



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA-REVISED

Business Committee Conference Room-2nd Floor Norbert Hill Center
May 2, 2018 9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be approved**
 - 1. April 18, 2018 LOC Meeting Minutes (pg. 2)
- III. Current Business**
 - 1. General Tribal Council Meetings Law (pg. 4)
 - 2. Comprehensive Policy Governing Boards, Committees and Commissions (pg. 38)
 - 3. Internal Audit Amendments (pg. 93)
 - 4. Real Property Amendments (pg. 95)
- IV. New Submissions**
 - 1. Personnel Selection Committee By-laws (pg. 128)
 - 2. Petition: G. Dallas 5k Per Capita (pg. 134)
- V. Additions**
- VI. Administrative Updates**
 - 1. Leasing Rule #1 – Residential Leases (pg. 135)
 - 2. Oneida Personnel Commission By-laws (pg. 147)
 - 3. Employment Law Update (pg. 148)
 - 4. Oneida Judiciary Rules of Civil Procedures (pg. 152)
 - 5. Military Service Employee Protection Act (pg. 254)
 - 6. Oneida Personnel, Policies and Procedures (pg. 282)
 - 7. Employee Protection Policy (pg. 352)
- VII. Executive Session**
- VIII. Recess/Adjourn**



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2nd Floor Norbert Hill Center

April 18, 2018

9:00 a.m.

Present: David P. Jordan, Daniel Guzman King, Jennifer Webster, Kirby Metoxen

Excused: Ernest Stevens III

Others Present: Brandon Wisneski, Clorissa Santiago, Tani Thurner, Jen Falck, Ed Delgado, Laura Laitinen-Warren, Lee Cornelius

I. Call to Order and Approval of the Agenda

David P. Jordan called the April 18, 2018 Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster to adopt the agenda with the deletion of the Internal Audit Amendments and the Employment Law; seconded by Kirby Metoxen. Motion carried unanimously.

II. Minutes to be Approved (3:07-3:30)

April 2, 2018 LOC minutes

Motion to approve the April 2, 2018 LOC minutes by Daniel Guzman King, seconded by Jennifer Webster; motion carried with Kirby Metoxen abstaining.

III. Current Business

~~1. Internal Audit Amendments~~

~~2. Employment Law~~

3. Petition – Metivier: Treatment Clinic (1:40 – 2:28)

Motion by Kirby Metoxen to approve and send to the Oneida Business Committee next week; seconded by Jennifer Webster. Motion carried unanimously.

IV. New Submissions

1. Oneida Personnel, Policies and Procedures (2:29 – 3:19)

Motion by Daniel Guzman King to add to the Active Files List as a high priority with David P. Jordan as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

2. Military Service Employee Protection Act (3:21- 3:47)

Motion by Kirby Metoxen to add to the Active Files list as a high priority with David P. Jordan as the Sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

V. Additions

Legislative Operating Committee Meeting Minutes of April 18, 2018

VI. Administrative Updates

1. LOC FY 18 2nd Quarter Report (3:49 – 7:02)

Motion by Jennifer Webster to approve LOC FY 18 2nd Quarter Report and forward to the Oneida Business Committee; seconded by Daniel Guzman King. Motion carried unanimously.

****note for the record:** add the reason why LOC meetings were cancelled and why there wasn't a quorum.

2. Rules of Civil Procedure (7:03 - 8:55)

Motion by Kirby Metoxen to approve the Rules of Civil Procedure to Emergency Amendment as a high priority with the same sponsor; seconded by Jennifer Webster. Motion carried unanimously.

3. Employee Protection Policy (8:55 -9:36)

Motion by Jennifer Webster to change the status to Emergency Amendment; seconded by Daniel Guzman King. Motion carried unanimously.

VII. Executive Session

VIII. Adjourn

Motion by Kirby Metoxen to adjourn at 9:09 a.m.; seconded by Daniel Guzman King. Motion carried unanimously.



Legislative Operating Committee May 2, 2017

General Tribal Council Meetings Law

Submission Date: 9/6/17	Public Meetings: n/a
LOC Sponsor: Daniel Guzman King	Emergency Enacted: n/a Expires: n/a

Summary: *This item was carried over into the current term by the LOC. This proposal is for a new law to govern the scheduling and conducting of GTC meetings, including: a standard agenda format and a code of conduct for those in attendance; outlining the duties of those preparing and assisting with GTC meetings, and establishing how petitions would be processed.*

9/6/17 LOC: Motion by Jennifer Webster to add GTC Meetings Law to the active files with Daniel Guzman King as the sponsor; seconded by Ernest Stevens III. Motion carried unanimously.

9/6/17: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa Santiago, Candice Skenandore, Maureen Perkins, Tani Thurner, Cathy Bachhuber. Drafting attorney provided an update on the status of the GTC meetings law. Next steps will be: 1) pull the current draft back, 2) conduct work meetings with the LOC for policy determinations, 3) collaborate with the Oneida Nation Secretary, and 4) conduct community outreach to garner input.

9/21/17: *Work Meeting.* Present: Daniel Guzman King, Clorissa Santiago, Jennifer Falck, Maureen Perkins, Chantre' Smith. The purpose of this work meeting was to develop a plan for outreach to the community regarding the GTC Meetings law.

9/22/17: *Work Meeting.* Present: Clorissa Santiago, Melissa Nuthals, Jennifer Falck. The purpose of this meeting was to discuss the development of survey questions for GTC Meetings law.

9/28/17: *Work Meeting.* Present: Clorissa Santiago, Jennifer Falck, Maureen Perkins, Jennifer Webster, David P. Jordan, Kirby Metoxen, Ernest Stevens, Daniel Guzman King, Lisa Liggins, Melinda Danforth. Discussed the survey, and made revisions. Discussed the upcoming community meeting and how the LOC envisioned it would be run. The survey and community meeting notice will be updated based on today's conversation.

10/16/17: *Work Meeting.* Present: Clorissa Santiago, Jennifer Falck, Maureen Perkins. The purpose of this work meeting was to review potential questions for discussion during the community meeting, and formulate a plan for how the community meeting will be run. A memorandum containing a schedule and discussion questions will be sent to the LOC for review.

10/23/17: *Work Meeting.* Present: Clorissa Santiago, Jennifer Falck, Candice Skenandore, Maureen Perkins, David P. Jordan, Kirby Metoxen, Ernest Stevens II, Daniel Guzman King, Jennifer Webster. The purpose of this meeting is to prep for the GTC Meetings law community meeting that will occur that evening from 5:00-7:00p.m. During this meeting we will review the topics of conversation for the community meeting.

Community Meeting. Present: Clorissa Santiago, Jennifer Falck, Candice Skenandore, Maureen Perkins, David P. Jordan, Kirby Metoxen, Ernest Stevens II, Daniel Guzman King,

Jennifer Webster and various members of the community. The purpose of the community meeting was to collect comments and ideas from the community regarding GTC Meetings and a potential law.

11/1/17 LOC: Motion by Kirby Metoxen approve the 60 day active files list update and continue development of all the items on the active files list; seconded by Ernie Stevens III. Motion carried unanimously.

11/15/17: *Work Meeting.* Present: Clorissa Santiago, Jennifer Falck, Maureen Perkins, David P. Jordan, Kirby Metoxen, Ernest Stevens II, Daniel Guzman King, Jennifer Webster. The LOC reviewed all comments collected from the survey and 10/23/17 community meeting and began making policy determinations regarding what issues should be addressed in a GTC Meetings law. The drafter will begin working on a draft that reflects decisions made during the meeting.

12/6/17LOC: Motion by Jennifer Webster to approve the GTC Meeting Law status update for the January 28, 2018 GTC Annual Meeting with one addition; add a web link to the update so that readers can access the full GTC Meetings Law Survey Report; including the Facebook, Oneida Nation Page, LOC Page, and Oneida Register and forward to the Secretary's Office to be included in the meeting packet; seconded by Ernest Stevens III. Motion carried unanimously.

12/28/17: *Work Meeting.* Present: Clorissa Santiago, Jennifer Falck, Owen Somers, Katsitsiyo Danforth, Dakota House, Brandon Wisneski, Maureen Perkins. The purpose of this meeting was to go over the portions of the draft of the law that involved Internal Security and discuss their impressions, concerns, and suggestions. Drafting attorney will review and incorporate suggestions into draft, and bring all concerns and suggestions to the LOC.

1/4/18: *Work Meeting.* Present: Clorissa Santiago, Jennifer Falck, Lisa Summers, Lisa Liggins, Brandon Wisneski, Maureen Perkins. The purpose of this meeting was to go the law with the Secretary and discuss her impressions, concerns, and suggestions. Drafting attorney will review and incorporate suggestions into draft, and bring all concerns and suggestions to the LOC.

1/26/18: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Maureen Perkins, Cathy Bachhuber. The LOC reviewed and discussed the first draft of the GTC Meetings law. The drafting attorney will make revisions to the law based on the LOC's decisions.

2/21/18LOC: Motion by Jennifer Webster to direct the LRO to complete a legislative analysis; seconded by Kirby Metoxen. Motion carried unanimously.

3/16/18: *Work Meeting:* Present: David P. Jordan, Jennifer Webster, Daniel Guzman, Ernest Stevens III, Clorissa Santiago, Brandon Wisneski, Cathy Bachhuber, Rosa Laster. LOC reviewed the GTC Meetings Law Update that is included in the March 19, 2018, GTC meeting agenda materials, and are prepared to discussed the matter at the GTC meeting.

3/26/17: *Work Meeting.* Present: David P. Jordan, Clorissa Santiago, Maureen Perkins. The purpose of this meeting was to review the draft analysis. Analyst will make revisions to analysis.

4/25/18: *Work Meeting.* Present: Clorissa Santiago, Maureen Perkins, Jennifer Falck. LRO staff met to review and discuss the legislative analysis.

Next Steps:

- Accept the legislative analysis and defer to a work meeting.



General Tribal Council Meetings Law

Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: LOC	SPONSOR: Daniel Guzman King	DRAFTER: Clorissa Santiago	ANALYST: Maureen Perkins
Intent of the Law	The intent of this law is to create organization and consistency for General Tribal Council (GTC) meetings.		
Purpose	The purpose of this law is to create standardized aspects of GTC meeting processes in order to create efficiency, cost and time savings.		
Affected Entities	The GTC, the Nation's Secretary, Oneida Business Committee (OBC), Business Committee Support Office (BCSO), Trust Enrollment Department, Oneida Judiciary, Oneida Law Office, Internal Security Department		
Affected Legislation	Oneida Nation Constitution, General Tribal Council Meeting Stipend Payment Policy, Oneida General Tribal Council Ten Day Notice Policy, OBC Resolution 10-26-11-C (prohibiting weapons on Tribal public property)		
Enforcement/Due Process	Internal Security Department is responsible for the enforcement of this law <i>[see 118.9-1]</i> . Any individual who fails to meet the responsibilities and requirements identified in section 118.8 may be subject to removal from the meeting area including on an emergency basis <i>[see 118.9-2 and 3]</i> . The Chairperson may request the sergeant-at-arms to remove an individual from the designated meeting area <i>[see 118.9-2(a)]</i> . An individual removed from a GTC meeting shall not be allowed to return for the duration of the meeting and shall forfeit any meeting stipend for which he or she would have been qualified, in accordance with the General Tribal Council Meeting Stipend Payment Policy <i>[see 118.9-2(b)]</i> . A member of GTC who breaches confidentiality requirements in section 118.8-6 may be removed from the meeting area, prohibited from attending a meeting, and/or imposed a fine by the Judiciary <i>[see 118.9-4]</i> . Decisions of the Trial Court are appealable <i>[see 118.9-4(c)(3)]</i> .		
Public Meeting	A public meeting has not been held this term. Public meetings were held in previous terms for previous drafts on 12/06/12, 06/26/17 and 06/29/17.		

SECTION 2. LEGISLATIVE DEVELOPMENT

A. This proposal is for a new law to govern the scheduling and conducting of GTC meetings. The law is developed according to Oneida Nation Constitutional requirements and also aligns with related legislation including: Oneida Nation Constitution, General Tribal Council Meeting Stipend Payment Policy, Oneida General Tribal Council Ten Day Notice Policy, OBC Resolution 10-26-11-C (prohibiting weapons on Tribal public property). The law includes a standard agenda format and behavioral expectations for GTC members and others in attendance at GTC meetings; outlines the duties of those preparing and assisting with GTC meetings, and establishes a process for petitions for special meetings. The goal of the GTC Meetings Law is to improve the efficiency of GTC meetings and create time and cost savings.

- 12 **B.** The LOC began working on the GTC Meetings Law in 2011 and has developed several previous
13 drafts through four terms of office. The current draft was developed through outreach with the
14 community to guide legislative development and policy decision making.
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16 **SECTION 3. CONSULTATION**

- 17 **A.** The Nation's Secretary and staff were consulted regarding the petition process, the scheduling of
18 GTC meetings, and handling of all meeting records. The Internal Security Department was consulted
19 regarding their role in ensuring safety of GTC meetings. The Oneida Law Office has responsibilities
20 to bring actions to the Oneida Judiciary regarding breach of confidentiality in the law and has not yet
21 responded to consultation efforts; however, these duties align with current responsibilities. The
22 Office of Intergovernmental Affairs assisted with the development of a community outreach survey
23 and analysis of data collected. There were ten work meetings and one community meeting held
24 during this term. There was also a survey developed and posted on the internet and also distributed
25 during a GTC meeting to collect community input prior to drafting.

- 26 • The LOC developed an outreach plan for the proposed General Tribal Council Meetings Law.
27 The primary outreach tool included a GTC Meeting Law survey. The survey was designed to
28 collect input from the community that the LOC could then use to make policy decisions to
29 guide the lawmaking.
- 30 • Surveys were collected from September 11, 2017 to October 10, 2017. The survey was sent
31 out electronically via email and Facebook. In addition, paper copies were collected at three
32 community budget meetings and the October 8, 2017 General Tribal Council Meeting. A total
33 of 291 completed surveys were collected. (see attachment 1 for summary of survey)
 - 34 ▪ The majority of people that filled out the survey;
 - 35 1. 73% have attended four or more GTC meetings in the past year
 - 36 2. 52% are very dissatisfied or dissatisfied with GTC meetings
 - 37 3. 85% strongly agree or strongly agree the change at GTC meetings is needed
 - 38 4. 74% strongly agree or agree that a GTC Meetings Law is necessary
 - 39 5. "GTC behavior" is the most commonly identified item that should be in the
40 law.
 - 41 ▪ Common themes addressed in this law from the surveys include:
 - 42 1. concern for the level of respect shown to others,
 - 43 2. concern for safety, and
 - 44 3. frustration with the meeting's exiting procedures.
- 45 • A community meeting including a pot luck meal was held on the evening of October 23, 2017
46 to collect comments and ideas from the community regarding GTC Meetings and this law.
47 Sixteen community members and four LOC members attended this community meeting.
48 Feedback from this meeting was analyzed and used to guide the development of the current
49 draft.

- 50 **B.** Current laws of the Nation that were reviewed in this analysis include the GTC Meeting Stipend
51 Payment Policy and the GTC Ten Day Notice Policy. There are no conflicts with this current draft
52 and either of these laws. Previous GTC motions were also analyzed before the current draft of the
53 law developed. The Ho Chunk Nation and the Forest County Potawatomi petition processes were
54 reviewed and compared with the Nation's petition requirements. Results of the comparison revealed
55 that Ho Chunk Nation requires a higher number of signatures from qualified voters to call a special
56 meeting while Forest County Potawatomi requires fewer. The quorum for General Tribal Council

meetings for Ho Chunk Nation (1,184) is higher than both Oneida Nation (75) and Forest County Potawatomi (roughly 100 although exact number could not be identified) (see Chart 1 for comparison).

Chart 1. Comparison of Petition Process, Quorum and Stipend

Nation	Oneida Nation	Forest County Potawatomi	Ho Chunk Nation
Total Membership	17,268 Total Members	1,400 Total Members	7,762 total members
Voting Membership	14,161 voting age members age 18 and up	Roughly 926 voting age members age 21 and up.	5,920 voting age members age 18 and up
Number of Signatures for a Special Meeting	50 Qualified Voters (0.35%)	10 qualified voters (1.07%)	1,184 Eligible Voters (20%)
Section of Establishing Document Regarding Special Meeting Petition.	<u>Constitution: Section 6.</u> The chairman or fifty (50) qualified voters may, by written notice, call special meetings of the General Tribal Council.	<u>Constitution: Article III Sec. 3.</u> The Chairman may call a special meeting of the General Council, and shall call and hold a special meeting within fifteen (15) days from receipt of a written request signed by at least ten (10) qualified voters.	<u>Constitution: Section 6. Special Meetings.</u> Special Meetings of the General Council shall be called by the President upon petition by twenty (20) % of the eligible voters, or upon written request of a majority of the Legislature, or when deemed necessary by the President. Notice shall be provided by the President for all Special Meetings of the General Council.
Number of Members for a Meeting Quorum	75 Qualified Voters	Roughly 100 qualified voters Fifteen (15) % of qualified voters.	1,184 Eligible Voters Twenty (20) % of qualified voters.
Section of Establishing Document Regarding Meeting Quorum	<u>Constitution: Section 6.</u> Seventy-five (75) qualified voters shall constitute a quorum at any regular or special meeting of the General Tribal Council.	<u>Constitution Article III Sec. 5.</u> At its annual meeting, the General council shall determine the number of qualified voters constituting fifteen (15) % of the qualified voters of the Community. The number of qualified voters so determined shall constitute a quorum for the next annual meeting and all intervening regular and special meetings.	<u>Constitution: Section 7. Procedures.</u> Twenty (20) % of the eligible voters of the Nation present in General Council shall constitute a quorum.
Stipend	\$100	\$100	\$100

SECTION 4. PROCESS

A. Additional outreach with the community was conducted before this law was drafted to gain the Community's perspective on the content of the law. The law was drafted based on this outreach. The law will now follow the legislative process by completing legislative and fiscal analyses, a public meeting to gain further feedback from the community, draft any changes to the law as decided by the LOC, and submit finalized draft law, legislative and fiscal analyses to the OBC for approval before forwarding to the GTC for final adoption.

B. The current draft of the law was sent for a legislative analysis on 2/21/18.

SECTION 5. CONTENTS OF THE LEGISLATION

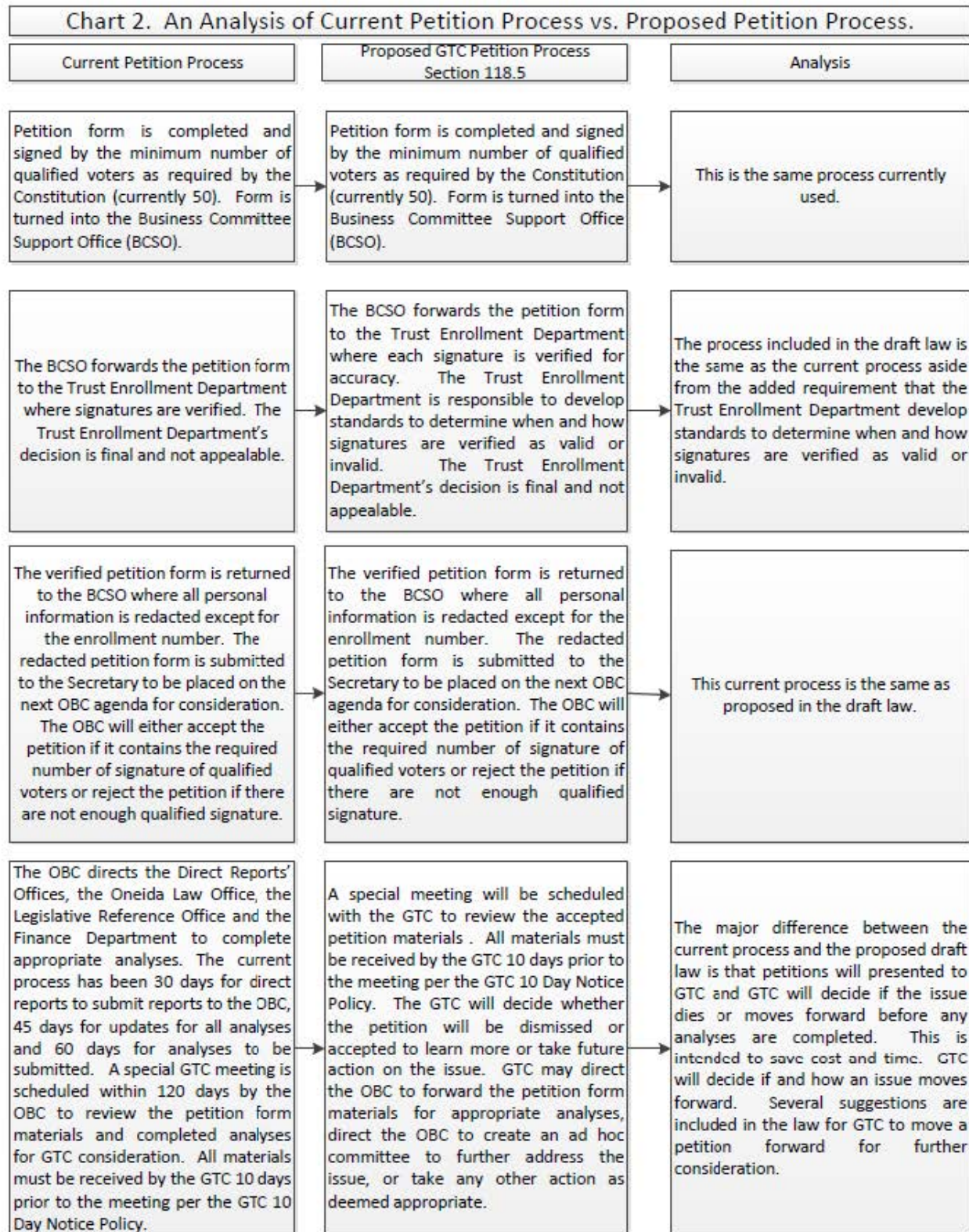
A. General Tribal Council Meeting Schedule [see 118.4]. Regular annual and semi-annual meetings will be held in January and July per the Constitution. Budget meetings will be held at least once a year and as often as necessary to adopt the Nation's budget for the upcoming fiscal year. Special meetings will be held as necessary to address GTC business, including petitions, in accordance with the Constitution. The Secretary is responsible for scheduling and organizing GTC meetings.

- This draft gives the Nation's Secretary discretion over the development of a special meeting schedule. The Nation's Secretary currently develops a schedule of open dates at the meeting facility to schedule verified petitions. This provision in the law gives the Secretary further discretion to create a schedule as the Secretary decides which can mean fewer special meeting dates and a different method for determining when petitions will be presented to the GTC.

B. Petitions [see 118.5]. The minimum number of qualified voters according to the Constitution, currently 50, may call a special meeting by submitting completed petition requests to the Business Committee Support Office. Standard petition forms will be created by the Secretary. The requirements for a completed petition are detailed in this section. The Trust Enrollment Department verifies signatures and is required to develop a standard to determine how a signature is verified as valid or invalid. The OBSO will redact all personal information for each person who signed the petition except for the enrollment number. The Secretary will place verified petitions on the OBC agenda. The OBC will either dismiss a verified petition based on lack of verified signatures or accept a petition based on a valid number of verified signatures. Accepted petitions will be scheduled and presented to the GTC to decide if the issue will be analyzed and presented to GTC for consideration or dismissed with no action. The GTC will decide how the issue will move forward for analysis if the decision is made; suggestions are included in the law.

- The current petition process requires that a legislative analysis, fiscal analysis, and legal review be completed before the GTC has an opportunity to consider the petition. Completing the analyses is expensive and takes a lot of time and resources. The recent directive that petitions must be in front of GTC within 120 days puts an additional strain on staff and resources. The proposed petition process allows the GTC to give the OBC some indication as to whether or not they are interested in learning more about a petition, or declining it before the analyses are completed, which could result in a savings in time and resources.
- The average cost of a Special GTC meeting between 2015 and 2017 was \$252,809 in addition to the cost of staff hours in completing the required analyses and reviews prior to the GTC Meeting. Under the proposed petition process; the staff hours invested in petitions will be reduced to only those petitions the GTC is interested in learning more about.

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C. Holding a GTC Meeting [see 118.6]. Regular annual and semi-annual meetings will be held in January and July per the Oneida Nation Constitution. Budget meetings will be held at least once a year and as often as necessary to adopt a budget for the upcoming fiscal year. Special meetings will be held as

necessary to address GTC business including petitions. GTC Members shall register with the Trust Enrollment Department with an Oneida Nation or state issued ID. Non-GTC members who are approved to attend shall register.

- This aligns with the General Tribal Council Meeting Stipend Payment Policy.
- Currently non-GTC attendees who attend GTC meetings are not required to register. This is a new provision that helps the Secretary keep track of attendance of non-GTC attendees.

The Secretary is responsible for maintaining the record for each meeting including the audio recording, the action report, the transcript and the minutes.

- Minutes are not currently kept due to a previous motion from the GTC floor to keep all minutes verbatim. The Secretary will now begin keeping actual minutes in addition to the verbatim transcript.

The Secretary is also responsible for including a notice that all printed materials are not to be shared or distributed to any person who is not a member of the Nation unless authorized by the Nation to access the materials.

- It isn't current practice to include a statement on each GTC packet; however there is a statement on the Member Only section of the Oneida Nation website where packets are available to Oneida Nation enrolled members that states the following:
 - The documents contained in the Members Only section are confidential and only available to tribal members. The materials contained here are not to be shared with non-tribal members.

D. GTC Meeting Agenda [see 118.7]. Detail related to the agenda for GTC meetings include descriptions of agenda items is contained in each section. The order of the proposed agenda is consistent with Robert's Rules of Order (RRO). The agenda items shall appear in the order as described except that items within each section may be moved at the adoption of the agenda. Not all sections of the agenda will be utilized each meeting.

- RRO states if Rules of Order are adopted those rules dictate the order of the agenda items. Adoption of the GTC Meetings Law would dictate the order of the agenda. The law would allow GTC Members to change the order of the agenda within sections but will not allow sections to be moved around. This decision was made to ensure agenda items are considered in a timely and orderly fashion; ensuring that tabled items are considered before new agenda items unless modified by the Secretary. This also removes the potential for political maneuvering. This is a change from current practice which allows GTC Members to manipulate the agenda before it is adopted which has impacted important agenda items from being considered in a timely manner.

The Secretary may modify the order of the agenda if action of an item is time sensitive or needed on an emergency basis for the immediate preservation of the public health, safety, or general welfare of the reservation population.

- RRO encourages this flexibility of the agenda and this provision allows for emergency and time sensitive items to be moved to the top of the agenda.

When the meeting is adjourned, items from annual and semi-annual meetings that have not been completed shall be deferred to the next annual or semi-annual meeting. Items not completed at the adjournment of a budget meeting shall be deferred to a new budget meeting.

- This is consistent with both RRO and current practice.

Items not completed by the adjournment of a special meeting shall be automatically placed on the next special meeting agenda one (1) time. If not completed by the end of the second meeting it is up to the GTC on whether or not to defer or table the item to another special meeting.

- RRO states that an item laid on the table can be taken off the table during the same session or during the next session and if not taken off the table the issue dies. Current practice has been that items not taken off the table or deferred to another meeting die at the end of that meeting.

E. Responsibilities of GTC Members [see 118.8]. GTC Members and meeting attendees are expected to behave in alignment with the Nation's core values of the Good Mind, comply with prohibition of weapons and violence, follow the designated entrance and exit plan, and comply with all facility regulations or the designated sergeant-at-arms may remove them from the meeting. GTC Members and meeting attendees are prohibited from sharing sensitive/classified information and may be prohibited from attending or removed from GTC meetings by the sergeant-at-arms if this provision is violated. Audio and video recordings are prohibited except for those who are recording for their employment. Meetings materials are prohibited from being distributed to anyone who is not a member of the Nation unless they are performing the responsibilities and duties of their employment.

- The law was drafted to include Oneida cultural teachings related to behavioral expectations. GTC members are currently expected to behave in accordance with the traditional Oneida core values expressed by The Good Mind which includes:
 - Kahletsyalúsla. The heart felt encouragement of the best in each of us.
 - Kanolukhwásla. Compassion, caring, identity, and joy of being.
 - Ka'nikuhli-yó. The openness of the good spirit and mind.
 - Ka'tshatstásla. The strength of belief and vision as a People.
 - Kalihwi-yó. The use of the good words about ourselves, our Nation, and our future.
 - TwahwahtsíláyΛ. All of us are family.
 - YukwatsístayΛ. Our fire, our spirit within each one of us.
- Weapons and violence are currently prohibited at all Nation owned buildings.
- The Internal Security Department currently regulates facilities owned by the Nation and this law reinforces their current authority.
- Meeting materials are currently prohibited from being distributed to non-members of the Nation except for work purposes. The OBC may authorize non-members employees to access GTC meeting material for work purposes through an SOP or authorize other non-members to access the materials.

F. Enforcement [see 118.9]. The Internal Security Department is delegated responsibility to enforce this law. A sergeant-at-arms shall be designated by the Internal Security Department. Penalties for violating this law include removal from a meeting and forfeit any meeting stipend, imposed a fine by the Judiciary, and/or restricted entrance to the designated meeting area temporarily or permanently. Violations of this law will be brought by the Oneida Law Office before the Trial Court of the Judiciary and decisions may be appealed according to applicable rules of procedure. The sergeant-at-arms may temporarily or permanently restrict an individual from entering the premises of the meeting facility for repeated violations of this law resulting in removal or if a person threatens the health and safety of other GTC members.

- According to RRO, the chair of the meeting has no authority to order a member removed from a meeting. Instead, the Chair can "call the member to order". The chair should then direct the Secretary to enter the offending behavior or language into the record. The Chair should then direct the offender to be seated. If the member complies the membership can drop the issue if they choose. If the member does not comply, the Chair should ask the meeting membership what

penalty should be imposed. Suggested penalties that could be imposed by the GTC include asking the offending member: to apologize, be censured, leave the meeting place for the remainder of the meeting or until prepared to apologize. Majority vote can require the member leave the meeting place until the vote is complete. Currently, the Chair has been asking the offending GTC Member to move away from the microphone or sit down and if they do not comply the Chair has been shutting the microphone down and ignoring the offending member.

- The Internal Security Department indicated that the RRO method described above is not feasible given the number of GTC Members that attend meetings and the set up of the current GTC Meeting location. Asking the GTC Membership to decide what penalties how a disruptive Member receives would cause the crowd to get agitated and the goal of the Internal Security Department is to keep the crowd as cooperative as possible. Additionally, not all members are aware that there is a disturbance happening at times due to the different rooms and also the size of the rooms. For these reasons it was decided by the LOC that the RRO method would not be used and that the Chairperson of the GTC Meeting would have the authority to direct the sergeant-at-arms to remove a disruptive GTC Member if necessary.
- There isn't currently a law regarding sharing the Nation's confidential GTC materials so although there is notice that the materials are confidential; there isn't currently a law in place to enforce this. This law serves as the mechanism to hold GTC members accountable for violations of this law.

SECTION 6. INTENT

A. The purpose of the law is to identify how the General Tribal Council will carry out its responsibilities. Meetings of the General Tribal Council are for the purpose of conducting the business of the Oneida Nation as delegated to the General Tribal Council under the Constitution and By-laws of the Oneida Nation. *[see 118.1-1]*.

- The law is intended to apply to GTC members. Members of the Oneida Nation are considered GTC members only when a duly called GTC meeting is in session. The law creates expectations for GTC members' behavior and also holds GTC members accountable by detailing how violations of conduct and also confidentiality will be enforced.
- The survey data collected prior to drafting the GTC Meetings Law indicated that 74% of survey participants agree that a GTC Meetings Law is necessary, that 57.3% indicated that GTC behavior and 57.3% indicated that safety concerns were issues that should be addressed in the law. These concerns have been addressed in the law.

SECTION 7. EFFECT ON EXISTING LEGISLATION

A. The law does not conflict with any current laws in place. The laws below were reviewed.

- The General Tribal Council Meeting Stipend Payment Policy dictates the criteria established for GTC Members to receive a stipend.
- The Oneida General Tribal Council Ten Day Notice Policy dictates the deadlines established related to GTC meeting materials.
- The Oneida Nation Constitution dictates requirements related to GTC Meetings, GTC Membership, qualified voting age, responsibilities of the Chairperson and the Secretary of the Nation.

