



# Title 1. Government and Finances – Chapter 124 MEMBERSHIP ORDINANCE Rule #2 – Voiding Unlawful Membership

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## 1.1. Purpose and Delegation

1.1-1. *Purpose.* The purpose of this rule is to create a process by which the Oneida Nation may void the membership of a Tribal member who no longer qualifies for enrollment pursuant to the Membership Ordinance under limited circumstances.

1.1-2. *Delegation.* The Membership Ordinance delegated the Oneida Trust Enrollment Committee rulemaking authority pursuant to the Administrative Rulemaking law.

## 1.2. Adoption and Authority

1.2-1. This rule was adopted by the Oneida Trust Enrollment Committee in accordance with the procedures of the Administrative Rulemaking law.

1.2-2. This rule may be amended or repealed pursuant to the procedures set out in the Administrative Rulemaking law.

1.2-3. 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.

1.2-4. 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.

1.2-5. This rule supersedes all prior rules, regulations, internal policies, or other requirements relating to the Membership Ordinance.

## 1.3. Definitions

1.3-1. 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) “Clear and convincing evidence” means that a particular fact is substantially more likely than not to be true.

(b) “Committee” means the Oneida Trust Enrollment Committee.

(c) “Department” means the Trust Enrollment Department.

(d) “Judiciary” means the judicial system responsible for applying the laws of the Oneida Nation. The three branches, as identified in resolutions BC-05-08-13-A and GTC 01-07-13-B are the Family Court, Trial Court, and Court of Appeals.

(e) “Nation” means the Oneida Nation.

(f) “Tribal Member” means an individual who is an enrolled member of the Nation.

(g) “Void” or “Voidance” means to cancel an enrollment with the resulting Tribal membership having no legal effect.

#### **1.4. Applicability.**

1.4-1. This rule applies only to future enrollments that occur after the effective date of the rule.

#### **1.5. Voiding an Unlawful Membership.**

1.5-1. *Limited Circumstances for Voiding an Unlawful Membership.* Under the following limited circumstances, an enrolled party's Tribal membership may be voided as unlawful because it does not satisfy the qualifications for enrollment pursuant to the Membership Ordinance:

- (a) When enrollment is based on a birth certificate or an acknowledgement of paternity and the father on the birth certificate or acknowledgement is later determined not to be the father based on a subsequent paternity determination by a court of competent jurisdiction and that determination affects eligibility; and/or
- (b) When the person obtained membership rights by fraud, deceit, or misrepresentation; and/or
- (c) When the person, who would otherwise not have been eligible for membership, obtained membership rights through an enrolled member who is subject to section 1.5-1(a) or (b).

1.5-2. *Initiating a Voidance.* A Tribal member or Tribal department who has knowledge of facts supporting one or more of the grounds listed in section 1.5-1(a)-(c) may initiate the voidance of the enrolled party's Tribal membership by filing a petition with the Judiciary's Trial Court.

- (a) The petition shall, at a minimum, include the following information:
  - (1) The name and address of the enrolled party in question; and
  - (2) A statement of the facts supporting that one of the grounds listed in section 1.5-1(a)-(c) has been satisfied.
- (b) In regard to taking actions under this rule, petitions filed with the Judiciary shall be served on the Department who may intervene as an interested party to either oppose or support the proposed voidance. Regardless of whether the Department intervenes, a copy of all orders issued under this section shall be forwarded to the Department.

1.5-3. *Hearing.* The Petitioner has the burden to prove by clear and convincing evidence that one of the circumstances named in section 1.5-1(a)-(c) apply to the enrolled party in question.

1.5-4. *Appeal.* Decisions of the Trial Court under this section may be appealed to the Court of Appeals in accordance with the Rules of Appellate Procedure.

1.5-5. *Final Voidance of an Enrollment.* The Department shall officially void the subject individual's enrollment and remove the individual from the Nation's tribal roll by sending a notice of official voidance including the implications of the voidance under the following circumstances:

- (a) If the time frame for filing a Notice of Appeal with the Oneida Judiciary Court of Appeals has expired; or
- (b) If a Notice of Appeal was filed, upon receipt of a determination from the Oneida Judiciary Court of Appeals regarding the voidance.

1.5-6. *Voidance Hearings Closed to the Public.* Voidance hearings shall be closed to the public.

#### **1.6. Implications of a Voided Membership.**

1.6-1. *Termination of Benefits Contingent on Tribal Membership Status.* All benefits provided by the Nation that are contingent upon Tribal member status shall be terminated upon the

voidance of enrollment. Such benefits include, but are not limited to the following:

(a) *Per Capita Payments.* A party whose enrollment is voided is no longer eligible for per capita payments, provided that payments received while enrolled are not subject to repayment.

(b) *Per Capita Trust Accounts.* Should the party whose enrollment has been voided have a balance in a per capita trust account, the balance of the account shall be redirected to the Disability Fund.

(c) *Higher Education.* A party whose enrollment is voided is no longer eligible for the higher education or trust scholarships, provided that any scholarship payments received while enrolled are not subject to repayment. While the subject individual would be able to complete any classes that have already been paid for, any future higher education expenses shall be the responsibility of the subject individual.

(d) *Voting in the Nation's Elections.* A party whose enrollment is voided is no longer eligible to vote in the Nation's elections.

(e) *Health, Vision, and Dental Services at Oneida Community Health Center.* A party whose enrollment is voided may no longer qualify for enrolled membership services provided at the Oneida Community Health Center.

1.6-2. *Future Eligibility for Enrollment.* A party whose membership is voided is not eligible for re-enrollment with the Nation unless the party meets the qualifications for enrollment.

1.6-3. *Appeal of Eligibility for Re-Enrollment.* A party that is dissatisfied with the Committee's determination of eligibility for re-enrollment may appeal that determination in accordance with the Membership Ordinance.

*End.*

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