eligible for a rental agreement, applicants shall have a maximum debt to income ratio of thirty-three percent (33%).” Based on a number of comments received and a review of the Elder Rental Program’s current practices, the income requirements were modified to indicate that “[i]n order to be eligible for the Elder Rental Program, applicants must demonstrate that they can meet the financial requirements of the rental agreement, including through the use of financial assistance.”

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Comment 3.

Kathleen Polar – Oral Comment: Question is how come we don't have a payee for the elders here. I know it might not be in there but it is part of us. Besides letting Brown County take all our money. And I'd like to know how come we don't have guardians here for the elders so because everything is here and we have buses to take them grocery shopping. How come we don't have guardians also to help them along.

Response: The above comment does not pertain to the proposed rule and there are no recommended changes to the draft based on this comment.

Comment 4.

Mike Denny – Oral Comment: There is no mention to the use of handicap individuals who might need service animals. It says, under no circumstances are animals allowed.

Response: Section 3.6-2 of the rule states that “[t]enants in the Comprehensive housing Division’s elder rental program may not have pets in the rental premises under any circumstances.” The law does not consider service animals to be pets.

There are no recommended changes to the draft based on this comment.

Comment 5.

Pat Beilke – Oral Comment: I don't agree with this 33% because when we lived here, we had a meeting and they said our rent would never be changed. And now they are trying to include our per cap in that. I don't agree with this.

Response: Section 3.4-2 of the initial draft of the rule states that “[i]n order to be eligible for a rental agreement, applicants shall have a maximum debt to income ration of thirty-three percent (33%).” Per capita income is included in the calculation of income. Based on a number of comments received and a review of the Elder Rental Program’s practices, the income requirements were modified to indicate that “[i]n order to be eligible for the Elder Rental Program, applicants must demonstrate that they can meet the financial requirements of the rental agreement, including through the use of financial assistance.” The income assessment will not result in an increase in rent due.

Comment 6.

Mike Hill – Oral Comment: What about all these trails that are blacktop. It's great, everybody uses them, everybody loves them, but nobody maintains them. Nobody is plowing in the winter time, in the summer time there is stones and branches. I mean in the regular walk and trips you know sprains their ankle. They got over by the cottages the trail that goes right up to the back door that's, not plowed out. And even to the Health Center to here, that's not plowed out here.

Response: The above comment does not pertain to the proposed rule and there are no recommended changes based on this comment.

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Comment 7.

Marjorie Stevens – Oral Comment: I live in the longhouse apartments and I'm concerned about the lighting in the back that doesn't work. If there ever gonna...I am being told that it is getting fixed but I don't know if it's fixed yet. I haven't heard anything. But I think it is very important that we have an instant camera in the back of the, in the entrance where we walk in. I think those cameras should be working for safety reasons.

Response: The above comment does not pertain to the proposed rule and there are no recommended changes based on this comment.

Comment 8.

Kathleen Polar – Oral Comment: We are talking about the water in these apartments. We have just hard water. We can't even get our sinks and the bathroom by the faucets clean. There is always full of white stuff on it and we can't cook with it and we can't even make coffee because we gotta boil our water. I boil my water. And even in the refrigerator. And otherwise we have to go out and buy filters for our own use. But what I understood they were suppose to put filters here for us. Because that chlorine is too strong for us.

Pat Beilke – Oral Comment: And I had problems with water . I went through two coffee pots already and it keeps plugging up my coffee pot and then I can't get them unplugged so I have to go buy a new one. It's all because of that stuff in the water. So I just buy bottled water and I been just using a pitcher of soap in my water. So it's not dirt or salt or whatever it is.

Linda Williams – Oral Comment: I've been drinking bottled water for so long because the water isn't good to drink. And also it isn't, I notice a smell.

Response: The above comments do not pertain to the proposed rule and there are no recommended changes based on these comments.

Comment 9.

Dixon Skenandore – Oral Comment: I've been paying \$45, \$50 every month for my electric bill. And all of a sudden I got a bill last for \$96 and I'm just wondering how come.

Response: The above comment does not pertain to the proposed rule and there are no recommended changes based on this comment.

Comment 10.

Al King – Oral Comment: I was wondering what they were separating housing or that the housing organization. Did they say that they were going to put under one organization? Why is the land commission still responsible with Housing?

Response: Pursuant to BC Resolution #10-12-16-D, the Business Committee defined the Comprehensive Housing Division as the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program. The Land Commission is

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tasked with supervising the actions of the Division of Land Management Director and developing and implementing policies and procedures for the Division of Land Management.

There are no recommended changes to the draft rule on this comment.

Comment 11.

Mike Denny – Oral Comment: There is something about moving inspections. You could move into a unit, something could be faulty and at annual inspection you could be charged even though it wasn't your fault. There is nothing in here about moving inspections.

Richard Baird – Oral Comment: In relation to that housing inspections that, seems like housing or someone should have a check list, or something that they looked prior to the tenant taking occupancy to make sure that everything is in working order.

Mike Hill – Oral Comment: When I moved in to my complex there, Lisa um, what's her name? Vega, she inspected. I went with her to inspect my apartment there, out there, where I lived there. And as we walked along there was a bunch of water along the mop board where the washer and dryer is. And I asked about that because nobody lived there. Unless it was on the other side. So anyway, they said they'd check into it and couple weeks later they finally end up taking the wall apart. And here they found that PCV pipe coming down. They cut in half but they never attached the other part that went to the drain. So whenever they use it next door there, it was coming into my side. So, I mean that's, how you find something like that. That was one of the problems.

Response: Section 611.6-3(d) of the Landlord-Tenant law states that “[t]he landlord shall provide all new tenants with a check-in sheet when the tenant commences his or her occupancy of the premises that the tenant may use to make comments, if any, about the condition of the premises. The landlord shall provide the tenant with seven (7) days from the date the tenant commences his or her occupancy to complete the check-in sheet and return it to the landlord.” Additional duties of the landlord are outlined in section 611.6-3(a).

There are no recommended changes to the rule based on these comments.

Comment 12.

Barb Mendolla – Oral Comment: I just wanna know, how would there be, what do you have to do to be, in one of those elder housing things, you know to rent it, an apartment. Do you, you can't have anything or, ya gotta, like a house or anything. What do you do to get on it. But you can't answer questions. Oh, well that don't help me. I wanna know what you can have and what you can't have and if you own your own house, would you, you have to get rid of that first before you, before your ahhh able to rent a, you know whatever you call it. I had another question to but I can't remember it. I shoulda wrote it down. Another thing, does that include trailer houses. My trailer, how does that affect you, how you have to pay and stuff. You don't know that either. Be glad you don't have to rent. We'd like to have some answers trying do everything else.

Response: Section 3.4 and 3.5 of the rule address eligibility requirements and the application process. There are additional eligibility requirements outlined in section 611.4-2 of the Landlord-Tenant law.

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There are no recommended changes to the rule based on this comment.

Comment 13.

Kathleen Polar – Oral Comment: We are gonna hold a meeting this Saturday at 1 o'clock in apartment, in ahhh, in the common room, common room B at 1 o'clock, so if anybody wants to have people writing down and their names so we can send it in also. So you're welcome to come. Because a lot of them might be too afraid to speak into this thing.

Response: The above comment does not pertain to the proposed rule and there are no recommended changes based on this comment.

Comment 14.

Richard Baird – Oral Comment: Just one more comment. This public law about housing is great but it, it's all about what the tenant, what the, how the tenant qualifies and what the tenant is going to be responsible for. But there's nothing in here about what the Tribe is gonna guarantee when the tenant moves in. Cuz there's a lot of problems with elderly housing in the back here, with things that aren't built right, inspections that aren't completed probably. I've heard things about bad walls, bad floors that are being redone because the contractors aren't under any kind of inspection process. I know that my niece over at Ho-Chunk, she says everybody who's involved in business development can read a blueprint and everybody has the authority to go on a project and if they don't like what the contractor's doing, they stop the work and they get it corrected. All through the process. They don't let the contractor build the house and then come back and say, "Oh it looks fine". They let them know. They don't do that. Everything is checked all the way, all along the way. That's how the, that's how the white people do it. So, but we don't have those rules. We don't have them.

Response: Section 611.6-3(a) of the Landlord-Tenant law addresses the duties of the landlord. The proposed rule is being created to address elder rental program eligibility, selection, and other requirements.

There are no recommended changes to the rule based on this comment.

Comment 15.

Linda Williams – Oral Comment: I have a problem with my toilets. The water keeps on running and running and running. And I don't know if it's, it's not easy to take the top off and just play with it. It's, it looks foreign to me. But it, the water just runs and runs and runs and I don't know what to do about it.

Response: The above comment does not pertain to the proposed rule and there are no recommended changes based on this comment.

Comment 16.

Mike Hill – Oral Comment: On these trails, I don't understand, behind Anna John there, why they plowed just half of it. They didn't do the whole track. There's no way you can use the track because when they do the roads they plow all the snow in front of it so you can't get at it. So . . . ok.

Response: The above comment does not pertain to the proposed rule and there are no recommended changes based on this comment.

Comment 17.

Nancy Torres – Written Comment: Questions in regard to the Elder Rental Program:

1. 3.2.5 What Rule are they talking about? It just says; This Rule supersedes, etc;

Response: “This rule” is a reference to the proposed rule titled, “Elder Rental Program Eligibility, Selection and Other Requirements.” There are no recommended changes to the rule based on this comment.

2. 3.4.1 Under Requirements; It says one of the tenants has to be a Tribal member. Is this any tribe or just Oneida?

Response: At least one (1) of the tenants named as a party to the rental agreement is required to be a member of the Oneida Nation who is fifty-five (55) years of age or older. The rule was revised to clarify this.

3. 3.4.2-B. It says Per Capita payments will be considered as income in regards to rental payments. Whose idea is this? I totally disagree with this as I am retired and don’t get that much in Social Security and this yearly Per Capita comes in handy. Since we do get it once a year and not monthly. This should not be included as our income.

Response: Section 3.4-3 of the revised rule states that “[i]n order to be eligible for the Elder Rental Program, applicants must demonstrate that they can meet the financial requirements of the rental agreement, including through the use of financial assistance. The rule was revised based on a number of comments received and a review of the Elder Rental Program’s current practices. As per capita payments are considered income, they are taken into consideration when assessing income. If the applicant’s per capita payments appear inconsistent or have been attached during the five (5) year period before application, then an average of the per capita payments received is used to assess income. There are no additional recommended changes to the rule based on this comment.

4. 3.4.4 Under Past Due Accounts; It says if a tenant has outstanding debts. They are ineligible for review. Does that mean that tenant will get evicted?

Response: An applicant for a rental agreement is ineligible if a review of their credit report reveals more than five (5) accounts that are past due and/or in collections that are based on debts incurred within the past five (5) years. Medical bills are not included in this consideration. If a current tenant has outstanding debts, they will not be evicted unless one of the grounds contained within the Eviction and Termination law exist. However, these debts could affect the ability to renew a rental agreement. There are no recommended changes to the rule based on this comment.

5. 3.7.1 Under Annual Inspection; Is this 30 days prior to tenant expiration date or 30 days after?

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Response: The annual inspection shall be scheduled at least thirty (30) calendar days prior to the expiration of the tenant's rental agreement. There are no recommended changes to the rule based on this comment.

6. 3.7.3 Under Inspection Findings; Is there a time limit as to when these apt. issues will be tended to? Also, I don't think its fair that a tenant gets evicted if theres something that needs fixing. For instance, I have a cracked cabinet door thats been there since I moved in. Its been promised to get fixed and 3 plus years later. It still hasn't been fixed.

Response: If an inspection reveals conditions that may affect the health and safety of the tenant and/or the community or the integrity and condition of the rental premises, the Comprehensive Housing Division shall implement a follow up schedule to ensure the issue is adequately remedied. As adequately remedying conditions can take different amounts of time based on the condition, there is no time limit established in the rule. A tenant would not be evicted simply because something needs to be fixed. One of the grounds contained within the Eviction and Termination law would have to exist to proceed with an eviction. There are no recommended changes to the rule based on this comment.

7. 3.8.1 Under Rental Agreement Cancellation; Does this mean that a lease can be broken as long as the tenant gives a two week notice?

Response: A tenant in the elder rental program may cancel their rental agreement by giving at least two (2) weeks of notice. There are no recommended changes to the rule based on this comment.

Comment 18.

Group Submission – Written Comment: The following is a list of concerns that were expressed by tenants of the Elder Rental Program at a public meeting that was held on February 16, 2017 at the meal site. Thanks to those who initiated this public meeting to gather our input in the direction of rule No. 3 – Elder Rental Program under Title 6. Property and Land – Chapter 611 Landlord-Tenant.

We are grateful to have a program that meets the needs of retired Oneida citizens and would like to offer our comments to make the program better.

1. Add language to the new rule that Elder Services Management must deposit rental payments no later than the 15th of every month. When deposits aren't done in a timely manner it causes confusion for elder's budget management.

Response: Elder Services already sets a regular payment schedule with the parties based on their move-in date and the date that they receive their monthly financial benefits. The rent withdrawal is done every month on a regular schedule to avoid causing confusion for the tenant. While there are no recommended changes to the rule based on this comment, the Elder Services Program Manager will further investigate the rental payment deposit issue.

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2. Under 3.4 Eligibility Requirements 3.4-2 (3) a, b, and c the language is not clear. It needs to be clarified further. Many elders at the meeting expressed concern about their per capita payment being “taken away” because of this requirement.

Response: Section 3.4-3 of the revised rule now states that “[i]n order to be eligible for the Elder Rental Program, applicants must demonstrate that they can meet the financial requirements of the rental agreement, including through the use of financial assistance.” Per capita income is included in the income assessment. This section of the rule will not take away any per capita income received by the tenant. There are no recommended changes to the rule based on this comment.

In addition to the above comments about the Rule No. 3 we want to share the following concerns that directly affect the health, safety and welfare of elder tenants.

1. Install functioning security cameras in key areas throughout the property. We must know that they are always functioning and that they are also being monitored daily.
2. Install water purifiers in kitchen and bathroom sinks. The water that is dispensed from those faucets have a strong odor that can't be healthy to ingest or use.
3. We have concerns about our electricity bills significantly increasing in the winter months. We realize bills go up in the winter, but we would like someone to investigate why this might be happening.
4. We need a process to contact the Manager when we have concerns or issues at any time day or night. (within reason)
5. Storm doors and windows should be installed in a timely manner prior to the colder weather. This year many of us had to make a request for these things to be installed, it should be done on a regular schedule. They were finally installed around December 2016.
6. Flooring – The kitchen and bathroom floors are noticeably cold in some units. Also, some of us would like to request hardwood floors that would have less allergens.
7. We would like management to organize a regular meet and greet for tenants to get to know each other more and to share our concerns with management. This would help to create a sense of community for us tenants, as well as help management be proactive in managing tenant's issues and concerns.