- The OBC Resolution 10-26-11-C prohibits weapons on Tribal public property despite State of Wisconsin law allowing individuals to carry concealed weapons. The resolution prohibits carrying open or concealed handguns other firearm on Tribal on public property, including in any Tribal building, gaming or retail business, facility, construction site, vehicle or any Tribally sponsored event. Exceptions are included for performance of duty during employment. The term used for weapon in this draft law is consistent with Resolution 10-26-11-C.

SECTION 8. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

- A.** The proposed legislation creates a process regarding existing rights, privileges, benefits and obligations related to GTC meetings. The process related to the Constitutional right for qualified voters to petition for a special GTC meeting is contained in the law.
- B.** The legislation creates a process for GTC meetings which will supersede processes currently in place, as well as RRO.

SECTION 9. ENFORCEMENT

- A.** The law will be enforced by the Internal Security Department, the Oneida Law Office, and the Judiciary.
- The Internal Security Department is already delegated this authority because they are responsible for the safety of the building. The provisions of this law reinforce the ability for the Internal Security Department to act upon their delegated authority and also detail which instances the Chair of the meeting shall act and when Internal Security shall act upon their own delegated authority.
 - Oneida Law Office is delegated to bring actions before the Oneida Judiciary for violations of a breach of confidentiality related to dissemination of confidential materials. The Oneida Law Office is currently delegated authority to represent the Nation in legal matters. There is currently not a law in place to enforce this authority. This law establishes the delegated authority of the Oneida Law Office to bring violations of this law before the Judiciary.
 - Oneida Judiciary is the appropriate entity to hear cases resulting from this law because this is the entity the GTC created to enforce the laws of the Nation.
- B.** The Internal Security Department, the Oneida Law Office and the Judiciary will provide the human resources to enforce this law.
- The Internal Security Department currently provides security to the GTC meetings and this law will not change the human resources provided by this department.
 - The Oneida Law Office does not anticipate the need for any additional personnel for their role in enforcing this law.
 - The Judiciary is tasked to enforce the Nation's Code of Laws and the Trial Court and the Court of Appeals are currently fully staffed [see Judiciary law].

SECTION 10. ACCOUNTABILITY

- A.** The General Tribal Council, the Nation's Secretary, the OBC, the Internal Security Department and the Judiciary have a large role in the implementation and operation of the law.
- All GTC members are subject to the laws of the Nation.

- The draft law lacks the necessary provision for the Removal Law to create accountability for elected officials to follow this law. The Removal Law states that elected officials may be removed from office for a violating a Tribal law which specifies removal as a penalty. This penalty is not included in this draft of the GTC Meetings Law. There are currently no other laws related to penalties for elected officials (see other considerations section on page 11 of this analysis).

SECTION 11. OTHER CONSIDERATIONS

A. Section 118.8-4. *Participation.* All members of the General Tribal Council are encouraged to participate during meetings by speaking and sharing ideas, opinions, questions and concerns.

- The LOC may consider adding a provision that individual GTC members will have an opportunity to respond to questions or allegations made from the GTC floor regardless of time constraints or speaking requirements established in the law or at the adoption of the agenda. Often allegations are made against employees or officials of the Nation and these individuals deserve a chance to respond to the allegations regardless of the constraints established with the adoption of the agenda. Additionally, the LOC may want to add a provision that all accusations and allegations of any individual or entity of the organization must have factual back up as proof; and, if not, those comments are ruled out of order and removed from the record. An amendment to the main motion to adopt the agenda made at the March 19, 2017 GTC meeting detailed this requirement of all accusations and allegations made from the floor:
 - That all accusations and allegations of any individual or entity of the organization have factual back-up as proof; and, if not, those comments be ruled out of order.

B. Section 118.5-3(a). *Dismiss the Petition.* The Oneida Business Committee shall send written notice to the qualified voters within thirty (30) days of a petition dismissal informing the qualified voters that the petition was dismissed due to an insufficient number of verified signatures.

- The law establishes that all of the current number of qualified voters according to the Constitution, currently 50 or more, who sign the petition will receive notice of actions taken with regard to the petition.
- The LOC may consider providing notice in the Kalihwisaks and other official media outlets rather than burdening the BCSO to notify each qualified voter who signed a petition which is equal or greater than 50.
 - Consultation with the BCSO revealed that this process would have to be done by hand which could result in error due to inability to read handwritten addresses and also transcription error.
 - The amount of time required to inform each of the GTC members who signed the petition form would be burdensome to the BCSO.
 - In the case of a removal petition, the number of qualified voters will increase drastically as the law requires either fifty (50) or a number equal to at least thirty (30) percent of the vote cast in the previous general election; whichever is greater. The last general election had a total of 1,612 voters. Thirty (30) percent of 1,162 is equal to 484 qualified voters who must sign a removal petition. It would be a burden to the BCSO to notify each of these Members who sign a removal petition.

C. Section 118.5-4. *Scheduling a Special Meeting.* (a) The Business Committee Support Office shall

provide the qualified voters the date of the special meeting.

- The LOC may consider providing notice in the Kalihwisaks and other official media outlets rather than burdening the BCSO to notify each qualified voter who signed a petition which is equal or greater than 50.
 - Consultation with the BCSO revealed that this process would have to be done by hand which could result in error due to inability to read handwritten addresses and also transcription error.
 - The amount of time required to inform each of the GTC members who signed the petition form is burdensome to the BCSO.

D. Section 118.5-1(b). *Petition Form.* (b) The petition form shall contain the following information:

(1) Name, address, date of birth, and enrollment number of the qualified voters;

- The LOC may consider removing the address from the required information on the petition form. If the LOC decides to notify those qualified voters that signed the petition form in the Kalihwisaks rather than requiring the BCSO to notify each individual; the address is not a necessary piece of information to include on the form.

E. Section 118.7-1(j)(1) to (3). *Adjourn.* Items not completed by the adjournment of a special meeting shall be automatically placed on the next special meeting one (1) time. If not completed by the end of the second meeting it is up to the GTC on whether or not to defer or table the item to another special meeting [*see 118.7-1(j)(1) to (3)*].

- There is not an enforcement mechanism included with this provision. Will the Chair be responsible to ask if the GTC wants to hear the item again?

F. GTC Motion July 17, 2017. Motion by Linda Dallas to have General Tribal Council petitions submitted to the Tribal Secretary's Office shall be processed and a General Tribal Council meeting be convened within 120 calendar days of receipt by the Tribal Secretary's Office. Seconded by Debbie Powless. Motion carried by show of hands.

- The draft law gives the Secretary discretion for developing a schedule for GTC meetings; including special meetings. The law also schedules initial Special GTC meetings for the GTC to decide how and if submitted petitions will move forward. The law does not address the 120 calendar day GTC motion above, however; it will be the Secretary's discretion to schedule the initial GTC meeting within 120 calendar days from receipt by the Tribal Secretary's Office. It is possible to meet this deadline under the current draft.

G. Removal. The LOC may consider adding a provision that failure to follow this law by elected officials is cause for removal. The Removal Law states that an elected official can be removed for failure to follow tribal law if removal is indicated as a penalty in the law. Removal is currently the only penalty elected officials are subject to and adding this provision to the GTC Meetings Law will create accountability for elected officials to follow this law. There are currently no other laws that cover penalties for elected officials. The LOC may also want to reference "other applicable laws" in addition to the Removal Law to cover future law development related to penalties.



Legislative Operating Committee Survey Report: General Tribal Council Meeting Law

**Drafted by the Legislative Reference Office
October 2017**

Executive Summary

At the beginning of the 2017-2020 term, the Legislative Operating Committee (LOC) set a goal to increase the amount of public participation in the Nation's Legislative efforts. To that end, the Legislative Reference Office (LRO) is developing a model to increase participation using several different formats.

In September 2017, the LOC placed the General Tribal Council Meetings Law on the Active Files list and assigned Daniel Guzman King as its sponsor. The LRO began to discuss participation efforts, and chose to move forward with a survey regarding this legislation. The hope was that survey data would guide the LOC and the LRO in drafting and policy decisions.

Survey Development

The survey was developed in conjunction with the Statistician from the Intergovernmental Affairs Department. Objective questions that could guide the LOC in policy discussions were developed. The survey was not designed nor distributed to meet statistics standards. Our goal was to collect enough information to guide legislative drafting and policy decisions.

Methodology

Surveys were collected from September 11- October 10, 2017. Survey Monkey was used to collect the data. The survey was posted onto the Oneida Nation's Facebook page, daily Update Oneida e-mail, and paper copies were collected at three budget community meetings. Lastly, the LRO staff collected paper copies at the October 8, 2017 General Tribal Council meeting. Paper surveys were entered manually. A total of 291 surveys were completed. The margin of error is +/- 5.8%. This number is not statistically representative of the entire population, but it can be used to formulate policy questions and discussion.

High Level Takeaways

Common themes from the surveys include 1) changing or ending the \$100 stipend per meeting, 2) concern for the level of respect shown to others, 3) concern for safety, and 4) frustration with the meeting's exiting procedures. The majority of people that filled out the survey;

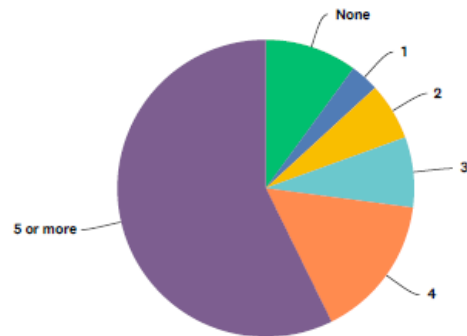
- Attend several GTC meetings per year
- Are dissatisfied with the meetings
- Feel that change is needed and a law is necessary
- Think that GTC behavior should be part of the law

A summary of survey results follow, as well as some comparative data for employees and non-employees.

1. 73% have attended four or more GTC meetings in the past year.

Q1 How many GTC meetings have you attended in the past year?

Answered: 288 Skipped: 3

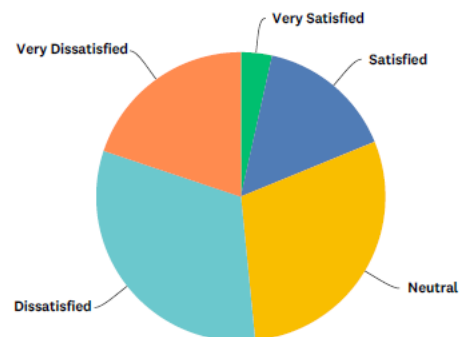


ANSWER CHOICES	RESPONSES	
None	10.07%	29
1	3.13%	9
2	6.25%	18
3	7.64%	22
4	15.63%	45
5 or more	57.29%	165
TOTAL		288

2. 52% are very dissatisfied or dissatisfied with GTC meetings.

Q2 Overall, how satisfied are you with GTC meetings?

Answered: 287 Skipped: 4

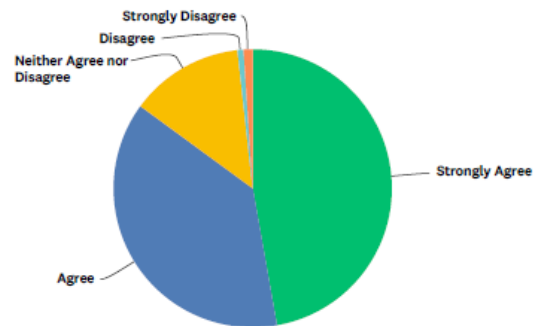


ANSWER CHOICES	RESPONSES	
Very Satisfied	3.48%	10
Satisfied	15.33%	44
Neutral	29.62%	85
Dissatisfied	31.71%	91
Very Dissatisfied	19.86%	57
TOTAL		287

3. 85% strongly agree or agree that change at GTC meetings is needed.

Q3 I believe change is needed at GTC meetings.

Answered: 288 Skipped: 3

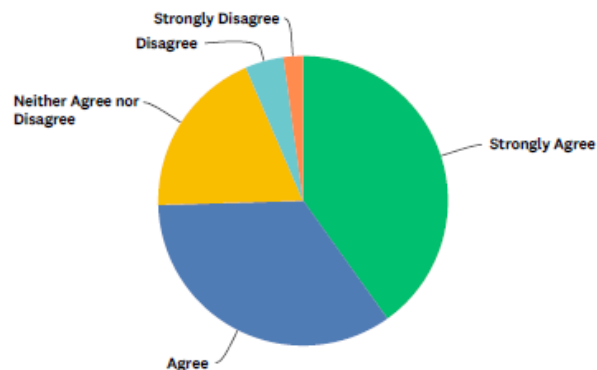


ANSWER CHOICES	RESPONSES
Strongly Agree	47.22% 136
Agree	37.85% 109
Neither Agree nor Disagree	13.19% 38
Disagree	0.69% 2
Strongly Disagree	1.04% 3
TOTAL	288

4. 74% strongly agree or agree that a GTC Meetings Law is necessary.

Q4 I believe a GTC Meetings Law is necessary.

Answered: 279 Skipped: 12

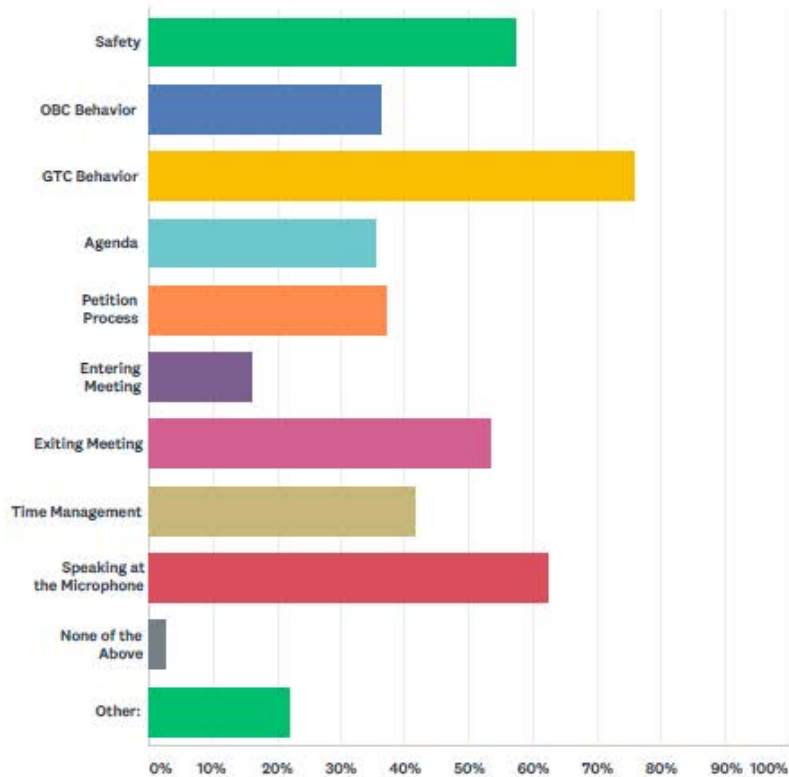


ANSWER CHOICES	RESPONSES
Strongly Agree	40.14% 112
Agree	34.41% 96
Neither Agree nor Disagree	19.00% 53
Disagree	4.30% 12
Strongly Disagree	2.15% 6
TOTAL	279

5. "GTC behavior" is the most commonly identified item that should be in the law. "Entering the meeting" is the least identified item.

Q5 Which items should be addressed in a GTC Meetings Law? (Check all that apply)

Answered: 274 Skipped: 17



ANSWER CHOICES	RESPONSES	
Safety	57.30%	157
OBC Behavior	36.50%	100
GTC Behavior	75.91%	208
Agenda	35.40%	97
Petition Process	37.23%	102
Entering Meeting	16.06%	44
Exiting Meeting	53.28%	146
Time Management	41.61%	114
Speaking at the Microphone	62.41%	171
None of the Above	2.55%	7
Other:	21.90%	60
Total Respondents: 274		

5. Continued...Other items which should be addressed in a GTC Meetings Law

#	OTHER:	DATE
1	Offer after one (1) hour off members the opportunity to leave the meeting with stipend at least (3) three times so we can measure how many people are at the GTC meeting for the stipend. If we offer this in the long term. We could possibly speed things up because the people that aren't there to participate in GTC as a body but need the money can leave and we can make good policy.	10/10/2017 11:56 AM
2	All of the above	10/9/2017 12:39 PM
3	All of above	10/9/2017 12:38 PM
4	Stipends ended	10/9/2017 12:17 PM
5	[REDACTED]	10/9/2017 12:14 PM
6	Time length person at mic & times they repeat coming to mic-people OUT IN THE HALL!-they only come for the money not the meeting-chair chatter- some are loud and make it hard to hear.	10/9/2017 12:12 PM
7	More elders & handicap should use the elder exits for their safety. Not sure why they don't. maybe have a elderly and handicap section	10/9/2017 12:08 PM
8	Covering agenda and less shenanigans at the microphone	10/9/2017 11:45 AM
9	Remove bands from those sitting in outer area	10/9/2017 11:23 AM
10	Price of food items being sold	10/9/2017 11:21 AM
11	Dialysis Center	10/9/2017 11:18 AM
12	We need clickers for voting	10/9/2017 11:13 AM
13	A law is not necessary	10/9/2017 11:11 AM
14	All of the above	10/9/2017 10:51 AM
15	All of the above	10/9/2017 9:57 AM
16	Noise in the 2 room that people can't hear people talking	10/9/2017 9:53 AM
17	Certain individuals who control our meetings.	10/9/2017 9:51 AM
18	Tabling and not completing agenda items	10/9/2017 9:48 AM
19	Food Costs	10/9/2017 9:41 AM
20	Everyone in one room	10/9/2017 9:39 AM
21	Everyone should be sitting	10/9/2017 9:37 AM
22	BC disrespect of GTC	10/9/2017 9:27 AM
23	It should be in place but doesn't need to be addressed at every meeting. Everyone should know	10/9/2017 9:26 AM
24	The noise in the overflow rooms being too loud. No one is keeping the noise down so people can hear what is going on.	10/6/2017 2:13 PM
25	NO LAW	10/5/2017 4:26 PM
26	put age 18 back to 21	10/5/2017 4:22 PM
27	All of the above	10/5/2017 4:19 PM
28	Districting/ voting/ input/ stipends	10/5/2017 4:17 PM
29	YOUTH & education	10/5/2017 4:13 PM
30	Open up the smoking area	10/5/2017 4:11 PM
31	Overflow room, baggage check, longer meeting	10/5/2017 3:57 PM
32	Laws do not replace values and manners	10/5/2017 3:52 PM

Note: Personal Information has been redacted.

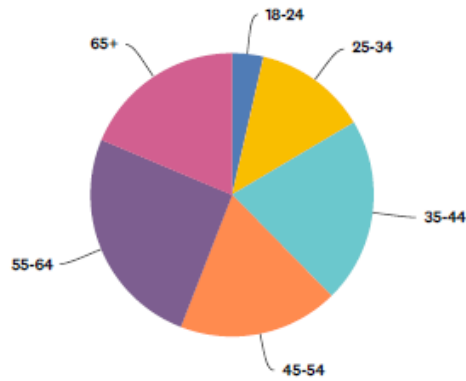
5. Continued...Other items which should be addressed in a GTC Meetings Law

33	CONDUCT	10/5/2017 3:49 PM
34	self serving	10/5/2017 9:05 AM
35	Privledged questions aren't privledged questions at all!	10/5/2017 8:46 AM
36	Chair not in charge, GC member, chairs all seem to ignore many but give mic time to relatives or plants. Used to travel 2 hours to attend but it's a waste because it's not our voice but Chair's voice.	10/4/2017 7:26 AM
37	Standing at mic! Same people always standing at the mic throughout the entire meeting!	10/4/2017 12:31 AM
38	Have an ombudsmen-type person available to walk people through the process of making a motion and speaking up at meetings. Roberts Rules of Order can be intimidating. Also, it would be great to have facilitated table-top discussions to get a lot of input very quickly on any particular topic.	10/3/2017 10:59 PM
39	Don't know what "law" would be. Totally need change.	10/3/2017 10:08 PM
40	Could we consider another method to ask questions? People at the microphone phone insert too many negative and often in true statements. Writing questions down might help.	10/3/2017 10:01 PM
41	More microphones to speak at; Orientation/greeters for those who are new to GTC meetings (such as those who just turn 18)	10/3/2017 7:30 PM
42	Bring a fact checker	10/3/2017 7:20 PM
43	Organization of the BC's agenda and controlling the GTC	10/3/2017 11:14 AM
44	Open the smoking area back up.	10/3/2017 11:09 AM
45	Stipend to attend. End it and save money	10/3/2017 11:08 AM
46	Stipend	10/3/2017 10:46 AM
47	Alcohol. I know i have many relatives that take the cards and head straight to the one stop and stock up on drinks.	10/3/2017 10:45 AM
48	someone needs to explain approving minutes. These are not acted upon, but only for reference.	10/3/2017 7:10 AM
49	Staying on course with current topic and avoiding hear say.	10/2/2017 12:39 PM
50	Stipends	10/2/2017 10:16 AM
51	All who have the pink wrist bands should exit first, anyone with the white wrist banks should remain seated until all pink have exited the room. State this new safety rule at the beginning of the meeting, and then again 1/2 hour before we adjourn. One person with a white band is allowed to leave to assist the pink band elder. not all 10 with that family, just one is needed to assist. Have Security at all the exits and have them look for the pink bands and only allow those with pink bands to exit(with the exception of one white band person to assist the pink band elder)	10/2/2017 10:12 AM
52	Not allowing people to sit in the front area ALL MEETING. Then come in door to check out and get money. Idea: Bathroom Pass for 10 minutes per person and write on wrist band time leaveing and before walking in, check time. If they are past time allotted, they are not allowed to re-enter, sign out, or get paid.	10/2/2017 9:00 AM
53	same ppl allowed to speak,interrupt others, put them out	10/2/2017 8:36 AM
54	the overflow room	10/2/2017 8:34 AM
55	only relevant issues should appear on the agenda--those that fit into the scope of the tribe's mission, vision, strat plan	10/2/2017 8:32 AM
56	Control microphones allow others to get up and talk. Certain people hog the microphones won't even sit down during the entire meeting forcing their agenda on the population. It needs to stop.	10/2/2017 8:25 AM
57	referencing individual names in regards to court hearings	10/2/2017 7:36 AM
58	Smoking area needs to be opened	10/2/2017 6:49 AM
59	Badgering of individuals or departments	10/2/2017 6:41 AM
60	Enforcement by police in all processes	10/2/2017 6:19 AM

6. Ages 55-64 are most represented and 18-24 are least represented

Q6 What is your age?

Answered: 279 Skipped: 12

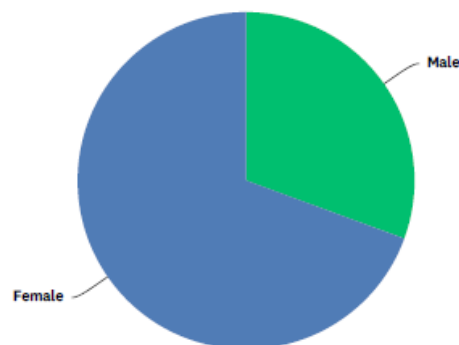


ANSWER CHOICES	RESPONSES	
Younger than 18	0.00%	0
18-24	3.58%	10
25-34	12.90%	36
35-44	21.15%	59
45-54	18.28%	51
55-64	25.45%	71
65+	18.64%	52
TOTAL		279

7. 70% of survey takers are women

Q7 What is your gender?

Answered: 281 Skipped: 10

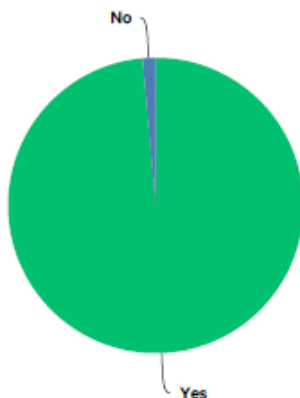


ANSWER CHOICES	RESPONSES	
Male	30.60%	86
Female	69.40%	195
TOTAL		281

8. 99% of survey takers are Oneida tribal members.

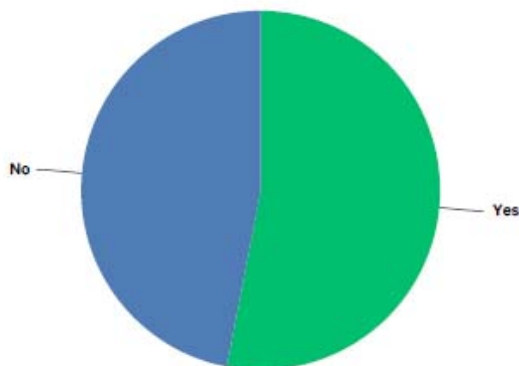
Q8 Are you an Oneida Tribal member?

Answered: 280 Skipped: 11



ANSWER CHOICES	RESPONSES	
Yes	98.57%	276
No	1.43%	4
TOTAL		280

9. 53% of survey takers are Oneida Nation employees.



ANSWER CHOICES	RESPONSES	
Yes	53.05%	148
No	46.95%	131
TOTAL		279

10. Additional comments

#	RESPONSES	DATE
1	Chairman needs to be more respectful of elders and others at the meeting.	10/10/2017 6:13 PM
2	There should be a time limit on topics such as motions, amendments, etc. No more than 40 minutes there is no reason that some topics take as long as 2 hours the get tabled. There should be a limit on how many times a person can speak, some argue just to argue. People should get 10 minutes total per meeting to speak. That way they pick their moments wisely. Meetings should be on weekends only, mid morning or afternoon. Stipends should only be gift card.	10/9/2017 4:07 PM
3	Checking in and out needs more attending	10/9/2017 12:36 PM
4	Better having people wheelchairs, scooters, walkers. Help exiting instead of people pushing on front of the handicapped people.	10/9/2017 12:35 PM
5	Exiting the meeting really need to be worked on. There is a lot of pushing, shoving, budding on line. Elderly & handicap are getting hurt because everyone young shoves there way thru. Need to break sitting one side elderly & handicap w/ helper. Other side non elderly & handicap. Security to control exiting w/ more force into keeping each half at bay.	10/9/2017 12:28 PM
6	Limit speaking at the mic.	10/9/2017 12:25 PM
7	None at this time.	10/9/2017 12:23 PM
8	Can some issues be taken up ahead of the meeting or by another smaller group?	10/9/2017 12:14 PM
9	Loud & smelly	10/9/2017 12:09 PM
10	Problem with the exit doors blocked during the meeting- this is a big safety issue.	10/9/2017 12:06 PM
11	I believe the agenda should get passed on a more timely manner & NOT to limit mtg to definite 4 hours	10/9/2017 12:00 PM
12	Less B.S. at the microphone	10/9/2017 11:45 AM
13	More Coffee	10/9/2017 11:42 AM
14	It should help the meeting move smoothly and cut down on people monopolizing the meetings, strategy to facilitate a fast & safe exit.	10/9/2017 11:27 AM
15	Table next to door just for wheelchairs.	10/9/2017 11:23 AM
16	I don't think we should get paid for these meetings.	10/9/2017 11:15 AM
17	Respecting members when they speak!!	10/9/2017 11:13 AM
18	Find a bigger facility to hold mtgs so all are in one location	10/9/2017 10:55 AM
19	Security needs to be delegated the Authority to manage lines @ mic, GTC individual behavior on behalf of the Chair.	10/9/2017 9:55 AM
20	We do need a mt. law. law on Monday night meeting. With the recent shooting in Las Vegas- I have concerns regarding our own GTC mtg for our safety-Is there a plan in place if we were to experience a active shooter situation.	10/9/2017 9:53 AM
21	Introducing new laws against the GTC is a dangerous thing.	10/9/2017 9:49 AM
22	I believe that a guideline letting people know how to act. I believe that their should be repercussions for bad behavior. We do it for kindergarteners; why not the GTC	10/9/2017 9:45 AM
23	Get the agenda before questions	10/9/2017 9:38 AM
24	None	10/9/2017 9:36 AM
25	Please be clear and concise	10/9/2017 9:34 AM

10. Additional comments continued...

26	Honor Guard Veterans should at doors making sure Elders and others get out safely.	10/9/2017 9:31 AM
27	Keep exit doors clear	10/9/2017 9:29 AM
28	GTC is the government	10/9/2017 9:27 AM
29	I believe there should be police officers NOT security at these meetings and any member of threatening behavior the person should be removed and banned from future meetings.	10/9/2017 9:17 AM
30	enforce the meeting law	10/6/2017 2:13 PM
31	Safety and security needs especially for seniors and all- to much talking & eating during meetings.	10/5/2017 4:24 PM
32	Just change age 18 back to 21. very distracting.	10/5/2017 4:22 PM
33	There has to be an overhaul of the system by which members can participate in government. There is only a few people that contribute on the floor of mtgs. There also needs to be greater role of outreach by the organization/leadership to communicate prior to mtgs so that once in session, actions are merely sanctions of previously discussed and resolved agenda items. Stipends should only be paid/ agenda NOT tabled/rescheduled/deferred items.	10/5/2017 4:17 PM
34	I do not go to GTC Meetings because I am unsure of what they are and I have a fear of new situations.	10/5/2017 4:12 PM
35	Make sure GTC completely understands what the GTC meeting law hopes to accomplish. The BC closed the smoking area because of a couple of people, unfair to all who abided by the rules- now you don't really have a place to go to let off steam, What gave the OBC the power close the smoking area.	10/5/2017 4:11 PM
36	Petitions should require 300 signatures for it to become an agenda item	10/5/2017 4:03 PM
37	Reviewing GTC mandates for effectiveness	10/5/2017 3:48 PM
38	when exiting or when registering only the ones 60 and over to get the white bracelets- people 55-60 who are healthy and are working and run over the elder in my opinion your not an elder till at least 60- people are more healthy and work in their 70's	10/5/2017 3:46 PM
39	For exiting- the volunteers should refuse to process an exit for GTC member who is not an ELDER. Elders come first. Send thy young ones back.	10/5/2017 3:42 PM
40	Budget should be passed. I'm an elder 68 my wife 70 need doors windows furnace need it now my house almost 50 years old its a health issue too	10/5/2017 1:28 PM
41	Sniping, cutting on OBC and staff is extreme More decorum and controls needed	10/5/2017 9:06 AM
42	GTC meetings of the past are so negative people making statements that are rumors and not true allowed to vent at people and be mean to employees. Don't like going until people can treat other people respectfully (everyone)	10/5/2017 8:46 AM
43	Invest in scanners for GTC meetings to scan in and out. Have elderly section- first out.	10/5/2017 8:43 AM
44	Its hard to say if a "law" is needed without knowing what is meant by that. I think the agenda should be the main driver of the meetings, not people's personal vendettas or "agendas". I believe treatment regarding time speaking, respect, sticking to topics should be consistent. I believe there shouldn't be other things going on in the meetings such as gathering signatures for petitions or selling crafts to make money in the meeting. I don't think there should be an overflow room because its turned into a "fun" room where people aren't paying attention. Finally I believe EVERYONE should be sitting in the meeting room and not standing in the halls - or they should go home. They come back in to adjourn so they can get paid. That's disrespectful.	10/4/2017 9:08 PM
45	Just do something to improve the flow and respect.	10/4/2017 7:13 PM
46	Chairman needs to be respectful to the elders!	10/4/2017 10:46 AM
47	No payout if entire agenda isn't acted upon, including if items are tabled. Get business done. Need provisions for remote viewing and voting if you're going to have evening meetings that are more than just informational.	10/4/2017 7:26 AM
48	Limits should always be enforced, the usual suspects should not be allowed to continually hijack the meetings with useless business.	10/3/2017 11:47 PM
49	Eliminate the meeting stipend. Instead, put it into an Oneida Community Foundation. Establish criteria for people to apply for grants from it. Grants offered may be related to youth leadership development, combating poverty, entrepreneurship and language and culture programs.	10/3/2017 10:59 PM

10. Additional comments continued...

50	I quit going to meetings because of the disrespect, inability to govern members and people wasting time.	10/3/2017 10:08 PM
51	We should need more than 50 signatures for a petition it should be closer to 2/3 of the average meeting attendance.	10/3/2017 10:01 PM
52	Maybe the law should be a referendum or something to vote on at an election after community input, community meetings, presentations, and a reasonable amount of information sharing and gathering and input. So it cannot be tabled indefinitely but allowed to be voted on by all eligible voters.	10/3/2017 7:30 PM
53	Support each other, but if needed, agree to disagree. Never, ever ambush others	10/3/2017 7:20 PM
54	The traffic that parks their vehicles along side of the Casino. This is an accident just waiting to happen. Customers can barely get out before or after the GTC., Customers are having drive in the opposite lane to leave the Casino. Customers walking to their cars almost get ran over. The customers can't even pull up to Valet. This is unacceptable. We talk about Customer Service . Where is the Casinos CustomerService? They are the ones who pay for your stipends Customer Service is the most important thing the employer doesn't even care about the Customers when there is a GTC MEETING. I could not believe what I saw in front of the Casino, before , and after the GTC MEETINGS. What is the Tribe going to do when someone gets ran over , or has a wreck because of the tactics are not implemented when there are GTC MEETINGS. I	10/3/2017 5:06 PM
55	I would love to see change when it comes to how we exit. Security really needs to enforce that elders and disabled go first.	10/3/2017 5:03 PM
56	Make it mandatory to give out Retail gift cards so funds stay within the Tribe.	10/3/2017 3:08 PM
57	People should be stopped playing games or standing out in the for most of the meetings	10/3/2017 1:27 PM
58	There never seems to be a real line for microphones. It takes far too long to adopt an agenda. Meeting minutes are too frequently tabled.	10/3/2017 12:09 PM
59	I wish smoking was still allowed. Make sure that no one is hanging out in the hall. People need breaks and also for food etc. I'm know I shouldn't smoke-but haven't been going to meetings because of it. My own fault-but still..thanks.	10/3/2017 11:17 AM
60	Again, attending should be a privilege to attend and not receive money for just showing up to fall asleep. Stipends should be taken away or replaced with One Stop \$50 gift cards so something goes back to the tribe.	10/3/2017 11:14 AM
61	End the stipend to attend the meetings. If people really care about their nation, this will show it.	10/3/2017 11:08 AM
62	I think meetings have been moving along better than the previous business committee but could still be better. Getting business accomplished at the meetings are priority.	10/3/2017 10:58 AM
63	It is very unsafe for people to be sitting / and or standing by the exit doors, they should be made to find a place to sit or leave. Also I think that the ppl signing out should make the young ppl get in back of the line so the elders, handicap and their helpers can get out first.	10/3/2017 10:52 AM
64	Our security needs to step up and needs to stop standing around needs more accountability for what they do. The over flow room needs to go. When checking in if you are under the influence of any drugs or alcohol don't allow them to check in its getting out of hand.	10/3/2017 10:46 AM
65	Many of the members of the GTC don't have the best interest of the tribe in mind. They need to be silenced at meetings.	10/3/2017 10:46 AM
66	Need to do something more about housing, the drug/s overdose on our reservation.	10/3/2017 10:45 AM
67	Making it easier for tribal members who have nonviolent felonies to get jobs. There are many who have changed their lives around who struggle...because of a tag	10/3/2017 10:45 AM
68	Change the amount we are paying for these meetings. Maybe do something like a scale: 1st hour you get \$25 2nd hour \$50 3rd hour \$75 stay until the end \$100 Maybe this will alleviate some of the congestion at the end of the meetings. and if a meeting ends within two hours, the membership would get paid less saving us money. Start a scanning process for entering and leaving, it takes too long to go thru these lines.	10/3/2017 7:10 AM
69	Scheduled meetings dismissed or adjourned without addressing at least one (1) item on the agenda and then holding another meeting to continue, participants would receive full stipend when attending follow up meeting, or only a portion (TBD), if the meeting ends before the agenda is approved or less than 45 minutes, participants would not receive any stipend.	10/2/2017 2:40 PM

10. Additional comments continued...

70	With the short amount of time given to each speaker having questions previously submitted and addressed to avoid lines.	10/2/2017 12:39 PM
71	I used to attend most of the GTC meetings, but have not attended in the last year due to the behavior disrespectful behavior of the GTC members and the lack of completing the business on the agenda.	10/2/2017 12:13 PM
72	I would like the microphone faced towards the crowd to eliminate the feeling of the community "against" the BC. It is a community meeting the discussion should be among the community. When hand counts are made, recounts should have to be taken until all votes equal how many signed in or within 50 of in attendance. Stipends should be eliminated and if not eliminated then to gas card only. No option for paper checks. Accounting Collections should have a cross check of members signed in during the meeting against outstanding balances due the Nation. Upon check out, their stipend amount should go to outstanding balances and notified no gas card will be given. If people are out of line they should be removed from the meeting and be issued a disorderly conduct fine.	10/2/2017 10:16 AM
73	4 hours looks like the longest that many people can stay without getting out of control. I don't like to hear OBC members threatening GTC members with being thrown out of the meeting. They have to be respectful as well to everyone. When standing for the national anthem, they cannot be seen with their hands/thumbs in the pockets. Lead by example. Perhaps, we need additional mike's placed in the back of the room so not everyone has to go all the way to the front of the room. something they decide at the last minute to share something, they get up to go and while they are walking someone else calls for the question and then they didn't get to share what they wanted to share. I do like the time lines for speakers, and one person talks on one subject until all others have been exhausted/or had their turn to speak. However, the timer should be stopped if someone else jumps in or is allowed to speak when the first person is talking - using all the first speaker's time. That is not fair. Question 8 is useless - of course I am an Oneida tribal member otherwise how did I get in the meeting. This last meeting we allowed a personal issue to be attached to one of our main motions. Unacceptable. there are other avenues to resolve this issue - such as going before the Land Commission is she really wanted to know the answer and the reasoning. It should not have been approved to go forward. It needs to be quieter in the room so people that are listening can hear the back and forth. also the overflow room needs a BC member in there at all times. Hopefully that will bring a sense of attending the meeting, and be more constructive in that room as right now, it's just a place to go to collect the \$100 Very disruptive in there.	10/2/2017 10:12 AM
74	GTC needs to be educated on Roberts Rules, maybe need our own rules and they should be simple. Also need to know tribes history, why we do things certain ways, usually because of a law.	10/2/2017 10:12 AM
75	Need Sergeant at Arms to control the crowd.	10/2/2017 9:43 AM
76	I would just like to say the last GTC meeting that I attended was the first meeting with the new chairman Tehassi Hill, and the overall meeting was run professionally and smoothly (even though his life was threatened and security seemed oblivious as to how to handle that situation). Previous GTC meetings seemed unstable and chaotic. There was an overall feeling of clique groups having hidden agendas and not sharing with the overall GTC the entire picture. I don't know how this could change, but it did seem at the last GTC meeting that I attended, that Chairman Hill was able to handle crowd control with a sense of respect and firmness without threats or insinuations, as the previous Chairwoman had done.	10/2/2017 9:19 AM
77	Need criteria for petitions and a fee for submitting the petition. Fee could be refundable if petition passes and if not, it is kept and charged as an administrative fee. Petitions need criteria to show the petitioner thought through the petition and understands that a petition that harms Oneida will not be considered (i.e. Exorbitant amount of per capita payment, destroying a corporation, damaging Oneida's reputation, requesting a new program/department that is cost prohibitive, etc.) Need to have door monitors NOT allow everyone to gang up at doors to get out. Designate two Elder and handicapped doors - one at each end of the building) and only Elders and handicapped and their service person, can check out at that line. For all meetings set a standard 4 hour meeting time and develop an agenda to accommodate a 4 hour meeting. Set microphone rules so that the same people can't dominate the meeting. One time per subject, 3 minutes to talk, no attacks on individuals, chairs for three who are waiting to talk, no seconds, etc. If it isn't in the constitution - STOP Robert's Rules of Order! Being a sovereign nation, not clear why Oneida feels they have to use an archaic process for meetings that obviously doesn't work. People manipulate it and some don't know it. Create a user friendly meeting process that could be understood by all. If anyone yells, shouts, or is disruptive to the meeting by speaking loudly when not called on - give them a warning and the next warning - escort them out the door. Stop bullying in the GTC meeting and stop allowing GTC meetings to be like a Jerry Springer episode.	10/2/2017 9:00 AM
78	This legislation needs to be a priority of the nation.	10/2/2017 8:49 AM

10. Additional comments continued...

79	Don't go to meets. I Can't stand the negativity that I hear from these meetings, plus the things that go on there-people on cells phones, out in lobbies, reading books& phones, lap tops plugged in in hallway and on them,not paying attention. Don't like politics. BC not in control or enforce the rules.	10/2/2017 8:48 AM
80	Open to knowing more about it and voting on it	10/2/2017 8:36 AM
81	Respect for our elected officials needs to be maintained.	10/2/2017 8:34 AM
82	There are too many meetings which have been allowing incomplete agendas. This holds up the work that needs to get done and costs the Nation way too much money.	10/2/2017 8:34 AM
83	The overflow room is outrageous! Seems like a bunch of people crammed into a room waiting to get \$100. Half of the Business Committee should sit in there to observe and participate. Most people in there don't listen at all, they are just killing time. I've observed over the years many times the overflow room votes opposite of the majority in the main room. And the decisions make no sense. Another option maybe is to seat people by when they arrive and only allow overflow when the main room is full. Please ensure overflow room pays attention & understands! BC staff [REDACTED] were in the room but seemed to be staring at their computers the majority of the time. If they serve no purpose, add chairs to the room because they had lots of room AND tables, and the rest of us were crammed like sardines. They did not help at all when twice someone asked in the overflow room to have it quieted down. BC staff didn't do anything. When BC staff are absorbed in their computers, it makes me wonder, are they just on facebook, or playing computer games, or surfing the web? What purpose does BC staff have in the overflow room?	10/2/2017 8:34 AM
84	The paid stipend to attend meetings is an indicator of how we (tribe) have conditioned members to behave and contribute...only when they get something for it. Many people who attend don't have a clue what is on the agenda or what they are voting for. The sense of entitlement is high without regard of what we need to contribute. Use referendum voting processes to pass laws and avoid long drawn out meetings. Use community/info sharing meetings instead to communicate. Who wants to sit in a 6 hour meeting to listen to the same people complain about the same topics?	10/2/2017 8:32 AM
85	With the new administration I appreciate the control of the no interruption and removal of disruptive persons. Exiting should be done by security control they should go church style to remove people by aisles. Of course elders and handicapped should continue to use their own exit.	10/2/2017 8:25 AM
86	Find an easier way to vote.	10/2/2017 8:21 AM
87	I purposely do not attend GTC Meetings as they are chaotic, unorganized and a huge waste of time, not to mention a drain of the Nation's resources that could be used elsewhere. If the meetings were focused on resolving an issue versus reiterating the same topics meeting after meeting and allowing the repetitive disruptive dissidents to take over the meeting, people who actually care about Oneida would attend. Currently people only attend to get a check and the majority of them do NOT know what they are voting for or against. If these issues could be resolved through a meeting law, that would be fantastic.	10/2/2017 7:57 AM
88	1) Meetings beginning earlier (weekends at 11:00 am) (evenings at 5:00 pm). 2) No time limit on meeting (meet a minimum of 6 hrs) 3) If after 4 hrs (when meetings run at least 6 hrs) if members want to leave, they could be allowed with 50% of payout by check only 4) Everyone needs to be in a seat to have their vote counted 5) Do not block the exits (currently people stand or sit in front of exits) I pray there is not ever an emergency because ppl would be trapped. 6) When members are loud (not just the overflow room) they need to be given a warning & if they continue then asked to leave 7) Maybe OPD needs to sit with membership in problem areas (should not need babysitters, but we do) 8) Request hand counts for everything that needs a vote (individuals change their minds on second count) YAW^KO for the opportunity to express what I feel may help.	10/2/2017 7:36 AM
89	Find a way for people to get there money and leave and you will have the people there that want to be there and not visit. Everyone does this! It is very disruptive to those that want the information.	10/2/2017 7:14 AM
90	The agenda is set and is always getting changed. Can you stick to the agenda I would like to attend meetings but it is a fiasco most of the time.	10/2/2017 7:03 AM
91	If a law truly needs to be developed, it needs to be done by the GTC not BC. It seems over the past 4 years that the BC wants to take control of everything and limit the GTC's ability to say and do what they feel they need to do. This is infringing on the rights of the GTC.	10/2/2017 6:49 AM
92	Only accept petition that are warranted. Too much of employee time reviewing information, making a statement of effect, mailing, GTC stipends. Overall, this cost is at least \$10-\$15 million that can be used wisely for other things. If you lived in a different municipality you go to those meetings on your own time.	10/2/2017 6:41 AM
93	I don't see how addressing behavior in the GTC meetings law will fix the meeting environment. How would this be enforceable? If the petition process is addressed in other legislation, it may be necessary to review these laws.	9/28/2017 9:05 AM

Note: Personal Information has been redacted.

Title 1. Government and Finances - Chapter 118
GENERAL TRIBAL COUNCIL MEETINGS
Latihash<@khwa> kayanl^hsla
GTC Meeting Law

118.1. Purpose and Policy
118.2. Adoption, Amendment, Repeal
118.3. Definitions
118.4. General Tribal Council Meeting Schedule
118.5. Petitions for a Special Meeting

118.6. Holding a General Tribal Council Meeting
118.7. Agenda
118.8. Responsibilities of General Tribal Council Members
118.9. Enforcement

118.1. Purpose and Policy

118.1-1. *Purpose.* The purpose of this law is to identify how the General Tribal Council will carry out its responsibilities. Meetings of the General Tribal Council are for the purpose of conducting the business of the Oneida Nation as delegated to the General Tribal Council under the Constitution and By-Laws of the Oneida Nation.

118.1-2. *Policy.* It is the policy of the Nation to hold consistent, organized General Tribal Council meetings to enable General Tribal Council members to participate and provide input in a respectful and meaningful way.

118.2. Adoption, Amendment, Repeal

118.2-1. This law was adopted by the General Tribal Council by resolution GTC#_____.

118.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

118.2-3. 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.

118.2-4. 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.

118.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

118.3. Definitions

118.3-1. 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 Committee Support Office" means the office that provides administrative support to the Oneida Business Committee.

(b) "Business day" means Monday through Friday from 8:00 a.m. through 4:30 p.m., excluding holidays recognized by the Nation.

(c) "Chairperson" means the individual elected to serve as the Chairperson of the Nation, and the Vice-Chairperson of the Nation while he or she is assuming the Chairperson's duties in the Chairperson's absence.

(d) "Constitution" means the Constitution and By-Laws of the Oneida Nation.

(e) "Entity" means a program, division, department, board, committee, commission or similar business unit of the Nation. It does not include the Oneida Business Committee.

(f) "General Tribal Council member" means an enrolled member of the Oneida Nation who is eighteen (18) years of age or older in attendance at a General Tribal Council

meeting.

(g) “Member of the Nation” means an individual enrolled in the Oneida Nation.

(h) “Nation” means the Oneida Nation.

(i) “Qualified voter” means an enrolled member of the Oneida Nation who is eighteen (18) years of age or older.

(j) “Secretary” means the individual elected to serve as the Oneida Nation Secretary.

(k) “Sergeant-at-arms” means the highest ranking member of the Internal Security Department in attendance at a General Tribal Council meeting or designee.

(l) “Weapon” means any gun, switchblade knife, knives with blades longer than three (3) inches, electric weapons, billy clubs, and any other similar instrument or device.

118.4. General Tribal Council Meeting Schedule

118.4-1. *Regular Meetings.* Annual and semi-annual meetings shall be held in January and July, in accordance with Article III, Section 4 of the Constitution.

118.4-2. *Budget Meetings.* A meeting shall be held at least once a year and as often as required for the primary purpose of adopting the Nation’s budget for the upcoming fiscal year.

118.4-3. *Special Meetings.* Special meetings shall be scheduled, as necessary in order to address General Tribal Council business, in accordance with Article III, Section 6 of the Constitution.

(a) If a special meeting is called by the Chairperson, the Secretary shall place the item on the next available Oneida Business Committee agenda for review. The Oneida Business Committee shall:

(1) approve the meeting date when the item will be considered by the General Tribal Council; and

(2) direct the appropriate parties to prepare any analyses that the Oneida Business Committee deems appropriate; including deadlines for submitting such analyses.

(b) If a special meeting is called through written notice by the minimum number of qualified voters as required by the Constitution, the process for petitions for a special meeting described in section 118.5 shall be followed.

118.4-4. *Scheduling of General Tribal Council Meetings.* The Secretary shall be responsible for scheduling and organizing meetings. The Secretary shall develop a schedule for potential special meeting dates that can be utilized if called by the Chairperson or the minimum number of qualified voters as required by the Constitution.

118.5. Petitions for a Special Meeting

118.5-1. *Petition Form.* The minimum number of qualified voters as required by the Constitution may petition to call a special meeting of the General Tribal Council by written notice by submitting a completed petition form to the Business Committee Support Office.

(a) The Secretary shall create a standard petition form and shall make the form available to any member of the Nation upon request.

(b) The petition form shall contain the following information:

(1) Name, address, date of birth, and enrollment number of the qualified voters;

(2) Telephone number and e-mail address, if available, of the qualified voters;

(3) Signatures of the qualified voters;

(4) A summary of the content of the issue to be considered at the special meeting; and

(5) Additional documents, if applicable.

118.5-2. *Petition Verification* Once a completed petition form is submitted to the Business

Committee Support Office, the Business Committee Support Office shall forward the petition form to the Trust Enrollment Department.

(a) *Valid Signatures.* The Trust Enrollment Department shall ensure that all signatures are valid by verifying that each signature on the petition form is from a qualified voter. The Trust Enrollment Department's decision to validate a signature is final and non-appealable.

(1) The Trust Enrollment Department shall develop standards to determine when and how a signature is verified as valid or invalid.

(b) The Trust Enrollment Department shall provide written notice of the verification results and a copy of the original petition form to the Business Committee Support Office after verifying the signatures. The Trust Enrollment Department shall retain a copy of the petition materials.

(c) Once the Business Committee Support Office receives the verification results from the Trust Enrollment Department, the Business Committee Support Office shall redact all personal information of each person who signed the petition form, leaving only the enrollment number visible. The Business Committee Support Office will forward the redacted petition form to the Secretary, who shall then place the item on the next available Oneida Business Committee agenda for review.

118.5-3. *Oneida Business Committee Review.* The Oneida Business Committee shall review the petition form and the verification results, and then either dismiss or accept the petition to call a special meeting.

(a) *Dismiss the Petition.* The Oneida Business Committee shall dismiss any petition for a special meeting that does not contain the required number of verified signatures from qualified voters. The Oneida Business Committee shall send written notice to the qualified voters within thirty (30) days of a petition dismissal informing the qualified voters that the petition was dismissed due to an insufficient number of verified signatures.

(b) *Accept the Petition.* The Oneida Business Committee shall accept the receipt of any petition for a special meeting that contains at least the minimum number of verified signatures from qualified voters.

118.5-4. *Scheduling a Special Meeting.* After a petition is accepted by the Oneida Business Committee, the Oneida Business Committee shall determine and approve the special meeting date when the petition issue will be considered by the General Tribal Council.

(a) The Business Committee Support Office shall provide the qualified voters the date of the special meeting.

118.5-5. *Special Meeting Packet Materials.* The special meeting packet will include the petition form materials.

118.5-6. *General Tribal Council Review.* At the special meeting the General Tribal Council shall review the petition form materials. The General Tribal Council shall take no action, except to either dismiss or accept the issue contained within the petition form materials.

(a) *Dismiss the Issue.* The General Tribal Council may dismiss any issue contained in the petition form materials if the General Tribal Council does not wish to pursue the issue.

(b) *Accept the Issue.* The General Tribal Council may accept any issue contained in the petition form materials if the General Tribal Council wishes to further pursue the issue and learn more, or take future action on the issue. If the General Tribal Council accepts an issue, the General Tribal Council may:

(1) Direct the Oneida Business Committee to forward the petition materials and

assign any analyses deemed appropriate, including, but not limited to:

(A) Legal, financial, and administrative analyses from the Law, Finance, and Direct Report Offices', and a statement of effect from the Legislative Reference Office.

(i) The Law, Finance, and Legislative Reference Office shall submit their analyses and statement of effect to the Secretary within sixty (60) days with a progress report to be submitted within forty-five (45) days;

(ii) The Direct Report Offices' shall submit all administrative analyses to the Secretary within thirty (30) days.

(2) Direct the Oneida Business Committee to create an ad hoc committee to further address the issue, or delegate the issue to the Oneida Business Committee or other entity of the Nation.

(3) Take any other appropriate action to address the issue.

118.6. Holding a General Tribal Council Meeting

118.6-1. *Notice.* Notice of a meeting shall be provided in accordance with the Oneida General Tribal Council Ten Day Notice Policy.

(a) The Secretary shall ensure that all printed meeting materials include a statement of notice identifying that meeting materials shall not be shared with, or distributed to, any person who is not a member of the Nation, unless the individual who is not a member of the Nation is authorized by the Nation to access the materials.

118.6-2. *Quorum.* The quorum for a meeting shall be established by the Constitution.

118.6-3. *Eligibility to Attend a General Tribal Council Meeting.* The following individuals are eligible to attend a meeting:

(a) Members of the Nation qualified to vote in accordance with the Constitution; and

(b) Other individuals who attend the meeting for official purposes and are approved to attend the meeting by majority vote of the General Tribal Council. The General Tribal Council shall approve each such individual to attend either all or a certain part(s) of the meeting. Such individuals shall not be permitted to vote. Such individuals shall be required to follow all provisions of this law.

118.6-4. *Registration.* All members of the Nation who attend a meeting shall follow the registration requirements as identified in the General Tribal Council Meeting Stipend Payment Policy. Individuals who are not members of the Nation, who are approved to attend the meeting for official purposes, shall register with their name, contact information, and purpose for attending the meeting.

118.6-5. *Canceling a Meeting.*

(a) The Oneida Business Committee may cancel a meeting if:

(1) Neither the Chairperson, nor the Vice-Chairperson of the Nation, can be present due to circumstances beyond their control, or

(2) Holding the meeting would endanger those individuals who attend the meeting, due to circumstances that cannot be controlled, including but not limited to, inclement weather or public health dangers.

(b) Meetings shall not be cancelled less than twenty-four (24) hours in advance of the meeting start time, unless, for good cause.

(c) Notice of a meeting cancellation shall be provided through the Nation's official media outlets, as identified by Oneida Business Committee; as well as any other practicable media outlets.

118.6-6. *Rescheduling a Meeting.*

(a) When a regular or budget meeting is canceled, the Oneida Business Committee shall re-schedule the meeting as soon as practicable.

(b) When a special meeting is canceled, the Oneida Business Committee shall either:

(1) re-schedule the meeting as soon as practicable; or

(2) place the agenda items from the meeting on the agenda for the next available meeting, as determined by the Secretary.

118.6-7. *Record.* The Secretary shall be responsible for maintaining a record for each meeting.

(a) *Audio Recording.* The Secretary shall ensure that each meeting is recorded, and that the audio recordings are available to members of the Nation within five (5) business days after a meeting.

(b) *Action Report.* The Secretary shall ensure that an action report for the meeting is created. The action report is an unofficial document that shall contain a summary of action taken by the General Tribal Council and shall be available within five (5) business days after a meeting.

(c) *Transcript.* The Secretary shall ensure a transcript of the meeting is created and available within sixty (60) days after a meeting. The transcript shall be transcribed verbatim.

(d) *Minutes.* The Secretary shall ensure draft minutes of the meeting are created and available within sixty (60) days after a meeting. The draft minutes shall contain:

(1) The start and end times of the meeting;

(2) A quorum count from the meeting;

(3) Action taken by the General Tribal Council; and

(4) Signature of the person submitting the minutes for approval.

118.7. *Agenda*

118.7-1. The agenda for the meetings shall contain the following sections. The general characteristics of each section are defined below.

(a) *Call to Order.* The Chairperson shall call meetings to order at the noticed meeting time or upon confirmation of a quorum, whichever occurs later. If a quorum has not been established within fifteen (15) minutes after the noticed meeting time, the meeting shall not be held.

(1) *Announcements.* The Chairperson may allow time, prior to the opening, for announcements to be made which do not directly relate to the agenda, provided the announcements last no more than fifteen (15) minutes.

(b) *Opening.* This portion of the agenda shall be used to present a purposeful opening statement given by an individual designated by the Chairperson, such as a prayer or other pomp and circumstance.

(c) *Adoption of the Agenda.* This portion of the agenda shall be used to adopt the agenda for that meeting. Amendments to the agenda may be made before the agenda is adopted. Any time limitations on participation shall be identified during this portion of the agenda.

(d) *Approval of Minutes.* This portion of the agenda shall be used to approve the minutes of each meeting of the General Tribal Council.

(e) *Unfinished Business.* This portion of the agenda shall be used when agenda items

from prior meetings were not completed.

(f) *Tabled Business*. This portion of the agenda shall be used when an agenda item has been specifically tabled from a prior meeting. The item on the agenda shall be clearly labeled as a tabled action and the date of the meeting at which it was tabled shall be noted.

(g) *New Business*. This portion of the agenda shall be used for any new business brought before the General Tribal Council.

(h) *Reports*. This portion of the agenda shall be used for any reports to the General Tribal Council. All reports shall conform to the format and contain information as required by the Oneida Business Committee. Each entity and Tribally-chartered corporation shall file an Annual and Semi-Annual Report with the Business Committee Support Office to be made available to members of the Nation, either electronically or through inclusion in the meeting materials provided to members of the Nation.

(i) *Other*. This portion of the agenda shall be used for any other business of the General Tribal Council that does not fit into other portions of the agenda.

(j) *Adjourn*. This portion of the agenda shall adjourn the meeting.

(1) Items not completed before the adjournment of an annual or semi-annual meeting shall be deferred to the next annual or semi-annual meeting.

(2) Items not completed by the adjournment of a budget meeting shall be deferred to a new budget meeting.

(3) Items not completed by the adjournment of a special meeting shall be automatically placed on the next special meeting one (1) time. If the item is not completed by the adjournment of the second special meeting it is put to the General Tribal Council on whether or not to defer or table the item to a subsequent special meeting.

118.7-2. The meeting agenda shall follow the prescribed order found in section 118.7-1(a)-(j). The order of agenda sections shall not be modified. The order of items within each agenda section may be modified.

(a) *Exception*. The Secretary may modify the order of the agenda if action for an agenda item is time sensitive or is needed on an emergency basis for the immediate preservation of the public health, safety, or general welfare of the reservation population.

118.7-3. The meeting agenda shall only contain sections that contain business that must be addressed during that meeting. Not all sections of the agenda will be addressed at every meeting.

118.8. Responsibilities of General Tribal Council Members

118.8-1. *Behavior of General Tribal Council Members*. All members of the General Tribal Council shall behave in a manner that exhibits and upholds the Nation's core values of The Good Mind as expressed by Onoyotea:ka, which include:

(a) Kahletsyal&sla. The heart felt encouragement of the best in each of us.

(b) Kanolukhw@sla. Compassion, caring, identity, and joy of being.

(c) Ka>nikuhli=y%. The openness of the good spirit and mind.

(d) Ka>tshatst^sla. The strength of belief and vision as a People.

(e) Kalihwi=y%. The use of the good words about ourselves, our Nation, and our future.

(f) Twahwahts\$lay<. All of us are family.

(g) Yukwats\$stay<. Our fire, our spirit within each one of us.

118.8-2. *Prohibition of Weapons and Violence*. All members of the General Tribal Council shall adhere to the prohibition of weapons and violence at meetings.

(a) *Weapons*. No member of the General Tribal Council shall carry a weapon, whether in the open or concealed, at a meeting.

(1) *Exception*. An individual actively engaged in the performance of the duties of their employment may carry a required weapon.

(b) *Violence*. No member of the General Tribal Council shall engage in any behavior that intentionally inflicts, attempts to inflict, or threatens to inflict damage to property, or emotional or bodily harm on another person.

118.8-3. *Entering and Exiting a Meeting*. The Chairperson shall develop a safe and orderly plan for entering and exiting a meeting that shall be followed by all members of the General Tribal Council.

118.8-4. *Participation*. All members of the General Tribal Council are encouraged to participate during meetings by speaking and sharing ideas, opinions, questions and concerns.

(a) During the adoption of the meeting agenda, the General Tribal Council may determine if a time limit for participation is necessary and if so, identify the time limit.

(b) Whenever a time limit is established, a General Tribal Council member will have up to the allotted time to ask questions or make a statement concerning the topic at hand. Once that time expires or the General Tribal Council member yields the floor, that General Tribal Council member must wait until all other members have had an opportunity to speak on that topic before making additional comments.

118.8-5. *Facility Regulations*. All members of the General Tribal Council shall abide by all policies and regulations of the facility in which the meeting is held.

118.8-6. *Confidentiality*. Meetings are a forum for the governing body of the Nation to gather and discuss matters related to the Nation, including but not limited to, policy making, internal governance, and business strategy. Information provided and shared at meetings is considered sensitive; and should be treated as confidential. To ensure confidentiality is maintained, the following shall apply:

(a) No person shall make or disseminate any audio or video recording within the designated meeting area.

(1) *Exception*. An individual actively engaged in the performance of the duties and responsibilities of their employment may make and disseminate audio or video recordings.

(b) No person shall disseminate any meeting materials, including but not limited to, meeting packets and meeting minutes, to any individual who is not a member of the Nation, unless the individual who is not a member of the Nation is authorized by the Nation to access the materials.

(c) The Oneida Business Committee may establish a standard operating procedure that authorizes employees of the Nation who are not members of the Nation access to meeting materials as may be necessary for performing the responsibilities and duties of their employment, and/or authorize any non-member of the Nation access to meeting materials.

118.9. Enforcement

118.9-1. *Internal Security*. The Nation's Internal Security Department, under direction of the sergeant-at-arms, shall be responsible for the enforcement of this law. Internal Security shall oversee the security of the meeting, ensure the safety of all present, and enforce the designated meeting area boundaries.

118.9-2. *Removal of an Individual*. A member of the General Tribal Council who fails to meet

the responsibilities and requirements provided in section 118.8 of this law may be subject to removal from the designated meeting area. An Internal Security officer shall address any General Tribal Council member exhibiting behaviors that do not meet the standards provided in this law. If the individual continues to exhibit adverse behavior, the sergeant-at-arms may remove the individual.

(a) The Chairperson may request the sergeant-at-arms to remove an individual from the designated meeting area.

(b) An individual removed from the designated meeting area shall not be allowed to return for the duration of the meeting and shall forfeit any meeting stipend for which he or she would have been eligible, in accordance with the General Tribal Council Meeting Stipend Payment Policy.

118.9-3. Emergency Removal of an Individual. If the behavior of an individual has the potential to result in an immediate danger to the health and safety of any General Tribal Council member, the sergeant-at-arms may take immediate action to remove the disorderly or disruptive person.

118.9-4. Breach of Confidentiality. A member of the General Tribal Council who breaches the confidentiality requirements provided for in section 118.8-6 may be:

(a) removed from the designated meeting area if making audio or visual recordings or disseminating information or materials during a meeting;

(b) prohibited from attending a meeting if found disseminating information and materials in advance of a scheduled meeting; or

(c) imposed a fine by the Oneida Judiciary for disseminating information or materials after a meeting.

(1) The Oneida Law Office, acting on behalf of the Nation, is delegated the responsibility to bring actions before the Judiciary when there is a violation of this section.

(A) An individual who is aware of a breach of confidentiality may inform the Oneida Law Office.

(2) The Trial Court of the Judiciary shall conduct a hearing, and if the Trial Court determines there has been a violation, shall impose the appropriate penalty.

(3) The Trial Court's decision may be appealed in accordance with the applicable rules of procedure.

118.9-5. Restricting Entrance of a Disorderly or Disruptive Person. The sergeant-at-arms may temporarily or permanently restrict an individual from entering the premises of the meeting facility for any of the following:

(a) A person is repeatedly removed from the designated meeting area for disorderly or disruptive behavior; or

(b) The behavior of a person reaches such a severe level that restricting the individual from entering the designated meeting area is necessary for the protection of the health and safety of all other General Tribal Council members.

End.

Adopted – GTC#



Legislative Operating Committee
May 2, 2018

Comprehensive Policy Governing Boards, Committees and Commissions Amendments

Submission Date: 9/6/17	Public Meetings: n/a
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a Expires: n/a

Summary: *This item was carried over from the last two terms. Amendments were originally requested to: prohibit individuals from serving on multiple boards, committees and commissions at one time; set term limits; and prohibit Tribal employees from serving on tribal boards, committees and commissions.*

9/6/17 LOC: Motion by Jennifer Webster to add Comprehensive Policy Governing Boards, Committees, and Commissions Amendments to the active files list with Jennifer Webster as the sponsor; seconded by Ernest Stevens III. Motion carried unanimously.