Thank you for taking our comments regarding the Rule No. 3. In terms of our additional concerns #1-7, we are requesting a written and verbal response within 2 weeks of receiving this memo.

We are grateful for the opportunity to improve our quality of life, as well as those elders who come after us.

We the undersigned do so with a good mind, good heart and a strong fire. [7 signatures follow]

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Response: The above comments (#1-7) do not pertain to the proposed rule and there are no recommended changes to the draft based on these comments. The Elder Services Department is going to attempt to follow up with these individuals to provide additional information.

Comment 19.

Carol Elm – Written Comment: On behalf of ONCOA, I am submitting questions and concerns about the Elder Rental Program.

- 3.4-2. Debt to Income Ratio. What is the rationale for including the maximum debt to income ratio of 33%? It seems like this would exclude elders who really need housing. Do the current renters come under this requirement too?
- 3.4-2(b)(3) - refer to the second (3)(A)(B)(C). Why is the per capita considered as part of the income for rental payments? Please clarify this. In the past per capita was not considered as part of your income to calculate a rental agreement. And, there were no income guidelines. The income guidelines were set at a uniform rate for all tenants. This elder housing was not developed to be revenue producing property. The per capita should not be considered when determining eligibility for the Elder Services Elder Housing. The small amount of money received is often used for paying bills or maybe helping to buy grandchildren school clothes.

Response: Section 611.4-2(d) of the Landlord-Tenant law states that in order to be eligible for a rental agreement, applicants shall meet the income requirements for entering the rental agreement as determined by the rental program's governing rules. Section 3.4-3 of the revised rule now states that "[i]n order to be eligible for the Elder Rental Program, applicants must demonstrate that they can meet the financial requirements of the rental agreement, including through the use of financial assistance." The rule was revised based on this and other comments received and a review of the Elder Rental Program's current practices. This rule will apply to those applying for new rental agreement and will not affect those individuals who are currently in a valid agreement.

For purposes of completing an income assessment for elder rental applicants, the Comprehensive Housing Division staff shall include per capita payments to the extent that receipt of per capita payment may be verified for each of the five (5) years prior to rental agreement application. If the applicant's per capita payments appear inconsistent or have been attached during the five (5) year period before application, then an average of the per capita payments received is used to assess income. Per capita payments are classified as unearned income and are subject to federal tax. Therefore, it is appropriate to consider that income when doing an assessment of the applicant. This rule will not take away any per capita income received by the applicant.

The rule was revised to correct a formatting error that was pointed out in the public comment.

Public Meeting Sign In Sheet
 Income Based Elder Rental Program Eligibility, Selection and Other Requirements
 Feb 16, 2017, Anna John Resident Community Care Center Cafeteria (Meal Site)

	Name	Phone/Email
1	Marlene Summers	
2	Claudia Spencer	
3	Joetta Mencheski	
4	Harold Hamon	
5	Mary V	
6	Rob Collins	
7	Wileen Smith	
8	Alan R. Kin B	
9	Nancy Torres	
10	Barbara Mendolla	
11	Romya Carlson	
12	Valentina Froh	
13	Valerie Strzyska	
14	Dale Clonens	
15	Robert Blakey	
16	W. Skunk	
17	Frederick Johnson	
18	Hille Dill	
19	Jodie Miller	
20	Robert Steffes	
21	Don Charnon	
22	Sandra Charnon	
23		
24		
25		
26		
27		

Public Meeting Sign In Sheet

Income Based Elder Rental Program Eligibility, Selection and Other Requirements

Feb 16, 2017, Anna John Resident Community Care Center Cafeteria (Meal Site)

	Name	Phone/Email
1	Ronald W Jordan	
2	Carolyn Skene	
3	Beroldine J. Malolos	
4	Clifford Klitzke	
5	Marjorie Stenens	
6	DONNA LAU	
7	Lyonsdahl E. Delgado	
8	Michael C. Denny	
9	Rita Summers	
10	Gene Strzelicki	
11	Linda Douglas	
12	Kathleen Polun	
13	Sue Graham	
14	Pat Beulke	
15	Dorinda Williams	
16	Orville Summers	
17	Loretta U. Metzger	
18	Brittany Bodoh	
19	Cecil Kennells	
20	Juanita Guerra	
21	Hugh Danforth	
22	FW Baur	
23	Mary H Cornelius	
24	Robert E. Brock	
25	Deloris Newth	
26		
27		

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OLIPP

(Oneida Life Insurance Plan Plus)

is a \$15,000 term life insurance policy available to ALL enrolled tribal members and intended to pay your funeral/final expenses. It is strongly recommended that all enrolled members over the age of 18, who have not completed their "Oneida Beneficiary Designation form" to complete and submit their form to the Oneida Enrollment Department.

For more information, call:

(920) 869-6212



Foster Care Donation Drive

Receive FREE admission on
February 6, 2016 when
you bring a hygiene or
monetary donation to an
Oneida Thunderhawks
Varsity

basketball game!

Girls Varsity-5:00pm

Boys Varsity to follow

Suggested Items:

Socks & Underwear (all sizes) | Shampoo & Conditioner | Body Wash/Loofa

Tooth Brush & Toothpaste | Deodorant | Journals | Coloring Book

Small Toy | Baby Bath Products | Overnight Tote Bags

...and any other hygiene or comfort items you are gracious enough to donate!

All donations benefit Oneida children in Foster Care.

NOTICE OF

PUBLIC MEETING

TO BE HELD

February 16, 2017 at 12:00 P.M.

IN THE

**Anna John Resident Community Care Center Cafeteria
(Meal Site)**

2901 S. Overland Drive, Oneida, WI 54155

In accordance with the Administrative Rulemaking Law, Elder Services is hosting this Public Meeting to gather feedback from the community regarding the following rule.

TOPIC: Elder Rental Program Eligibility, Selection and Other Requirements

This is a proposal to adopt a new rule to govern elder rentals which would establish:

- ◆ Eligibility requirements;
- ◆ Requirements for applying for a rental unit and selecting tenants;
- ◆ Security deposit and pet standards;
- ◆ Annual inspection and rental agreement renewal requirements; and
- ◆ Rental agreement cancellation provisions.

To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

PUBLIC COMMENT PERIOD OPEN UNTIL February 23, 2017

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to Elder Services by U.S. mail, interoffice mail or e-mail.

Oneida Elder Services
2907 S. Overland Road, Oneida, WI 54155
cskenan2@oneidanation.org
(920) 869-2448

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2017 02 16



8

Title 6. Property and Land – Chapter 611

LANDLORD-TENANT

Rule No. 3 – Elder Rental Program Eligibility, Selection and Other Requirements

- 3.1. Purpose and Delegation
- 3.2. Adoption, Amendment and Repeal
- 3.3. Definitions
- 3.4. Eligibility Requirements
- 3.5. Applications and Tenant Selection
- 3.6. Security Deposits and Pets
- 3.7. Annual Inspection and Rental Agreement Renewal
- 3.8. Rental Agreement Cancellation

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3.1. Purpose and Delegation

3.1-1. *Purpose.* The purpose of this rule is to provide additional eligibility requirements, selection procedures and general requirements that govern the Comprehensive Housing Division's elder rental programs.

3.1-2. *Authority.* The Landlord-Tenant law delegated the Comprehensive Housing Division and Land Commission joint rulemaking authority pursuant to the Administrative Rulemaking law.

3.2. Adoption, Amendment and Repeal

3.2-1. This rule was jointly adopted by the Comprehensive Housing Division and Land Commission in accordance with the procedures of the Administrative Rulemaking law.

3.2-2. This rule may be amended or repealed by the joint approval of the Comprehensive Housing Division and Land Commission pursuant to the procedures set out in the Administrative Rulemaking law.

3.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

3.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule control.

3.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Landlord-Tenant law.

3.3. Definitions

3.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

(a) "Comprehensive Housing Division" means the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution.¹

(b) "Landlord" means the Nation in its capacity to rent real property subject to a rental agreement.

(c) "Nation" means the Oneida Nation.

¹ See BC Resolution 10-12-16-D providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

44 (d) “Premises” means the property covered by a rental agreement, including not only the
45 real property and fixtures, but also any personal property furnished by the landlord
46 pursuant to a rental agreement.

47 (e) “Rental Agreement” means a written contract between a landlord and a tenant,
48 whereby the tenant is granted the right to use or occupy the premises for a residential
49 purpose for one (1) year or less.

50 (f) “Tenant” means the person granted the right to use or occupy a premise pursuant to a
51 rental agreement.

52 (g) “Security Deposit” means a payment made to the landlord by the tenant to ensure that
53 rent will be paid and other responsibilities of the rental agreement performed.
54

55 **3.4. Eligibility Requirements**

56 3.4-1. *Tribal Member Status.* At least one (1) of the tenants named as a party to the rental
57 agreement is required to be a Tribal member fifty-five (55) years of age or older.

58 3.4-2. *Debt to Income Ratio.* In order to be eligible for a rental agreement, applicants shall have
59 a maximum debt to income ratio of thirty-three percent (33%).

60 (a) Comprehensive Housing Division staff shall calculate the debt to income ratio by
61 dividing the applicant’s monthly debt by the applicant’s monthly income.

62 (b) For purposes of calculating income for the debt to income ratio, the Comprehensive
63 Housing Division staff:

64 (1) May not include child support payments;

65 (2) May not include education grants/scholarships;

66 (3) May not include medical bills; and

67 (3) Shall include per capita payments to the extent that receipt of per capita
68 payment may be verified for each of the five (5) years prior to rental agreement
69 application.

70 (A) For per capita payments paid by the Nation, the Comprehensive
71 Housing Division staff shall verify with the Trust Enrollment Department
72 that the applicant received the full eligible amount of the per capita
73 payments for each of the five (5) years prior to rental agreement
74 application.

75 (B) For per capita payments paid by other tribes the Comprehensive
76 Housing Division staff shall verify that the applicant received per capita
77 payments for each of the five (5) years prior to rental agreement
78 application using the applicant’s tax return.

79 (C) When per capita payments qualify to be considered as part of the
80 income calculation, Comprehensive Housing Division staff shall use an
81 average to the payments the applicant received for the five (5) years prior
82 to rental agreement application.

83 3.4-3. *Utility Bills.* Applicants for a rental agreement may not have any outstanding balance
84 owed to a utility provider.

85 3.4-4. *Past Due Accounts.* Applicants for a rental agreement are ineligible if a review of the
86 applicant’s credit report reveals more than five (5) accounts that are past due and/or in
87 collections that are based on debts incurred within the past five (5) years, provided that medical
88 bills may not be included in this consideration.

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89 **3.5. Applications and Tenant Selection**

90 3.5-1. *Application Period.* Tribal members wishing to rent a property in the Comprehensive
91 Housing Division's elder rental program may submit a rental application at the Comprehensive
92 Housing Division², in person or via e-mail,³ using the rental application form available on the
93 Nation's website and at the Comprehensive Housing Division, which includes any requirements
94 for supplemental information required to verify eligibility. Rental applications submitted using
95 any form other than the Nation will be considered ineligible by the Comprehensive Housing
96 Division.

97 (a) The Comprehensive Housing Division staff shall date and time stamp all rental
98 applications upon receipt.

99 (b) In the event that multiple parties arrive at the same time to submit a rental application
100 (i.e. if parties are waiting to submit prior to business hours), Comprehensive Housing
101 Division staff shall determine the order of receipt through a lottery system in which each
102 party receives a number by chance. Comprehensive Housing Division staff shall number
103 the offers having the same date and time stamps by from lowest drawn number to highest
104 drawn number.

105 3.5-2. *Tenant Selection.* Upon receipt of submitted rental applications, Comprehensive Housing
106 Division staff shall determine which applicants are eligible and place tenants in available units
107 on a first-come first-serve basis and shall maintain a waitlist of eligible applicants when there are
108 no rental premises currently available. When a rental premises becomes available,
109 Comprehensive Housing Division staff shall select a tenant from the waitlist based on the
110 eligible rental application that was received earliest based on the date and time stamp.

111

112 **3.6. Security Deposits and Pets**

113 3.6-1. *Standard Security Deposit.* Prior to providing a selected tenant with keys to the property,
114 Comprehensive Housing Division staff shall ensure that the standard security deposit equal to
115 one (1) month's rent payment has been paid by the tenant.

116 3.6-2. *Pets.* Tenants in the Comprehensive Housing Division's elder rental program may not
117 have pets in the rental premises under any circumstances.

118

119 **3.7. Annual Inspection and Rental Agreement Renewal**

120 3.7-1. *Scheduling Annual Inspections.* Comprehensive Housing Division staff shall schedule
121 tenants' annual inspections for a date that is within thirty (30) calendar days of the expiration of
122 the tenants' rental agreement.

123 3.7-2. *Inspection Checklist.* Comprehensive Housing Division staff completing the annual
124 inspection shall use the checklist that is approved by the Comprehensive Housing Division
125 director. Upon completion of the inspection, Comprehensive Housing Division staff shall
126 request that the tenant(s) sign the completed checklist.

127 3.7-3. *Inspection Findings.* In the event that an inspection reveals conditions that may affect the
128 health and safety of the tenant and/or the community or the integrity and condition of the rental
129 premises, the Comprehensive Housing Division shall implement a follow up schedule to ensure
130 the issue is adequately remedied. If the issue is not adequately remedied based on the schedule
131 determined by the Comprehensive Housing Division, termination and eviction may be necessary.

² Until such time as the services offered by the Comprehensive Division are consolidated into one central location, rental applications for rental premises in the elder program shall be submitted at the Elder Services Building.

³ The e-mail address for submitting applications for an elder based rental unit is cskenan2@oneidanation.org.

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2017 02 16

132 3.7-4. *Damages.* Tenants may be required to pay costs to repair any damages to the rental
133 premises discovered during the annual inspection. Payment for such costs must be received by
134 the Comprehensive Housing Division prior to signing a rental agreement renewal.

135 3.7-5. *Rental Agreement Renewal.* Each rental agreement is limited to a twelve (12) month
136 term. Tenants wishing to remain in the property are required to sign a renewal rental agreement
137 annually. The Comprehensive Housing Division may, in its discretion, decline renewal of a
138 rental agreement if it determines that the renewal is not in the best interest of the Nation. In the
139 event a tenant fails to enter a rental agreement renewal and has not vacated the rental premises
140 within thirty (30) calendar days of the expiration of the rental agreement, the Comprehensive
141 Housing Division shall initiate the eviction process pursuant to the Eviction and Termination
142 law.

143

144 **3.8. Rental Agreement Cancellation**

145 3.8-1. *Two Week Notice Required.* Tenant wishing to cancel a rental agreement in the elder
146 rental program are requested to provide the Comprehensive Housing Division with a minimum
147 of two (2) weeks of notice.

148 3.8-2. *Prorated Rent.* In the event of cancellation of a rental agreement, the Comprehensive
149 Housing Division staff shall prorate the last month's rent payment requirement based upon the
150 greater of the following:

151 (a) The number of calendar days the unit was occupied in the last month; or

152 (b) Two (2) weeks, which is the minimum allowable notice.

153

154 *End.*

155

156 _____
Original effective date:

157 Amendment effective date:

158

159

A. Eviction and Termination, Rule No. 1 Disposal of Abandoned Personal Property Status update and Public Hearing Information

Comment to line 65: send written request to LOC to add in "repairs" to this line. Motion by Racquel Hill to approve with the comment in line 65 add word "repairs" into line 65. Seconded by Donald McLester. Motion carried.

B. Request to approve Rule No. 3 – Elder Rental Program Eligibility, Selection and Other Requirements

Motion by Rebecca Webster to approve to send Rule No. 3 – Elder Rental Program Eligibility, Selection and Other Requirements to the LOC for approval. Seconded by Jay T. Rasmussen. Motion carried.

This is the directive that the Land Commission has given on March 13, 2017.



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney
DATE: April 5, 2017
RE: Certification of Eviction and Termination Law Rule No. 1 – Disposal of Abandoned Personal Property

The Legislative Reference Office has reviewed the certification packet provided by the Comprehensive Housing Division and Land Commission for the Eviction and Termination law Rule No. 1 – Disposal of Abandoned Personal Property (the “Rule”).

The Eviction and Termination law defines the Comprehensive Housing Division, pursuant to resolution BC-10-12-16-B, as the Division of Land Management, the Oneida Housing Authority, and Elder Services.

If certified by the Legislative Operating Committee, the Rule would become effective on April 13, 2017.

Administrative Record

The certification packet contains all documentation required by the Administrative Rulemaking law for a complete administrative record.

The certification packet contains:

- A memorandum containing the Rule’s procedural timeline;
- Updated draft of the Rule;
- Minutes from the March 13, 2017, Land Commission meeting approving the proposed rule;
- Memorandum approving the proposed rule from the following:
 - Dale Wheelock, Executive Director of the Oneida Housing Authority;
 - Tsyoshaht C. Delgado, Elder Services Program Manager; and
 - Patrick Pelky, Interim Director of the Division of Land Management.
- Summary Report;
- Public Meeting Notice;
- Draft of the Rule considered at the public meeting.
- Copy of Public Meeting Notice as it appeared in the Kalihwisaks;
- Public Meeting Sign In Sheet;
- Public Meeting Transcript; and
- Memorandum containing the public comments that were received and the Comprehensive Housing Division’s response to each comment.

Procedural Requirements

The certification packet demonstrates that the promulgation of the rule complies with the procedural requirements contained in the Administrative Rulemaking law.

In accordance with the Administrative Rulemaking law:

- A public meeting notice for the Rule was published in the Kalihwisaks on March 2, 2017;
- A public meeting for the Rule was held on March 16, 2017;
- The public comment period was held open until March 23, 2017;
- There were no written comments received during the public comment period; and
- The proposed rule was approved by the Land Commission on March 13, 2017, and the Comprehensive Housing Division on the following dates:
 - Oneida Housing Authority on March 24, 2017;
 - Elder Services on March 30, 2017; and
 - Division of Land Management on March 30, 2017.

Rulemaking Authority

The Rule did not exceed the rulemaking authority granted under the law for which the Rule is being promulgated.

Conclusion

Promulgation of the Eviction and Termination law Rule No. 1 – Disposal of Abandoned Personal Property complies with all requirements of the Administrative Rulemaking law.

Legislative Operating Committee



Agenda Request Form

- 1) Request Date: April 5, 2017
- 2) Contact Person(s): Krystal John Dept: Law Office
 Phone Number: x4375 Email: kjohn4@oneidanation.org
- 3) Agenda Title: Certification of Rule No. 1 - Disposal of Abandoned Personal Property
- 4) Detailed description of the item and the reason/justification it is being brought before the Committee
 Requesting LOC certification of Rule No. 1 as the Comprehensive Housing Division,
as defined in the Eviction and Termination law, develops rules regarding abandoned
personal property.

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

- 1) Rule No. 1
- 2) Summary Report
- 3) Public Meeting Notice
- 4) Public Meeting Sign-in and Transcript

- 5) Please List any laws, ordinances or resolution that might be affected:
Eviction and Termination law
- 6) Please List all other departments or person(s) you have brought your concern to:
N/A
- 7) Do you consider this request urgent? Yes No
 If yes, please indicate why: _____

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

Signature of Requester: _____

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



MEMORANDUM

TO: Legislative Operating Committee

FROM: Krystal L. John, Staff Attorney

DATE: March 30, 2017

SUBJECT: Request for Certification of Procedural Compliance
Eviction and Termination Rule No. 1 – Disposal of Abandoned Personal Property

The Comprehensive Housing Division, as defined in the Eviction and Termination law, is exercising its rulemaking authority to further define sections of Title 6 Property and Land – Chapter 610; Eviction and Termination.

This rule is newly drafted and is not a revision of a prior rule.

In accordance with the Administrative Rulemaking law, a public meeting was held for this rule on March 16, 2017 for which the comment period expired on March 23, 2017. No written comments were submitted during the comment period. The chart below provides a timeline outlining compliance with the Administrative Rulemaking process.

Rulemaking Timeline	
Required Action	Date Completed
Public Meeting notice for the rule is posted in the Kalihwisaks (see page 33) and on the Oneida Register	March 2, 2017
Public Meeting held	March 16, 2017
Public Comment Period closed; there were no comments received	March 23, 2017

The following attachments are included for your review:

1. Rule No. 1 – Disposal of Abandoned Personal Property
2. Comprehensive Housing Division and Oneida Land Commission Approval
3. Summary Report
4. Public Meeting Notice
5. Copy of Public Meeting Published in the Kalihwisaks – Page 33 of the December 15, 2016 issue
6. Sign in sheet from the January 3, 2017 Public Meeting
7. Public meeting transcription from the January 3, 2017 Public Meeting
8. Public Meeting Comment Review Memorandum

Following certification, this rule shall become effective on April 13, 2017.



Title 6. Property and Land – Chapter 610

EVICION and TERMINATION

Rule No. 1 – Disposal of Abandoned Personal Property

- 1.1. Purpose and Delegation
- 1.2. Adoption, Amendment and Repeal
- 1.3. Definitions
- 1.4. Storage and Disposal of Personal Property

9
10
11 **1.1. Purpose and Delegation**
12 1.1-1. *Purpose.* The purpose of this rule is to provide additional information related to the
13 storage and disposal of personal property pursuant to a lease or rental agreement.

14 1.1-2. *Authority.* The Eviction and Termination law delegated joint rulemaking authority to the
15 Land Commission and the Comprehensive Housing Division to further govern the disposition of
16 personal property in relation to residential contracts and to the Land Commission and the Division of
17 Land Management to further govern the disposition of personal property in relation to agricultural
18 and business contracts.

19 **1.2. Adoption, Amendment and Repeal**

20 1.2-1. This rule was jointly adopted by the Comprehensive Housing Division, the Division of
21 Land Management and the Land Commission in accordance with the procedures of the
22 Administrative Rulemaking law.

23 1.2-2. This rule may be amended or repealed by the joint approval of the Comprehensive
24 Housing Division, the Division of Land Management and the Land Commission pursuant to the
25 procedures set out in the Administrative Rulemaking law.

26 1.2-3. Should a provision of this rule or the application thereof to any person or circumstances
27 be held as invalid, such invalidity shall not affect other provisions of this rule which are
28 considered to have legal force without the invalid portions.

29 1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule,
30 internal policy, procedure, or other regulation; the provisions of this rule control.

31 1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements
32 relating to the Eviction and Termination law.
33

34 **1.3. Definitions**

35 1.3-1. This section governs the definitions of words and phrases used within this rule. All
36 words not defined herein are to be used in their ordinary and everyday sense.

37 (a) “Comprehensive Housing Division” means the entity responsible for housing matters
38 specifically related to rental agreements as defined by Oneida Business Committee
39 Resolution.¹

40 (b) “Contract” means either a lease document pursuant to the Leasing law or a rental
41 agreement pursuant to the Landlord-Tenant law.

42 (c) “Eviction” means to expel an occupant from the premises.

43 (d) “Nation” means the Oneida Nation.

¹ See BC Resolution 10-12-16-B providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general residential contracts, the Oneida Housing Authority for income-based residential contracts and Elder Services for residential contracts through the Elder Services program.

44 (e) “Occupant” means the person granted the right to use or occupy a premises pursuant to a
45 lease or rental agreement entered into in accordance with the Leasing law or Landlord-Tenant
46 law respectively.

47 (f) “Owner” means the Nation in its capacity as a lessor as defined in the Leasing law or as a
48 landlord as defined in the Landlord-Tenant law.

49 (g) “Premises” means the property covered by a contract, including not only the real property
50 and fixtures, but also any personal property furnished by the owner pursuant to a contract.
51

52 **1.4. Storage and Disposal of Personal Property**

53 1.4-1. *Designated Period for Removal of Personal Property.* The initial period designated for
54 removal of personal property following a contract termination is five (5) business days, as
55 provided in section 610.6-1 of the Eviction and Termination law. The initial designated period
56 may be extended in the owner’s discretion to a maximum period of fifteen (15) business days
57 from the date of contract termination. The only circumstance under which the timeframe for
58 removal of personal property may be extended beyond the maximum period is in the event of the
59 death of a tenant based on a written agreement executed in the owner’s discretion. During the
60 designated period for the removal of personal property:

61 (a) The owner shall store all personal property within the reclaimed premises and grant
62 access to the former occupant for purposes of removal of personal property.

63 (b) The only access the owner may grant to the premises is as follows:

- 64 (1) To the former occupant for purposes of removal of personal property;
- 65 (2) To the owner’s maintenance staff for emergency maintenance checks and
66 repairs as may be deemed necessary in the owner’s discretion; and/or
- 67 (3) To the owner’s administrative staff for purposes of assessment of the
68 condition of the premise.

69 (c) Former occupants may access the reclaimed premises by contacting the owner to
70 schedule an access appointment. Access appointments are limited to business days from
71 8:00 a.m. to 2:30 p.m., provided that the owner may provide access appointments outside
72 of these limited time periods in its discretion.

73 1.4-2. *Expiration of the Designated Period for Removal of Personal Property.* Upon the
74 expiration of the designated period for removal of personal property, all personal property
75 remaining in the premises subject to the terminated contract becomes abandoned property. The
76 owner shall dispose of all abandoned property as trash, provided that in the owner’s discretion,
77 the owner may donate items for which the owner determines the donation to be safe, sanitary and
78 appropriate.

79 (a) Any program wishing to donate abandoned personal property shall create a standard
80 operating procedure designating the donation location and any other required details.

81 (b) Should the owner, in the process of clearing abandoned property, discover items
82 which may be culturally significant items, the owner shall contact the Cultural Heritage
83 Department for review of the items. Upon review, the Cultural Heritage Department
84 may take possession of any items it deems culturally significant.

85
86 *End.*

87
88 _____
89 Original effective date:
90 Amendment effective date:

A. Eviction and Termination, Rule No. 1 Disposal of Abandoned Personal Property Status update and Public Hearing Information

Comment to line 65: send written request to LOC to add in “repairs” to this line. Motion by Racquel Hill to approve with the comment in line 65 add word “repairs” into line 65. Seconded by Donald McLester. Motion carried.

B. Request to approve Rule No. 3 – Elder Rental Program Eligibility, Selection and Other Requirements

Motion by Rebecca Webster to approve to send Rule No. 3 – Elder Rental Program Eligibility, Selection and Other Requirements to the LOC for approval. Seconded by Jay T. Rasmussen. Motion carried.

This is the directive that the Land Commission has given on March 13, 2017.



Memorandum

To: Legislative Operating Committee
From: Dale Wheelock, Executive Director Housing
Date: March 24, 2017
Subject: Rule 1 – Disposition of Abandoned Personal Property

As Executive Director of the Housing Department, I am approving the proposed Rule #1 – Disposal of Abandoned Personal Property. This approval is in context as it relates to Title 6 Property and Land – Chapter 611 Eviction and Termination Law (Administrative Rulemaking 106.10-1. (a)(4)).

Signature Approval

Dale P. Wheelock Date 03/24/17

Dale Wheelock

Executive Director Oneida Housing Authority



Oneida Nation
Elder Services
PO Box 365 • Oneida, WI 54155-0365
oneida-nsn.gov



TO: Legislative Operating Committee (LOC)
FROM: Tsyoshaht C. Delgado, Elder Services Program Manager *TCD*
DATE: March 30, 2017
RE: Disposal of Abandoned Personal Property Rule

This memorandum is being provided by the Elder Services Department to confirm that the Department approves the current draft of the Disposal of Abandoned Personal Property Rule.

Division of Land Management
470 Airport Drive • P.O. Box 365 • Oneida, WI 54155
oneida-nsn.gov



Memorandum

TO: Legislative Operating Committee
FROM: Patrick Pelky, Interim Director of the Division of Land Management
DATE: March 30, 2017
SUBJECT: Eviction and Termination – Rule #1

Patrick Pelky

As Interim Director of the Division of Land Management, I approve the proposed Rule #1 – Disposal of Abandoned Personal Property, which has been developed through rulemaking authority delegated in the Eviction and Termination law.



Summary Report for: Disposal of Abandoned Personal Property

Original effective date: N/A

Amendment effective date: N/A

Name of Rule: Disposal of Personal Property

Name of law being interpreted: Title 6. Property and Land – Chapter 610 Eviction and Termination

Rule Number: 1

Other Laws or Rules that may be affected: N/A

Brief Summary of the proposed rule: Rule No. 1 identifies the following:

- Designated Period for Removal of Personal Property
- Expiration of Designated Period
- How Abandoned Personal Property Will Be Handled

Statement of Effect: See Attached.

Financial Analyses: See Attached.



Statement of Effect

Eviction and Termination Rule No.1 – Disposal of Abandoned Personal Property

Summary

This rule provides additional information related to the storage and disposal of personal property pursuant to a lease or rental agreement.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

The Eviction and Termination law (Section 610.4) delegates administrative rulemaking authority to the Comprehensive Housing Division and the Oneida Land Commission as authorized by the Administrative Rulemaking Law. The Eviction and Termination law (Section 610.4-1 and 610.4-2) states that the Land Commission and the Comprehensive Housing Division may jointly create rules to further govern the processes contained in this law related to residential contracts, and the Land Commission and the Division of Land Management may jointly create rules to further govern the processes contained in this law related to agricultural and business contracts.