9/6/17: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Candice Skenandore, Maureen Perkins, Tani Thurner, Cathy Bachhuber. Drafting attorney provided an update on the status of Comprehensive Policy Governing Boards, Committees and Commissions amendments. Next steps will be: 1) pull the current draft back, 2) have work meetings with LOC for policy determinations, 3) conduct work meetings with boards, committees and commissions for input.

9/21/17: *Work Meeting.* Present: Jennifer Webster, Clorissa Santiago, Candice Skenandore, Jennifer Falck, Daniel Guzman King, Chad Wilson, Carol Silva, Gene Danforth, Mary Ann Krueheleg, Dakota Webster, Bonnie Pigman, Louis Powless, Lois Strong, Patricia Lassila, Raquel Hill, Laura Manthe, Lee Cornelius, Chaz Wheelock, Carol Elm. The purpose of this meeting was to collect input from members of boards, committees, and commissions on how to improve the currently effective law. Written comments will be accepted until October 11, 2017, and then all information will be compiled and brought back to the LOC.

10/2/17: *Work Meeting.* Present: Jennifer Webster, Clorissa Santiago, Candice Skenandore, Lee Cornelius, Stephen Webster, Brooke Doxtator. The purpose of this meeting was to collect input from the Oneida Nation Secretary's Office, and the Business Committee Support Office on how to improve the currently effective law.

10/27/17: *Work Meeting.* Present: Kirby Metoxen, Jennifer Webster, Cathy Bachhuber, Jennifer Falck, Daniel Guzman King, Candice Skenandore, Clorissa Santiago, Rosa Laster, Rae Skenandore. The purpose of this meeting was to go through the comments/suggestions collected from the boards, committees and commissions; BC Support Office and previous drafts to make policy considerations for the new proposed draft.

11/1/17 LOC: Motion by Kirby Metoxen approve the 60 day active files list update and continue development of all the items on the active files list; seconded by Ernie Stevens III. Motion carried unanimously.

Work Meeting. Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Clorissa Santiago, Candice Skenandore, Jennifer Falck, Maureen Perkins, Rae Skenandore. The purpose of this meeting was to continue going through the comments/suggestions collected from the boards, committees and commissions; BC Support Office and previous drafts to make policy considerations for the new proposed draft.

2/2/18: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Rosa Laster, Cathy Bachhuber. The LOC reviewed and discussed the first draft. Drafting attorney will update law to reflect revisions discussed. A LOC work meeting to discuss stipends will be scheduled, as well as a work meeting with all boards, committees, and commissions to review first draft.

2/15/18: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Rosa Laster, Cathy Bachhuber. The purpose of this meeting was to go over the current reality of stipends, and discuss how the LOC wants to proceed with stipends in the future, so that the resolution containing stipend information can be drafted. The conversation on stipends in regards to hearings will be continued at another work meeting, and the drafting attorney will begin drafting the resolution.

2/22/18: *Work Meeting.* Present: Jennifer Webster, Daniel Guzman King, Jennifer Falck, Clorissa Santiago, Dale Webster, Lois Strong, John Breuninger, Floyd Hill, Bonnie Pigman, Matt W. Denny, Vicki Cornelius, Raw Skenandore, Carol Silva, Brooke Doxtator, Carol L. Elm, Mark Powless, Dylan Benton, Maureen Perkins. The purpose of this meeting was to go over the members of the various boards, committees, and commissions opinion, comments, concerns, and suggestions on the proposed drafted amendments. The drafting attorney will take all comments and suggestions to the LOC for review and consideration.

3/2/18: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Clorissa Santiago, Brandon Wisneski, Laura Laitinen-Warren, Lisa Summers. The LOC reviewed and considered all comments received from the boards, committees, and commissions. The drafting attorney will make all revisions the LOC determined were necessary.

3/16/18: *Work Meeting:* Present: David P. Jordan, Jennifer Webster, Daniel Guzman, Ernest Stevens III, Clorissa Santiago, Brandon Wisneski, Cathy Bachhuber, Rosa Laster. LOC reviewed revisions made based on the last LOC work session and directed changes be made, and that the draft be e-poll on March 21, 2018, so that the LOC may direct that the legislative analysis be completed.

3/21/18: *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Brooke Doxtator, Tony Doxtator, Victoria Krueger. The purpose of this work meeting was to discuss the requirement in the current draft that all BCC members have an official Oneida email, that is different than their employee email address, if applicable. The goal was to obtain an IT perspective on this issue from MIS, and to discuss the realities, challenges, and timelines this requirement will result in. The group will meet again to discuss this issue in a couple weeks, once the various MIS departments have an opportunity to meet further.

4/2/18 LOC: Motion by Daniel Guzman King to accept the draft of the Comprehensive Policy Governing Boards, Committees, and Commissions amendments and direct that a legislative analysis be completed; seconded by Jennifer Webster Motion Carried unanimously.

4/11/18: *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Brooke Doxtator, Tony Doxtator, Stephen Webster, James Sommerfeldt, Jesse Kujawa, Chad Mrotek. The purpose of this work meeting was to discuss the questions and concerns regarding the provision of the law that says an email address must be provided to every BCC member, and discussion on how to implement this matter.

4/25/18: *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Jennifer Falck. LRO staff met to review and discuss the legislative analysis.

Next Steps:

- Accept the legislative analysis and defer to a work meeting.



Amendments to Comprehensive Policy on Boards, Committees and Commissions Legislative Analysis

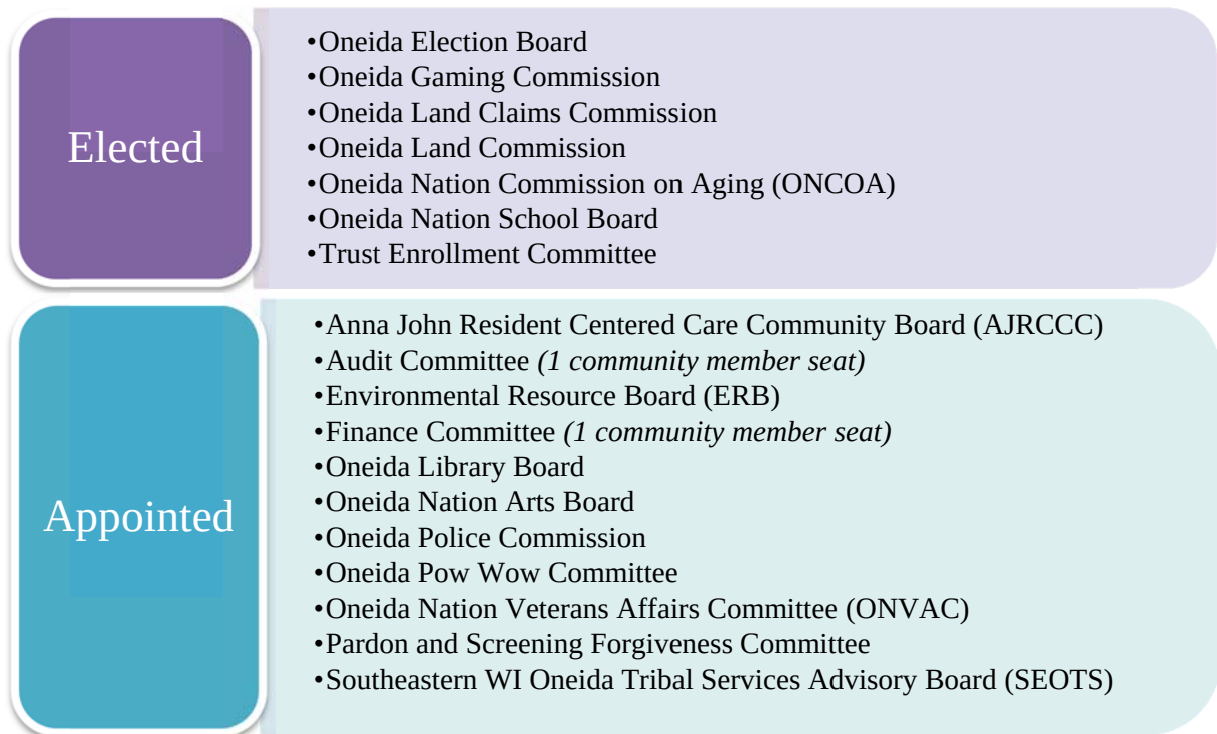
SECTION 1. BACKGROUND

REQUESTER: LOC	SPONSOR: Jennifer Webster	DRAFTER: Clorissa Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	When added to the Active Files list in 2013, the original intent of the amendments was to prohibit individuals from serving on multiple boards, committees and commission at one time; set term limits; and prohibit Tribal employees from serving on tribal boards, committees and commissions. The current intent of the amendments is to update requirements for bylaws, reporting, and stipends, among other changes.		
Purpose	To govern the procedures regarding boards, committees and commissions of the Nation, including appointment and election, creation of bylaws, maintenance of official records, and compensation. <i>[see Boards, Committees and Commissions, 1 O.C. 105.1-1]</i>		
Affected Entities	Anyone serving on a Board, Committee or Commission of the Nation. Anyone applying to serve on a Board, Committee, or Commission of the Nation. Political appointees. This law references the duties of the Business Committee Support Office, the Nation's Secretary, the Nation's Chairperson, the Oneida Election Board, Purchasing Department, Management Information Service (MIS) Department, and Records Management Department. This law does not apply to the Oneida Business Committee or Tribal corporations.		
Affected Legislation	Election law, Removal law, Conflict of Interest law, Code of Ethics, Computer Resources Ordinance, Social Media Policy, Travel and Expense Policy, Oneida Nation Gaming Ordinance, and bylaws of all boards, committees and commissions of the Nation.		
Enforcement/Due Process	A member of an entity that violates this law may be subject to sanctions and penalties in accordance with any laws and policies of the Nation governing sanctions and penalties. A member of an elected entity may be subject to removal pursuant to the Removal Law. A member of an appointed entity may be subject to termination of appointment by the Oneida Business Committee. Candidates for appointment or election may be disqualified from taking office. <i>[see Boards, Committees and Commissions, 1 O.C. 105.17]</i>		
Public Meeting	A public meeting has not yet been held.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. These amendments set new standards for entity bylaws, update reporting requirements, update the appointment process to increase feedback from entities and BC members, provide official email addresses for members of entities, set a procedure for the creation of new entities, sets a new procedure to set stipend amounts by resolution, among other changes.
- B. The following chart lists the Boards, Committees and Commissions of the Nation that are governed by this law:

Chart 1. Boards, Committees and Commissions of the Oneida Nation



SECTION 3. CONSULTATION

- A. The Business Committee Support Office, Records Management, MIS and representatives from the following Boards, Committees and Commissions were consulted in the development of this law: Environmental Resource Board, Police Commission, Oneida Nation Commission on Aging, Oneida Nation School Board, Oneida Election Board, Land Claims Commission, Trust Enrollment Committee, Oneida Veterans Affairs Committee, Gaming Commission, Pow-wow Committee, Land Commission, Oneida Library Board. All boards, committees and commissions were invited to participate in two work meetings scheduled outside of normal business hours to meet their needs.
- B. The Election Law, Removal Law, Conflict of Interest Law, Code of Ethics, Computer Resources Ordinance, Social Media Policy, Travel and Expense Policy, and Oneida Nation Gaming Ordinance were reviewed in drafting this analysis. In addition, the following bylaws were reviewed: Oneida Election Board, Oneida Land Claims Commission, Oneida Land Commission, ONCOA, Oneida Nation School Board, Trust Enrollment Committee, Anna John Resident Centered Care Community Board, Finance Committee, Arts Board, Audit Committee, Environmental Resource Board, Oneida Library Board, ONVAC, Pardon and Forgiveness Screening Committee, Police Commission, Pow-wow Committee and Southern WI Oneida Tribal Services Advisory Board (SEOTS).

SECTION 4. PROCESS

- A. This law has followed the process set forth in the Legislative Procedures Act (LPA).
- B. The law was originally added to the Active Files list on April 3, 2013 and has been carried over from the previous two terms. The law was re-added to the Active Files List on September 17, 2014 and again on September 6, 2017.

C. At the time this legislative analysis was developed, the following work meetings were held/scheduled regarding the most recent efforts to develop this law and legislative analysis:

- September 6, 2017: LOC
- September 21, 2017: LOC, BC Support Office, and representatives from the following Boards, Committees and Commissions: Election Board, Environmental Resource Board, Land Claims Commission, Police Commission, ONCOA, and Trust Enrollment. In addition, the Oneida Nation School Board submitted written comments.
- October 2, 2017: BC Support Office
- October 27, 2017: LOC
- February 2, 2018: LOC
- February 22, 2018: LOC, BC Support Office, and representatives from the following Boards, Committees and Commissions: Election Board, Gaming Commission, Land Commission, Library Board, ONCOA, ONVAC, Police Commission, Pow-wow Committee, and Trust Enrollment. In addition, Environmental Resource Board submitted written comments.
- March 2, 2018: LOC
- March 21, 2018: BC Support Office and Oneida Management Information Services (MIS)
- April 11, 2018: BC Support Office and MIS

SECTION 5. CONTENTS OF THE LEGISLATION

A. **Title.** The title of the law has been changed from “Comprehensive Policy on Boards, Committees and Commissions” to “Boards, Committees and Commissions.”

B. **Creation of an Entity.** This new provision outlines a standard procedure for the creation a board, committee or commission. Boards, committees or commissions must be created by adoption of a law or resolution by the Oneida Business Committee or General Tribal Council. The law or resolution must include the purpose, powers and responsibilities of the entity. The Oneida Business Committee is responsible for drafting the initial bylaws of the new entity [see *Boards, Committees and Commissions*, 1 O.C. 105.4].

C. **Applications.** The application form to serve on a Boards, Committees and Commissions must be approved by the Oneida Business Committee. A statement has been added to the application form explaining attendance requirements Application materials will be made available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

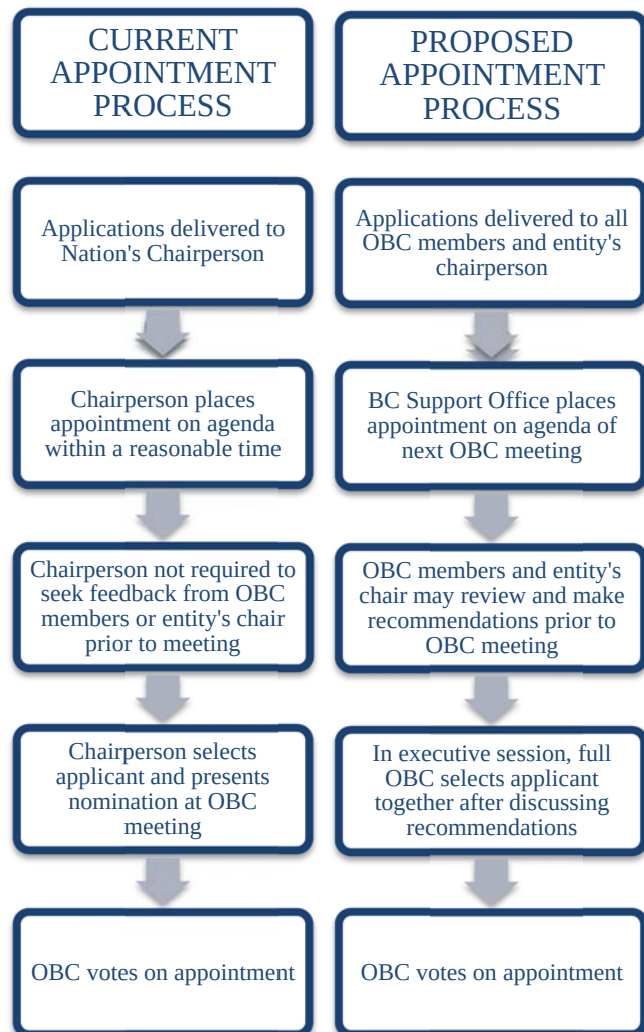
- **Background Investigation Application.** For entities that require a background check, an additional application form will now be required. This background application form will include social security number and any other information required to conduct a background investigation. The background investigation application will not be shared with the Oneida Business Committee, entity or Election Board [see *Boards, Committees and Commissions*, 1 O.C. 105.5-1(b)]. Currently, only Oneida Gaming Commission and Oneida Police Commission require background checks.
- Completed applications must be submitted by 4:30 p.m. on the deadline date. Applications may be mailed as long as they are postmarked by the deadline date and received by the Business Committee Support Office within 5 business days of the deadline [see *Boards, Committees and Commissions*, 1 O.C. 105.5-2].

D. **Vacancies.** This section describes the process for filling vacancies.

- 78 ▪ *Appointments to Fill Vacancies on Elected Entities.* Individuals appointed to fill a vacancy on an
79 elected entity will be considered an appointed official for the purposes of this law. This means
80 that the appointed official may have their appointment terminated by the BC, regardless of
81 whether they serve on an elected board, unless another law of the Nation states that removal from
82 a particular entity may only be done by the Removal Law [see *Boards, Committees and*
83 *Commissions, 1 O.C. 105.6-1*].
 - 84 ○ For example, the Oneida Nation Gaming Ordinance states that Gaming Commissioners
85 may only be removed via the Removal Law [see *Oneida Nation Gaming Ordinance, 5*
86 *O.C.501.6-12*]. Similarly, the Election Law states that members of the Election Board
87 may only be removed via the Removal Law [see *Election Board 1 O.C. 102.4-4*].
- 88 ▪ *Serve until Successor Appointed.* A new provision was added to allow members to remain in
89 office until their successor has been sworn in. This provision was added to ensure that entities can
90 still maintain a quorum while they wait for new appointments to be processed [see *Boards,*
91 *Committees and Commissions, 1 O.C. 105.6-2(a)(1)*].
- 92 ▪ *Resignations.* In addition to submitting resignations to the entity’s chairperson or verbally at an
93 official meeting, members will now have the option of submitting their resignation letter to the
94 Business Committee Support Office instead. This option was added for convenience, since certain
95 entities meet only once per month, while the BC Support Office is open during the Nation’s
96 regular business hours. The resignation will be effective upon receipt by the Business Committee
97 Support Office. [see *Boards, Committees and Commissions 1 O.C. 105.6-2(d)*]
- 98 ▪ Entities must notify the Secretary’s Office of vacancies as soon as they learn the position will
99 become vacant [see *Boards, Committees and Commissions, 1 O.C. 105.6-3*]. This section also
100 specifies when the Secretary must post notice of vacancies [see *Boards, Committees and*
101 *Commissions, 1 O.C. 105.6-4*]. Notice of vacancies will be posted by the BC Support Office in all
102 official media outlets of the Nation, as determined by the Oneida Business Committee. [see
103 *Boards, Committees and Commissions, 1 O.C. 105.6-5*].

104 **E. Appointment to an Entity.** This section describes the procedures for appointment to an entity. Under
105 current law, all applications are delivered to the Nation’s chairperson. The chairperson selects an
106 applicant “within a reasonable time” and the appointment is voted on by the Oneida Business
107 Committee. Currently, the chairperson is under no obligation to consult with OBC members prior to
108 making an appointment, and there is no timetable for when the appointment must be made. The
109 appointment process has been modified to provide individual OBC members and the entity’s
110 chairperson an opportunity to review applications and offer recommendations. In addition, this law
111 requires BC Support Office to place appointments on the agenda for the next BC meeting, to ensure a
112 speedier appointment process. [see *Boards, Committees and Commissions, 1 O.C. 105.7-1*].

Chart 2. Comparison of Appointment Process.



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- **Notification of an Appointment.** After an appointment is approved by the Business Committee, the Nation's Chairperson will notify the Secretary of the appointment. The Secretary will then notify the applicant. [see *Boards, Committees and Commissions*, 1 O.C. 105.7-2].

- **Termination of Appointment.** Appointed members, including individuals appointed to fill vacancies on elected entities, may have their appointment terminated by a 2/3 majority vote of the BC. Termination of appointment is final and cannot be appealed. [see *Boards, Committees and Commissions*, 1 O.C. 105.7-3].

140 **F. Election to an Entity.** Candidates for an
141 elected entity must be nominated at a caucus
142 or petition to be placed on the ballot.
143 Vacancies may be filled by appointment, per
144 each entity's bylaws. The election process is
145 governed by the Election Law. [See *Boards,*
146 *Committees and Commissions*, 1 O.C.
147 105.8]

148 **G. Oath of Office.** This section lists the oath
149 of office and the procedure for changing the
150 oath.

- **Revised Oath.** Minor revisions have been made to the wording of the oath to reflect the change from Oneida Tribe to Oneida Nation and to make it easier to recite. Specifically, "and with the strictest confidentiality" has been changed to "and will strictly maintain confidential information."
- **Video Conference.** A provision has been added that allows members to take their oath by video conference with permission of the Secretary. Members of the SEOTS Board, who reside in the Milwaukee area, are an example of members who may benefit from this provision.
- **Electronic Copies.** The BC Support Office may now store electronic copies of the signed oath, rather than keep original paper copies. [See *Boards, Committees and Commissions*, 1 O.C. 105.9]

160 **H. Bylaws.** Bylaws are the documents that provide a framework for the operation and management of an
161 entity. This law outlines the format that entities must follow for developing their bylaws. Bylaws
162 must be organized in the following manner:

- **Article I: Authority.** This section includes the following new provisions: Establishment, which cites the law or resolution that established the entity. Authority, which will state the purpose of the entity and the authority delegated to the entity. Termination or Removal, which identifies

causes for termination or removal from the entity. Trainings and Conferences, which describes trainings and/or conferences the entity deems necessary for service on the entity [See *Boards, Committees and Commissions, 1 O.C. 105.10-3(a)*].

- *Article II: Officers.* This section lists the duties and responsibilities of the entity's chairperson, vice chairperson, and any additional officers. It also describes the procedure for selecting officers and whether the entity has the authority to hire personnel. A new provision on budgetary and travel sign-off authority has been added to identify which members of the entity have sign-off authority on behalf of the entity [See *Boards, Committees and Commissions, 1 O.C. 105.10-3(b)*].
- *Article III: Meetings.* This section identifies when and where regular meetings will be held and how meetings will be noticed. [See *Boards, Committees and Commissions, 1 O.C. 105.10-3(c)*].
 - *Justification for Special/Emergency Meetings.* Within 72 hours of a special or emergency meeting, the entity must provide the Nation's Secretary with notice of the meeting, the reason for the meeting, and an explanation for why the matter could not wait for a regular meeting. This is a new provision.
 - *Voting and E-Poll.* The Voting section has been revised to include procedures for electronic polling process and under what circumstances the entity's chairperson is allowed to vote
- *Article IV: Expectations.* This is a new section which sets expectations for behavior of members of an entity. Entities must prohibit violence and the use of alcohol and illegal drugs when acting in official capacity. Entities must also list expectations regarding how official business of the entity may be posted on social media. A conflict of interest section has also been added, which lists any additional conflict of interests that may be unique to that entity. This section will also describe how conflicts of interest will be handled and mitigated. [See *Boards, Committees and Commissions, 1 O.C. 105.10-3(d)*].
- *Article V: Stipends and Compensation.* This new section will list all of the stipends members are eligible to receive and the requirements for collecting each stipend. [See *Boards, Committees and Commissions, 1 O.C. 105.10-3(e)*].
- *Article VI: Records and Reporting.* This section describes the procedure and format for agenda items, meeting minutes, attachments and relationship with OBC Liaison. New revisions to this section include identifying a reasonable timeframe that the entity will submit minutes to BC Support Office, identifying how records of meeting attachments will be kept, and whether the entity is required to audio record meetings [See *Boards, Committees and Commissions, 1 O.C. 105.10-3(f)*].
- *Article VII: Amendments.* This section describes how entities may revise their bylaws, with the approval of Oneida Business Committee or General Tribal Council [See *Boards, Committees and Commissions, 1 O.C. 105.10-3(g)*].

I. Reporting Requirements. This law describes reporting requirements for minutes, standard operating procedures and reports to the Oneida Business Committee and General Tribal Council. Several new provisions have been added:

- *Minutes.* Actions taken by an entity are valid once the action has been approved by a vote. For example, if an entity passes a motion, that motion is valid immediately. Entities have the option of adding a requirement to their bylaws that minutes be approved before the actions become valid. [See *Boards, Committees and Commissions, 1 O.C. 105.11-1*].

- 209 ▪ *Standard Operating Procedures.* Entities will now be required to submit all standard operating
210 procedures to the BC Support office to be kept on file.
- 211 ▪ *Quarterly Reports to Oneida Business Committee.* Entities must submit quarterly reports to the
212 Oneida Business Committee. At least one member of each entity must attend the BC Meeting
213 where their quarterly report is being presented. Quarterly reports will contain the following
214 information: Contact information, number and type of meetings, the topics of any emergency or
215 special meetings, accomplishments, goals, budget status, requests to the Business Committee and
216 any other information deemed appropriate by the entity [*See Boards, Committees and*
217 *Commissions, 1 O.C. 105.11-3*].
- 218 ▪ *Annual and Semi-Annual Reports to GTC:* Entities must submit annual and semi-annual reports to
219 the General Tribal Council. The Business Committee will set the format for these reports.
 - 220 ○ *Complaints.* New provisions were added that require entities to include the number of
221 substantiated complaints in their annual and semi-annual reports. A substantiated
222 complaint is a complaint that has been found valid by the BC or Judiciary. The proposed
223 Sanctions and Penalties law will set a standard procedure for complaints.
- 224 ▪ *Failure to Submit Reports.* A new provision was added specifying that if an entity does not
225 submit reports on time, OBC may place a hold on all stipends for that entity until the reports are
226 received. [*See Boards, Committees and Commissions, 1 O.C. 105.11-5*].
- 227 **J. *Stipends, Reimbursement and Compensation.*** This law describes the procedures for how stipends
228 will be paid for meetings, hearings, and other expenses. The Oneida Business Committee will set
229 stipend amounts by resolution, and may adjust those amounts by amending the resolution. At the time
230 this analysis was written, the LOC plans to draft a resolution setting stipend amounts and include the
231 resolution in the adoption packet for this law.
- 232 ▪ *Requirements for Meeting Stipend.* In order to receive a stipend, meetings must have an
233 established quorum and last at least one hour. In addition, there is a new requirement that
234 members must be physically present for the entire meeting to earn the stipend.
 - 235 ○ *Appointed Members:* Appointed members may only receive one meeting stipend per
236 month, regardless of the number of meetings held. This is consistent with current law
237 [*See Boards, Committees and Commissions, 1 O.C. 105.12-4(a)*].
 - 238 ○ *Elected Members:* Elected members may receive stipends for any number of meetings, so
239 long as the meetings meet the requirements for a stipend. This is consistent with current
240 law [*See Boards, Committees and Commissions, 1 O.C. 105.12-4(b)*].
- 241 ▪ *Stipends for Oneida Judiciary Hearings.* A member of an entity may receive a stipend for
242 attending an Oneida Judiciary hearing if that member is required to attend by subpoena. If the
243 entity itself receives a subpoena that does not identify individual members, then only one member
244 of the entity may receive a stipend for attending the hearing on the entity's behalf. If a subpoena
245 has not been issued and the entity wishes to send a member to a Judiciary Hearing on the entity's
246 behalf, then only one member of the entity may receive a hearing stipend [*See Boards,*
247 *Committees and Commissions, 1 O.C. 105.12-5*].
- 248 ▪ *Hearings of an Entity:* Members may receive stipends for conducting hearings administered by
249 the entity. Entities may only receive one stipend for each hearing, regardless of the length of the
250 hearing. Members may not receive additional stipends for continuations of a hearing or to draft
251 decisions [*See Boards, Committees and Commissions, 1 O.C. 105.12-6*].

- o *Boards with Hearing Authority:* The following entities currently exercise hearing authority: Election Board, Police Commission, School Board, Trust Enrollment Committee, Pardon and Forgiveness Screening Committee, and Gaming Commission (pro-tem commissioners only). Environmental Resource Board and Land Commission have transferred hearing body authority to the Judiciary.
- *Oneida Business Committee Meetings.* Up to two members of an entity may receive stipends for presenting their entity's quarterly report at an Oneida Business Committee Meeting. Their report must be on the agenda to receive a stipend for the meeting [See *Boards, Committees and Commissions*, 1 O.C. 105.12-7].
 - *Other Stipends:* Stipends for any other activity will be set by the OBC in a resolution setting stipend amounts. Currently, examples of such activities include Pow-wow committee working at Pow-wows and Election Board conducting elections or conducting hand counts at GTC [See *Boards, Committees and Commissions*, 1 O.C. 105.12-8].
 - *Conferences and Training:* Members will receive stipends for attending conferences and training. Members will receive stipends for each full day of training required by law, bylaw or resolution. Members will not receive stipends for travel days. In addition, members are eligible for per diem per the Nation's Travel and Expense policy. This is consistent with current law. This section removes the \$100 amount for the travel stipend. Instead, the amount of the stipend will be set by the OBC by resolution [See *Boards, Committees and Commissions*, 1 O.C. 105.12-9].
- K. Confidential Information.** This law requires members to maintain confidentiality in all information obtained through their position on the entity. Members cannot disclose confidential information without the written authorization of the Oneida Business Committee. After leaving an entity, a member must return all records. Members of an entity cannot use confidential information for personal gain [See *Boards, Committees and Commissions*, 1 O.C. 105.13-1].
- *Official Email Address.* Members will now be provided an official email address for conducting business of the entity. Members cannot use personal or work email to conduct the entity's business. Employees of the Nation will receive a separate email address. Members must follow the Nation's computer and media related policies and sign an acknowledgment form provided by the Secretary. When a member leaves office, the Nation's Secretary will direct MIS to disable the email address [See *Boards, Committees and Commissions*, 1 O.C. 105.13-2].
- L. Conflicts of Interest.** This law requires members to adhere to the Nation's policies regarding conflict of interests. It also requires members to disclose conflicts of interest as soon as they arise and keep an updated conflict of interest disclosure form with the Nation's Secretary. [See *Boards, Committees and Commissions*, 1 O.C. 105.14-2].
- *Political Appointees.* In this new provision, political appointees are no longer allowed to serve on boards, committees or commissions. There are currently ten political appointees in the organization: Chairperson's Assistant, Chairperson's Policy Advisor, Vice Chair's Assistant, Treasurer's Assistant, Secretary's Assistant, and five Legislative Assistants [See *Boards, Committees and Commissions*, 1 O.C. 105.14-3].
 - *Deleted Sections.* The current Comprehensive Policy includes a list of specifically prohibited activities covered under "conflicts of interest." This draft deletes this list of prohibited activities, and instead, entities are directed to "follow the Nation's laws and policies governing conflicts of interest" [See *Boards, Committees and Commissions*, 1 O.C. 105.14-1]. These laws include the Conflict of Interest Law and the Code of Ethics, which both apply to members of boards,

committees and commissions. Members must also follow any conflict of interest provisions in their entity's bylaws. The deleted sections provided specific examples, while the Conflict of Interest Law and Code of Ethics provide broader, general guidelines. While most of the deleted examples are covered under the broad definition of conflict of interest or in other laws, there are three provisions that are not. See "Section 11: Other Considerations" later in this analysis for a detailed review of the deleted provisions.

- M. Use of the Nation's Assets.** This law describes how entities will maintain bank accounts, execute and record transactions, and use Generally Accepted Accounting Principles for the Nation's funds. Any evidence of noncompliance will be reported to the Internal Audit department *[See Boards, Committees and Commissions, 1 O.C. 105.15]*.
- N. Dissolution of an Entity.** Entities can only be dissolved by GTC or OBC motion. Entities created by GTC can only be dissolved by GTC. A new requirement was added that within 5 business days of dissolving an entity, OBC will provide the entity with a written notice of the dissolution. *[See Boards, Committees and Commissions, 1 O.C. 105.16-2]*. This law specifies that chairpersons and secretaries of dissolved entities are responsible for closing out business and forwarding records to the BC Support Office. The BC Support Office may use the assistance of Records Management or any other appropriate department. *[See Boards, Committees and Commissions, 1 O.C. 105.16-3]*.
- O. Enforcement.** Members who violate this law are subject to sanctions and penalties, removal pursuant to the Removal law, or termination of appointment to an appointed entity. Candidates for appointment or election may be disqualified from taking office *[See Boards, Committees and Commissions, 1 O.C. 105.17]*.