The Eviction and Termination law (Section 610.6-1(b)(2)) states that the Land Commission and the Comprehensive Housing Division shall jointly create rules further governing the disposition of personal property in relation to residential contracts and the Land Commission and the Division of Land Management shall jointly create rules further governing the disposition of personal property in relation to agricultural and business contracts.

Eviction and Termination law Rule No. 1 provides information related to the storage and disposal of personal property pursuant to a lease or rental agreement.

Conclusion

There are no legal bars to adopting Eviction and Termination law Rule No. 1 – Disposal of Abandoned Personal Property.

Financial Analysis for Disposal of Abandoned Personal Property (Elder Services)

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	N/A	\$0
Personnel	N/A	\$0
Office	N/A	\$0
Documentation Costs	N/A	\$0
Estimate of time necessary for an individual or agency to comply with the rule after implementation	N/A	\$0
Other, please explain	N/A	\$0
Total	Annual Net Revenue	\$0

Division of Land Management

PO Box 365
Oneida, WI 54155
920-869-1690



Financial Analysis for Disposal of Abandoned Personal Property (Oneida Housing Authority)

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	N/A	\$0.00
Personnel	N/A	\$0.00
Office	N/A	\$0.00
Documentation Costs	N/A	\$0.00
Estimate of time necessary for an individual or agency to comply with the rule after implementation	<p>It is anticipated there will be little or no financial impact outside of existing costs of removing personal property.</p> <p>After the designated period for removal of personal property has expired, OHA will remove remaining property and dispose of it, just as OHA currently handles abandoned personal property.</p>	Unknown
Other, please explain	N/A	\$0.00
Total	Annual Net Revenue	\$0.00

Division of Land Management

PO Box 365
Oneida, WI 54155
920-869-1690



Financial Analysis for Disposal of Abandoned Personal Property (Division of Land Management)

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	N/A	\$0.00
Personnel	N/A	\$0.00
Office	N/A	\$0.00
Documentation Costs	N/A	\$0.00
Estimate of time necessary for an individual or agency to comply with the rule after implementation	N/A	N/A
Other, please explain	N/A	\$0.00
Total		\$0.00

**Financial Analysis for Disposal of Abandoned Personal Property
Cultural Heritage Department**

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	NA	\$0
Personnel	NA (currently 8 people on staff)	\$0
Office	NA	\$0
Documentation Costs	NA	\$0
Estimate of time necessary for an individual or agency to comply with the rule after implementation	NA	\$0
Other, please explain	Cost depends on number of properties that need to be examined. Approximate Expenditure based on 2-3 individuals per property for 1-3 hours per property.	\$590.00
Total Cost (Annual)		\$590.00

NOTICE OF
PUBLIC MEETING

TO BE HELD
March 16, 2017 at 1:15 PM
IN THE
OBC Conference Room
2nd Floor Norbert Hill Center
N7210 Seminary Road, Oneida, WI 54155

In accordance with the Administrative Rulemaking Law, the Oneida Housing Authority (OHA), Division of Land Management (DOLM) and Elder Services is hosting this joint Public Meeting to gather feedback from the community regarding the following rule.

TOPIC:

- Rule No. 1—Disposal of Abandoned Personal Property

The Disposal of Abandoned Personal Property Rule Identifies:

- Designated Period for Removal of Personal Property
- Expiration of Designated Period
- How Abandoned Personal Property Will Be Handled

To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

PUBLIC COMMENT PERIOD
OPEN UNTIL Tuesday, March 23, 2017

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to OHA by U.S. mail, interoffice mail, e-mail or fax.

Oneida Housing Authority
2913 Commissioner Street, Oneida, WI 54155
jhill7@oneidanation.org
Phone: 920-869-2227
Fax: 920-869-2836



Title 6. Property and Land – Chapter 610

EVICION and TERMINATION

Rule No. 1 – Disposal of Abandoned Personal Property

- 1.1. Purpose and Delegation
- 1.2. Adoption, Amendment and Repeal
- 1.3. Definitions
- 1.4. Storage and Disposal of Personal Property

9

10 **1.1. Purpose and Delegation**

11 1.1-1. *Purpose.* The purpose of this rule is to provide additional information related to the
12 storage and disposal of personal property pursuant to a lease or rental agreement.

13 1.1-2. *Authority.* The Eviction and Termination law delegated joint rulemaking authority to the
14 Land Commission and the Comprehensive Housing Division to further govern the disposition of
15 personal property in relation to residential contracts and to the Land Commission and the Division of
16 Land Management to further govern the disposition of personal property in relation to agricultural
17 and business contracts.

18

19 **1.2. Adoption, Amendment and Repeal**

20 1.2-1. This rule was jointly adopted by the Comprehensive Housing Division, the Division of
21 Land Management and the Land Commission in accordance with the procedures of the
22 Administrative Rulemaking law.

23 1.2-2. This rule may be amended or repealed by the joint approval of the Comprehensive
24 Housing Division, the Division of Land Management and the Land Commission pursuant to the
25 procedures set out in the Administrative Rulemaking law.

26 1.2-3. Should a provision of this rule or the application thereof to any person or circumstances
27 be held as invalid, such invalidity shall not affect other provisions of this rule which are
28 considered to have legal force without the invalid portions.

29 1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule,
30 internal policy, procedure, or other regulation; the provisions of this rule control.

31 1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements
32 relating to the Eviction and Termination law.

33

34 **1.3. Definitions**

35 1.3-1. This section governs the definitions of words and phrases used within this rule. All
36 words not defined herein are to be used in their ordinary and everyday sense.

37 (a) “Comprehensive Housing Division” means the entity responsible for housing matters
38 specifically related to rental agreements as defined by Oneida Business Committee
39 Resolution.¹

40 (b) “Contract” means either a lease document pursuant to the Leasing law or a rental
41 agreement pursuant to the Landlord-Tenant law.

42 (c) “Eviction” means to expel an occupant from the premises.

43 (d) “Nation” means the Oneida Nation.

¹ See BC Resolution 10-12-16-B providing that for purposes of this law, the Comprehensive Housing Division means the Division of Land Management for general residential contracts, the Oneida Housing Authority for income-based residential contracts and Elder Services for residential contracts through the Elder Services program.

44 (e) “Occupant” means the person granted the right to use or occupy a premises pursuant to a
45 lease or rental agreement entered into in accordance with the Leasing law or Landlord-Tenant
46 law respectively.

47 (f) “Owner” means the Nation in its capacity as a lessor as defined in the Leasing law or as a
48 landlord as defined in the Landlord-Tenant law.

49 (g) “Premises” means the property covered by a contract, including not only the real property
50 and fixtures, but also any personal property furnished by the owner pursuant to a contract.
51

52 **1.4. Storage and Disposal of Personal Property**

53 1.4-1. *Designated Period for Removal of Personal Property.* The initial period designated for
54 removal of personal property following a contract termination is five (5) business days, as
55 provided in section 610.6-1 of the Eviction and Termination law. The initial designated period
56 may be extended in the owner’s discretion to a maximum period of fifteen (15) business days
57 from the date of contract termination. The only circumstance under which the timeframe for
58 removal of personal property may be extended beyond the maximum period is in the event of the
59 death of a tenant based on a written agreement executed in the owner’s discretion. During the
60 designated period for the removal of personal property:

61 (a) The owner shall store all personal property within the reclaimed premises and grant
62 access to the former occupant for purposes of removal of personal property.

63 (b) The only access the owner may grant to the premises is as follows:

64 (1) To the former occupant for purposes of removal of personal property;

65 (2) To the owner’s maintenance staff for emergency maintenance checks as may
66 be deemed necessary in the owner’s discretion; and/or

67 (3) To the owner’s administrative staff for purposes of assessment of the
68 condition of the premise.

69 (c) Former occupants may access the reclaimed premises by contacting the owner to
70 schedule an access appointment. Access appointments are limited to business days from
71 8:00 a.m. to 2:30 p.m., provided that the owner may provide access appointments outside
72 of these limited time periods in its discretion.

73 1.4-2. *Expiration of the Designated Period for Removal of Personal Property.* Upon the
74 expiration of the designated period for removal of personal property, all personal property
75 remaining in the premises subject to the terminated contract becomes abandoned property. The
76 owner shall dispose of all abandoned property as trash, provided that in the owner’s discretion,
77 the owner may donate items for which the owner determines the donation to be safe, sanitary and
78 appropriate.

79 (a) Any program wishing to donate abandoned personal property shall create a standard
80 operating proceeding designating the donation location and any other required details.

81 (b) Should the owner, in the process of clearing abandoned property, discover items
82 which may be culturally significant items, the owner shall contact the Cultural Heritage
83 Department for review of the items. Upon review, the Cultural Heritage Department
84 may take possession of any items it deems culturally significant.
85

86 *End.*

87
88 _____
89 Original effective date:
90 Amendment effective date:

Summary Report for: Disposal of Abandoned Personal Property

Original effective date: N/A

Amendment effective date: N/A

Name of Rule: Disposal of Personal Property

Name of law being interpreted: Title 6. Property and Land – Chapter 610 Eviction and Termination

Rule Number: 1

Other Laws or Rules that may be affected: N/A

Brief Summary of the proposed rule: Rule No. 1 identifies the following:

- Designated Period for Removal of Personal Property
- Expiration of Designated Period
- How Abandoned Personal Property Will Be Handled

Statement of Effect: See Attached.

Financial Analyses: See Attached.



Statement of Effect

Eviction and Termination Rule No.1 – Disposal of Abandoned Personal Property

Summary

This rule provides additional information related to the storage and disposal of personal property pursuant to a lease or rental agreement.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

The Eviction and Termination law (Section 610.4) delegates administrative rulemaking authority to the Comprehensive Housing Division and the Oneida Land Commission as authorized by the Administrative Rulemaking Law. The Eviction and Termination law (Section 610.4-1 and 610.4-2) states that the Land Commission and the Comprehensive Housing Division may jointly create rules to further govern the processes contained in this law related to residential contracts, and the Land Commission and the Division of Land Management may jointly create rules to further govern the processes contained in this law related to agricultural and business contracts.

The Eviction and Termination law (Section 610.6-1(b)(2)) states that the Land Commission and the Comprehensive Housing Division shall jointly create rules further governing the disposition of personal property in relation to residential contracts and the Land Commission and the Division of Land Management shall jointly create rules further governing the disposition of personal property in relation to agricultural and business contracts.

Eviction and Termination law Rule No. 1 provides information related to the storage and disposal of personal property pursuant to a lease or rental agreement.

Conclusion

There are no legal bars to adopting Eviction and Termination law Rule No. 1 – Disposal of Abandoned Personal Property.

Division of Land Management

PO Box 365
Oneida, WI 54155
920-869-1690



Financial Analysis for Disposal of Abandoned Personal Property (Oneida Housing Authority)

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	N/A	\$0.00
Personnel	N/A	\$0.00
Office	N/A	\$0.00
Documentation Costs	N/A	\$0.00
Estimate of time necessary for an individual or agency to comply with the rule after implementation	<p>It is anticipated there will be little or no financial impact outside of existing costs of removing personal property.</p> <p>After the designated period for removal of personal property has expired, OHA will remove remaining property and dispose of it, just as OHA currently handles abandoned personal property.</p>	Unknown
Other, please explain	N/A	\$0.00
Total	Annual Net Revenue	\$0.00



Financial Analysis for Disposal of Abandoned Personal Property (Division of Land Management)

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	N/A	\$0.00
Personnel	N/A	\$0.00
Office	N/A	\$0.00
Documentation Costs	N/A	\$0.00
Estimate of time necessary for an individual or agency to comply with the rule after implementation	N/A	N/A
Other, please explain	N/A	\$0.00
Total		\$0.00

Financial Analysis for Disposal of Abandoned Personal Property (Elder Services)

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	N/A	\$0
Personnel	N/A	\$0
Office	N/A	\$0
Documentation Costs	N/A	\$0
Estimate of time necessary for an individual or agency to comply with the rule after implementation	N/A	\$0
Other, please explain	N/A	\$0
Total	Annual Net Revenue	\$0

Financial Analysis for Disposal of Abandoned Personal Property (Cultural Heritage)

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	N/A	\$0
Personnel	Cultural Advisor (1) Cultural/Language Archivist (1) Tribal Historic Preservation (1) History Department (3) Museum (1) Administrative Assistant (1)	\$0
Office	In-Kind	\$0
Documentation Costs	N/A	\$0
Estimate of time necessary for an individual or agency to comply with the rule after implementation	Depends on property 2-3 individuals Approximately 1-3 hours per property	\$588.96
Other, please explain	N/A	\$0
Total	Annual Net Revenue	\$588.96

From page 24/*Employment Law*

the draft Employment Law is that the Employment Law does not provide temporary or probationary employees access to the grievance process. The grievance process may only be accessed by regular status employees.

Q: Will the Employment Law lessen or eliminate an employee's ability to appeal corrective actions?

A: No. The current grievance process has 3 levels of appeal: Area Manager → OPC → Judiciary Appellate Court. Aside from the duplicating services provided by the Judiciary, the process is tedious because the OPC can only hear 1 corrective action at a time. This means if you do not appeal a corrective action immediately, you forever lose your right to appeal that action. The process causes controversy and conflict in the work place.

The Employment Law maintains all 3 levels of appeal: Reviewing Supervisor → Judiciary Trial Court → Judiciary Appellate Court. In recogni-

tion that appealing written warnings that have no consequence on an employee's status and fall off their record after 12 months consumes a lot of money and resources and causes conflict, the draft Employment Law does change how written warnings are handled. Written warnings will not be appealable to the Judiciary on their own. However, if the employee is suspended or terminated and appeals that decision to the reviewing supervisor, the written warning may become part of the entire appeal of the suspension or termination heard by the Judiciary, which in not possible with the OPC.

Q: Will the Employment Law change employees accrual rates for personal and vacation time?

A: No, the Employment Law maintains accruals at current rates. Personal and vacation time will be combined and referred to as paid time off (PTO).

Q: Does the Employment Law include or eliminate any oversight of HRD?

A: Currently, all oversight of HRD is done by the

Oneida Business Committee and the General Tribal Council. The Employment Law increases oversight of HRD by requiring them to report to the proposed Chief Executive Director of Administration (CEDA). The CEDA is the proposed new general manager like position. If GTC does not approve the proposed CEDA position at the March 19, 2017 GTC meeting, the oversight of HRD under the Employment Law would stay the same as it is today, with HRD being a direct report to the Oneida Business Committee.

Additional information related to the Employment Law, including endorsements of support from Oneida Business Committee (OBC) members, can be found on the Featured Legislation page of the Oneida Register at: <https://oneida-nsn.gov/government/register/employmentlaw/>. Hard copies of the Employment Law GTC packet may be viewed through the Secretary's Office or at the Oneida Community Library on Elm Street.

NOTICE OF

PUBLIC MEETING

TO BE HELD

March 16, 2017 at 1:15 PM

IN THE

OBC Conference Room

2nd Floor Norbert Hill Center

N7210 Seminary Road, Oneida, WI 54155

In accordance with the Administrative Rulemaking Law, the Oneida Housing Authority (OHA), Division of Land Management (DOLM) and Elder Services is hosting this joint Public Meeting to gather feedback from the community regarding the following rule.

TOPIC:

- Rule No. 1—Disposal of Abandoned Personal Property

The Disposal of Abandoned Personal Property Rule Identifies:

- Designated Period for Removal of Personal Property
- Expiration of Designated Period
- How Abandoned Personal Property Will Be Handled

To obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings.

PUBLIC COMMENT PERIOD OPEN UNTIL Tuesday, March 23, 2017

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to OHA by U.S. mail, interoffice mail, e-mail or fax.

Oneida Housing Authority
2913 Commissioner Street, Oneida, WI 54155
jhill7@oneidanation.org
Phone: 920-869-2227
Fax: 920-869-2836

For the best in Native American music, listen to

Kalihwiyo'se

WPNE 89.3 FM

Thursday evenings from 10:00p.m.-Midnight

Public Meeting Sign In Sheet

Disposal of Abandoned Personal Property

March 16, 2017

	Name	Phone or Email
1	RAE SKENANDORE	869-4337
2	DIANE WILSON	869-1690
3		
4		
5		
6		
7		
8		
9		

Comprehensive Housing Division (as defined in the Eviction and Termination law)
Public Meeting Transcript
Eviction and Termination law - Rule No. 1 - Disposal of Abandoned Personal Property
Business Committee Conference Room – 2nd Floor Norbert Hill Center
March 16, 2017 at 1:15 P.M.

Robert Collins: Hi, My Name is Rob Collins with Oneida Law Office. Were here today on a public meeting on Rule # 1, Disposal of Abandoned Personal Property. This is a rule that's being enacted pursuant to the eviction and termination law. The purpose of the rule is to provide additional information related to the storage and disposal of personal property pursuant to a lease or rental agreement. The purpose of this public meeting is to except public comments. The agencies will then consider those comments and will respond to them individually, so with that being said, if anyone would like to make a comment, they can now come up to the microphone and do so.

Rae Skenadore: This is Rae Skenadore, I work in Finance. The comments are on the fiscal analysis for the disposal of abandoned personal property for Cultural Heritage. Accompany document to the rule, it appears it may have been calculated incorrectly, under the 5th row, estimated time necessary for an individual or agency to comply with the rule after implementation. This should be an estimate of time as in 30 days, 60 days, 90 days, and Cultural Heritage put in, it appears wages depending on the property 2-3 individuals, approximately 1-3 hours per property. There are no assumptions accompanying this, so you do not know the amount of the wages, how often they calculated, but the final number they came up with was \$588.96. Again this is supposed to be an estimate of time, so it appeared the template should actually be moved around where this falls below the calculation for the revenue. Also in the template, it says in all net revenue. These are not revenues, they appear to be expenses. Normally when Finance does a fiscal analysis, if its existing personnel or part of their job already, you consider it a "Sunk" cost and it doesn't have to be recognized on a form such as this. I think that's all. Also these would carry over to have some budget impact which the areas need to keep in mind as they develop their budgets for the next year. So, that's all my comments.

Diane Wilson: Ok, this is Diane Wilson, Oneida Land Management. I just have a comment on line 80. It states, shall create a standard operating proceeding and I believe it should be procedure instead.

- End of Meeting -



TO: Comprehensive Housing Division (as defined in Eviction and Termination law)
FROM: Robert J. Collins II, Oneida Law Office
DATE: March 21, 2017
RE: Disposal of Abandoned Personal Property: Public Meeting Comment Review

On March 16, 2017, a public meeting was held regarding the proposed Disposal of Abandoned Personal Property rule. This memorandum is submitted as a review of the oral and written comments that were presented at the public meeting and submitted within the public comment period.

Comment 1.

Rae Skenadore – Oral Comment: I work in Finance. The comments are on the fiscal analysis for the disposal of abandoned personal property for Cultural Heritage. Accompanying document to the rule; it appears it may have been calculated incorrectly. Under the fifth row; estimated time necessary for an individual or agency to comply with the rule after implementation. This should be an estimate of time as in 30 days, 60 days, 90 days, and Cultural Heritage put in, it appears wages depending on the property; two to three individuals, approximately one to three hours per property. There are no assumptions accompanying this, so you do not know the amount of the wages, how often they calculated, but the final number they came up with was \$588.96. Again this is supposed to be an estimate of time, so it appeared the template should actually be moved around where this falls below the calculation for the revenue. Also in the template, it says net revenue. These are not revenues, they appear to be expenses. Normally when Finance does a fiscal analysis, if it's existing personnel or part of their job already, you consider it a "sunk" cost and it doesn't have to be recognized on a form such as this. I think that's all. Also these would carry over to have some budget impact which the areas need to keep in mind as they develop their budgets for the next year. So, that's all my comments.

Response: The above comment does not pertain to the proposed rule; however, the fiscal analysis document will be modified to address the concerns.

Comment 2.

Diane Wilson – Oral Comment: I just have a comment on line 80. It states, shall create a standard operating proceeding and I believe it should be procedure instead.

Response: Section 1.4-2(a) of the rule was revised to state, "Any program wishing to donate abandoned personal property shall create a standard operating procedure designating the donation location and any other required details" as a result of this comment.



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



AGENDA REQUEST FORM

- 1) Request Date: April 5, 2017
- 2) Contact Person(s): Rob Collins, OLO
Dept: Oneida Law Office
Phone Number: 869-4327 Email: rcollins@oneidanation.org
- 3) Agenda Title: Professional Conduct for Attorneys and Advocates
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
This law is being developed to govern the conduct of attorneys and advocates
that are admitted to practice before the Judiciary

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

- 1) Draft
- 2) _____
- 3) _____
- 4) _____
- 5) Please list any laws, policies or resolutions that might be affected:
To be determined
- 6) Please list all other departments or person(s) you have brought your concern to:
Oneida Law Office
- 7) Do you consider this request urgent? Yes No
If yes, please indicate why:
Law will need to be in place when Legal Resource Center starts taking cases

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

Signature of Requester: _____
[Handwritten Signature]

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

Title 8. Judiciary - Chapter 810
PROFESSIONAL CONDUCT FOR ATTORNEYS AND ADVOCATES

810.1. Purpose and Policy	810.13. Client with Diminished Capacity
810.2. Adoption, Amendment, Repeal	810.14. Declining or Terminating Representation
810.3. Definitions	810.15. Duties to Prospective Clients
810.4. Competence	810.16. Role as Advisor
810.5. Scope of Representation	810.17. Candor and Impartiality toward the Judiciary
810.6. Diligence	810.18. Fairness to Opposing Party and Counsel
810.7. Communication	810.19. Counsel as Witness
810.8. Fees	810.20. Admittance to Practice and Disciplinary Matters
810.9. Confidentiality	810.21. Misconduct
810.10. Conflict of Interest	810.22. Civil Actions for Negligence or Violation of Duty
810.11. Duties to Former Clients	810.23. Disciplinary Actions
810.12. Former Judge, Mediator, or Peacemaker	

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810.1. Purpose and Policy

810.1-1. *Purpose.* The purpose of this law is to govern the conduct of attorneys and advocates that are admitted to practice law before the Judiciary.

810.1-2. *Policy.* It is the policy of the Nation that the interests of all parties that appear before the Judiciary are protected. In pursuit of this interest, it is to the benefit of all parties that attorneys or advocates are subject to rules governing their professional conduct.

810.2. Adoption, Amendment, Repeal

810.2-1. This law was adopted by the Oneida Business Committee by resolution _____.

810.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

810.2-3. 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.

810.2-4. 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.

810.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

810.2-6. Where precedent for any issue under this law has not been established by the Judiciary, the Judiciary and counsel may refer to established Wisconsin or federal case law precedent or laws for guidance. The Wisconsin State Law Library maintains a section on Legal Ethics and Professional Conduct located at <http://wilawlibrary.gov/topics/legalprof/malpractice.php>.

810.3. Definitions

810.3-1. 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) “Advocate” means a non-attorney advocate who is admitted to practice law and is presented to the Court as the representative or advisor to a party. “Advocate” shall not mean a domestic violence advocate present in court for the sole purpose of providing support.

(b) “Attorney” means a person trained and licensed to represent another person in Court, to prepare documents, and to give advice or counsel on matters of law.

(c) “Counsel” means an attorney or advocate that is admitted to practice before the Judiciary.

38 (d) “Judiciary” means the judicial system that was established by Oneida General Tribal
39 Council resolution GTC #1-07-13-B to administer the judicial authorities and
40 responsibilities of the Nation.

41 (e) “Informed consent” means the agreement by a person to a proposed course of
42 conduct after counsel has communicated adequate information and explanation about the
43 material risks of and reasonably available alternatives to the proposed course of conduct.

44 (f) “Preponderance of the evidence” means it is more likely than not that the facts
45 presented are true.

46 (g) “Prospective client” means a person who consults with counsel about the possibility
47 of forming a client-counsel relationship.

48 (h) “Pro Tem Judge” means a decision maker that is not currently seated on the
49 Judiciary, but that is appointed on a temporary (*pro tempore*), case-by-case basis to hear
50 and decide matters in professional conduct panels.

51 (i) “Reasonable” or “reasonably” when used in relation to conduct by counsel means the
52 conduct of a reasonably prudent and competent attorney or advocate.

53 54 **810.4. Competence**

55 810.4-1. Counsel shall provide competent representation to a client. Competent representation
56 requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the
57 representation.

58 59 **810.5. Scope of Representation**

60 810.5-1. A client develops a privileged relationship protected by section 810.9 of this law and
61 section 804.82 of the Oneida Judiciary Rules of Evidence once they consult with counsel to
62 obtain legal services or once counsel performs legal services for the client. Any professional
63 opinion given by counsel without express disclosure negating a privileged relationship shall
64 create a privileged counsel-client relationship.

65 810.5-2. Counsel shall abide by a client’s decisions concerning the objectives of representation
66 and shall consult with the client as to the means by which they are to be pursued. Counsel may
67 take such action on behalf of the client as is impliedly authorized to carry out the representation.

68 810.5-3. Counsel’s representation of a client, including representation by appointment, does not
69 constitute an endorsement of the client’s political, economic, social or moral views or activities.

70 810.5-4. Counsel may limit the scope of representation if the limitation is reasonable under the
71 circumstances and the client gives informed written consent.

72 810.5-5. Counsel shall not advise a client to engage, or assist a client, in conduct that counsel
73 knows is criminal or fraudulent, but counsel may discuss the legal consequences of any proposed
74 course of conduct with a client and may advise or assist a client to make a good faith effort to
75 determine the validity, scope, meaning, or application of the law.

76 77 **810.6. Diligence**

78 810.6-1. Counsel shall act with reasonable diligence and promptness in representing a client.

79 80 **810.7. Communication**

81 810.7-1. Counsel shall:

82 (a) Promptly inform the client of any decision or circumstance with respect to which the
83 client’s informed consent is required by this law;

84 (b) Reasonably consult with the client about the means by which the client’s objectives
85 are to be accomplished;

- 86 (c) Keep the client reasonably informed about the status of the matter;
87 (d) Promptly comply with reasonable requests by the client for information; and
88 (e) Consult with the client about any relevant limitations on counsel's conduct when
89 counsel knows that the client expects assistance not permitted by this law or other laws or
90 rules.

91 810.7-2. Counsel shall explain a matter to the extent reasonably necessary to permit the client to
92 make informed decisions regarding the representation.
93

94 **810.8. Fees**

95 810.8-1. Counsel shall not make an agreement for, charge, or collect an unreasonable fee or an
96 unreasonable amount for expenses. The factors to be considered in determining the
97 reasonableness of a fee include the following:

- 98 (a) The time and labor required, the novelty and difficulty of the questions involved, and
99 the skill required to perform the legal service properly;
100 (b) The likelihood, if apparent to the client, that the acceptance of the particular
101 employment will preclude other employment by counsel;
102 (c) The fee customarily charged in the locality for similar legal services;
103 (d) The amount involved and the results obtained;
104 (e) The time limitations imposed by the client or by the circumstances;
105 (f) The nature and length of the professional relationship with the client; and
106 (g) The experience, reputation, and ability of the lawyer or lawyers performing the
107 services.

108 810.8-2. The scope of the representation and the basis or rate of the fee and expenses for which
109 the client will be responsible shall be communicated to the client in writing, before or within a
110 reasonable time after commencing the representation. Any changes in the basis or rate of the fee
111 or expenses shall also be communicated in writing to the client.

112 810.8-3. Counsel shall promptly respond to a client's request for information concerning fees
113 and expenses.
114

115 **810.9. Confidentiality**

116 810.9-1. Counsel shall not reveal information relating to the representation of a client unless the
117 client gives informed consent, except for disclosures that are impliedly authorized in order to
118 carry out the representation.

119 810.9-2 The Legal Resource Center's supervising attorney shall establish standard operating
120 procedures governing the operation of the Center in regard to confidentiality including when the
121 Center represents both parties to an action.

122 810.9-3. Counsel shall reveal information relating to the representation of a client to the extent
123 counsel reasonably believes necessary to prevent the client from committing a criminal or
124 fraudulent act that counsel reasonably believes is likely to result in death or substantial bodily
125 harm or in substantial injury to the financial interest or property of another.

126 810.9-4. Counsel may reveal information relating to the representation of a client to the extent
127 counsel reasonably believes necessary:

- 128 (a) To prevent reasonably likely death or substantial bodily harm;
129 (b) To prevent, mitigate, or rectify substantial injury to the financial interests or property
130 of another that is reasonably certain to result or has resulted from the client's commission
131 of a crime or fraud in furtherance of which the client has used counsel's services;
132 (c) To secure legal advice about counsel's conduct under this law;

133 (d) To establish a claim or defense on behalf of counsel in a controversy between
134 counsel and the client, to establish a defense to an action deny admission to practice
135 before the Judiciary, or to respond to allegations in any proceeding concerning counsel's
136 representation of the client;

137 (e) To comply with other laws or court orders; or

138 (f) To detect and resolve conflicts of interest, but only if the revealed information would
139 not compromise the client-counsel privilege or otherwise prejudice the client.