SECTION 6. EFFECT ON EXISTING LEGISLATION

- A. Bylaws.** The bylaws of every Board, Committee and Commission will need to be updated to conform with the new bylaw requirements in this law *[See Boards, Committees and Commissions, 1 O.C. 105.10-3]*.
- B. References to the Other Laws of the Nation:** The following laws of the Nation are referenced in this law. This law does not conflict with any of the referenced laws.
- **Election Law.** The process for election of a member to an elected entity will be governed by the Election Law *[See Boards, Committees and Commissions, 1 O.C. 105.8-2]*.
 - **Removal Law.** Removal of an official elected to an entity is governed by the Removal Law *[See Boards, Committees and Commissions, 1 O.C. 105.6-2(b)]*. Members who violate this law may be subject to Removal pursuant to the Removal Law. *[See Boards, Committees and Commissions, 1 O.C. 105.17-1]*.
 - **Conflict of Interest Law.** All members of an entity are required to follow the Nation's laws governing conflicts of interest *[See Boards, Committees and Commissions, 1 O.C. 105.14-1]*.
 - **Code of Ethics.** All members of an entity are required to follow the Nation's laws governing conflicts of interest. The Code of Ethics also includes conflict of interest provisions *[See Boards, Committees and Commissions, 1 O.C. 105.14-1]*.
 - **Computer Resources Ordinance.** Members of an entity must sign an acknowledgment form indicating notice of the Nation's applicable computer and media related laws *[See Boards, Committees and Commissions, 1 O.C. 105.13-2(b)]*.

- 338 ▪ **Social Media Policy.** The bylaws of each entity must identify expectations for the use of social
339 media in regards to official business of the entity [*See Boards, Committees and Commissions, 1*
340 *O.C.105.10-3(d)(4)*].
- 341 ▪ **Travel and Expense Policy.** Members of an entity are eligible to be reimbursed for travel and per
342 diem to attend a conference or training in accordance with the Nation's travel policies [*See*
343 *Boards, Committees and Commissions, 1 O.C.105.12-9*].
- 344 ▪ **Oneida Nation Gaming Ordinance.** Members appointed to fill a vacancy on an elected board
345 may have their appointments terminated by the Oneida Business Committee, unless another law
346 of the Nation states removal from that entity must be done pursuant to the Removal Law. [*See*
347 *Boards, Committees and Commissions, 1 O.C.105.6-1*]. The Oneida Gaming Ordinance (ONGO)
348 is an example of such a law. ONGO states that Gaming Commissioners must be removed
349 pursuant to the Removal Law [*see Oneida Nation Gaming Ordinance, 5 O.C.501.6-12*]
350

351 **SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR** 352 **OBLIGATIONS**

- 353 A. **Right to Appeal Termination of Appointment.** After the OBC terminates an appointment, the
354 termination is final and not subject to appeal. While appointed members have always served at the
355 discretion of the Business Committee, for clarity, the law now specifically states that appeals are not
356 allowed. Note that this does not impact members who were elected to their positions, which is
357 governed by the Removal Law.
- 358 B. **Political Appointees.** This law bans political appointees, such as legislative assistants, from serving
359 on boards, committees and commissions. By accepting the position, political appointees will be
360 knowingly giving up the right to serve on an entity as a condition of their employment. [*See Boards,*
361 *Committees and Commissions, 1 O.C. 105.14-3*]
362

363 **SECTION 8. ENFORCEMENT**

- 364 A. Elected officials may be removed pursuant to the Removal Law and appointed officials may have
365 their appointments terminated by the Oneida Business Committee [*See Boards, Committees and*
366 *Commissions, 1 O.C. 105.17-1(b-c)*].
- 367 B. Any member of an entity who violates this law may be subject to sanctions and penalties. The LOC is
368 currently developing a Sanctions and Penalties law [*See Boards, Committees and Commissions, 1*
369 *O.C. 105.17-1(a)*].
- 370 C. Entities that fail to comply with reporting requirements in this law may have their stipends withheld
371 until reports are submitted [*See Boards, Committees and Commissions, 1 O.C. 105.11-5*].
372

373 **SECTION 9. OTHER CONSIDERATIONS**

- 374 A. **Bylaws.** Boards, Committees and Commissions have been unable to update their bylaws for the last
375 several years while this law has been on the active files list. Upon adoption of this law, all entities
376 will need to update their bylaws to conform with the new standards [*See Boards, Committees and*
377 *Commissions, 1 O.C. 105.10*]. All bylaws must be approved by the Oneida Business Committee.
378 Entities, the LOC and BC should expect to begin processing a large number of bylaws after passage.
379 It is recommended that a memorandum to entities be developed to provide guidance on the new
380 bylaw requirements and the procedure for amending bylaws.

- B. *Sanctions and Penalties.*** This law references sanctions and penalties. The LOC is currently drafting a Sanctions and Penalties Law, which will provide options for reprimanding members who violate provisions of this and other laws. Currently, the only reprimand available for violating this law is termination of appointment for appointed members and removal of elected members [*See Boards, Committees and Commissions, 1 O.C. 105.17-1(a)*].
- C. *Standing Committees.*** This law does not apply to the Oneida Business Committee [*See Boards, Committees and Commissions, 1 O.C. 105.1-1*]. However, it is unclear if the law is intended to apply to the Nation's Standing Committees, which are largely made up of OBC members. These standing committees are the Audit Committee, Finance Committee, Legislative Operating Committee, Community Development Planning Committee, and Quality of Life Committee. The Audit and Finance committees include community member seats, whose appointments are governed by this law. If the LOC's intent is to have Standing Committees to follow this law's requirements for bylaws and reporting, the LOC may want to clarify this in the law.
- D. *Stipends.*** Under this law, stipend amounts will be set by Business Committee resolution [*see Boards, Committees and Commissions 1 O.C. 105.12-3*]. The OBC will periodically review and adjust these stipend amounts. Below is a depiction of current stipend amounts at the time this analysis was drafted. Whether to maintain or adjust the current stipend amounts a policy decision.

Chart 3. Current Meeting Stipends for Appointed Boards.

No Stipend

- Oneida Nation Arts Board

\$50 Per Meeting

- Anna John Resident Centered Care Community Board (AJRCC)
- Audit Committee (1 community member seat)
- Environmental Resource Board (ERB)
- Finance Committee (1 community member seat)
- Oneida Library Board
- Oneida Nation Arts Board
- Oneida Police Commission
- Oneida Pow Wow Committee
- Oneida Nation Veterans Affairs Committee (ONVAC)
- Pardon and Screening Forgiveness Committee
- Southeastern WI Oneida Tribal Services Advisory Board (SEOTS)

Chart 4. Current Meeting Stipends for Elected Boards.

\$50 Per Meeting

- Land Commission
- Land Claims Commission

\$75 Per Meeting

- Oneida Nation Commission on Aging
- Oneida Nation School Board

\$100 Per Meeting for Chair, \$75 Per Meeting for Members

- Trust Enrollment Committee

\$100 per Meeting

- Oneida Election Board

Full Time Salary- No Meeting Stipend

- Oneida Gaming Commission
- "Pro-Tem" Commissioners, appointed as needed to participate in hearings when full-time commissioners recuse themselves, receive \$150 per hearing.

- *Summary of Current Meeting Stipends.* Currently, there are variations in stipends from board to board based on various BC and entity actions over the years.
 - Members of appointed entities receive \$50 per meeting, with the exception of Oneida Arts Board, which is a volunteer board that does not accept stipends.
 - Member of elected entities receive between \$50 to \$100 per meeting. An exception is the Oneida Gaming Commission, whose members receive a full-time salary.
- *Hearing Stipends.* Entities with hearing body authority receive stipends for conducting hearings. Hearing stipend amounts are typically the same as meeting stipends.
- *Conferences and Training Stipends.* Members currently receive a \$100 stipend for each full day spent attending a conference or training, not including travel days.
- *Other Stipends.* In addition, certain entities receive stipends for other activities:
 - Oneida Election Board members receive \$10 per hour for conducting elections and caucuses. They also receive a \$100 stipend for conducting hand counts at General Tribal Council meetings.
 - Oneida Pow-wow Committee members receive \$25 per hour, not to exceed \$200 per day, for planning, preparation and working Oneida Pow-wows.
- *Considerations When Setting Stipend Amounts.* When adjusting stipend amounts, OBC may want to consider the following:
 - What is the purpose of a stipend?
 - Should chairpersons receive more than members?
 - Should any of the following criteria be considered: Workload, qualifications for membership, oversight of a department or supervision of employees?

- E. Stipend Processing.** This law places several new requirements and limitations on how and when members may receive stipends. These new requirements will require enforcement. Enforcing these new provisions will require reviewing numerous bylaws, entity and BC meeting minutes, Judiciary subpoenas and previous actions. Currently, stipend requests are sent directly to Accounting. The BC Support Office is in the process of taking over this responsibility and is well suited to this role given

their familiarity with each of the boards. If possible, the BC Support Office should take over this role to coincide with the implementation of this law.

F. Current Political Appointees. This law bans political appointees from serving on boards, committees and commissions [See *Boards, Committees and Commissions, 1 O.C. 105.14-3*]. At the time this analysis was drafted, three political appointees currently serve on an entity. All three serve on elected entities. The BC will need to decide whether these officials will be allowed to serve out the remainder of their terms, or if they will need to resign once this law becomes effective.

- *Recommendation:* The LOC should include the decision regarding current political appointees in the adopting resolution for this law. The BC should also consider working with Oneida Human Resources Dept. to update job descriptions for political appointees to include this ban.

G. Disqualification from Taking Office. This law states that candidates for elected office who violate this law may be disqualified from taking office [see *Boards, Committees and Commissions, 1 O.C. 105.17-2*]. The current law contains this same provision. However, the law provides no details on how this disqualification process would work. Based on consultation with the Election Board chairperson, I could not identify an instance of a candidate being disqualified from taking office for violating provisions of this law. In addition, the Election Board currently has no policies in place for disqualifying a candidate for violating any law other than the Election Law.

- *Disqualification under Election Law.* Currently, candidates may be disqualified for not meeting eligibility requirements for the office they are seeking or for an incomplete application [See *Election Law, 1 O.C. 102.5*].
- *Sanctions and Penalties Law.* The LOC is currently drafting a Sanctions and Penalties law, which may include prohibition from office as a potential penalty for violating the Nation's laws. Although this does not apply to candidates prior to election, it will provide a detailed procedure for sanctioning office holders who violate the Nation's laws.
- *Recommendation:* Since the provision provides little guidance and is rarely (if ever) used, the LOC may want to consider removing it or providing detail on how to enforce it.
 - o This detail should include the following information to provide guidance to the Election Board: What violations of this law rise to the level of disqualification from office? Which body is responsible for disqualifying a candidate for elected office? How long does this disqualification last – one election cycle or longer? What due process rights does the candidate have to challenge their disqualification?

H. Email Addresses for BCC Members. MIS, BC Support Office and Records Management have begun work to develop a process to provide and manage email addresses for BCC members. Based on MIS' research, this will impact approximately 130 BCC members. Planning will be necessary to implement protocols and secure licenses to set up new email addresses.

- *Recommendation:* The LOC may want to include an implementation date for this provision in the adopting resolution. This date should be selected in consultation with MIS. To allow for budgeting, the implementation date should be no earlier than October 1, 2018.

I. Purchasing Department. This law states that the Purchasing Department will "confirm" each position within each entity as having been designated sign-off authority [see *Boards, Committees and Commissions, 1 O.C. 105.10-3(b)(6)(a)*].

- *Recommendation:* Based on consultation with the Purchasing Department, the LOC may want to consider either deleting this provision as unnecessary or revising it to state that entities shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.

- 485 **J. *Declining Appointment Prior to Taking Oath.*** There have been at least two occasions where an
486 individual was appointed by the BC to an entity and then declined their appointment prior to taking
487 the oath of office. The BC Support Office would like guidance in this law on how these situations
488 should be handled.
- 489 ▪ *Recommendation:* The LOC may want to consider adding a provision to this law to address
490 appointees who decline their appointment prior to taking the oath of office. This provision should
491 include the following information, which are policy decisions for the LOC:
 - 492 ○ Whether the position needs to be re-posted or if the OBC can select another applicant from
493 the original posting.
 - 494 ○ A procedure for how an applicant can officially decline their appointment. Examples include
495 delivering a letter to the BC Support Office and failure to take the oath within a certain
496 number of days.
- 497 **K. *Changes to Application Form.*** The following changes must be made to the application form for
498 boards, committees and commissions. The revised application forms must be approved by the
499 Business Committee. The LOC may want to include the updated forms in the adoption packet to the
500 OBC [*see Boards, Committees and Commissions, 1 O.C. 105.5-1*].
- 501 ▪ Add a statement to the application form explaining the attendance requirements of section
502 105.11-3
 - 503 ▪ Create an additional Background Investigation Application Form, to include social security
504 number and any other information needed to conduct a background investigation. This form will
505 only be provided to applicants applying to entities that require a background check
- 506 **L. *New Forms and Standard Operating Procedures:***
- 507 ▪ *Computer Resource Acknowledgment Form.* The Secretary must provide an acknowledgment
508 form to be signed by each member upon receiving an email address. The Nation's Secretary and
509 BC Support Office may want to consult with MIS regarding these forms [*see Boards, Committees
510 and Commissions 1 O.C. 105.13-2(b)*].
 - 511 ▪ *Disabling Email Addresses.* The Secretary must direct MIS to disable the email address for
512 members that leave office. The Nation's Secretary and BC Support Office may want to develop
513 an SOP for this process [*see Boards, Committees and Commissions 1 O.C. 105.13-2(d)*].
 - 514 ▪ *SOP for Background Check Application Forms.* Given the sensitive information on the new
515 background check application forms, the Nation's Secretary and BC Support Office may want to
516 create an SOP for how these forms will be securely stored and processed, if such an SOP does not
517 already exist.
- 518 **M. *Deleted Conflict of Interest Section.*** The current Comprehensive Policy includes a detailed list of
519 prohibited activities that are considered conflicts of interest. [*see Comprehensive Policy on Boards,
520 Committees and Commissions, 1 O.C. 105.13*]. This draft deletes these provisions and instead, directs
521 members to follow the Nation's laws and policies regarding conflicts of interest, which include the
522 Conflict of Interest Law and the Code of Ethics. The deleted sections were reviewed to ensure that
523 they appear elsewhere in the Nation's laws or are covered under the definition of "conflict of
524 interest." Based on this review, three provisions were identified that do not appear in other laws of
525 the Nation:
- 526 ▪ ***Conflict of Interest Section on Application Form.*** Under this law, members of entities are
527 required to disclose conflicts of interest as soon as the conflict occurs and keep an updated
528 conflicted of interest form on file with the Secretary. However, the requirement that this

disclosure be included on the application form is deleted [see *Boards, Committees and Commissions, 1 O.C.105.13-3*] Members are still required to disclose, but it does not necessarily have to be on the application form.

- o *Recommendation:* Whether to require conflict of interest disclosure to be included on the application form is a policy decision. This requirement could be added to the Application section of this law at 105.5.
- **Require Majority Vote to Destroy Entity Records.** A deleted provision stated that records of an entity can only be removed or destroyed by approval of the entity at a duly called meeting [see *Comprehensive Policy on Boards, Committees and Commissions, 105.13-1*]. The Open Records and Open Meetings Law, which entities must follow, provides a process for removal and destruction of documents. Under the Open Records and Open Meetings Law, entities must retain records for at least 7 years before destruction [see *Open Records and Open Meetings Law, 1 O.C. 107.9-4*]. However, the Open Records and Open Meetings Law does not require a majority vote of the entity to remove or destroy records after that 7 year period.
 - o *Recommendation:* Whether to keep the requirement that records can only be removed or destroyed by approval of an entity at a duly called meeting is a policy decision. For clarity, this requirement may best belong in the Open Records and Open Meetings law itself.
- **Require Secretary to Consult with Law Office Regarding Conflicts of Interest.** Under this law, members of entities are required to disclose conflicts of interest to the Nation's Secretary. However, the requirement that the Secretary request a determination from the Law Office upon receiving information on a potential conflict of interest has been deleted and does not appear in other laws of the Nation [see *Boards, Committees and Commissions, 105.13-23*].
 - o *Recommendation:* Whether to continue to require the Nation's Secretary to consult with the Law Office upon receiving information regarding conflicts of interest is a policy decision.
- **Other Deleted Examples.** Based on this review, it was determined that the Conflict of Interest Law and Code of Ethics provide broad guidelines, while the deleted Conflict of Interest sections in this law provided more specific examples that fell within those guidelines. While the remaining deleted sections are covered by the Nation's existing laws and the definition of "conflict of interest," some of the detailed examples may be helpful to members of entities seeking to determine what constitutes a conflict. For example, one deleted section included detailed examples of "gifts" [see *Comprehensive Policy on Boards, Committees and Commissions, 1 O.C. 105.13-14*]. The LOC may want to consider adding these and other examples to the Conflict of Interest Law or Code of Ethics. The Code of Ethics is currently on the LOC's Active File list.

N. Please refer to the fiscal impact statement for any fiscal impacts.

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Title 1. Government and Finances – Chapter 105
~~COMPREHENSIVE POLICY GOVERNING~~ BOARDS, COMMITTEES AND
COMMISSIONS

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105.1. Purpose and Policy	105.9. ~~Minutes~~ <u>Oath of Office</u>
105.2. Adoption, Amendment, Repeal	105.10. ~~Dissolution of Entities~~ <u>Bylaws</u>
105.3. Definitions	105.11. <u>Reporting Requirements</u>
105.4. <u>Creation of an Entity</u> ~~Applications~~	~~105.12.~~ <u>Stipends, Reimbursement and Compensation</u> ~~for Services~~
105.5. <u>Applications</u>	105. ~~12~~ <u>13.</u> Confidential Information
~~105.6.~~ <u>Vacancies</u>	105. ~~13~~ <u>14.</u> Conflicts of Interest
105. ~~6.~~ <u>Appointed Positions</u>	<u>105.15. Use of the Nation's Assets</u>
~~105.7.~~ <u>Elected Positions</u> <u>Appointment to an Entity</u>	<u>105.16. Dissolution of an Entity</u>
105.8. ~~By-Laws of Boards, Committees and Commissions~~ <u>Election to an Entity</u>	<u>105.17. Enforcement</u>

105.1. Purpose and Policy

105.1-1. It is the purpose of this policy law to govern boards, committees, and commissions of the standard Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of by-lawsbylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. This policy law does not apply to the Oneida Business Committee, or Tribal corporations due to the corporate structure and autonomy of those entities.

105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of by-lawsbylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

105.2. Adoption, Amendment, Repeal

105.2-1. This policy law was adopted by the Oneida Business Committee by resolution #BC-5-14-97-F and amended by resolutions #BC-09-27-06-E~~and #~~, BC-09-22-10-C, and BC- - - - -.

105.2-2. This policy law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Oneida AdministrativeLegislative Procedures Act ~~by the Oneida Business Committee or the Oneida General Tribal Council, regardless of where the original adoption took place.~~

105.2-3. Should a provision of this policy law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this policy law which are considered to have legal force without the invalid portions.

~~105.2-4. Any policy, regulation, rule, resolution or motion, or portion thereof, which directly conflicts with the provisions of this policy is hereby repealed to the extent that it is inconsistent with or is contrary to this policy. Provided that meeting stipends for elected members of a board, committee or commission that are in effect on [adoption date of the amendments] shall remain unaffected, but prior exceptions to this policy for appointed entities shall be repealed to extent that meeting stipends are inconsistent with this policy.~~

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105.2-4. 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.

105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

105.3. Definitions

105.3-1. This section shall govern the definitions of words and phrases ~~as used herein~~within this law. All words not defined herein shall be used in their ordinary and everyday sense.

~~(a)~~(a) "Application" means the form by which a person seeks to be appointed to fill a vacancy on an entity.

(b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.

(c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

(d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.

(e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.

(f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.

(g) "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 that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.

(h) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the ~~General Tribal Council~~Nation's membership.

~~(b) "Vacancy";~~(j) "Nation" means the Oneida Nation.

(k) "Per Diem" means the payment made by the Nation to offset the costs of being out-of-town or to travel on behalf of the Oneida Nation.

(l) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any ~~position on~~any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.

(m) "Stipend" means that amount paid by the Oneida Nation to persons serving on

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boards, committees and commissions of the Oneida Nation to offset the expenses of being a member on the board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position. Stipends are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards.

~~(c) "Application" means any process by which a person proceeds to be appointed to a vacancy.~~

~~(d) "Appointment" means the process by which a person is chosen to fill a vacancy.~~

(e(n) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.

(o) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by a preponderance of the evidence.

(p) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.

~~(f) "Conference"q) "Vacancy" means any training, seminar, meeting, or other assembly position on any board, committee or commission caused by resignation, end of persons which is not term, removal, termination, or creation of a new position.~~

105.4. Creation of an assembly Entity

105.4-1. An entity of the entity Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.

~~(g) "Per Diem" means the payment made by 105.4-2. The law or resolution establishing the Tribe to offset entity shall state the costs of being out of town or to travel on behalf purpose of the Oneida Tribe of Indians of Wisconsin.~~

~~(h) "Stipend" means that amount paid by entity and all powers and responsibilities delegated to the entity.~~

105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

105.5. Applications

~~105.5-1. The Oneida Tribe of Indians of Wisconsin to persons serving on boards, committees and commissions of the Oneida Tribe of Indians of Wisconsin to offset the expenses of being a member on the board, committee or commission.~~

~~(i) "Official" means any person appointed or elected to membership Business Committee shall approve all applications to serve on an entity of the Oneida Tribe.~~

105.4 Nation. Applications

~~105.4-1. All applications application materials shall be generated by available in the Tribal Secretary's Business Committee Support Office and approved any other location specified by the Oneida Business Committee Support Office.~~

~~105.4-2. The content of (a) All applications shall be as follows: include a statement explaining the attendance requirements of section 105.11-3.~~

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(a) ~~questions designed to obtain the following information~~

- ~~(1) name~~
- ~~(2) address~~
- ~~(3) phone number~~
- ~~(4) enrollment number~~
- ~~(5) position applied for~~

(b) ~~applications may contain any other questions necessary to obtain information necessary to making an informed decision as to the qualifications of any individual to hold any vacancy.~~

(c) ~~Form A-1, attached, is the current approved application form in use and shall be placed in the Tribal Secretary's Office and other locations specified by the Tribal Secretary's Office.~~

(b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.

105.5-2. ~~105.4-3.~~ Applications shall be filed with the ~~Tribal Secretary's office~~ Business Committee Support Office by 4:30 p.m. of the deadline date. Postmarked envelopes are accepted as filed if postmarked by the deadline date and received by the ~~Tribal Secretary's Office within five (5) business days of the deadline.~~ At the completion of the posted deadline for filing applications the Tribal Secretary shall notify by postcard all persons who have filed an application of the date the application was filed and whether it will be considered for the election or appointment. A tentative date for appointment will be placed on the post card with the instruction that this is a tentative date and further information can be requested by calling the Tribal Secretary's Office. Postcard information should be in substantially similar format as that in Figure 1. Business Committee Support Office within five (5) business days of the deadline.

105.5-3.

~~Your application was received on:~~ ~~Tentative date for appointment or election:~~ ~~You application is -9 is not being considered.~~ ~~For more information, call the Tribal Secretary's Office at 869-2214.~~

105. At the completion of the posted deadline for filing applications the Business Committee Support Office shall notify all persons who have filed an application of the date his or her application was received and if his or her application met the deadline to be considered for the election or appointment.

105.5-4-4. Applications for elected positions shall be verified according to the ~~Oneida Election Ordinance.~~ Nation's laws and/or policies governing elections. Applications for appointed

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positions shall be verified by the ~~Tribal Secretary's~~Business Committee Support Office as needed or as required in the ~~by-laws~~bylaws of the entity.

105.4-5-5. Insufficient Applicants. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the ~~Tribal Chairperson~~Oneida Business Committee may elect to:

- (a) ~~Include~~include within the pool of appointed persons late applications, or
- (b) ~~Repost~~repost for an additional time period. In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.

105.56. Vacancies

~~105.5-1. This section shall govern when vacancies occur, and where and when notice of the vacancies shall be posted.~~

105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws. Unless, a law of the Nation indicates that removal of an official shall be done pursuant to the Removal law, an appointed individual may have his or her appointment terminated by the Oneida Business Committee.

~~105.56-2. The A position on an entity shall be considered vacant in the following vacancies shall be effective as listed herein.situations:~~

- (a) *End of Term.* A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends ~~as of the by-laws of the entity.~~

(1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.

- (b) *Removal.* Removal is effective, ~~under adopted pursuant to any law and approved procedures of the entity, when the final action has taken place. Where a final action is defined as/or policy of the Nation regarding removal.~~

- ~~(1) failure to file a timely appeal,~~
- ~~(2) denial of appeal, or~~
- ~~(3) final written opinion is filed.~~

(c) Termination of Appointment. A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.

- (d) Resignation. A resignation is effective upon:

- (1) Deliverance of a letter to the ~~entity, or~~Business Committee Support Office;
- (2) Upon receipt of resignation, the Business Committee Support Office will notify the entity of the resignation;
- (2) Deliverance of a letter to the Chairperson of the entity, or designee, or
- (3) Acceptance by motion of the entity of a verbal resignation.

~~(e) New Positions.~~ Vacancies on new entities are effective upon adoption of ~~by-laws~~bylaws.

~~(e) Interim Positions.~~ Vacancies of interim positions are effective upon creation of

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~~interim positions by~~ 105.6-3. An entity shall notify the ~~Oneida Business Committee Support Office as soon as the entity learns that a position has~~ or ~~General Tribal Council.~~
~~will become vacant.~~ 105.5-3. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee. ~~The following guidelines are minimum notice requirements:~~

~~(a) End of Term. Entity should be notified 60 days prior to end of term by the Tribal Secretary.~~

~~(b) Removal or Resignation. Entity should be notified as soon as final action is taken by the Oneida Business Committee or General Tribal Council to accept the resignation, or final action according to any Removal law of the Tribe.~~

~~105.5-4. Notice of vacancies shall be by the Tribal Secretary's Office in the following locations:~~

~~(a) Tribal Secretary's Office~~

~~(b) The Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida Community Health Center, the South Eastern Wisconsin Oneida Tribal Services (SEOTS) building and the Highway 54 and E & E Oneida One Stops.~~

~~(c) Kalihwisaks~~

~~(d) Minutes of the Oneida Business Committee, and~~

~~(e) Any reasonable location requested by the entity.~~

~~105.5-5. The Tribal Secretary's~~ Support Office shall forward the notice of vacancy to the ~~Oneida Business Committee for~~ Secretary. The Secretary shall request and receive approval ~~and direction from the Oneida Business Committee~~ to post ~~the notice as set out in this section of~~ vacancy. The ~~Tribal~~ Secretary shall post notice of vacancies at the following times:

~~(a) End of Term. Automatically thirty (30) days prior to completion of the term.~~

~~(b) Removal. Upon notice by Secretary, or other person authorized by~~ No later than the ~~by laws~~ first Oneida Business Committee meeting following the effective date of the entity, ~~to the Tribal Secretary's Office.~~ removal.

~~(c) Resignation. Upon notice by~~ No later than the ~~Secretary, or other person authorized by~~ first Oneida Business Committee meeting following the ~~by laws~~ Secretary's receipt of notice of an effective resignation from the entity, ~~to the Tribal Secretary's Office.~~

~~(d) New Positions. Upon one of the following conditions:~~

~~(1) if not specified, immediately upon creation of entity or adoption of~~ by laws ~~by laws~~, whichever is later, or

~~(2) upon date specified when creating the entity.~~

~~(e) Interim Members. Upon one of the following:~~

~~(1) upon completion of the term designated to hold in new entity, or~~

~~(2) upon completion of vacant term of the pre-existing entity~~

~~(f) Termination of appointment. At~~ No later than the ~~next~~ first Oneida Business Committee meeting following the effective date of the ~~termination of appointment.~~

105.6. Appointed Positions

~~105.6-1. All appointments~~ 5. Notice of vacancies shall be ~~made~~ posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee ~~at regular or special Oneida Business Committee meetings.~~

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~~Provided that, no applicant may be appointed who fails to meet, as well as any other location deemed appropriate by the requirements set out in the entity's by laws~~ Secretary.

105.7. Appointment to an Entity

~~105.6-2-7-1. Appointment Selection.~~ The following procedures shall be used to determine ~~who shall be~~ how the applicant for an appointed position is selected:

(a) Five (5) business days after ~~close of notice,~~ the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:

(1) deliver all applications shall be delivered to the Tribal Chairperson, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and

~~(b) Within a reasonable time, the Tribal Chairperson shall:~~

(2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made.

(b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.

(1) The entity's Chairperson may have until the executive session to review the application materials and provide the Oneida Business Committee a recommendation of an applicant for appointment.

(c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:

(1) choose an applicant for appointment, or

(2) ask the Tribal Secretary's Office Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.

~~(c) Forward choice of applicants to all Council members prior to appointment:~~

~~(1) Council members may accept the Tribal Chairperson's selected applicants, or~~

~~(2) Reject an applicant by majority vote of a quorum at any regular or special~~ (d) All appointments shall be made by the Oneida Business Committee meeting during the open session of a

~~105.6-3. All appointments are official upon taking an oath at a regular or special Oneida Business Committee meeting and all rights and delegated authorities of membership in the entity shall vest upon taking the oath.~~ meetings. The Tribal Secretary shall notify the chosen persons when they should appear for taking the oath.

~~(a) Originals of the signed oath shall be maintained by the Tribal Secretary's Office.~~

~~(b) Copies of the oath shall be forwarded to the new member and the entity.~~

~~(c) Wording of oaths shall be approved by the Oneida Business Committee and kept on file by the Tribal Secretary's Office.~~ shall not appoint an applicant who fails to meet the

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requirements set out in the entity's bylaws.

(e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:

- (1) ~~The following oath is the standard oath to accept the selected applicant and vote to appoint the individual to the vacant position, or~~
- (2) reject the selected applicant and vote to oppose the appointment of the individual.

(f) If the Oneida Business Committee rejects the selected applicant, the matter will be used unless a specific oath for the entity is pre-approved deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee; or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.

~~I, ♦name♦, do hereby promise to uphold the laws and regulations of the Oneida Tribe of Indians of Wisconsin, the General Tribal Council, and the Tribal Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and with the strictest confidentiality.~~

~~I will carry out the duties and responsibilities as a member of the ♦entity name♦, and all recommendations shall be made in the best interest of the Oneida Tribe as a whole.~~

~~(d) Revisions of oaths shall be approved by the Oneida Business Committee prior to usage.~~

~~(e) All oaths shall be sufficient to make the appointee aware of their duty to the Oneida Tribe and as members of the entity.~~

~~105.6-4. The Tribal~~105.7-2. Notification of Appointment. Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.

(a) The Tribal~~Nation's~~ Chairperson shall forward a list of all applicants to the ~~Tribal~~Nation's Secretary and the final decision regarding the selection after the procedures ~~in sec. 6-2~~for selection of an applicant described in section 105.7-1 are completed. ~~Provided that, the Tribal~~

(b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph:

~~"The Oneida Tribe of Indians of Wisconsin reports all income paid by the Oneida Tribe in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."~~

~~105.6-5. Termination of Appointment. Appointed members of entities serve at the discretion of the Oneida Business Committee. Upon the recommendation of the Tribal Chair, an appointed member of an entity may have his or her appointment terminated by the Oneida Business Committee by a two-thirds majority vote of the entire Oneida Business Committee.~~

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105.7 Elected Positions

~~105.7-1. All elected positions, unless otherwise noted in the by-laws of the entity, shall be nominated at a caucus called by the Oneida Election Board, or petition for ballot placement, in accordance with the Oneida Election Law. Provided that, when the Election Board notifies a petitioner or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included:~~

“The Oneida ~~Tribe of Indians of Wisconsin~~Nation reports all income paid by the ~~Tribe~~Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income.”

105.7-3. Termination of Appointment. Appointed members of entities serve at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee by a two-thirds majority vote of the Oneida Business Committee.

(a) The Oneida Business Committee’s decision to terminate an appointment is final and not subject to appeal.

105.8 Election to an Entity

105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or petition for ballot placement, in accordance with the Nation’s laws and/or policies governing elections, except where an entity’s bylaws allow for a vacancy to be filled by appointment.

(a) When the Election Board notifies a petitioner or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: “The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income.”

105.8-2. All other processes for the election of a member of an entity shall be as directed in the Oneida Election Law by the Nation’s laws and/or policies governing elections.

105.7-39. Oath of Office

105.9-1. All appointed and elected positions are official upon taking an oath at during a regular or special Oneida Business Committee meeting and all. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation’s Secretary shall notify the chosen persons when they shall appear for taking the oath.