140 810.9-5. Counsel shall make reasonable efforts to prevent the inadvertent or unauthorized
141 disclosure of, or unauthorized access to, information relating to the representation of a client.
142

143 **810.10. Conflict of Interest**

144 810.10-1. Counsel, except as provided in 810.10-2, shall not represent a client if the
145 representation involves a conflict of interest. A conflict of interest exists if:

146 (a) The representation of one client will be directly adverse to another client; or

147 (b) There is a significant risk that the representation of one or more clients will be
148 materially limited by counsel's responsibilities to another client, a former client, a third
149 person, or by a personal interest of counsel.

150 810.10-2. Notwithstanding the existence of a conflict of interest under 810.10-1, counsel may
151 represent a client if:

152 (a) Counsel reasonably believes that counsel will be able to provide competent and
153 diligent representation to each affected client;

154 (b) The representation is not prohibited by law;

155 (c) The representation does not involve the assertion of a claim by one client against
156 another client represented by counsel in the same litigation or other proceeding before the
157 Judiciary; and

158 (d) Each affected client gives informed consent, confirmed in a writing signed by the
159 client.

160 810.10-3. Should the Legal Resource Center represent both parties to an action, written informed
161 consent shall be obtained by both parties prior to the commencement of representation.

162 810.10-4. The Legal Resource Center's supervising attorney shall establish standard operating
163 procedures governing the operation of the Center in regard to any actual or perceived conflicts of
164 interest including those that may arise when the Center represents both parties to an action.

165 810.10-5. Counsel shall not use information relating to representation of a client to the
166 disadvantage of the client unless the client gives informed consent, except as permitted or
167 required by this law.

168 810.10-6. Counsel shall not provide the client with any financial assistance pertaining to the
169 matter for which counsel represents the client.

170 810.10-7. Counsel shall not have sexual relations with a current client unless a consensual
171 sexual relationship existed between them when the client-counsel relationship commenced.
172

173 **810.11. Duties to Former Clients**

174 810.11-1. Counsel who has formerly represented a client in a matter shall not thereafter
175 represent another person in the same or a substantially related matter in which that person's
176 interests are materially adverse to the interests of the former client unless the former client gives
177 informed written consent.
178

179 **810.12. Former Judge, Mediator, or Peacemaker**

180 810.12-1. Counsel shall not represent anyone in connection with a matter in which counsel
181 participated personally and substantially as a judge, mediator, or peacemaker.

182

183 **810.13. Client with Diminished Capacity**

184 810.13-1. When a client's capacity to make adequately considered decisions in connection with
185 a representation is diminished, whether because of minority, mental impairment, or for some
186 other reason, counsel shall, as far as reasonably possible, maintain a normal client-counsel
187 relationship with the client.

188 810.13-2. When counsel reasonably believes that the client has diminished capacity, counsel
189 may request that the court appoint a guardian ad litem for the client.

190

191 **810.14. Declining or Terminating Representation**

192 810.14-1. Counsel shall not represent a client or, where representation has commenced, shall
193 withdraw from the representation of a client if:

194 (a) The representation will result in a violation of this law or any other applicable law or
195 rule governing professional conduct;

196 (b) Counsel's physical or mental condition materially impairs counsel's ability to
197 represent the client; or

198 (c) Counsel is discharged.

199 810.14-2. Counsel may withdraw from representing a client if:

200 (a) Withdrawal can be accomplished without material adverse effect on the interests of
201 the client;

202 (b) The client persists in a course of action involving counsel's services that counsel
203 reasonably believes is criminal or fraudulent;

204 (c) The client has used the counsel's services to perpetrate a crime or fraud;

205 (d) The client insists upon taking action that counsel considers repugnant or with which
206 counsel has a fundamental disagreement.

207 (e) The client fails substantially to fulfill an obligation to counsel regarding counsel's
208 services and has been given reasonable warning that counsel will withdraw unless the
209 obligation is fulfilled;

210 (f) The representation will result in an unreasonable financial burden on counsel or has
211 been rendered unreasonably difficult by the client; or

212 (g) Other good cause for withdrawal exists.

213 810.14-3. Counsel must comply with applicable court rules requiring notice to or permission of
214 the Judiciary when terminating a representation. When ordered to do so by the Judiciary,
215 counsel shall continue representation notwithstanding good cause for terminating the
216 representation.

217 810.14-4. Upon termination of representation, counsel shall take steps to the extent reasonably
218 practicable to protect a client's interests, such as giving reasonable notice to the client, allowing
219 time for seeking other counsel, surrendering papers and property to which the client is entitled
220 and refunding any fees not earned.

221

222 **810.15. Duties to Prospective Clients**

223 810.15-1. Even when no client-counsel relationship ensues, counsel who has learned
224 information from a prospective client shall not use or reveal that information learned in the
225 consultation, unless:

- 226 (a) The affected client and/or the prospective client have given informed written consent;
227 or
228 (b) Counsel who received the information took reasonable measures to avoid exposure to
229 more disqualifying information that was reasonably necessary to determine whether to
230 represent the prospective client.
231

232 **810.16. Role as Advisor**

233 810.16-1. In representing a client, counsel shall exercise independent professional judgment and
234 render candid advice. In rendering advice, counsel may refer not only to law but to other
235 considerations such as moral, economic, social, cultural, and political factors that may be
236 relevant to the client's situation.

237 810.16-2. In representing a client, counsel shall not:

- 238 (a) Knowingly advance a claim or defense that is unwarranted under existing law, except
239 that counsel may advance such claim or defense if it can be supported by good faith
240 argument for an extension, modification, or reversal of existing law;
241 (b) Knowingly advance a factual position unless there is a basis for doing so that is not
242 frivolous;
243 (c) File an action, assert a position, conduct a defense, delay a trial, or take other actions
244 on behalf of the client when counsel knows or when it is obvious that such an action
245 would serve merely to harass or maliciously injure another.

246 810.16-3. In the course of representing a client, counsel shall not knowingly:

- 247 (a) Make a false statement of material fact or law to a third person; or
248 (b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid
249 assisting a criminal or fraudulent act by a client.
250

251 **810.17. Candor and Impartiality toward the Judiciary**

252 810.17-1. Counsel shall not knowingly:

- 253 (a) Make a false statement of fact or law to the Judiciary or fail to correct a false
254 statement of material fact or law previously made to the Judiciary by counsel;
255 (b) Fail to disclose to the Judiciary legal authority in the controlling jurisdiction known
256 to the lawyer to be directly adverse to the position of the client and not disclosed by
257 opposing counsel;
258 (c) Offer evidence that counsel knows to be false. If counsel, counsel's client, or a
259 witness called by counsel has offered material evidence and counsel comes to know of its
260 falsity, counsel shall take reasonable remedial measures, including, if necessary,
261 disclosure to the Judiciary. Counsel may refuse to offer evidence believed to be false.

262 810.17-2. Counsel shall not:

- 263 (a) Seek to influence a judge, juror, or other court official;
264 (b) Communicate ex parte with a judge during the proceedings unless authorized to do so
265 by law or court order or for scheduling purposes, if permitted by the court; or
266 (c) Engage in conduct intended to disrupt the Judiciary.
267

268 **810.18. Fairness to Opposing Party and Counsel**

269 810.18-1. Counsel shall not:

- 270 (a) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy,
271 or conceal a document or other material having potential evidentiary value. Counsel shall
272 not advise or assist another person to do any such act;
273 (b) Falsify evidence, advise or assist a witness to testify falsely;

- 274 (c) Knowingly disobey an obligation under any applicable law or rule, except for open
275 refusal based on an assertion that no valid obligation exists;
276 (d) In pretrial procedure, make a frivolous discovery request or fail to make reasonably
277 diligent effort to comply with a legally proper discovery request by an opposing party; or
278 (e) In trial, allude to any matter that counsel does not reasonably believe is relevant or
279 that will not be supported by admissible evidence.

280 810.18-2. In representing a client, counsel shall not communicate about the subject of the
281 representation with a person counsel knows to be represented by another attorney or advocate in
282 the matter unless counsel has the consent of the other attorney or advocate or is authorized to do
283 so by law or a court order.

284 810.18-3. In dealing on behalf of a client with a person who is not represented by an attorney or
285 advocate, counsel shall inform such person of counsel's role in the matter. When counsel knows
286 or reasonably should know that the unrepresented person misunderstands counsel's role in the
287 matter, counsel shall make reasonable efforts to correct this misunderstanding. Counsel shall not
288 give legal advice to an unrepresented person other than the advice to secure counsel.
289

290 **810.19. Counsel as Witness**

291 810.19-1. Counsel shall not act as an attorney or advocate at a trial in which counsel is likely to
292 be a necessary witness unless:

- 293 (a) The testimony relates to the nature and value of legal services rendered in the case; or
294 (b) Disqualification of counsel would work substantial hardship on the client.
295

296 **810.20. Admittance to Practice and Disciplinary Matters**

297 810.20-1. Counsel shall comply with the Judiciary's Rules of Admission to Practice.

298 810.20-2. An applicant for admission to practice or counsel in connection with a disciplinary
299 matter, shall not:

- 300 (a) Knowingly make a false statement of material fact; or
301 (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to
302 have arisen in the matter, or knowingly fail to respond to a lawful demand for
303 information from an admissions or disciplinary authority.
304

305 **810.21. Misconduct**

306 It is professional misconduct for counsel to:

- 307 (a) Violate or attempt to violate this law, knowingly assist or induce another to do so, or
308 do so through the acts of another;
309 (b) Commit a criminal act that reflects adversely on counsel's honesty, trustworthiness,
310 or fitness as counsel in other respects unless such criminal activity has been pardoned or
311 forgiven;
312 (c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation unless
313 such conduct is pardoned or forgiven;
314 (d) State or imply an ability to influence improperly a tribal or government agency or
315 official or to achieve results by means that violate any applicable law or rule;
316 (e) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable
317 canons of judicial conduct or other law or rule;
318 (f) Violate the counsel's oath given to the Judiciary; or
319 (g) Fail to cooperate in the investigation of a complaint filed with the Judiciary.
320

321 **810.22. Civil Actions for Negligence or Violation of Duty**

322 810.22-1. A client alleging that counsel was negligent or violated a duty under this law may
323 initiate a civil action by filing a complaint with the Judiciary's Trial Court.

324 810.22-2. In a civil action against counsel for negligence or violation of duty, the client has the
325 burden of proving all of the following:

- 326 (a) A counsel-client relationship existed;
- 327 (b) That counsel committed acts that were negligent or in violation of duty under this
328 law;
- 329 (c) That the client suffered actual damages;
- 330 (d) That the negligence or violation of duty was the proximate cause of the damages; and
- 331 (e) That, but for the negligence or violation of duty on counsel, the client would have
332 been successful in the prosecution or defense of the case.

333 810.22-3. In making a final determination, the Court shall consider what a particular counsel did
334 or failed to do and what a reasonable or prudent counsel would do in the same circumstance.

335 810.22-4. If there is enough evidence to substantiate the allegations by a preponderance of the
336 evidence, the Court shall issue a written order awarding monetary damages to the client.

337 810.22-5. Decisions of the Trial Court under this section may be appealed to the Court of
338 Appeals.

339

340 **810.23. Disciplinary Actions**

341 810.23-1. The Judiciary's Court of Appeals is granted jurisdiction to hear complaints filed
342 regarding any disciplinary actions pertaining to this law.

343 810.23-2. Complaints of alleged violations of this law may be filed on behalf of the client with
344 the Court of Appeals or initiated by the Judiciary. Anonymous complaints shall not be acted on.
345 All complaints shall be forwarded to the Chief Judge of the Court of Appeals who may screen
346 out and take no action on complaints which are determined to be frivolous or repetitive on their
347 face. The Chief Judge or his or her designee shall communicate in writing any such decision
348 with the complainant.

349 810.23-3. If a complaint goes forward, the Chief Judge of the Court of Appeals shall appoint a
350 three (3) judge panel to preside over the disciplinary proceedings. Current or pro tem judges are
351 eligible to be on the panel.

352 (a) The party being accused of the disciplinary violation shall be given notice of a
353 hearing and an opportunity to meaningfully respond to the allegations.

354 (b) The complainant also shall be given notice of any hearings and shall have the right to
355 present evidence.

356 810.23-4. The three (3) judge panel can dismiss the complaint if it appears frivolous or if there is
357 not enough evidence to substantiate the allegations by a preponderance of the evidence.

358 810.23-5. If there is enough evidence to substantiate the allegations by a preponderance of the
359 evidence, the Court shall issue a written disciplinary order.

360 (a) The Court may opt to choose any combination of the following disciplinary methods:

- 361 (1) Private reprimand;
- 362 (2) Public reprimand through publication in the Nation's newspaper;
- 363 (3) Additional training requirements;
- 364 (4) Monetary fine; or
- 365 (5) Suspension or revocation of the right to practice before the Judiciary.

366 (b) The Judiciary may also forward their decision to an appropriate outside regulating
367 authority in appropriate situations (e.g. to the State Bar of Wisconsin if counsel is an
368 attorney licensed to practice in Wisconsin).

369 810.23-6. All decisions made by the Court of Appeals under this section are final.

370

371 *End.*

372

373

374 Adopted: _____



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



AGENDA REQUEST FORM

- 1) Request Date: April 5, 2017
- 2) Contact Person(s): Jennifer Falck, LRO Director
Dept: LRO
Phone Number: 869-4312 Email: jfalck@oneidation.org
- 3) Agenda Title: Legal Resource Center Law
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
The law will set out the structure of the GTC Legal Resource Center.
It may include; Types of cases, fee schedules, staffing, etc.

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

- 1) draft
- 2) _____
- 3) _____
- 4) _____

- 5) Please list any laws, policies or resolutions that might be affected:
Judiciary and Election laws
- 6) Please list all other departments or person(s) you have brought your concern to:
none
- 7) Do you consider this request urgent? Yes No
If yes, please indicate why:
The law will need to be adopted before the Legal Resource Center opens this summer

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

Signature of Requester:

Jennifer A. Falck

Please send this form and all supporting materials to:

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

Title 8. Judiciary – Chapter 811
LEGAL RESOURCE CENTER

811.1. Purpose and Policy
811.2. Adoption, Amendment, Repeal
811.3. Definitions
811.4. General Provisions

811.5. Supervising Attorney
811.6. Advocates
811.7. Standard Operating Procedures
811.8. Discipline and Removal

1 **811.1. Purpose and Policy**

2 811.1-1. *Purpose.* The purpose of this law is to establish a Legal Resource Center to provide
3 legal advice and representation to both Tribal members and employees in cases before the
4 Judiciary and to represent the Oneida General Tribal Council at General Tribal Council
5 meetings.

6 811.1-2. *Policy.* It is the policy of the Nation to provide high-quality legal assistance to its
7 members and employees in an effort to protect individual rights.

8
9 **811.2. Adoption, Amendment, Repeal**

10 811.2-1. This law was adopted by the Oneida Business Committee by resolution BC-__-__-__-
11 __.

12 811.2-2. This law may be amended or repealed by the Oneida Business Committee and/or
13 Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures
14 Act.

15 811.2-3. Should a provision of this law or the application thereof to any person or circumstances
16 be held as invalid, such invalidity shall not affect other provisions of this law which are
17 considered to have legal force without the invalid portions.

18 811.2-4. In the event of a conflict between a provision of this law and a provision of another
19 law, the provisions of this law shall control.

20 811.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

21
22 **811.3. Definitions**

23 811.3-1. This section shall govern the definitions of words and phrases used within this law. All
24 words not defined herein shall be used in their ordinary and everyday sense.

25 (a) “Advocate” means a person elected by the membership who is a non-attorney
26 presented to the Court as the representative or advisor to a party.

27 (b) “Employee” means any individual who is hired by the Nation through the normal
28 hiring process, works full-time or part-time and is subject to the Nation’s direction and
29 control with respect to the material details of the work performed. “Employee” includes,
30 but is not limited to, individuals employed by an entity and individuals employed through
31 an employment contract as a limited term employee, but does not include elected or
32 appointed officials, temporary employees or individuals employed by a tribally chartered
33 corporation.

34 (c) “Judiciary” means the Nation’s judicial system, which includes the Family Court,
35 Trial Court and Court of Appeals.

36 (d) “Nation” means the Oneida Nation.

37 (e) “Supervising Attorney” means a person elected by the membership who is trained and
38 licensed to represent another person in Court, to prepare documents and to give advice or
39 counsel on matters of law.

40 (f) “Tribal Member” means an individual who is an enrolled member of the Nation.

41 **811.4. General Provisions**

42 811.4-1. *Establishment.* There is hereby established a Legal Resource Center, which shall
43 provide legal advice and representation to Tribal members and employees in cases brought forth
44 in the Judiciary and to represent the Oneida General Tribal Council at General Tribal Council
45 meetings.

46 811.4-2. *Restrictions.* The Legal Resource Center shall not:

47 (a) Accept a case that is determined to be frivolous or without legal merit. Whenever the
48 Supervising Attorney or Advocate makes such a determination in a case where a notice of
49 representation has been filed or an appearance has been made, he or she shall motion the
50 court for withdrawal;

51 (b) Accept a case when there is a conflict of interest pursuant to the Professional Conduct
52 for Attorneys or Advocates law;

53 (c) Appear in any case before the Judiciary prior to the client applying for the services of
54 the Legal Resource Center; or

55 (d) Appear in any case before the Judiciary where the Supervising Attorney or Advocate
56 does not meet the qualifications established by law.

57 811.4-3. *Prohibitions.* While serving a term of office, no Supervising Attorney or Advocate
58 may:

59 (a) Be elected or appointed to serve on any of the Nation's boards, committees or
60 commissions; or

61 (b) Be otherwise employed by the Nation.

62 811.4-4. *Vacancies.* If a Supervising Attorney or Advocate dies, resigns, is removed from
63 office, becomes incapacitated for a period in excess of one hundred eighty (180) consecutive
64 days, or is declared incompetent by a court of competent jurisdiction, the position shall be
65 declared vacant by the Oneida Business Committee and:

66 (a) A special election shall be held to fill the position for the remainder of the
67 Supervising Attorney's or Advocate's term of office, if two hundred seventy (270) days
68 or more remain in the term; or

69 (b) The Oneida Business Committee shall appoint a successor to fill the office for the
70 remainder of the term, if fewer than two hundred seventy (270) days remain in the term.

71

72 **811.5. Supervising Attorney**

73 811.5-1. *Qualifications.* There shall be at least one (1) full-time Supervising Attorney of the
74 Legal Resource Center. This position shall be an elected position and shall have the following
75 qualifications:

76 (a) is an enrolled Tribal member and is at least twenty-one (21) years of age on the date
77 of the election;

78 (b) have a juris doctor (J.D.) degree from an accredited law school;

79 (c) have at least two (2) years of previous experience practicing law and/or equivalent
80 combination of education and experience;

81 (d) be licensed to practice law in the State of Wisconsin and in good standing; and

82 (e) be admitted to practice before the Judiciary.

83 811.5-2. *Election.* The Supervising Attorney shall be elected to a term of four (4) years.

84 811.5-3. *Duties.* The Supervising Attorney shall have the duty of administering the Legal
85 Resource Center, which shall include the following:

86 (a) provide legal services;

- 87 (b) oversee the assignment of cases to the Advocates;
- 88 (c) supervise the Advocates and any other administrative personnel;
- 89 (d) prescribe standards concerning the training and continued education for the
- 90 Advocates;
- 91 (e) manage the operation, activities, policies, and procedures of the Legal Resource
- 92 Center;
- 93 (f) submit an annual budget for consideration by the Oneida General Tribal Council;
- 94 (g) provide annual and semi-annual reports to the Oneida General Tribal Council;
- 95 (h) represent the Legal Resource Center at functions and meetings where appropriate;
- 96 (i) maintain the integrity of the legal process by acting ethically and honestly both in
- 97 private and in public and maintaining the strictest of confidentiality;
- 98 (j) remain informed about changes to Tribal, state and federal laws, and state and federal
- 99 court and administrative hearing body decisions that may impact Indian country;
- 100 (k) develop standard operating procedures to ensure confidentiality and accommodate the
- 101 handling of potential conflicts of interest by the Legal Resource Center;
- 102 (l) promulgate rules establishing how clients apply for services and a fee schedule for
- 103 services provided by the Legal Resource Center, including a fee waiver for individuals
- 104 with a financial hardship;
- 105 (m) advise the Oneida General Tribal Council during General Tribal Council meetings;
- 106 (n) provide bi-annual training starting in FY 2018 that is open to all Tribal members and
- 107 includes, but is not limited to, training on the Oneida Code of Laws and the Judiciary's
- 108 processes and procedures; and
- 109 (o) other duties as prescribed by the Nation's laws and the Legal Resource Center's
- 110 standard operating procedures.

111

112 **811.6. Advocates**

113 811.6-1. *Qualifications.* There shall be at least two (2) full-time Advocates in the Legal
114 Resource Center. The Advocates shall be elected and have the following qualifications:

115 (a) is an enrolled Tribal member and is at least twenty-one (21) years of age on the date
116 of the election;

117 (b) have one (1) of the following from an accredited institution:

118 (1) a master's degree; or

119 (2) a bachelor's degree or associate's degree in one of the following fields of
120 study, provided that a degree in a similar field of study shall also apply:

121 (A) Criminal Justice

122 (B) Education

123 (C) Political Science (including Government, Politics or Public Policy)

124 (D) Human Rights

125 (E) Journalism

126 (F) Legal Studies

127 (G) Native American Studies

128 (H) Psychology

129 (I) Sociology

130 (J) Public Administration

131 (K) History

132 (L) Business Administration

- 133 (M) Economics or Finance
- 134 (N) Philosophy
- 135 (O) Judicial Studies
- 136 (P) Paralegal Studies
- 137 (Q) Family Law

138 (c) have at least two (2) years of experience in litigation, negotiation, or advocacy and/or
139 equivalent combination of education and experience; and

140 (d) be admitted to practice before the Judiciary.

141 811.6-2. *Election.* Advocates shall be elected to a term of three (3) years; however, during the
142 first Legal Resource Center election the following shall apply:

143 (a) the candidate with the highest number of votes shall be elected to a three (3) year
144 term.

145 (b) the candidate with the next highest number of votes shall be elected to a two (2) year
146 term.

147 (c) in the event of any tie vote, the provisions of the Oneida Election Law for resolving a
148 tie vote shall determine the outcome.

149 811.6-3. *Duties.* Advocates shall represent clients in accordance with the Professional Conduct
150 for Attorneys and Advocates law. In addition to all other duties imposed by this law and other
151 laws or rules, advocates shall:

152 (a) provide legal services;

153 (b) complete assignments given by the Supervising Attorney;

154 (c) represent the Legal Resource Center at functions and meetings where appropriate;

155 (d) maintain the integrity of the legal process by acting ethically and honestly both in
156 private and in public and maintaining the strictest of confidentiality;

157 (e) attend training and continued education;

158 (f) remain informed about changes to Tribal, state and federal laws, and state and federal
159 court and administrative hearing body decisions that may impact Indian country; and

160 (g) other duties as prescribed by the Nation's laws and the Legal Resource Center's
161 standard operating procedures.

162

163 **811.7. Standard Operating Procedures**

164 811.7-1. The Legal Resource Center is authorized to establish standard operating procedures
165 governing the operation of the office. The procedures shall not conflict with existing law,
166 including the Professional Rules of Conduct for Attorneys or Advocates law.

167

168 **811.8. Discipline and Removal**


169 811.8-1. Supervising Attorneys and Advocates shall be subject to disciplinary actions pursuant
170 to the Professional Conduct for Attorneys and Advocates law and any other laws that govern
171 discipline and/or removal.

172 811.8-2. Supervising Attorneys and Advocates shall at all times be subject to removal. When a
173 Supervising Attorney or Advocate has their admission to practice before the Judiciary revoked or
174 no longer qualifies to serve as a Supervising Attorney or Advocate, removal proceedings shall be
175 commenced in accordance with the Removal Law.

176

177 *End.*

178 Adopted – BC-_____

ONEIDA NATION	TITLE: Legislative Operating Committee Meetings SOP	ORIGINATION DATE: November 4, 2002
DIVISION: n/a	APPROVED BY THE LOC: Brandon Stevens, LOC Chairperson	
AUTHOR: Legislative Reference Office		DATE: 04/05/17

1.0 Purpose

- 1.1 The purpose of this Standard Operating Procedure is to provide the process and procedures for items which are referred or submitted to the Legislative Operating Committee for consideration and processing.

This Standard Operating Procedure was approved by the LOC on November 4, 2002 and amended November 4, 2005, October 17, 2008, May 4, 2011, August 19, 2015 and April 5, 2017.

2.0 Definitions

- 2.1 "GTC" means the General Tribal Council.
 2.2 "LOC" means the Legislative Operating Committee.
 2.3 "LPA" means the Legislative Procedures Act.
 2.4 "LRO" means the Oneida Legislative Reference Office.
 2.5 "OBC" means the Oneida Business Committee.

3.0 LOC Agenda Posting

- 3.1 The LRO shall post the LOC Agenda for the upcoming LOC meeting on the Nation's website no fewer than:
- 3.1.1 three (3) business days prior to a regular scheduled meeting;
 - 3.1.2 twenty-four (24) hours before a special meeting; or
 - 3.1.3 as soon as possible for an emergency meeting.

4.0 Submission Procedures

- 4.1 Proposal submissions.
- 4.1.1 Proposals must be submitted to the LRO pursuant to section 109.5-1 of the LPA.
 - 4.1.1.1 In order to guarantee that an item is placed on the upcoming LOC meeting agenda, the proposal must be received by 12:00 p.m. on the Thursday before an LOC meeting; it is possible that proposals received after this deadline will not be placed on the LOC agenda until the following LOC meeting packet is developed.
 - 4.1.2 Proposals must be accompanied by the following:
 - 4.1.2.1 A completed Agenda Request Form (available in the LRO and on the Nation's website).
 - 4.1.2.2 Electronic draft, if available, sent via e-mail to loc@oneidanation.org.

- 5.2 LOC Accept or Return Proposal.
- 5.2.1 The LOC shall approve a motion which either accepts the proposal by adding it to the Active Files List or which rejects the proposal by declining to add it to the Active Files List and returning the proposal to the submitter. The LOC must accept all GTC and OBC directives. If the LOC accepts the proposal, a sponsor must be assigned in accordance with 4.3. A priority level may be assigned if deemed appropriate in accordance with 4.3.2. If the LOC decides to not develop the proposal, the LOC Chairperson shall send correspondence to the submitter informing the submitter of that action. The LOC shall also send a copy of the correspondence to the LOC meeting packet (e-mail) group.
- 5.3 LOC Sponsor.
- 5.3.1 When the LOC adds a proposal to the Active Files List, the sponsor(s) shall oversee drafting and other follow-up requirements related to the proposal.
- 5.3.2 When deemed appropriate, a low, medium, or high priority level shall be assigned to each item on active files list. High priority items will be assigned a drafting attorney and a legislative analyst. Medium and low priority legislation shall remain on the Active Files List but may not be assigned a drafting attorney or legislative analyst until the legislation is moved to high priority. These decisions are recommended by the LRO Director in cooperation with LRO staff and finalized by the LOC.
- 5.4 Active Files List.
- 5.4.1 The LRO shall maintain an Active Files List to track legislation and other items the LOC is working on. The Active Files List must be formatted in an alphabetical order and for each item on the list must include
- 5.4.1.1 the date the item was added to the Active Files List;
 - 5.4.1.2 a chronological of action taken to date;
 - 5.4.1.3 the LOC sponsor; and
 - 5.4.1.4 parties interested in the item.
- 5.4.2 The LRO shall post the Active Files List on the Nation's website and shall update the list periodically.
- 5.4.2.1 Personal contact information will be redacted prior to posing on the Nation's website.
- 5.4.3 The LRO shall log all work meeting dates (except meetings with sponsors) and their attendees in the Active Files List and place a hard copy of all memos in the applicable file.
- 5.5 Follow-up Agenda Placement.
- 5.5.1 Within sixty (60) days after an item is added to the Active Files List, the LRO shall place the item on the LOC agenda for an update. The LOC shall adopt a motion to either:
- 5.5.1.1 Continue developing the proposal.
 - 5.5.1.2 Discontinue developing the proposal.
- 5.5.2 If the LOC, in accordance with the above, makes a determination to discontinue work on a proposal, correspondence shall be sent to the submitter informing the submitter of that action. The LOC shall also send a copy of the correspondence to the LOC meeting packet (e-mail) group.
- 5.5.2.1 The LOC shall formally remove the item from the Active Files List

- 7.2.2.1 Forwarding the Public Meeting Notice to the Kalihwisaks so that it may be published no fewer than ten (10) business days prior to the scheduled public meeting date.
- 7.2.2.2 Sending the Public Meeting Notice, a copy of the proposal, the legislative analysis, and the fiscal impact statement (if available) to the LOC meeting packet group via email no fewer than ten (10) business days prior to the scheduled public meeting date. The Notice must specify that all appropriate managers or directors shall direct comments to be provided during the public comment period or at a public meeting by those employees of the Nation who have special knowledge or expertise on the subject of the meeting, in accordance with section 109.8-4(a) of the Legislative Procedures Act.
- 7.2.2.3 Posting the Public Meeting Notice and the proposal on the Register no fewer than ten (10) business days prior to the scheduled public meeting date.
- 7.3 Testimony. All persons participating at the meeting shall register by signing the sign-in sheet provided by the LRO.
 - 7.3.1 Oral Testimony.
 - 7.3.1.1 The LOC shall provide any persons that have pre-registered to provide oral testimony at the public meeting the opportunity to provide testimony, in the order the pre-registrations were received, before any persons whom have not pre-registered.
 - 7.3.1.2 Persons who have not pre-registered may give testimony after all pre-registered participants have given testimony.
 - 7.3.1.3 All oral testimony may be limited, but may not be limited to fewer than five (5) minutes per person and any such limitations must be applied to all persons equally.
 - 7.3.2 Written testimony.
 - 7.3.2.1 Must be submitted within the comment period, which must remain open for no fewer than five (5) business days from the date of public meeting.
 - 7.3.2.2 Submissions can be made to the LRO or the Secretary's Office.
 - 7.3.3 After the comment period has expired, all oral and written comments must be compiled, transcribed and placed into the public meeting draft by the LRO.
 - 7.3.3.1 The public meeting draft with comments included and a cover sheet from the LRO must be placed on the LOC Agenda within thirty (30) days after the expiration of the written comment period, unless otherwise directed.
 - 7.3.4 The LOC directs further development of the proposed document where necessary:
 - 7.3.4.1 Legal review addressing special concerns;
 - 7.3.4.2 Other continued development of the proposal and/or;
 - 7.3.4.3 Second public meeting if determined by the LOC to be necessary.