(a) The appointed or elected member shall appear in person at the Oneida Business Committee meeting to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.

105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of

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oaths shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.

105.9-3.(a) Originals of the signed oath, or electronic copies of the originals of the signed oath, shall be maintained by the Tribal Secretary's Business Committee Support Office.

(b) Copies of the oath shall be forwarded to the new member of the entity and the entity.

105.9-4.© ~~Wording of oaths shall be approved by the Oneida Business Committee and kept on file by the Tribal Secretary's Office.~~ The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee:

I, ~~✦[name✦, do]~~, hereby promise to uphold the laws and regulations of the Oneida ~~Tribe of Indians of Wisconsin~~Nation, the General Tribal Council, and the ~~Tribal~~Oneida Nation Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and ~~with the strictest confidentiality~~will strictly maintain confidential information. I will carry out the duties and responsibilities as a member of the [entity name], and all recommendations shall be made in the best interest of the Oneida Nation as a whole.

~~I will carry out the duties and responsibilities as a member of the ✦entity name✦, and all recommendations shall be made in the best interest of the Oneida Tribe as a whole.~~

(d) ~~Revisions of oaths shall be approved by the Oneida Business Committee prior to usage.~~

(e)105.9-5. All oaths shall be sufficient to make the ~~appointee~~appointed or elected member of an entity aware of their duty to the ~~Tribe~~Nation and as members of the entity.

~~105.8. By Laws of Boards, Committees and Commissions~~

~~105.8~~10. Bylaws

105.10-1. ~~By Laws~~All entities of ~~all Boards, Committees and Commissions~~the Nation shall have bylaws that conform to the requirements of this outline law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.

(a) All existing entities must comply with this format and present ~~by laws~~bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this policy. ~~By laws must contain this minimum information, although more information is not prohibited.~~law.

~~105.8-2. Specifically excepted from this section are~~ (b) Bylaws must contain at least the minimum information required by law, although more information is not prohibited.

(c) Exception. Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities must have, at minimum, mission or goal statements for completion of the task.

~~105.8-3. There~~10-2. Articles. Bylaws shall ~~be~~contain, at a minimum, the following Articles:

- (a) Article I. Authority.
- (b) Article II. Officers.
- (c) Article III. Meetings.
- (d) Article IV. ~~Reporting~~Expectations.
- (e) Article V. Stipends and Compensation.

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(f) Article VI. Records and Reporting.

(g) Article VII. Amendments.

105.8-410-3. Sections. Articles shall be divided into "Sections~~sections~~" as set out.

(a) "Article I. Authority" ~~consists~~shall consist of the following ~~information~~:

(1) Name. ~~All entities should list the~~ The full name of the entity. ~~In addition, there should be listed~~ shall be stated, along with any short name that will be officially used.

(2) ~~Authority~~Establishment. This section ~~should~~shall state the citation and name, if any, of the creation document.

~~(3)~~(3) Authority. This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.

~~(4)~~Office. There ~~should~~shall be listed the official office or post box of the entity.

~~(4)~~Membership. The following information ~~should~~shall be in this section:

(A) Number of members on the entity;

(B) ~~How~~If members on the entity are elected or appointed; and how a member is elected or appointed;

(C) How vacancies are filled; and

(D) ~~The qualifications~~Qualifications for membership on the entity.

(6) Termination or Removal. This section shall identify causes for termination or removal, if any, in addition to those already identified in laws and/or policies of the Nation.

(7) Trainings and Conferences. This section shall describe any trainings and/or conferences that the entity deems necessary for members to responsibly serve the entity, if any.

(b) "Article II. Officers" ~~consists~~shall consist of the following ~~information~~:

(1) ~~Chair~~Chairperson and Vice-~~Chair~~Chairperson. This section creates the chairperson and vice-chairperson positions of the entity. Other officer positions may also be created here.

(2) ~~Chair duties~~Responsibilities of the Chairperson. Because of the importance of this position, ~~those~~all duties and responsibilities of the chairperson, as well as limitations ~~should~~of the chairperson shall be specifically listed here.

(3) Responsibilities of the Vice-~~Chair~~dutiesChairperson. Because of the importance of this position, ~~those~~all duties and responsibilities of the vice-chairperson, as well as limitations ~~should~~of the vice-chairperson shall be specifically listed here.

(4) Responsibilities of Additional ~~Offices and Duties~~Officers. There ~~should~~may be additional sections as needed for every ~~office~~officer position created in subsection one (1) above. These sections shall state all duties and responsibilities of the officer, as well as any limitations of the officer.

(5) ~~How chosen.~~ There ~~should be specifically set out~~Selection of Officers. This section shall identify how a member of the entity ~~will occupy~~shall be selected for an official officer position ~~as set out in this section~~the entity.

~~(6)~~(6) Budgetary and Travel Sign-Off Authority. This section shall identify the

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entity's varying levels of budgetary sign-off authority, the members that are authorized to sign-off at each level, and which members have the authority to sign-off on travel on behalf of the entity.

(A) The Nation's Purchasing Department shall confirm each position within the entity that has been designated as having sign-off authority.

(7) Personnel. State entities This section shall state the entity's authority for hiring personnel, if any, and the duties of such personnel.

(c) "Article III. Meetings" ~~consists~~ shall consist of the following ~~information~~:

(1) *Regular meetings.* ~~There~~ This section shall ~~be listed~~ identify when and where regular meetings shall be held, and, how the entity shall provide notice of the meeting agenda, documents, and minutes ~~will be disbursed to the members.~~

(2) *Emergency meetings.* ~~There~~ This section shall ~~be listed~~ identify what constitutes an emergency meeting, how Emergency emergency meetings shall be called ~~and noticed~~, and how the entity shall provide notice of the emergency meeting.

~~(3)~~ (A) All bylaws shall include a provision requiring that within seventy-two (72) hours after an emergency meeting, the entity shall provide the Nation's Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular or special meeting.

(3) Special meetings. This section shall identify what constitutes a special meeting, how special meetings shall be called and how the entity shall provide notice of the special meeting.

(A) All bylaws shall include a provision requiring that within seventy-two (72) hours after a special meeting, the entity shall provide the Nation's Secretary with notice of the meeting, the reason for the special meeting, and an explanation of why the matter could not wait for a regular meeting.

(4) Quorum. This section shall list ~~identify~~ how many members of an entity create a quorum.

(4) Order of Business. This section sets out how the agenda will be set up.

(5) Voting. This section should list how ~~shall identify~~ voting ~~shall be taken, what requirements, such as, but not limited to:~~

(A) the percentages that shall be needed to pass different items;

(B) if, and when, the chairperson is allowed to vote; and

(C) an electronic polling process.

(d) ~~"Article IV. Reporting"~~ Expectations ~~consists~~ shall consist of the following information:

(1) Behavior of Members. This section shall identify the behavioral expectations and requirements of a member of the entity, and identify how the entity shall enforce these behavioral expectations.

(2) Prohibition of Violence. This section shall prohibit any violent intentional act committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to

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property, and set forth any further expectations regarding the prohibition of violence.

(3) *Drug and Alcohol Use.* This section shall prohibit the use of alcohol and prohibited drugs for a member of an entity when acting in their official capacity, and set forth any further expectations regarding the use of prohibited drugs and alcohol.

(4) *Social Media.* This section shall identify expectations for the use of social media in regards to official business of the entity.

(5) *Conflict of Interest.* This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest and how they are handled, as well as requirements related to prohibited activities resulting from disclosed conflicts of interest, and means by which a party can alleviate or mitigate the conflict of interest.

(e) "Article V. Stipends and Compensation" shall consist of the following information:

(1) *Stipends.* This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.

(2) *Compensation.* This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting such compensation, if any in addition to those contained in this law.

(f) "Article VI. Records and Reporting" shall consist of the following information:

(1) *Agenda Items.* Agenda items shall be maintained in ~~an identified~~ a consistent format as identified by this section.

(2) *Minutes.* Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the entity. This may include a summary of action taken by the entity. This section shall identify the format for minutes, and a reasonable timeframe by which minutes shall be submitted to the Business Committee Support Office.

(3) *Attachments.* Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented. This section shall identify how records of attachments shall be kept.

(4) *Oneida Business Committee Liaison.* Entities ~~will report to~~ shall regularly communicate with the Oneida Business Committee member who is their designated liaison. This ~~reporting section shall identify a~~ format and frequency for communication which may be as the liaison and entity agree to, but not less than that required in any law or policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. ~~Reports shall be made within a reasonable time after a meeting is held, or as the Oneida Business Committee member liaison and entity agree. Provided that, the agreement~~ The purpose of the liaison relationship is to uphold the ability of the liaison to act as a support to that entity.

(5) *Audio Recordings.* This section shall state whether or not the entity is required to audio record meetings, and maintain the audio records.

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(g) "Article ~~V~~VII. Amendments" consists of:

(1) ~~Amendments to By-laws. There should be described~~Bylaws. This section shall describe how amendments to the ~~by-laws shall take place. Provided that, bylaws are made. Any~~ amendments to bylaws shall conform to the requirements of this and any other policy. ~~Provided further, that amendments are of the Nation. Amendments to bylaws shall be~~ approved by the Oneida Business Committee, in addition to the General Tribal Council when applicable, prior to implementation.

105.9. Minutes**11. Reporting Requirements**

~~105.9~~11-1. Minutes. All minutes shall be submitted to the ~~Tribal Secretary's~~Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.

~~105.9-2~~(a) Actions taken by an entity are valid ~~when~~upon approval of the action by vote, unless the bylaws of the entity otherwise require minutes to be approved by the entity before the actions are approved, provided that, minutes are valid.

(b) Minutes shall be filed according to this section, and any specific directions within approved ~~by-laws~~bylaws.

~~(c) 105.9-3.~~ No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the ~~by-laws~~bylaws of that entity.

~~105.9-4. In the event of dissolution of an entity, all files and documents are required to be forwarded to the Tribal Secretary's Office for proper storage and disposal.~~

105.10. Dissolution of Entities

~~105.10-1. All entities of the Tribe shall be dissolved according to this section. Provided that other specific directions may be included within by laws.~~

~~105.10-2. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the~~ 105.11-2. Standard Operating Procedures. All standard operating procedures established by an entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.

105.11-3. Quarterly Reports to the Oneida Business Committee. Entities shall provide quarterly reports to the Oneida Business Committee in accordance with the quarterly reporting schedule approved by the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:

(a) Contact Information. The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.

(b) Meetings. When and how often the entity is holding meetings and whether any

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emergency and/or special meetings have been held.

(1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.

(2) If special meetings were held, the report shall indicate the topic of each meeting.

(c) Accomplishments. Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.

(d) Goals. Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.

(e) Budget. The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.

(f) Requests. Details of any requests to the Oneida Business Committee.

(f) Other. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.

105.11-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.

(a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.

(b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.

~~105.11-5. Tribal Secretary's Office for proper disposal within two weeks of dissolution.~~

~~105.10-3. All other entities of the Tribe shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee. Unless otherwise indicated, the materials generated by these entities shall be forwarded to the Tribal Secretary's Office for proper disposal within two weeks of dissolution.~~

~~105.10-4. All Chairpersons and Secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding materials.~~

105.11 Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

105.12. Stipends, Reimbursement and Compensation for Service

105.12-1. The Nation recognizes that an individual serving on an entity of the Nation, whether elected or appointed, incurs some expense as a result of his or her position on the entity. Therefore, the Nation, in order to attract individuals to serve on entities, shall pay stipends to these members in accordance with this section.

105.12-2. 105.11-1. Compensation and reimbursement for expenses shall ~~be follow~~ follow the procedures as set out in this section and according to procedures for payment as set out by the ~~Oneida Tribe of Indians of Wisconsin.~~

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~~105.11-2. The Oneida Tribe recognizes that persons serving on entities of the Tribe, whether elected or appointed, incur some expense. Therefore, the Tribe, in order to attract persons to serve on entities, shall pay stipends to these members in accordance with this section.~~

~~105.11-3. *Meeting Stipends for Appointed Members.* Except provided in sub (a) and Nation, unless otherwise declined by the entity through its bylaws, or declined by a member(s), appointed members serving on entities shall be paid a stipend of no more than \$50 per month when at least one (1) meeting is conducted where a quorum has been established in accordance with the duly adopted by laws of that entity. Provided that the meeting lasts for at least one (1) hour and that members collecting stipends must be present for at least one (1) hour of the meeting.~~

105.12-3.(a) Members serving on the Oneida Child Protective Board shall be exempt from the \$50 stipend per month limitation and shall receive a \$50. The Oneida Business Committee shall set stipend for each meeting held in accordance with amounts by resolution. ~~105.11-3.~~

~~105.11-4. *Meeting Stipends for Elected Members.* Unless otherwise declined by the entity through its bylaws, or declined by a member(s), elected members serving on entities shall be paid a minimum stipend of \$50 for each meeting which has established a quorum in accordance with the duly adopted by laws of that entity for at least one (1) hour, regardless of the length of the meeting. Members collecting stipends must be present for at least one (1) hour of the meeting, regardless of the length of the meeting.~~

~~105.11-5. The Oneida Business Committee shall periodically review the amounts provided for meeting stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending this Policy the resolution.~~

105.12-4. *Meeting Stipends.* A member of an entity, whether elected or appointed, shall only receive a meeting stipend for a meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting.

(a) *Meeting Stipends for Appointed Members.* Appointed members serving on entities shall be paid no more than one (1) meeting stipend per month when at least one (1) meeting is conducted

(b) *Meeting Stipends for Elected Members.* Elected members serving on entities shall be paid a stipend for each meeting held in accordance with this law.

105.12-5. *Oneida Judiciary Hearings.* Any member of an entity may receive a hearing stipend if the member's attendance at the hearing is required by official subpoena. Only one (1) member of an entity may receive a hearing stipend if the member's attendance at a hearing before the Oneida Judiciary directly involving the entity is at the discretion of the entity.

105.12-6. *Hearings of an Entity.* A member of an entity that maintains hearing authority may obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of all functions related to the resolution of the matter notwithstanding the amount of time it takes to resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting.

105.12-7. *Oneida Business Committee Meetings.* Up to two (2) members of an entity that attend the Oneida Business Committee meeting where the quarterly report of the entity is an agenda item, and present the quarterly report are eligible to receive a stipend.

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105.12-8. Other Stipends. The Oneida Business Committee shall determine if, and when, any other stipends are appropriate to compensate members of entities for their official actions. All possible stipends shall be included in the Oneida Business Committee resolution which sets stipend amounts.

105.12-9. Conferences and Training. A member of any entity, elected or appointed, shall be reimbursed in accordance with the ~~Tribal~~Nation's policy for travel and per diem, for attending a conference or training. Provided that:

- (a) A member shall be eligible for a ~~\$100~~ stipend for each full day the member is present at the conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
- (b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.
- (c) No stipend payments shall be made for those days spent traveling to and from the conference or training.

~~105.11-7,~~12-10. Business Expenses. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.

105.12-11-8. Task Force ~~members and members~~Ad Hoc Subcommittees. Members of task force, ad hoc committees and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

105.1213. Confidential Information

~~105.1213-1. The Oneida Tribe is involved in numerous business ventures and governmental functions where it is necessary that private information be kept in the strictest confidence to assure the continued success and welfare~~All members ~~of the Tribe. It is in the best interest of the Oneida Tribe that all officials~~an entity shall maintain in a confidential manner all information, ~~whether of historical, immediate, or future use or need.~~ obtained through their position on the entity. The ~~Oneida Tribe desires~~Nation requires that all ~~officials~~members of an entity who have access to the ~~Oneida Tribe's~~Nation's confidential information be subject to specific limitations in order to protect the interest of the ~~Oneida Tribe.~~ It is the intention of the Oneida TribeNation and ensure that no persons engaged in by the ~~Tribe~~Nation, nor their relatives or associates, benefit from the use of confidential information.

~~(a) 105.12-2. Confidential information means all information or data, whether printed, written, or oral, concerning business or customers of the Oneida Tribe, disclosed to, acquired by, or generated by officials in confidence at any time during their elected or appointed term or during their employment.~~

~~105.12-3.~~ Confidential information shall be considered and kept as the private and privileged records of the ~~Oneida Tribe~~Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.

~~(b) A member of an entity~~105.12-4. An official will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the ~~Oneida Tribe~~Nation shall be entitled to an injunction by any competent court to enjoin and

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restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the ~~Oneida Tribe~~Nation and the entity.

~~(c) 105.12-5.~~ Upon completion or termination of his/or her elected or appointed term of membership in an entity, for any cause whatsoever, the ~~official~~member of the entity will surrender to the ~~Oneida Tribe~~Nation, in good condition, all records kept by the ~~employee~~member of the entity.

~~(d) 105.12-6.~~ No ~~official~~member of an entity shall disclose confidential information acquired by reason of his/~~her~~ other relationship or status with the ~~Oneida Tribe~~Nation for his/or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.

105.13-2.

~~105.13.~~ Official Oneida Nation E-mail Address. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.

(a) If a member is also an employee of the Nation, he or she shall receive a separate e-mail address from his or her regular work e-mail address.

(b) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.

(c) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.

(d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

105.14. Conflicts of Interest

Subpart A. General

~~105.13~~14-1. ~~The Oneida Tribe recognizes the ability of all persons to serve on entities of the Oneida Tribe. However, it is also recognized that the delegated authority and responsibilities~~All members of an entity ~~may cause conflict with membership on other entities or employment.~~

~~are required to adhere~~105.13-2. ~~It is the policy of the Oneida Tribe to request a candidate to disclose possible conflicts prior to election or appointment to allow the conflicts to be resolved in a timely manner.~~

~~105.13-3.~~ ~~Officials shall disclose and resolve~~the Nation's laws and policies governing conflicts of interest ~~in a reasonable and timely manner. Failure to resolve conflicts shall result in removal from office for elected officials and may result in termination of appointment for appointed officials. Provided that, all applicants shall submit, with the application forms, a signed conflict of interest declaration disclosing all known conflicts.~~

~~105.13-4.~~ This section sets forth specifically prohibited conflicts of interests. However, for any individual candidate ~~or~~14-2. ~~A member on~~of an entity, ~~conflicts may arise within the by-laws of that entity or employment relationships.~~

~~105.13-5.~~ No official shall ~~act as~~disclose a consultant, agent, representative for, or hold any

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~~position as an officer, director, partner, trustee, or belong as a member in a board, committee or commission, or the like without first disclosing such activity to determine possible conflicts of interest.~~

Subpart B. Employment Interests

~~105.13-6. No official shall hold office in an entity which has authority over the area in which the official is employed by the Oneida Tribe or elsewhere. The Oneida Tribe recognizes the ability of all persons to serve on entities of the Oneida Tribe, however, recognizes the conflict arising out of membership on an entity~~of interest as soon as the conflict arises ~~and employment in~~keep ~~an area over which the entity has authority.~~

~~105.13-7. Employment is defined for this subpart as that area which the employee supervises or is supervised in regards to a specific subject matter.~~

~~105.13-8. Authority~~updated conflict ~~of an entity is defined for this subpart as that area over which the entity has subject matter jurisdiction delegated either by the Oneida Business Committee or Oneida General Tribal Council, and for which that authority may be regulatory, oversight, or otherwise.~~

Subpart C. Financial Interests, Investments, and Gifts

~~105.13-9. No official, or their immediate family, may have a financial interest in any transaction between the entity and an outside party where the official has a financial or familial relationship.~~

~~105.13-10. The following words are defined for the purposes of this subpart:~~

~~(a) "Financial interest" means any profit sharing arrangements, rebates, payments, commissions, or compensation in any~~disclosure ~~form, and shall include any form of ownership, regardless of ability to control the activities of the business. Provided that, this shall not include ownership of shares which, other than in combination with others, cannot exert a controlling influence on the activities of the business and in relation to the outstanding shares, the ownership of shares represents a small part of the whole.~~with the Nation's Secretary.

~~(b) "Transaction" means any activity wherein a provider of goods and/or services is compensated in any form.~~

~~(c) "Immediate family" means the mother, father, sister, brother, daughter, son, granddaughter, grandson, grandfather, grandmother and these relationships with any spouse.~~

~~105.13-11. As referred~~14-3. Due ~~to in this Subpart, entity includes~~the potential ~~for the purposes of defining conflicts, the programs or enterprises over which the entity has delegated authority.~~

~~105.13-12. Officials~~a real or perceived conflict of interest to exist, political appointees and legislative assistants ~~shall avoid personal investment in any business with which the Oneida Tribe has or is expected to have a contractual or other business relationship. Notwithstanding the foregoing, however, an investment by an official in a business with which the Oneida Tribe has dealings is permissible if the Oneida Business Committee or other delegated authority determines in writing that:~~

~~(a) the investment is not made or cannot be considered to have been made~~serve ~~on the basis of confidential information, and~~an appointed or elected entity.

~~(b) the investment cannot be expected to adversely affect or influence the official's~~

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~~judgement in the performance of any services or obligations on behalf of the Oneida Tribe.~~

105.15. Use of the Nation's Assets

~~105.13-13. Officials~~**15-1. Entities** shall ~~not use their relationship with the Oneida Tribe to exercise undue influence to obtain anything which is not freely available to all prospective purchasers.~~

~~105.13-14. No official shall accept gifts, payments for personal gain, opportunities to invest, opportunities to act as an agent, a consultant, or a representative for actual or potential purchasers, sales sources, contractors, consultants, customers or suppliers, or accept any direct or indirect benefit from any actual or potential purchaser, sales source, contractor, consultant, customer, or supplier.~~

~~105.13-15. No official shall accept any gift, entertainment, service, loan, promise of future benefits or payment of any kind which the Oneida Business Committee or other delegated authority determines adversely affects or influence his/her judgement in the performance of any services, duties, obligations or responsibilities to the Oneida Tribe, or impairs confidence in the Oneida Tribe.~~

~~105.13-16. Notwithstanding the foregoing, however, officials may accept or provide business-related meals, entertainment, gifts or favors when the value involved is insignificant and the Oneida Business Committee or other delegated authority has determined that it clearly will not place him/her under any obligation.~~

Subpart D. Competition With The Oneida Tribe

~~105.13-17. No official shall enter into competition with the Oneida Tribe in the purchase or sale of any property, property rights or interests, without prior consent of the Oneida Tribe.~~

~~105.13-18. An official may enter into competition with the Oneida Tribe where the activity engaged is approved through an Oneida entrepreneur development program or other similar Oneida program and does not otherwise violate this policy.~~

Subpart E. Use Of Tribal Assets

~~105.13-19. All~~**maintain all** bank accounts for ~~tribal~~**the Nation's** funds ~~shall be maintained~~ in the name of the Oneida ~~Tribe and~~**Nation. Bank accounts** will be reflected on the Oneida ~~Tribe's~~**Nation's** books in accordance with Generally Accepted Accounting ~~Procedures~~**Principles**.

~~105.13-20~~**15-2.** Each ~~official~~**member of an entity** shall comply with the system of internal accounting controls sufficient to provide assurances that:

- (a) all transactions are executed in accordance with management's authorization; and
- (b) access to assets is permitted only in accordance with management's authorization; and
- (c) ~~all transactions are recorded to permit preparation of financial statements in conformity with generally accepted accounting principles~~**Generally Accepted Accounting Principles** or other applicable criteria.

~~105.13-21. Any records created or obtained while as an official of an entity of the Oneida Tribe is/are the property of the Oneida Tribe and can only be removed or destroyed by approval from a quorum of the entity at a duly called meeting. All removal or destruction of documents must be made in accordance with the Open Records and Open Meetings law.~~

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Subpart F. Disclosure

~~105.13-22. Each official shall disclose any outside activities or interests that conflict or suggest a potential conflict with the best interests of the Oneida Tribe by completely filling out the application for membership or informing the Oneida Business Committee or other designated authority after election or appointment of a conflict arising during membership on an entity.~~

Subpart G. Reporting

~~105.13-23. All conflicts or potential conflicts that arise during membership on an entity shall be immediately reported to the Tribal Secretary of the Oneida Tribe. Upon receiving information of a potential conflict of interest, the Tribal Secretary shall request a determination from the Oneida Law Office whether further action must be taken by the Oneida Tribe regarding the status of the official.~~

~~105.13-24.~~105.15-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the ~~internal audit staff.~~Internal Audit department. If the ~~internal audit staff~~Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office ~~of the Oneida Tribe,~~ who will then make a determination of further action to be taken, if any.

105.16. Dissolution of an Entity

105.16-1. Dissolution of a Task Force or Ad Hoc Committee. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the *Subpart H. Business Committee Support Office* for proper disposal within two (2) weeks of the dissolution.

105.16-2. Dissolution of an Entity. All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee. The General Tribal Council shall have the authority to dissolve an entity created by the General Tribal Council or the Oneida Business Committee, and the Oneida Business Committee shall have the authority to dissolve an entity created by the Oneida Business Committee. Within five (5) business days of the Oneida General Tribal Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida Business Committee shall provide the entity written notice of the dissolution.

105.16-3. Management of Records and Materials. All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.

(a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

105.17. Enforcement And Penalties

~~105.13-25. Officials~~105.17-1. Any member of an entity found to be in violation of this

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policy law may be ~~removed~~ subject to:

(a) sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;

(b) removal pursuant to ~~the Removal Law~~ any laws or policies of the Nation's governing removal, if a member of an elected entity; or have their

(c) termination of appointment ~~terminated~~ by the Oneida Business Committee, if a member of an appointed entity.

105. ~~13-26~~ 17-2. Candidates for appointment or election to ~~office~~ a position on an entity found in violation of this policy law may be disqualified from taking office.

End.

Adopted - BC-~~8-20~~08-02-95-A

Amended - BC-~~505~~-14-97-F

Emergency Amendments - BC-04-12-06-JJ

Amended - BC-~~909~~-27-06-E (permanent adoption of emergency amendments)

Amended – BC-09-22-10-C

Amended – BC-

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Title 1. Government and Finances – Chapter 105
BOARDS, COMMITTEES AND COMMISSIONS
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105.1. Purpose and Policy
105.2. Adoption, Amendment, Repeal
105.3. Definitions
105.4. Creation of an Entity
105.5. Applications
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105.10. Bylaws
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105.13. Confidential Information
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105.15. Use of the Nation's Assets
105.16. Dissolution of an Entity
105.17. Enforcement

105.1. Purpose and Policy

105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. This law does not apply to the Oneida Business Committee, or Tribal corporations due to the corporate structure and autonomy of those entities.

105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

105.2. Adoption, Amendment, Repeal

105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, and BC-__-__-__.

105.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

105.2-3. 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.

105.2-4. 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.

105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

105.3. Definitions

105.3-1. 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) "Application" means the form by which a person seeks to be appointed to fill a vacancy on an entity.

(b) "Appointment" means the process by which a person is chosen to fill a vacancy on an

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entity by the Oneida Business Committee.

(c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

(d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.

(e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.

(f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.

(g) "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 that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.

(h) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.

(j) "Nation" means the Oneida Nation.

(k) "Per Diem" means the payment made by the Nation to offset the costs of being out-of-town or to travel on behalf of the Oneida Nation.

(l) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.

(m) "Stipend" means that amount paid by the Oneida Nation to persons serving on boards, committees and commissions of the Oneida Nation to offset the expenses of being a member on the board, committee or commission. Stipends are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards.

(n) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.

(o) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by a preponderance of the evidence.

(p) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be

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long-term.

(q) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

105.4. Creation of an Entity

105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.

105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.

105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

105.5. Applications

105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

(a) All applications shall include a statement explaining the attendance requirements of section 105.11-3.

(b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.

105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date. Postmarked envelopes are accepted as filed if postmarked by the deadline date and received by the Business Committee Support Office within five (5) business days of the deadline.

105.5-3. At the completion of the posted deadline for filing applications the Business Committee Support Office shall notify all persons who have filed an application of the date his or her application was received and if his or her application met the deadline to be considered for the election or appointment.

105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. Applications for appointed positions shall be verified by the Business Committee Support Office as needed or as required in the bylaws of the entity.

105.5-5. *Insufficient Applicants*. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Oneida Business Committee may elect to:

(a) include within the pool of appointed persons late applications, or

(b) repost for an additional time period. In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.

105.6. Vacancies

105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the

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entity's classification as an appointed or elected entity pursuant to the entity's bylaws. Unless, a law of the Nation indicates that removal of an official shall be done pursuant to the Removal law, an appointed individual may have his or her appointment terminated by the Oneida Business Committee.

105.6-2. A position on an entity shall be considered vacant in the following situations:

(a) *End of Term*. A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.

(1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.

(b) *Removal*. Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.

(c) *Termination of Appointment*. A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.

(d) *Resignation*. A resignation is effective upon:

(1) Deliverance of a letter to the Business Committee Support Office;

(A) Upon receipt of resignation, the Business Committee Support Office will notify the entity of the resignation;

(2) Deliverance of a letter to the Chairperson of the entity, or designee, or

(3) Acceptance by motion of the entity of a verbal resignation.

(e) *New Positions*. Vacancies on new entities are effective upon adoption of bylaws.

105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.

105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The Secretary shall post notice of vacancies at the following times:

(a) *End of Term*. Automatically thirty (30) days prior to completion of the term.

(b) *Removal*. No later than the first Oneida Business Committee meeting following the effective date of the removal.

(c) *Resignation*. No later than the first Oneida Business Committee meeting following the Secretary's receipt of notice of an effective resignation from the entity.

(d) *New Positions*. Upon one of the following conditions:

(1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or

(2) upon date specified when creating the entity.

(f) *Termination of appointment*. No later than the first Oneida Business Committee meeting following the effective date of the termination.

105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

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105.7. Appointment to an Entity

105.7-1. *Appointment Selection.* The following procedures shall be used to determine how the applicant for an appointed position is selected:

(a) Five (5) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:

(1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and

(2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made.

(b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.

(1) The entity's Chairperson may have until the executive session to review the application materials and provide the Oneida Business Committee a recommendation of an applicant for appointment.

(c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:

(1) choose an applicant for appointment, or

(2) ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.

(d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meetings. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.

(e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:

(1) accept the selected applicant and vote to appoint the individual to the vacant position, or

(2) reject the selected applicant and vote to oppose the appointment of the individual.

(f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.

105.7-2. *Notification of Appointment.* Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the

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final status of their application.

(a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary and the final decision regarding the selection after the procedures for selection of an applicant described in section 105.7-1 are completed.

(b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph: "The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

105.7-3. Termination of Appointment. Appointed members of entities serve at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee by a two-thirds majority vote of the Oneida Business Committee.

(a) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

105.8 Election to an Entity

105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or petition for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.

(a) When the Election Board notifies a petitioner or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: "The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

105.9. Oath of Office

105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.

(a) The appointed or elected member shall appear in person at the Oneida Business Committee meeting to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.

105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.

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105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded to the new member of the entity and the entity.

105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will carry out the duties and responsibilities as a member of the [entity name], and all recommendations shall be made in the best interest of the Oneida Nation as a whole.

105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware of their duty to the Nation and as members of the entity.

105.10. Bylaws

105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.

(a) All existing entities must comply with this format and present bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this law.

(b) Bylaws must contain at least the minimum information required by law, although more information is not prohibited.

(c) *Exception.* Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities must have, at minimum, mission or goal statements for completion of the task.

105.10-2. *Articles.* Bylaws shall contain, at a minimum, the following Articles:

(a) Article I. Authority.

(b) Article II. Officers.

(c) Article III. Meetings.

(d) Article IV. Expectations.

(e) Article V. Stipends and Compensation.

(f) Article VI. Records and Reporting.

(g) Article VII. Amendments.

105.10-3. *Sections.* Articles shall be divided into "sections" as set out.

(a) "Article I. Authority" shall consist of the following:

(1) *Name.* The full name of the entity shall be stated, along with any short name that will be officially used.

(2) *Establishment.* This section shall state the citation and name, if any, of the creation document.

(3) *Authority.* This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.

(4) *Office.* There shall be listed the official office or post box of the entity.

(5) *Membership.* The following information shall be in this section:

(A) Number of members on the entity;

(B) If members on the entity are elected or appointed, and how a member

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is elected or appointed;

(C) How vacancies are filled; and

(D) Qualifications for membership on the entity.

(6) *Termination or Removal*. This section shall identify causes for termination or removal, if any, in addition to those already identified in laws and/or policies of the Nation.

(7) *Trainings and Conferences*. This section shall describe any trainings and/or conferences that the entity deems necessary for members to responsibly serve the entity, if any.