8.0 Resolution, Statement of Effect, Legislative Analysis and Fiscal Impact Statement

- 10.1.2 Any outstanding legislation at the end of a term must be presented for consideration to the newly elected LOC within sixty (60) days after the new LOC takes office.
- 10.1.3 The incoming LOC Chairperson shall send a correspondence to all submitters whose items have expired, informing the submitter that the item was not assumed for sponsorship by a current LOC member and that he or she may re-submit the item to the LOC for re-consideration at a later time.



FY17 2nd Quarter Report January 1, 2017- March 31, 2017 Legislative Operating Committee (LOC)

Executive Summary

The second quarter was successful for the Legislative Operating Committee. The Oneida Business Committee was able to adopt two new laws, permanent amendments to six existing laws, and emergency amendments to one existing law. Legislation adopted includes; Oneida Nation Seal & Flag law, Community Support Fund amendments, Tobacco law amendments, Hunting, Fishing, Trapping law amendments, Per Capita law amendments, Budget Management & Control law, Real Property law amendments, Landlord-Tenant emergency amendments, and Conflict of Interest Policy amendments. The LOC also certified two sets of rules per the Administrative Rulemaking Law. Since the 2014-2017 term began, the LOC has completed forty-four (44) legislative items and prepared thirteen (13) Statements of Effect for GTC Petitions. See Table 1 for a summary of the FY17 second quarter agenda items.

The LOC’s third quarter goals are to 1) forward ten (10) items to the Business Committee for consideration, 2) plan for the remainder of this term, and 3) begin to plan for the 2017-2020 administration.

For a complete list of each LOC Members legislative items see Table3.

Table 1. SUMMARY OF SECOND QUARTER AGENDA ITEMS			
1	Budget Management and Control Law	15	Landlord-Tenant Rule 2
2	Business Committee Meetings Law	16	Legal Resource Center Governing Documents
3	Cemetery Law amendments	17	Mortgage & Foreclosure Law Rule 1
4	Code of Laws Reorganization project	18	Oneida Nation Seal & Flag Law
5	Community Support Fund amendments	19	Per Capita Law amendments
6	Conflict of Interest amendments	20	Petition: Benton-Pre-Employment Drug Testing
7	Drug & Alcohol Free Workplace Policy amendments	21	Petition: Delgado-Panel of Educators & Retention of Kindergarten Students
8	Employment Law	22	Probate Law
9	Endowments Fund amendments	23	Real Property Law amendments
10	Eviction and Termination Rules Extension request	24	Rules of Administrative Procedure
11	Hunting Fishing Trapping Law amendments	25	Tobacco Law amendments
12	Independent Contractor Policy amendments	26	Tribal Criminal Code, Tribal Traffic Code, Tribal Public Peace laws
13	Landlord-Tenant emergency/permanent amendments	27	Tribal Environmental Response
14	Landlord-Tenant rules extension request		

Table 2. MEETINGS HELD IN SECOND QUARTER

LOC MEETINGS HELD	PUBLIC MEETINGS HELD
January 4, 2017	-Conflict of Interest amendments held on January 3, 2017
January 18, 2017	-Endowments amendments held on February 16, 2017
February 1, 2017	-Drug and Alcohol Free Workplace amendments held on March 2, 2017
February 15, 2017	-Independent Contractor Policy amendments held on March 30, 2017
March 1, 2017	-Cemetery Law Amendments held on March 30, 2017
March 15, 2017	

Featured Legislation: Employment Law

At the request of the Business Committee, the LOC held a second round of Employment Law meetings. In the spring of 2016, 23 meetings were held and 424 employees attended. In January and February of this year, 8 more meetings were held, and 149 employees attended. The LOC has now held a total of 31 employee meetings, and 573 employees attended them.

- Social Services Building, January 30, 2017, 11 attended
- Division of Land Management, February 2, 2017, 19 attended
- Little Bear Development Center, February 6, 2017, 7 attended
- Oneida Health Center, February 6, 2017, 8 attended
- Skenandoah Building, February 9, 2017, 31 attended
- Gaming: Eagle Room, February 9, 2017, Exec. Conference Room (Main Casino), February 13, 2017, 55 attended
- Norbert Hill Center, February 16, 2017, 18 attended

Legislative Reference Office Activities

- Collaborated with Finance Department to develop new fiscal impact statement format and process
- Updated Public Meetings SOP
- Updated LOC Meetings SOP
- Completed Oneida Code of Laws Reorganization Project

Third Quarter Plans

- Complete the Standard Definitions Project
- Send the following items to the OBC for consideration;
 1. Audit Law amendments
 2. Business Committee Meetings Law
 3. Cemetery Law amendments
 4. Domestic Animal Ordinance amendments
 5. Drug & Alcohol Free Workplace Policy permanent amendments
 6. Endowments amendments
 7. Independent Contractor Policy amendments
 8. Landlord-Tenant permanent amendments
 9. Vehicle Driver Certification and Fleet Management Law
 10. GTC Meetings Law

Table 3.
LEGISLATIVE OPERATING COMMITTEE: ACTIVE AND COMPLETED ITEMS
Last Updated March 21, 2017

Types of Items: N= New Law, A=Amendments, B=Bylaws

Brandon Stevens, LOC Chair			
Item	Priority	Type	Active/Adoption Date
Administrative Rulemaking Amendments	High	A	Active
GTC Legal Resource Center Law	High	N	Active
Business Committee Meetings Law	High	N	Active
Employment Law	High	N	Active
Corporate Laws	High	N	Active
Sanctions & Penalties Law	High	N	Active
Election Board Bylaws Amendments	Low	A	Active
Tribal Criminal Code	Low	N	Active
Administrative Procedures Act Repeal	N/A	N	9/24/2014
Judiciary/Transition Plan Emergency Amendments	N/A	A	09-24-14-P
ONGO Amendments	N/A	A	09-09-15-A
APA Amendments	N/A	A	02-24-16-B
Eviction and Termination	High	N	10-12-16-A
Conflict of Interest	High	A	02-08-17-B
Budget Management & Control	High	N	02-08-17-C
Rules of Administrative Procedure	High	N	Removed 2/15/17

Tehassi Hill, LOC Vice Chair			
Item	Priority	Type	Active/Adoption Date
Workplace Violence Prevention	High	N	Active
Code of Ethics	High	A	Active
Domestic Animals Ordinance	High	A	Active
Law Enforcement Ordinance – Conservation Officers	Low	A	Active
Industrial Hemp Law	Low	N	Active
Tribal Traffic Code	Low	N	Active
Election Law Amendments (On 4/7/17 GTC Agenda)		A	Active
Tribal Environmental Response Program	Medium	A	Active
Leasing Law	High	A	10-26-16-C
Personnel Policies: Job Duties/Work Assignments (Emerg.)	N/A	A	09-24-14-Q
Public Use of Tribal Land (2014)	N/A	A	12-10-14-A
Motor Vehicle Registration	N/A	A	04-22-15-C
Real Property Law Amendments	N/A	A	05-13-15-B
Administrative Rulemaking	N/A	N	02-24-16-C
Election Law Emergency Amendments 2015	N/A	A	06-28-15-A
Tobacco Ordinance Amendments	Medium	A	01-25-17-B
Hunting, Fishing, Trapping Law	High	A	01-25-17-D

Jennifer Webster, LOC Member			
Item	Priority	Type	Active/Adoption Date
Drug & Alcohol Free Workplace for Elected & Appointed Officials (co-sponsor)	High	N	Active
Drug and Alcohol Free Workplace Emergency Amendments (co-sponsor)	High	A	Active
Comprehensive Policy Governing Boards, Committees, & Commissions	High	A	Active
Child Care Consumer Complaint Policy	High	N	Active
Vehicle Driver & Fleet Management	High	N	Active
Audit Law Amendments	High	A	Active
Whistleblower Law	Low	N	Active
Trust/Enrollment Committee Bylaws	Low	B	Active
Tribal Public Peace Law (co-sponsor)	Low	N	Active
Oneida Nation Seal and Flag	High	N	01-11-17-C
Rules of Appellate Procedure Amendments	NA	A	03-25-15-C
Investigative Leave Policy Amendments	NA	A	06-24-15-A
Vendor Licensing Amendments	High	A	10-12-16-E
Fitness for Duty	Medium	N	Removed 02/15/17

Fawn Billie, LOC Member			
Item	Priority	Type	Active/Adoption Date
Higher Education Scholarship	Medium	N	Active
Removal Law	High	A	Active
GTC Meetings Law	High	N	Active
Drug & Alcohol-Free Law for Elected and Appointed Officials (co-sponsor)	High	N	Active
Drug and Alcohol Free Workplace Emergency Amendments (co-sponsor)	High	A	Active
Children's Code	High	N	Active
Research Protection Act	Medium	N	Active
Guardianship Law	Low	N	Active
Personnel Commission Bylaws	Low	B	Active
Severance Law	Low	N	Active
Tribal Public Peace (co-sponsor)	Low	N	Active
Pow-wow Committee Bylaws	N/A	B	04/22/2015
Marriage Law Amendments (2015)	N/A	A	05-27-15-A
Marriage Law Amendments (2016)	N/A	A	05-25-16-A
Furlough Policy	N/A	N	11-10-15-B
Audit Committee Bylaws Amendments	N/A	B	01/20/2016

David Jordan, LOC Member			
Item	Priority	Type	Active/Adoption Date
Cemetery Law Amendments	High	A	Active
Endowment Fund Amendments	High	A	Active
Nonprofit Incorporation	Medium	N	Active
Rules of Civil Procedure	Medium	A	Active
Compliance and Enforcement Law	Low	N	Active
Secured Transactions	Low	N	Active
Land Commission Bylaws	Medium	B	Active
Landlord-Tenant Permanent Amendments	High	A	Active
Independent Contractor Policy	High	A	Active
Back Pay Amendments	High	A	10-26-16-A
Public Use of Tribal Land Amendments (2016)	N/A	A	01-13-16-C
Mortgage and Foreclosure	High	N	08-10-16-K
Garnishment Amendments	High	A	07-27-16-B
Landlord-Tenant	High	N	10-12-16-C
Community Support Fund Amendments	Medium	A	01-11-17-B
Landlord-Tenant Emergency Amendments	High	A	01-25-17-C
Real Property Amendments	High	A	02-08-17-A
Per Capita Amendments	High	A	02-22-17-D

March 2017

March 2017							April 2017						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4							1
5	6	7	8	9	10	11	2	3	4	5	6	7	8
12	13	14	15	16	17	18	9	10	11	12	13	14	15
19	20	21	22	23	24	25	16	17	18	19	20	21	22
26	27	28	29	30	31		23	24	25	26	27	28	29
							30						

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
Feb 26 - Mar 4	Feb 26	27	28	Mar 1	2	3	4
				9:00am 2:00pm FW: Administrativ 9:00am 2:00pm FW: LOC Meeting (BC_ 2:00pm 3:30pm GTC Meeting	12:15pm 2:15p m Public Meetings for the Drug and Alcohol Free Workplace Policy (BC_Conf_Ro		
Mar 5 - 11	5	6	7	8	9	10	11
				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)			
Mar 12 - 18	12	13	14	15	16	17	18
		3:00pm 4:30pm Canceled: Domestic Animal Ordinance- work meeting TODAY- NO	1:30pm 3:00pm FW: Strategy for Remainder of 3:00pm 4:00pm FW: LOC Prep Meeting (BC_Conf_Ro	9:00am 2:00pm FW: LOC Meeting (BC_ 9:00am 2:00pm LOC Meeting (BC_Conf_Ro 1:00pm 4:00pm BC Meetings			
Mar 19 - 25	19	20	21	22	23	24	25
	1:00pm 5:00pm GTC Meeting (Radisson)			8:30am 12:00a m BC Meeting (Business Committee Conference Room, 2nd Floor Norber			1:00pm 4:00pm Caucus (Business Committee Conference Room, 2nd Floor Norbert Hill Center)
Mar 26 - Apr 1	26	27	28	29	30	31	Apr 1
		GTC Meeting			12:15pm 2:15p m Public Meetings - Cemetery Law and Independent Contractors Policy (Busine		

April 2017

April 2017							May 2017						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
						1		1	2	3	4	5	6
2	3	4	5	6	7	8	7	8	9	10	11	12	13
9	10	11	12	13	14	15	14	15	16	17	18	19	20
16	17	18	19	20	21	22	21	22	23	24	25	26	27
23	24	25	26	27	28	29	28	29	30	31			
30													

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
	Mar 26	27	28	29	30	31	Apr 1
Mar 26 - Apr 1							
	2	3	4	5	6	7	8
Apr 2 - 8			10:00am 12:00pm FW: Sanctions & 3:00pm 4:00pm FW: LOC Prep Meeting (BC_	9:00am 2:00pm FW: LOC Meeting (BC_Conf_Room) - Taniquelle J.		6:00pm 10:00pm GTC (Radisson)	
	9	10	11	12	13	14	15
Apr 9 - 15				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert			
	16	17	18	19	20	21	22
Apr 16 - 22			3:00pm 4:00pm LOC prep	9:00am 2:00pm FW: LOC Meeting (BC_ 9:00am 2:00pm LOC Meeting (BC_Conf_Ro			
	23	24	25	26	27	28	29
Apr 23 - 29				8:30am 12:00am BC Meeting (Business Committee Conference			
	30	May 1	2	3	4	5	6
Apr 30 - May 6							