(b) "Article II. Officers" shall consist of the following:

(1) *Chairperson and Vice-Chairperson*. This section creates the chairperson and vice-chairperson positions of the entity. Other officer positions may also be created here.

(2) *Responsibilities of the Chairperson*. Because of the importance of this position, all duties and responsibilities of the chairperson, as well as limitations of the chairperson shall be specifically listed here.

(3) *Responsibilities of the Vice-Chairperson*. Because of the importance of this position, all duties and responsibilities of the vice-chairperson, as well as limitations of the vice-chairperson shall be specifically listed here.

(4) *Responsibilities of Additional Officers*. There may be additional sections as needed for every officer position created in subsection one (1) above. These sections shall state all duties and responsibilities of the officer, as well as any limitations of the officer.

(5) *Selection of Officers*. This section shall identify how a member of the entity shall be selected for an official officer position in the entity.

(6) *Budgetary and Travel Sign-Off Authority*. This section shall identify the entity's varying levels of budgetary sign-off authority, the members that are authorized to sign-off at each level, and which members have the authority to sign-off on travel on behalf of the entity.

(A) The Nation's Purchasing Department shall confirm each position within the entity that has been designated as having sign-off authority.

(7) *Personnel*. This section shall state the entity's authority for hiring personnel, if any, and the duties of such personnel.

(c) "Article III. Meetings" shall consist of the following:

(1) *Regular meetings*. This section shall identify when and where regular meetings shall be held, and how the entity shall provide notice of the meeting agenda, documents, and minutes.

(2) *Emergency meetings*. This section shall identify what constitutes an emergency meeting, how emergency meetings shall be called, and how the entity shall provide notice of the emergency meeting.

(A) All bylaws shall include a provision requiring that within seventy-two (72) hours after an emergency meeting, the entity shall provide the Nation's Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular or special meeting.

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(3) *Special meetings*. This section shall identify what constitutes a special meeting, how special meetings shall be called and how the entity shall provide notice of the special meeting.

(A) All bylaws shall include a provision requiring that within seventy-two (72) hours after a special meeting, the entity shall provide the Nation's Secretary with notice of the meeting, the reason for the special meeting, and an explanation of why the matter could not wait for a regular meeting.

(4) *Quorum*. This section shall identify how many members of an entity create a quorum.

(5) *Order of Business*. This section sets out how the agenda will be set up.

(6) *Voting*. This section shall identify voting requirements, such as, but not limited to:

(A) the percentages that shall be needed to pass different items;

(B) if, and when, the chairperson is allowed to vote; and

(C) an electronic polling process.

(d) "Article IV. Expectations" shall consist of the following information:

(1) *Behavior of Members*. This section shall identify the behavioral expectations and requirements of a member of the entity, and identify how the entity shall enforce these behavioral expectations.

(2) *Prohibition of Violence*. This section shall prohibit any violent intentional act committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property, and set forth any further expectations regarding the prohibition of violence.

(3) *Drug and Alcohol Use*. This section shall prohibit the use of alcohol and prohibited drugs for a member of an entity when acting in their official capacity, and set forth any further expectations regarding the use of prohibited drugs and alcohol.

(4) *Social Media*. This section shall identify expectations for the use of social media in regards to official business of the entity.

(5) *Conflict of Interest*. This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest and how they are handled, as well as requirements related to prohibited activities resulting from disclosed conflicts of interest, and means by which a party can alleviate or mitigate the conflict of interest.

(e) "Article V. Stipends and Compensation" shall consist of the following information:

(1) *Stipends*. This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.

(2) *Compensation*. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting such compensation, if any in addition to those contained in this law.

(f) "Article VI. Records and Reporting" shall consist of the following information:

(1) *Agenda Items*. Agenda items shall be maintained in a consistent format as identified by this section.

(2) *Minutes*. Minutes shall be typed and in a consistent format designed to

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generate the most informative record of the meetings of the entity. This may include a summary of action taken by the entity. This section shall identify the format for minutes, and a reasonable timeframe by which minutes shall be submitted to the Business Committee Support Office.

(3) *Attachments*. Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented. This section shall identify how records of attachments shall be kept.

(4) *Oneida Business Committee Liaison*. Entities shall regularly communicate with the Oneida Business Committee member who is their designated liaison. This section shall identify a format and frequency for communication which may be as the liaison and entity agree to, but not less than that required in any law or policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. The purpose of the liaison relationship is to uphold the ability of the liaison to act as a support to that entity.

(5) *Audio Recordings*. This section shall state whether or not the entity is required to audio record meetings, and maintain the audio records.

(g) "Article VII. Amendments" consists of:

(1) *Amendments to Bylaws*. This section shall describe how amendments to the bylaws are made. Any amendments to bylaws shall conform to the requirements of this and any other policy of the Nation. Amendments to bylaws shall be approved by the Oneida Business Committee, in addition to the General Tribal Council when applicable, prior to implementation.

105.11. Reporting Requirements

105.11-1. *Minutes*. All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.

(a) Actions taken by an entity are valid upon approval of the action by vote, unless the bylaws of the entity otherwise require minutes to be approved by the entity before the actions are valid.

(b) Minutes shall be filed according to this section, and any specific directions within approved bylaws.

(c) No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the bylaws of that entity.

105.11-2. *Standard Operating Procedures*. All standard operating procedures established by an entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.

105.11-3. *Quarterly Reports to the Oneida Business Committee*. Entities shall provide quarterly reports to the Oneida Business Committee in accordance with the quarterly reporting schedule approved by the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:

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(a) *Contact Information.* The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.

(b) *Meetings.* When and how often the entity is holding meetings and whether any emergency and/or special meetings have been held.

(1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.

(2) If special meetings were held, the report shall indicate the topic of each meeting.

(c) *Accomplishments.* Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.

(d) *Goals.* Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.

(e) *Budget.* The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter. (f) *Requests.* Details of any requests to the Oneida Business Committee.

(f) *Other.* And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.

105.11-4. *Annual and Semi-Annual Reports to the General Tribal Council.* Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.

(a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.

(b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.

105.11-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

105.12. Stipends, Reimbursement and Compensation

105.12-1. The Nation recognizes that an individual serving on an entity of the Nation, whether elected or appointed, incurs some expense as a result of his or her position on the entity. Therefore, the Nation, in order to attract individuals to serve on entities, shall pay stipends to these members in accordance with this section.

105.12-2. Compensation and reimbursement for expenses shall follow the procedures as set out in this section and according to procedures for payment as set out by the Nation, unless otherwise declined by the entity through its bylaws, or declined by a member.

105.12-3. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending the resolution.

105.12-4. *Meeting Stipends.* A member of an entity, whether elected or appointed, shall only receive a meeting stipend for a meeting where a quorum has been established in accordance with

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the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting.

(a) *Meeting Stipends for Appointed Members.* Appointed members serving on entities shall be paid no more than one (1) meeting stipend per month when at least one (1) meeting is conducted

(b) *Meeting Stipends for Elected Members.* Elected members serving on entities shall be paid a stipend for each meeting held in accordance with this law.

105.12-5. *Oneida Judiciary Hearings.* Any member of an entity may receive a hearing stipend if the member's attendance at the hearing is required by official subpoena. Only one (1) member of an entity may receive a hearing stipend if the member's attendance at a hearing before the Oneida Judiciary directly involving the entity is at the discretion of the entity.

105.12-6. *Hearings of an Entity.* A member of an entity that maintains hearing authority may obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of all functions related to the resolution of the matter notwithstanding the amount of time it takes to resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting.

105.12-7. *Oneida Business Committee Meetings.* Up to two (2) members of an entity that attend the Oneida Business Committee meeting where the quarterly report of the entity is an agenda item, and present the quarterly report are eligible to receive a stipend.

105.12-8. *Other Stipends.* The Oneida Business Committee shall determine if, and when, any other stipends are appropriate to compensate members of entities for their official actions. All possible stipends shall be included in the Oneida Business Committee resolution which sets stipend amounts.

105.12-9. *Conferences and Training.* A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:

(a) A member shall be eligible for a stipend for each full day the member is present at the conference or training, when attendance at the conference or training is required by law, bylaw or resolution.

(b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.

(c) No stipend payments shall be made for those days spent traveling to and from the conference or training.

105.12-10. *Business Expenses.* All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.

105.12-11. *Task Force and Ad Hoc Subcommittees.* Members of task force, ad hoc committees and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

105.13. Confidential Information

105.13-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order to protect the interest of the Nation and ensure that no persons engaged in by the Nation, nor their relatives or associates, benefit from the use of confidential information.

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(a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.

(b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the Nation and the entity.

(c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.

(d) No member of an entity shall disclose confidential information acquired by reason of his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.

105.13-2. *Official Oneida Nation E-mail Address.* Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.

(a) If a member is also an employee of the Nation, he or she shall receive a separate e-mail address from his or her regular work e-mail address.

(b) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.

(c) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.

(d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

105.14. Conflicts of Interest

105.14-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.

105.14-2. A member of an entity shall disclose a conflict of interest as soon as the conflict arises and keep an updated conflict of interest disclosure form with the Nation's Secretary.

105.14-3. Due to the potential for a real or perceived conflict of interest to exist, political appointees and legislative assistants shall not serve on an appointed or elected entity.

105.15. Use of the Nation's Assets

105.15-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.

105.15-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:

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- (a) all transactions are executed in accordance with management's authorization; and
- (b) access to assets is permitted only in accordance with management's authorization; and
- (c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.

105.15-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

105.16. Dissolution of an Entity

105.16-1. *Dissolution of a Task Force or Ad Hoc Committee.* A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.

105.16-2. *Dissolution of an Entity.* All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee. The General Tribal Council shall have the authority to dissolve an entity created by the General Tribal Council or the Oneida Business Committee, and the Oneida Business Committee shall have the authority to dissolve an entity created by the Oneida Business Committee. Within five (5) business days of the Oneida General Tribal Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida Business Committee shall provide the entity written notice of the dissolution.

105.16-3. *Management of Records and Materials.* All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.

- (a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

105.17. Enforcement

105.17-1. Any member of an entity found to be in violation of this law may be subject to:

- (a) sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;
- (b) removal pursuant to any laws or policies of the Nation's governing removal, if a member of an elected entity; or
- (c) termination of appointment by the Oneida Business Committee, if a member of an appointed entity.

105.17-2. Candidates for appointment or election to a position on an entity found in violation of this law may be disqualified from taking office.

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617 *End.*

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621 Adopted - BC-08-02-95-A

622 Amended - BC-05-14-97-F

623 Emergency Amendments - BC-04-12-06-JJ

624 Amended - BC-09-27-06-E (permanent adoption of emergency amendments)

625 Amended – BC-09-22-10-C

626 Amended – BC-

627

628



Legislative Operating Committee May 2, 2018

Internal Audit Law Amendments

Submission Date: 4/18/18	Public Meeting: n/a
LOC Sponsor: David P. Jordan	Emergency Enacted: n/a

Summary: *Oneida Law Office is seeking amendments to the law recognizing Oneida Judiciary's independence.*

2/21/18LOC: Motion by Kirby Metoxen to add to the active files list, with a medium priority and Kirby Metoxen as a sponsor, seconded by Daniel Guzman King. Motion carried unanimously.

3/28/18/ OBC: Motion by Brandon Stevens to accept notice regarding requested amendments to Internal Audit law regarding recognition of Judiciary independence and support request for Legislative Operating Committee to make appropriate amendments to Internal Audit law, seconded by Jennifer Webster. Motion carried unanimously.

3/28/18: *Work Meeting.* Present: Clorissa Santiago, Mary C. Graves, Loucinda Conway, Jacqueline Johnson. The purpose of this work meeting was to review the proposed amendments with the Internal Audit Department and obtain their comments and concerns. Drafting attorney will bring concerns to a LOC work meeting.

3/29/18: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens, Daniel Guzman, Clorissa Santiago, Brandon Wisneski, Laura Laitinen-Warren, Cathy Bachhuber. LOC reviewed and discussed the comments received from the Internal Audit Department on the proposed amendments.

Next Steps:

- Remove the Internal Audit law amendments from the Active Files List.
- Forward the memorandum to the Oneida Business Committee officers.



TO: Oneida Business Committee Officers:
Tehassi Hill, Oneida Business Committee Chairman
Brandon Stevens, Oneida Business Committee Vice-Chairman
Lisa Summers, Oneida Business Committee Secretary
Patricia King, Oneida Business Committee Treasurer
FROM: David P. Jordan, Legislative Operating Committee Chairman
DATE: May 2, 2018
RE: Internal Audit Law Amendments

On February 21, 2018, the Legislative Operating Committee (LOC) received a memorandum from Jo Anne House, Chief Counsel, on behalf of the Oneida Business Committee officers requesting the LOC to consider amending the Internal Audit law to recognize the constitutional independence of the Judiciary. The LOC added the Internal Audit law amendments to the Active Files List on February 21, 2018.

On March 28, 2018, the LOC received the memorandum from the Oneida Business Committee officers requesting the LOC make amendments to the Internal Audit law regarding recognition of Judiciary independence.

After consideration, the LOC unanimously decided to take action to remove the Internal Audit law amendments from the Active Files List on May 2, 2018, due to an interest in maintaining the separation of the Judiciary from the legislative process. The LOC respects the Oneida Tribal Judiciary Canons of Judicial Conduct, which require that there be a separation between the Judiciary and other branches of the Tribal government, such as the Legislative Operating Committee. [8 O.C. 802.1.2]. The Oneida Tribal Judiciary Canons of Judicial Conduct also require that any activities that cross the bounds of separating the powers of the Tribe's government be avoided, such as the Judiciary's involvement in the legislative process. [8 O.C. 802.1.2].

Thank you for expressing your interest to amend the Internal Audit law to the LOC. The LOC appreciates your participation in the legislative process.

Requested Action

Forward this memorandum to the Oneida Nation Judiciary.



Legislative Operating Committee
May 2, 2018

Real Property Law Amendments

Submission Date: 11/01/17	Public Meeting: 01/11/18
LOC Sponsor: Ernest Stevens III	Emergency Enacted: n/a Expires: n/a

Summary: *Revisions required to remove residential leasing responsibilities from the Division of Land Management and transfer them to the Comprehensive Housing Division and to clarify jurisdiction under the law applies to all Tribal fee land- not only fee land within the Reservation- which will clarify and affirm the Land Commission's authority.*

11/01/17 LOC: Motion made by Ernest Stevens III to add Real Property Law Emergency Amendments to the active files list with himself as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

11/15/17 LOC: Motion by Kirby Metoxen to remove the emergency status from Real Property Amendments and assign as a high priority; seconded by Jennifer Webster. Motion carried unanimously.

12/6/17 LOC: Motion by Daniel Guzman King to approve the public meeting packet and forward to the Real Property Amendments to a public meeting to be held on January 11, 2018 and forward to the Finance Office for a fiscal analysis to be completed by January 10, 2018; seconded by Ernest Stevens III. Motion carried unanimously.

01/11/18: *Public Meeting Held.* Attendees include Daniel Guzman King, Ernest Stevens III, David P. Jordan, Jenny Webster, Tani Thurner, Brandon Wisneski, Maureen Perkins, Pat Pelky, Rae Skenandore, Cathy Bachhuber.

2/21/18 LOC: (Ready to go, but the fiscal analysis not complete.) Motion by Kirby Metoxen to accept adoption packet as FYI; seconded by Daniel Guzman King. Motion carried unanimously.

Motion by Jennifer Webster – should we receive the fiscal analysis I would request that it go out by e-poll for approval and still go on the Oneida Business Committee [agenda] on February 28, 2018; seconded by Kirby Metoxen. Motion carried unanimously.

Note: The fiscal analysis was not received in time to be placed on the 2/28/18 OBC agenda.

Next Steps:

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



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



TO: Oneida Business Committee
 FROM: David P. Jordan, LOC Chairperson
 DATE: May 9, 2018
 RE: Real Property Law Amendments

Please find the following attached backup documentation for your consideration of the proposed amendments to the Real Property law:

1. Resolution: Real Property Law Amendments
2. Statement of Effect: Real Property Law Amendments
3. Real Property Law Amendments Fiscal Impact Statement
4. Real Property Law Amendments Legislative Analysis
5. Real Property Law Amendments Law Draft (Redline to current)
6. Real Property Law Amendments Law Draft (Clean)

Overview

This resolution adopts amendments to the Real Property law. These amendments will:

- Transfer residential leasing responsibilities from Land Management to the Comprehensive Housing Division; and
- Clarify that jurisdiction under the law applies to all Tribal fee land and not just fee land within the Reservation. This language was revised to clarify and affirm the Oneida Land Commission's authority over such land.
- Incorporate minor drafting style changes that do not affect the content of the law.

These attached amendments make changes to two sections of the law that were adopted on February 8, 2017, but have not yet gone into effect. The following timeline is provided to assist in explaining these changes:

February 8, 2017 – OBC adopted amendments to the Real Property Law, which, among other things, removed several types of provisions so that those requirements could be placed in other laws or rules instead. In the adopting resolution, the OBC directed that all of these amendments would go into effect on June 25, 2017, in order to give the various entities time to place those requirements into the other laws/rules. Two of the sections that would have most of their provisions removed from the Real Property law were:

1. **Leasing.** The amendments deleted most of the provisions governing leasing from the Real Property law, because the Nation had adopted a separate Leasing law to govern leasing, and those requirements belonged in the new Leasing law. The new Leasing law required approval from the Secretary of the Interior before it could go into effect.
2. **Probate.** The amendments deleted most of the provisions governing probate from the Real Property law, and required Land Management and the Land Commission to

promulgate rules governing probate, instead. (This was done so that the law would not need to be amended every time the requirements for probate needed to be changed).

However, if the Real Property law amendments went into effect before the new Leasing law was effective, it would have resulted in a gap – the leasing provisions would have been taken out of the Real Property law, meaning there would be very little Tribal law in effect to govern leasing, until the Leasing Law was approved and became effective.

To avoid this result, BC Resolution #2-08-17-A adopted the amendments to the Real Property Law, but also added that the existing leasing requirements would remain in the Real Property law until the Leasing Law went into effect – then, the amendments that removed most of the requirements from the Leasing section of the Real Property Law would go into effect.

June 14, 2017 – The Real Property law amendments were set to go into effect in 11 days, which would have removed most of the provisions governing probate. However, the Land Commission and Land Management needed additional time to develop and promulgate the rules governing probate. This meant that on June 25, when the amended Real Property law went into effect, there would not be any provisions in law or in rule that governed probate.

To prevent this, the OBC adopted BC 6-14-17-A, which allowed the probate provisions to remain in the Real Property law until the probate rules had been promulgated and gone into effect. Then, they would be removed and the amended language adopted on February 8, 2017, would go into effect for that section.

June 25, 2017. The amendments to the Real Property law went into effect, but because the Leasing Law and rules governing probate had not yet gone into effect, the amendments to those two sections of the law did not go into effect, and the old language remained in place.

November 1, 2017. The LOC received a request to make additional amendments to the Real Property Law - to transfer residential leasing responsibilities from Land Management to the Comprehensive Housing Division; and to clarify and affirm the authority of the Land Commission by stating that the jurisdiction of the Real Property law applies to all Tribal fee land and not just fee land within the Reservation.

May 9, 2018. The Leasing law has been approved by the Secretary of the Interior and becomes effective on May 19, 2018. When this happens, the temporary leasing language will be removed from the Leasing law, and the amendments adopted by the OBC on February 8, 2017 will go into effect.

If the OBC adopts these proposed new amendments at the May 9, 2018 meeting, then they will also go into effect on May 19, 2018.

- These proposed new amendments do not affect the original language governing leasing, that are temporarily in effect in the Real Property law.
- These proposed new amendments change the language adopted by the OBC on February 8, 2017, by transferring the responsibility for administering and processing all residential leasing of Tribal land, from Land Management to the Comprehensive Housing Division.

At this time, the Land Management and the Land Commission rules governing probate have still not gone into effect, so the original language governing probate will remain in the Real Property law until that happens. Once probate rules have gone into effect, the amended language adopted by the OBC on February 8, 2017, which removes most of the probate provisions from the Real Property Law, will go into effect.

- These proposed new amendments do not affect the original language governing probate that is temporarily in effect in the Real Property law.
- These proposed new amendments do not change the amended language adopted by the OBC on February 8, 2017, except to change “Division of Land Management” to “Land Management.”

In accordance with the Legislative Procedures Act, a public meeting on the proposed law was held on January 11, 2018, with a comment period closing on January 18, 2018. Due to the inadvertent posting of the incorrect Public Meeting time on the website, the public meeting was held at 12:15 p.m. and then re-opened at 1:00 p.m. The only public comment received related to the definition of Land Management; and to address this, the law was amended to no longer refer to Land Management as a “Division”.

Requested Action

Approve the Resolution: Real Property Law Amendments

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____
Real Property 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 Oneida Business Committee adopted the current Real Property Law by resolution BC-5-29-96-A; and has adopted amendments through resolutions BC-3-01-06-D, BC-04-28-10-E, BC-02-25-15-C, BC-05-13-15-B; BC-2-8-17-A and BC-6-14-17-A; and

WHEREAS, it is necessary to update this law to transfer residential leasing responsibilities to the Comprehensive Housing Division; and

WHEREAS, it is necessary to update this law to clarify that jurisdiction under the law applies to all Tribal fee land and not just fee land within the Reservation; and

WHEREAS, a public meeting on these proposed amendments was held on January 11, 2018 in accordance with the Legislative Procedures Act.

NOW THEREFORE BE IT RESOLVED, that the Real Property law amendments are hereby adopted.

BE IT FURTHER RESOLVED, that these amendments shall not affect the provisions of sections 601.8 that are currently in effect until probate rules are promulgated and effective; in accordance with resolution BC-06-14-17-A.



Statement of Effect

Real Property Law Amendments

Summary

This resolution adopts amendments to the Real Property law (the “Law”) which:

- Transfer residential leasing responsibilities to the Comprehensive Housing Division, and
- Clarify that jurisdiction under the law applies to all Tribal fee land - not just fee land within the Reservation

Submitted by: Tani Thurner, Staff Attorney, Legislative Reference Office

Analysis by the Legislative Reference Office

The Real Property law was originally adopted by Business Committee resolution #5-29-96-A, with additional amendments adopted in 2006, 2010 and 2015.

Currently, the Law identifies Land Management as the party responsible for managing residential leases. However, those responsibilities have been transferred to the recently established Comprehensive Housing Division. These amendments reflect that transfer of responsibilities.

Currently, the law establishes jurisdiction over various types of lands; including Tribal fee land within the Reservation. To ensure the broadest exercise of the Nation’s sovereign authority, these proposed amendments expand that jurisdictional authority to cover all Tribal fee land regardless of where it is located.

As required by the Legislative Procedures Act, a public meeting was held for these amendments on January 11, 2018, with the LOC accepting public comments through January 18, 2018. The only comment received was a statement made during the public meeting regarding the definition for Land Management. To address that comment, the term “Division of Land Management” was shortened to “Land Management” throughout the law.

These attached amendments make changes to two sections of the law that were adopted on February 8, 2017, but have not yet gone into effect. The following timeline is provided to assist in explaining these changes:

February 8, 2017 – OBC adopted amendments to the Real Property Law, which, among other things, removed several types of provisions so that those requirements could be placed in other laws or rules instead. In the adopting resolution, the OBC directed that all of these amendments would go into effect on June 25, 2017, in order to give the various entities time to place those requirements into the other laws/rules. Two of the sections that would have most of their provisions removed from the Real Property law were:

1. **Leasing.** The amendments deleted most of the provisions governing leasing from the Real Property law, because the Nation had adopted a separate Leasing law to govern leasing, and those requirements belonged in the new Leasing law. The new Leasing law required approval from the Secretary of the Interior before it could go into effect.
2. **Probate.** The amendments deleted most of the provisions governing probate from the Real Property law, and required Land Management and the Land Commission to promulgate rules governing probate, instead. (This was done so that the law would not need to be amended every time the requirements for probate needed to be changed).

However, if the Real Property law amendments went into effect before the new Leasing law was effective, it would have resulted in a gap – the leasing provisions would have been taken out of the Real Property law, meaning there would be very little Tribal law in effect to govern leasing, until the Leasing Law was approved and became effective.

To avoid this result, BC Resolution #2-08-17-A adopted the amendments to the Real Property Law, but also added that the existing leasing requirements would remain in the Real Property law until the Leasing Law went into effect – then, the amendments that removed most of the requirements from the Leasing section of the Real Property Law would go into effect.

June 14, 2017 – The Real Property law amendments were set to go into effect in 11 days, which would have removed most of the provisions governing probate. However, the Land Commission and Land Management needed additional time to develop and promulgate the rules governing probate. This meant that on June 25, when the amended Real Property law went into effect, there would not be any provisions in law or in rule that governed probate.

To prevent this, the OBC adopted BC 6-14-17-A, which allowed the probate provisions to remain in the Real Property law until the probate rules had been promulgated and gone into effect. Then, they would be removed and the amended language adopted on February 8, 2017, would go into effect for that section.

June 25, 2017. The amendments to the Real Property law went into effect, but because the Leasing Law and rules governing probate had not yet gone into effect, the amendments to those two sections of the law did not go into effect, and the old language remained in place.

November 1, 2017. The LOC received a request to make additional amendments to the Real Property Law - to transfer residential leasing responsibilities from Land Management to the Comprehensive Housing Division; and to clarify and affirm the authority of the Land Commission by stating that the jurisdiction of the Real Property law applies to all Tribal fee land and not just fee land within the Reservation.

May 9, 2018. The Leasing law has been approved by the Secretary of the Interior and becomes effective on May 19, 2018. When this happens, the temporary leasing language will be

removed from the Leasing law, and the amendments adopted by the OBC on February 8, 2017 will go into effect.

If the OBC adopts these proposed new amendments at the May 9, 2018 meeting, then they will also go into effect on May 19, 2018.

- These proposed new amendments do not affect the original language governing leasing, that are temporarily in effect in the Real Property law.
- These proposed new amendments change the language adopted by the OBC on February 8, 2017, by transferring the responsibility for administering and processing all residential leasing of Tribal land, from Land Management to the Comprehensive Housing Division.

At this time, the Land Management and the Land Commission rules governing probate have still not gone into effect, so the original language governing probate will remain in the Real Property law until that happens. Once probate rules have gone into effect, the amended language adopted by the OBC on February 8, 2017, which removes most of the probate provisions from the Real Property Law, will go into effect.

- These proposed new amendments do not affect the original language governing probate that is temporarily in effect in the Real Property law.
- These proposed new amendments do not change the amended language adopted by the OBC on February 8, 2017, except to change “Division of Land Management” to “Land Management.”

Additional minor changes were made to ensure consistency with the current drafting style and standards. These changes did not affect the content of the law.

Conclusion

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

HANDOUT

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

DATE: April 30, 2018

FROM: Rae Skenandore, Financial Management Analyst

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

RE: **Fiscal Impact of the Amendments to the Real Property Law**

I. Estimated Fiscal Impact Summary

Legislation: Amendments to the Real Property Law		
Implementing Agency	Comprehensive Housing Division	
	Land Management	
	Oneida Land Commission	
Estimated time to comply	In accordance with the Legislative Procedures Act (LPA)	
Estimated Impact	Current Fiscal Year	10 Year Estimate
Total Estimated Fiscal Impact	\$147,409	\$1,474,090

II. Background

A. Legislative History

The Real Property Law was adopted by BC resolution BC-5-29-96-A and last amended by BC resolution BC-02-25-15-C, BC-05-13-15-B, and BC-02-08-17-A

III. Summary of Content

A. Transfer residential leasing from the Division of Land Management to the newly developed Comprehensive Housing Division. A restructuring and reorganization of personnel accompanied this transfer of responsibilities.

B. A definition for Land Management was added to state the Division within the Nation responsible for maintaining the Oneida Nation Register of Deeds, entering into and administering agricultural and commercial leases on behalf of the Nation, processing

trust land transactions and land acquisition transactions, and for fulfilling other responsibilities as identified within this Law. The Legislative analysis states that the Division of Land Management was updated to Land Management to reflect current business practices. Land Management is no longer a division and has been restructured and moved under Environmental Health, Safety, and Land.

C. The definition for Tribal fee land was updated to remove “within the Reservation” to clarify that the Law applies to lands held in fee status both inside and outside of the Reservation. Clarify that this law applies to all Tribal fee land, not just fee land within the Reservation; affirming the Oneida Land Commission’s authority over Tribal fee land regardless of where it is located.

D. Other minor revisions were made to reflect current drafting and formatting standards.

According to the information provided by the Oneida Human Resources Department, the restructuring of these two areas impact approximately 14 positions. One new position was added and 11 title changes. Of the 11 title changes, eight (8) title reassignments resulted in grade changes. Of the eight (8) grade changes, only two (2) did not result in a change to wages.

The amendments to the Law are the reflection of the changes within the organization in the development of the Comprehensive Housing Division and the restructuring of Land Management. With a new position added and the title and grade changes that resulted in increases, there is approximately \$147,409 fiscal impact. It is unclear if these increases were included in the Fiscal Year 2018 budget.

IV. Methodology and Assumptions

A “Fiscal Impact Statement” means an estimate of the total identifiable 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 analysis was completed based on the information provided as of the date of this memo.

V. Financial Impact

Approximately \$147,409 in Fiscal Year 2018 and \$1,474,090 over the next 10 years.

VI. 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.



Real Property Amendments Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: Krystal L. John and Rae Skenandore	SPONSOR: Ernest Stevens III	DRAFTER: Taniquelle Thurner	ANALYST: Maureen Perkins
Intent of the Amendments	Transfer residential leasing responsibilities from Land Management to the Comprehensive Housing Division and clarify that jurisdiction under the law applies to all Tribal fee land and not just fee land within the Reservation – which will clarify and affirm the Oneida Land Commission’s authority over such land.		
Purpose of the Law	To provide regulations and procedures for the transfer, control and management of the territory within the Reservation and all Tribal land; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the Reservation; and to establish licensing and certification requirements for the Nation’s employees dealing with real property transactions <i>[see 601.1-1]</i> .		
Entities Affected by the Amendments	Comprehensive Housing Division, Oneida Land Commission, Land Management		
Affected Legislation	Mortgage and Foreclosure law, Land Ordinance, Leasing law, Landlord-Tenant law, Eviction and Termination law, Public Use of Tribal Land law, Oneida Land Commission bylaws		
Enforcement/Due Process	All involuntary transfers of title require a Judiciary hearing <i>[see 601.7-3]</i> . Land Management shall process and administer probate estates and, where necessary, shall refer probate estates to the Oneida Judiciary for formal administration <i>[see 601.8-1]</i> . The Judiciary shall hear and administer disputed probate estates or matters requiring appointment of a guardian ad litem and shall have all the above powers conferred upon the Land Management in such cases <i>[see 601.8-2]</i> .		
Public Meeting	A public meeting was held January 11, 2018.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The current amendments are proposed to transfer residential leasing responsibilities from Land Management to the newly established Comprehensive Housing Division and to clarify jurisdiction under the law applies to all Tribal fee land and not just fee land within the Reservation; which will clarify and affirm the Oneida Land Commission’s authority over all fee land outside of the Reservation.
- B. The Leasing Law was approved by the Secretary of the US Department of the Interior on 4/19/18 and becomes effective on 5/19/18. Provision 601.9 related to leasing becomes effective on 05/19/18 with the effective date of the Leasing Law.

SECTION 3. CONSULTATION

- A. The Oneida Law Office, the Comprehensive Housing Division, Land Management and the Oneida Land Commission were consulted in the development of these amendments.

SECTION 4. PROCESS

- A. The amendments clarify the jurisdiction of the Oneida Land Commission as the decision making authority with respect to all fee land, including fee land outside of the Reservation. The law also

transfers the responsibility of residential leasing from Land Management and places it with the newly created Comprehensive Housing Division.

- B. The emergency amendments were added to the Active Files List on November 1, 2017 with Ernest Stevens III as the sponsor. On November 15, 2017 the emergency status was removed but the amendments remain classified as a high priority.

SECTION 5. CONTENTS OF THE LEGISLATION

A. (1) The definition for the Comprehensive Housing Division was amended to:

- the division within the Nation under the direction of the Comprehensive Division Director which consists of all residential services offered by the Nation, including but not limited to, all rental programs, the rent-to-own programs, and the residential sales and mortgages programs *[see 601.3-1(c)]*.

(2) The footnote for the OBC resolution defining the Comprehensive Housing Division was deleted *[see footnote on page 2]*.

(3) A definition for Land Management was added:

- the entity within the Nation responsible for maintaining the Oneida Nation Register of Deeds, entering into and administering agricultural and commercial leases on behalf of the Nation, processing trust transactions and land acquisition transactions, and for fulfilling other responsibilities as identified within this law *[see 601.3-1(k)]*.

(4) The Division of Land Management was updated to Land Management to reflect current business practices.

(5) The definition for Tribal fee land was updated to remove “within the Reservation” to clarify that the law applies to lands held in fee status both inside and outside of the Reservation *[see 601.3-1(w)]*.

(6) Other minor revisions were made to reflect current drafting and formatting standards.

SECTION 6. INTENT OF AMENDMENTS

A. The purpose of the amendments is to clarify the decision making authority of responsible entities of the Nation:

- The Oneida Land Commission with respect to all fee land; including fee land outside the Reservation; and
- The Comprehensive Housing Division with respect to residential leasing.
- Land Management with respect to maintaining the Oneida Nation Register of Deeds, entering into and administering agricultural and commercial leases on behalf of the Nation, and processing trust transactions and land acquisition transactions.

SECTION 7. EFFECT OF AMENDMENTS ON EXISTING LEGISLATION

A. The amendments add the Leasing law to the list of laws the Comprehensive Housing Division is required to follow with respect to the administration and processing of residential leases; in addition, all corresponding rules of all applicable laws was added *[see 601.12-1]*.

B. Resolution BC-06-14-17-A adopted amendments to section 601.8, which govern probate. However, those amendments do not go into effect until probate rules are promulgated and effective.

C. Resolution BC-02-08-17-A adopted amendments to section 601.9, which governs leasing. Those amendments will go into effect on May 19, 2018, when the Leasing law becomes effective.

SECTION 8. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

- 67 A. The current proposed amendments do not impact existing rights, privileges, benefits or obligations.
68 B. The proposed amendments will affect the current application process with respect to residential leases.
69 The Comprehensive Housing Division will be the entity responsible for processing residential leases.
70

71 **SECTION 9. ENFORCEMENT**

- 72 A. The proposed amendments do not change enforcement of this law.
73

74 **SECTION 10. ACCOUNTABILITY**

- 75 A. The Comprehensive Housing Division and the Oneida Land Commission will be accountable for
76 implementation and operation of the current amendments of this law.

77

Title 6. Property and Land – Chapter 601

REAL PROPERTY

Tok[^]ske Kayanl[^]hsla Tsi[>] Ni[>]yohuntsya=t#

The real/certain laws of the territory of the nation

601.1.	Purpose and Policy	601.7.	Title Transfer
601.2.	Adoption, Amendment, Repeal	601.8.	Probate
601.3.	Definitions	601.9.	Leasing of Real Property
601.4.	General Provisions	601.10.	Records
601.5.	Holding of Ownership	601.11.	Real Estate Education Requirements and Certifications
601.6.	Legal Descriptions	601.12.	Organization

601.1. Purpose and Policy

601.1-1. *Purpose.* The purpose of this law is to provide regulations and procedures for the transfer, control and management of the territory within the Reservation and all ~~tribal~~-Tribal land; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the Reservation; and to establish licensing and certification requirements for the Nation's employees dealing with real property transactions.

601.1-2. *Policy.* It is the policy of the Nation to set out the responsibilities and expectations for persons purchasing and/or managing real property on behalf of the Nation and/or within the Reservation and to provide real property holder's rights and responsibilities. In addition, it is the Nation's policy that probated estates shall be settled expeditiously and without undue delay.

601.2. Adoption, Amendment, Repeal

601.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-29-96-A and amended by resolutions BC-3-01-06-D, BC-04-28-10-E, BC-02-25-15-C, BC-05-13-15-B and BC-02-08-17-A and.

601.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

601.2-3. 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.

601.2-4. 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. - Provided that, the Land Ordinance is applicable only to valid land assignments existing as of January 1, 2016 and is hereby repealed upon the expiration of the last existing land assignment.

601.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

601.3. Definitions

601.3-1. -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, subject to 601.4-5.

(a) "Broker" means a person who acts as an agent and negotiates the sale, purchase or rental of real property on behalf of others for a fee.

(b) "Certified ~~Survey~~-survey Map~~map~~" means a map which provides the legal description of real property and is officially filed and approved by the county, Tribal or municipal governments.

(c) “Comprehensive Housing Division” means the division within the Nation under the direction of the Comprehensive Housing Division Director which consists of all residential services offered by the Nation, including but not limited to, all rental programs, the rent-to-own program, and the residential sales and mortgages programs. ~~the entity responsible for housing matters as defined by Oneida Business Committee Resolution.~~⁺

(d) “Easement” means a real property right to cross or otherwise utilize the land of another for a specified purpose.

(e) “Estate” means a person’s interest in real property or other property.

(f) “Fiduciary” means a person required to act for the benefit of another person on all matters within the scope of their relationship and by such a relationship owes another duties of good faith, trust, confidence and candor. For the purposes of this law, both brokers and salespersons are “fiduciaries.”

(g) “Guardian ~~Ad ad Litem~~ litem” means a guardian appointed by the Judiciary on behalf of an incompetent or minor party.

(h) “Individual ~~Fee fee Land~~ land” means real property held in fee status by an individual or group of individuals.

(i) “Individual ~~Trust trust Land~~ land” means individual Tribal land held in trust by the United States of America for the benefit of a Tribal member.

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

(k) “Land Management” means the entity within the Nation responsible for maintaining the Oneida Nation Register of Deeds, entering into and administering agricultural and commercial leases on behalf of the Nation, processing trust transactions and land acquisition transactions, and for fulfilling other responsibilities as identified within this law.

~~(k)~~ (l) “Land ~~Use use License~~ license” means an agreement entered into by the Nation providing a party the right to occupy and/or utilize a specified piece of Tribal land for a specific purpose and a specific duration, which may require the Nation to be compensated for such use.

~~(l)~~ (m) “Leasehold ~~Mortgage~~ mortgage” means a mortgage, deed of trust, or other instrument that pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

~~(m)~~ (n) “Nation” means the Oneida Nation.

~~(n)~~ (o) “Personal ~~Representative~~ representative” means a person to whom authority to administer a decedent’s estate have been granted by ~~the Division of~~ Land Management or the Judiciary.

~~(o)~~ (p) “Probate” or “Administration” means any proceeding relating to a decedent’s estate, whether there is or is not a will.

~~(p)~~ (q) “Real ~~Property~~ property” means land and anything growing on, attached to, or erected on the land, excluding anything that may be severed without injury to the land.

⁺ See BC Resolutions 08-10-16-L, 10-12-16-B and 10-12-16-D defining the Comprehensive Housing Division for purposes of the Mortgage and Foreclosure law, Eviction and Termination law and Landlord-Tenant law respectively.

(~~qr~~) “Reservation” means all the property within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(~~rs~~) “Restricted ~~Fee-fee~~ ~~Status~~status” means an interest in real property which includes a provision in the deed or will that, upon the happening or failure to happen of a certain event, the title of the purchaser or devisee ~~will~~shall be limited, enlarged, changed or terminated.

(~~st~~) “Rule” means a set of requirements, including fee schedules, enacted by the Comprehensive Housing Division, ~~Division of~~ Land Management, Oneida Planning Department and/or the Oneida Land Commission in accordance with the Administrative Rulemaking law, based on authority delegated in this law in order to implement, interpret and/or enforce this law.

(~~tu~~) “TAAMS” (Trust Asset and Accounting Management System) means the Bureau of Indian Affairs system for maintaining and tracking land title documents and all legal documents relating to land transactions.

(~~uv~~) “Title ~~Status-status~~ ~~Report~~report” means a report issued by the Bureau of Indian Affairs after a title examination which shows the proper legal description of a tract of Tribal land; current ownership, including any applicable conditions, exceptions, restrictions or encumbrances on records; and whether the land is in unrestricted, restricted, trust, or other status as indicated by the records in a Land Titles and Records Office.

(~~vw~~) “Tribal ~~Fee-fee~~ ~~Land~~land” means ~~Tribal~~ land held in fee status by the Nation ~~within the Reservation~~.

(~~wxy~~) “Tribal ~~Land~~land” means Tribal fee land and Tribal trust land.

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

(~~yzx~~) “Tribal ~~Trust-trust~~ ~~Land~~land” means the surface estate of land or any interest therein held by the United States in trust for the Nation; land held by the Nation subject to federal restrictions against alienation or encumbrance; land reserved for federal purposes; and/or land held by the United States in trust for the Nation under Section 17 of the Indian Reorganization Act, 25 U.S.C §477, et. seq.

601.4. General Provisions

601.4-1. ~~Applicable Real Property.~~ -The provisions of this law extend to all Tribal member’s individual fee land and Tribal member’s individual trust land within the Reservation boundaries and all Tribal land.

601.4-2. ~~Tribal Land Base.~~ ~~The Division of~~ Land Management shall administer all transactions which add real property to the Tribal land base under the provisions of this law.

601.4-3. ~~Sale of Tribal Land Prohibited.~~ -The sale of Tribal land is specifically prohibited by this law, unless the intent of the transaction is the consolidation or partition of Tribal trust land and/or individual trust land.

601.4-4. ~~New Land Assignments Prohibited.~~ -The Nation may not acknowledge any new land assignments. -Further, in order to be eligible for a Tribal loan issued against a real property interest held as a land assignment, the land assignment shall first be converted to a residential lease.

601.4-5. ~~—~~ *Wisconsin Probate Code and its Related Chapters.* ~~—~~In instances where the Nation lacks definition, procedure, or legal precedent in a probate matter, the Nation shall use Wisconsin's Probate Code and its related chapters for guidance.

601.4-6. ~~—~~ *Wisconsin Real Property Law.* ~~—~~The Nation shall follow all applicable portions of the Wisconsin Real Property ~~Law~~ law when acquiring individual fee land.

601.4-7. ~~—~~ *No Waiver of Sovereign Immunity.* ~~—~~Nothing in this law may be construed as a waiver of the Nation's sovereign immunity.

601.5. Holding of Ownership

601.5-1. Interests in real property by more than one (1) person may be held in the following ways:

(a) *Joint Tenancy with the Right of Survivorship.* ~~—~~Pursuant to this ownership mechanism each owner has an equal, undivided interest in the real property. ~~—~~When an owner dies, his/her share is divided among the remaining owners; the last living owner owns the entire property.

(1) Real property owned by married persons is held under this mechanism unless they have executed a valid marital property agreement specifically stating that the real property in question is held as tenants in common.

(b) *Tenancy in Common.* ~~—~~Pursuant to this ownership mechanism each owner has a percentage of divided interest in the real property. ~~—~~When an owner dies, his/her interest is divided among his/her devisees or heirs.

(1) Real property owned by more than one (1) person, other than married persons, is owned under this mechanism unless a deed or transfer document specifically states the real property is held as joint tenants with rights of survivorship.

601.6. Legal Descriptions

601.6-1. The legal description for any real property transferred under this law shall be derived from a certified survey map or survey completed by a registered land surveyor according to currently accepted minimum industry standards for property surveys. ~~—~~ If the plat of survey changes the legal description of the certified survey map for the same piece of property, the certified survey map's legal description shall be used on transfer documents along with the survey description, which shall be designated as "Also Known As ..." Section, township, range and fourth principal meridian shall be included in all legal descriptions.

601.6-2. Every land survey shall be made in accordance with the county register of deeds' records for fee land, and in accordance with the Oneida Nation Register of Deed~~s~~' records for Tribal ~~Trust-trust Lands-lands~~ and ~~Individual-individual Trust-trust Landslands~~. The surveyor shall acquire data necessary to retrace record title boundaries such as deeds, maps, certificates of title, title status reports, Tribal leases, Tribal home purchase agreements, center line and other boundary line locations.

601.6-3. Legal descriptions defining land boundaries shall be complete, providing unequivocal identification of line or boundaries.

601.6-4. All surveys prepared for the Nation shall comply with survey requirements outlined in the Wisconsin Administrative Code, Chapter A-E7 and indicate setbacks, building locations and encroachments, as applicable.

601.6-5. Legal descriptions shall be used on transfer documents formalizing a purchase, real estate sale, lease, foreclosure, probate transfer, trust acquisition and Tribal resolutions.

601.6-6. When real estate is listed, noticed and/or advertised as available for sale, rent or lease to Tribal members, the address is an adequate legal description of the real property.

601.7. Title Transfer

601.7-1. *Trust Acquisition.* ~~The Division of~~ Land Management shall use title companies duly registered with the Department of Interior and approved by the ~~Division of~~ Land Management to update abstracts or provide title insurance on real property scheduled for trust acquisition.

(a) Title companies shall follow general guidelines provided by the federal government in terms of form, content, period of search, destroyed or lost records and abstracter's certificate.

(b) When researching land title for real property within the Reservation which is being considered for trust acquisition, ~~the Division of~~ Land Management ~~staff~~ shall request the title company to search the title back to the original allottee, in order to ~~assure~~ ensure that patents or Indian deeds were legally issued.

(c) Any valid liens or encumbrances shown by the commitment for title insurance shall be eliminated before the title is transferred into trust.

(d) After land is in trust both a title search of county records and a title status report requested by ~~the Division of~~ Land Management from the Bureau of Indian Affairs shall verify all valid encumbrances, if any, on the title. For the purposes of this section, a valid encumbrance is one that has been preapproved, in writing, by ~~the Division of~~ Land Management based on a standard operating procedure that is effective upon approval by the Oneida Land Commission.

(e) ~~Division of~~ Land Management applications to convert Tribal fee land into Tribal trust land require an Oneida Land Commission resolution approving the ~~said~~ conversion.

601.7-2. *Deeds.* A deed is the formal document used by the ~~Division of~~ Land Management to transfer title from one ~~(1)~~ party to another.

(a) A valid deed shall:

(1) Be in writing;

(2) Identify the grantor (seller) and grantee (buyer);

(3) Provide the legal description of the real property;

(4) Identify the interest conveyed, as well as any conditions, reservations, exceptions, or rights of way attached to the interest;

(5) Be signed by or on behalf of each of the grantors (sellers);

(6) Be signed by or on behalf of each spouse of each of the grantors (sellers), if applicable; and

(7) Be delivered to the grantee (buyer).

(b) In addition to the requirements listed in section 601.7-~~32~~(a), a deed prepared for trust acquisition shall include:

(1) The federal authority for trust acquisition;

(2) Any exceptions or exclusions from the State of Wisconsin's fees or other transfer requirements;

(3) The approximate acreage of the real property being transferred to trust; and

(4) The authority and signature of the appropriate Department of Interior official who accepts the real property into trust.

(c) A deed transferring fee simple title shall be recorded in the appropriate register of deeds office, provided that, once the real property is in trust, the title shall be recorded

with the Oneida Nation Register of Deeds and the Bureau of Indian Affairs Land Titles and Records Office.

601.7-3. *Involuntary Transfer of Title.* All involuntary transfers of title require a hearing and order from the Judiciary, and may occur in the following ways:

(a) *Eminent Domain.* Eminent domain is the right of the Nation's government to acquire Tribal member individual fee land within the Reservation for public uses without the consent of private owners.

(1) For the purposes of this section, public uses include, but are not limited to, environmental protection, streets, highways, sanitary sewers, public utility/sites, waste treatment facilities and public housing.

(2) Prior to exercising eminent domain, the Nation shall first attempt to negotiate an agreeable taking by making an offer to purchase based on an appraisal of the real property. The appraisal amount may be based on an appraisal provided by the Nation. In the event the property owner objects to the Nation's appraisal, they may obtain an independent appraisal at their own cost. For the purposes of this section, an appraisal means process for estimating a piece of real property's value.

(3) The Nation's exercise of eminent domain may be appealed to the Judiciary.

(b) *Foreclosure.* Foreclosures may occur subject to the Mortgage and Foreclosure law when a Tribal member ceases payment on a leasehold mortgage.

(c) *Tribal Land Consolidation.* Section 207 of the Indian Land Consolidation Act (Pub.L. No. 97-459, 96 Stat. 2515, and amended on October 30, 1984 by Pub.L. No. 98-608, 98 Stat. 3171) is incorporated into this law, which provides a mechanism for real property within the Reservation to escheat, or pass, to the Nation.

(1) Pursuant to section 207 of the Indian Land Consolidation Act, an ownership interest in real property escheats, or passes, to the Nation under the following circumstances, provided that the Nation shall provide just compensation for the interest:

(A) The real property is within the Reservation boundaries;

(B) The decedent's ownership in the given parcel of land is two percent (2%) or less of the total acreage; and

(C) The interest is incapable of earning one hundred dollars (\$100.00) in any one (1) of the five (5) years immediately following the decedent's death.

(2) A decedent's heirs may appeal a land consolidation under this section to the Judiciary.

(3) Land consolidation is subject to the probate requirements, as included in this law and accompanying rules.

(d) *Transferring Interests Inherited by Non-Tribal Members.* If the owner of an interest of real property which is held in trust or restricted fee status located within the Reservation devises such interest to a non-Tribal member, the Nation may acquire the said interest by paying the fair market value of the interest determined as of the date of the decedent's death. Such transfer is effective upon receipt of an order transferring inherited interests from the Judiciary pursuant to section 205 of the Indian Land Consolidation Act.

(1) An order transferring inherited interests may not be granted if:

(A) While the decedent's estate is pending, the non-Indian devisee denounces his or her interest in favor of a Tribal member person;
(B) The interest is part of a family farm that is devised to a member of the immediate family of the decedent, provided that such a restriction shall be recorded as part of the deed relating to the interest involved; or
(C) The devisee agrees in writing that the Nation may acquire the interest for fair market value only if the interest is offered for sale to a person or entity that is not a member of the immediate family of the owner of the interest.

(e) *Easements for Landlocked Properties.* ~~The Division of~~ Land Management and the Oneida Land Commission shall jointly develop rules regarding requests for easements for landlocked properties.

601.7-4. ~~Division of~~ Land Management shall work with the Oneida Law Office in order to pursue an involuntary transfer of title.

601.8. Probate

601.8-1. ~~The Division of~~ Land Management shall process and administer probate estates and, where necessary, shall refer probate estates to the Oneida Judiciary for formal administration. ~~The Division of~~ Land Management and the Oneida Land Commission shall jointly create any rules necessary to administer probate estates. ~~The Division of~~ Land Management shall:

- (a) Process applications for probate administration;
- (b) Receive proof of heirship demonstrating a party is entitled to receive an intestate decedent's property pursuant to applicable laws and rules;
- (c) Receive consent to serve forms and in undisputed matters, issue domiciliary letters;
- (d) Require and receive affidavits of service;
- (e) Receive waiver and consent to probate administration forms and any related affidavits;
- (f) Issue notice to creditors of the probate's administration, receive creditor claims for consideration and settlement, and issue discharge of creditors when appropriate;
- (g) Receive and process all estate inventories;
- (h) Receive and process, when possible, land transactions in accordance with this law and receive proof of recording documents;
- (i) Receive estate receipts;
- (j) In undisputed matters, receive and process statement of personal representative to close estate and issue discharge of personal representative; and
- (k) Refer disputed matters to the Judiciary, transfer probate and related documents, and participate in the Judiciary's proceedings as necessary.

601.8-2. The Judiciary shall hear and administer disputed probate estates or matters requiring appointment of a guardian ad litem and shall have all the above powers conferred upon ~~the Division of~~ Land Management in such cases. In addition, the Judiciary shall hear and administer probate estates in which ~~the Division of~~ Land Management seeks appointment as a personal representative.

601.9. Leasing of Real Property

601.9-1. ~~The~~ In accordance with the Leasing law, ~~the Division of~~ Land Management shall administer and process all leasing of Tribal land for ~~residential,~~ agricultural and commercial

purposes and the Comprehensive Housing Division shall administer and process all leasing of Tribal land for residential purposes~~in accordance with the Leasing law.~~ –The Leasing law definition of Tribal land does not include Tribal fee land; however, pursuant to this law, ~~the Division of Land Management~~ the responsible parties designated herein shall administer and process ~~all~~ leases of both Tribal fee land and Tribal trust land in accordance with the Leasing law. ~~lasting longer than one (1) year that are not made as part of the homeownership program using federal funding in accordance with the Leasing law.~~

601.10. Records

601.10-1. *Purpose.* ~~The Division of~~ Land Management shall oversee the administration of the Oneida Nation Register of Deeds which shall accept and record documents related to real property located within the Reservation, as well as documents related to and all Tribal fee land, regardless of where it is located.

601.10-2. *Types of Records.* The Oneida Nation Register of Deeds may only accept documents that provide evidence of activities affecting real property title, preserve the record of a title document and give constructive notice of changes to a title document. Further, ~~said~~ such documents shall be originals, signed duplicates or certified copies. The following documents may be accepted by the Oneida Nation Register of Deeds.

- (a) Deeds;
- (b) Probate orders;
- (c) Mortgages and other valid liens;
- (d) Easements, covenants, and restrictions;
- (e) Certified survey maps and plats of survey;
- (f) Patents;
- (g) Declarations of involuntary transfer or taking;
- (h) Satisfactions;
- (i) Leases made pursuant to the Leasing law;
- (j) Home ownership agreements made pursuant to the Landlord-Tenant law;
- (k) Marriage agreements; and
- (l) Correction of title defects.

601.10-3. *Accessibility.* The Oneida Nation Register of Deeds shall provide open access to land records and title documents.

601.10-4. *Trust Land.* All documents pertaining to Tribal trust land and ~~Individual~~ individual trust land shall be recorded with the Oneida Nation Register of Deeds and the Bureau of Indian Affairs Land Titles and Records Office.

601.10-5. *Tribal Seal.* The Nation's Secretary shall provide ~~the Division of~~ Land Management with the Nation's seal to be used to authenticate documents which are certified by the Oneida Nation Register of Deeds.

601.11. Real Estate Education Requirements and Certifications

601.11-1. *Wisconsin Real Estate Education and Exam Required.* All persons engaging in the acquisition of Tribal fee land on behalf of the Nation, specifically those performing real estate closings, shall pass the Wisconsin Real Estate License Exam. Such persons are not required to obtain a Wisconsin Real Estate License, but ~~are required to~~ shall fulfill the pre-license education requirement, pass the licensing exam and fulfill a minimum of twelve (12) hours or four (4) courses of continuing education requirements as required of Wisconsin real estate licensees. ~~The~~

~~Division of~~ Land Management ~~Director~~ director shall select which continuing education courses are required and the Oneida Law Office shall provide the ~~Director~~ director with a recommendation. In addition to Wisconsin's minimum education requirements as applied to the Nation's real estate employees in this law, ~~the Division of~~ Land Management shall require such employees to attend real estate training specific to the Nation's goals and unique positions as the Oneida Law Office shall offer on an as-needed basis.

(a) While Wisconsin real estate law allows persons engaged in the sale of real estate to earn a commission, persons acquiring Tribal fee land on behalf of the Nation are regular employees of the Nation and, therefore, shall waive any commission for which they might otherwise be eligible.

(b) It is critical to the Oneida Nation's goal to reacquire property within the original Reservation boundaries to have employees educated and experienced in executing real estate transactions. Accordingly, ~~the Division of~~ Land Management shall employ a minimum of one (1) employee whose primary focus is real estate acquisitions and shall ensure that a minimum of two (2) employees are educated and trained as backups to the primary.

601.11-2. *TAAMS Certification Required.* —All persons responsible for encoding leasing information shall obtain a TAAMS certification, which includes, but is not limited to, the following positions:

(a) Residential and Commercial Leasing Specialists;

(b) Land Title and Trust Manager; and

(c) Title Examiner.

601.11-3. *Fiduciary Responsibility.* All persons engaged in the buying or selling of Tribal land shall, at all times, act as a fiduciary to the Nation. Further, all such persons shall comply with all applicable Tribal and federal laws.

601.12. Organization

601.12-1. *Comprehensive Housing Division.* The Comprehensive Housing Division shall oversee all residential transactions, ~~excluding residential leases,~~ within the Reservation and shall process and administer ~~said such~~ transactions using the applicable of the Landlord-Tenant law, the Mortgage and Foreclosure law, the Leasing law and/or the Eviction and Termination law; including any corresponding rules. —In addition, the Oneida Land Commission and the Comprehensive Housing Division shall exercise joint rulemaking authority to provide process requirements, including but not limited to advertising, notice, prequalification, and selection, that apply in all circumstances when the Nation is selling a residential property.

601.12-2. *Oneida Land Commission.* The Oneida Land Commission is comprised of seven (7) elected Tribal members and shall:

(a) Interpret the provisions of this law and create policy to guide ~~the Division of~~ Land Management in implementing the same;

(b) Approve or deny all easements and land use licenses;

(c) Review and adopt ~~the Division of~~ Land Management's standard operating procedures for entering into agriculture and commercial leases pursuant to the Leasing law;

(d) Approve or deny all acquisition of Tribal land;

(e) Allocate and assign land uses to all Tribal land, except those uses governed by the Public Use of Tribal Land law, based on the Land Use Technical Unit rules which the

Oneida Planning Department shall develop in collaboration with affected Oneida divisions and departments and the Oneida Land Commission; and

(f) Name all buildings, roads, parks and the like on Tribal land.

601.12-3. ~~Division of Land Management.~~ ~~The Division of~~ Land Management shall implement this law in accordance with the policy directives provided by the Oneida Land Commission. ~~The Division of~~ Land Management shall:

(a) Forward requests for easements and land use licenses to the Oneida Land Commission based on the easement and land use license rules jointly developed by ~~the Division of~~ Land Management and the Oneida Land Commission;

(b) Administer and oversee the Oneida Nation Register of Deeds;

(c) Enter into and administer ~~residential,~~ agricultural and commercial leases pursuant to the Leasing law and the Eviction and Termination law and any corresponding rules;

(d) Prepare title reports and process trust transactions; and

(e) Process land acquisition transactions as approved by the Oneida Land Commission.

End.

Adopted ~~BC-05-29-96-A~~

Amended-BC-~~03-01-06-D~~

Amended-BC-04-28-10-E

Amended ~~BC-02-25-15-C~~

Amended-BC-05-13-15-B

Amended-BC-02-08-17-A

Amended- BC-06-14-17-A (Temporary Amendments)

Title 6. Property and Land – Chapter 601

REAL PROPERTY

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The real/certain laws of the territory of the nation

601.1.	Purpose and Policy	601.7.	Title Transfer
601.2.	Adoption, Amendment, Repeal	601.8.	Probate
601.3.	Definitions	601.9.	Leasing of Real Property
601.4.	General Provisions	601.10.	Records
601.5.	Holding of Ownership	601.11.	Real Estate Education Requirements and Certifications
601.6.	Legal Descriptions	601.12.	Organization

601.1. Purpose and Policy

601.1-1. *Purpose.* The purpose of this law is to provide regulations and procedures for the transfer, control and management of the territory within the Reservation and all Tribal land; to integrate these regulations and procedures with the real property laws and practices of other federal and state sovereigns which may hold jurisdiction within the Reservation; and to establish licensing and certification requirements for the Nation's employees dealing with real property transactions.

601.1-2. *Policy.* It is the policy of the Nation to set out the responsibilities and expectations for persons purchasing and/or managing real property on behalf of the Nation and/or within the Reservation and to provide real property holder's rights and responsibilities. In addition, it is the Nation's policy that probated estates shall be settled expeditiously and without undue delay.

601.2. Adoption, Amendment, Repeal

601.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-29-96-A and amended by resolutions BC-3-01-06-D, BC-04-28-10-E, BC-02-25-15-C, BC-05-13-15-B and BC-02-08-17-A and _____.

601.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

601.2-3. 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.

601.2-4. 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. Provided that, the Land Ordinance is applicable only to valid land assignments existing as of January 1, 2016 and is hereby repealed upon the expiration of the last existing land assignment.

601.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

601.3. Definitions

601.3-1. 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, subject to 601.4-5.

(a) "Broker" means a person who acts as an agent and negotiates the sale, purchase or rental of real property on behalf of others for a fee.

(b) "Certified survey map" means a map which provides the legal description of real property and is officially filed and approved by the county, Tribal or municipal governments.

(c) “Comprehensive Housing Division” means the division within the Nation under the direction of the Comprehensive Housing Division Director which consists of all residential services offered by the Nation, including but not limited to, all rental programs, the rent-to-own program, and the residential sales and mortgages programs.

(d) “Easement” means a real property right to cross or otherwise utilize the land of another for a specified purpose.

(e) “Estate” means a person’s interest in real property or other property.

(f) “Fiduciary” means a person required to act for the benefit of another person on all matters within the scope of their relationship and by such a relationship owes another duties of good faith, trust, confidence and candor. For the purposes of this law, both brokers and salespersons are “fiduciaries.”

(g) “Guardian ad litem” means a guardian appointed by the Judiciary on behalf of an incompetent or minor party.

(h) “Individual fee land” means real property held in fee status by an individual or group of individuals.

(i) “Individual trust land” means individual Tribal land held in trust by the United States of America for the benefit of a Tribal member.

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

(k) “Land Management” means the entity within the Nation responsible for maintaining the Oneida Nation Register of Deeds, entering into and administering agricultural and commercial leases on behalf of the Nation, processing trust transactions and land acquisition transactions, and for fulfilling other responsibilities as identified within this law.

(l) “Land use license” means an agreement entered into by the Nation providing a party the right to occupy and/or utilize a specified piece of Tribal land for a specific purpose and a specific duration, which may require the Nation to be compensated for such use.

(m) “Leasehold mortgage” means a mortgage, deed of trust, or other instrument that pledges a lessee’s leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

(n) “Nation” means the Oneida Nation.

(o) “Personal representative” means a person to whom authority to administer a decedent’s estate have been granted by Land Management or the Judiciary.

(p) “Probate” or “Administration” means any proceeding relating to a decedent’s estate, whether there is or is not a will.

(q) “Real property” means land and anything growing on, attached to, or erected on the land, excluding anything that may be severed without injury to the land.

(r) “Reservation” means all the property within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566, and any lands added thereto pursuant to federal law.

(s) “Restricted fee status” means an interest in real property which includes a provision in the deed or will that, upon the happening or failure to happen of a certain event, the title of the purchaser or devisee shall be limited, enlarged, changed or terminated.

(t) “Rule” means a set of requirements, including fee schedules, enacted by the Comprehensive Housing Division, Land Management, Oneida Planning Department

and/or the Oneida Land Commission in accordance with the Administrative Rulemaking law, based on authority delegated in this law in order to implement, interpret and/or enforce this law.

(u) “TAAMS” (Trust Asset and Accounting Management System) means the Bureau of Indian Affairs system for maintaining and tracking land title documents and all legal documents relating to land transactions.

(v) “Title status report” means a report issued by the Bureau of Indian Affairs after a title examination which shows the proper legal description of a tract of Tribal land; current ownership, including any applicable conditions, exceptions, restrictions or encumbrances on records; and whether the land is in unrestricted, restricted, trust, or other status as indicated by the records in a Land Titles and Records Office.

(w) “Tribal fee land” means land held in fee status by the Nation.

(x) “Tribal land” means Tribal fee land and Tribal trust land.

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

(z) “Tribal trust land” means the surface estate of land or any interest therein held by the United States in trust for the Nation; land held by the Nation subject to federal restrictions against alienation or encumbrance; land reserved for federal purposes; and/or land held by the United States in trust for the Nation under Section 17 of the Indian Reorganization Act, 25 U.S.C §477, et. seq.

601.4. General Provisions

601.4-1. *Applicable Real Property*. The provisions of this law extend to all Tribal member’s individual fee land and Tribal member’s individual trust land within the Reservation boundaries and all Tribal land.

601.4-2. *Tribal Land Base*. Land Management shall administer all transactions which add real property to the Tribal land base under the provisions of this law.

601.4-3. *Sale of Tribal Land Prohibited*. The sale of Tribal land is specifically prohibited by this law, unless the intent of the transaction is the consolidation or partition of Tribal trust land and/or individual trust land.

601.4-4. *New Land Assignments Prohibited*. The Nation may not acknowledge any new land assignments. Further, in order to be eligible for a Tribal loan issued against a real property interest held as a land assignment, the land assignment shall first be converted to a residential lease.

601.4-5. *Wisconsin Probate Code and its Related Chapters*. In instances where the Nation lacks definition, procedure, or legal precedent in a probate matter, the Nation shall use Wisconsin’s Probate Code and its related chapters for guidance.

601.4-6. *Wisconsin Real Property Law*. The Nation shall follow all applicable portions of the Wisconsin Real Property law when acquiring individual fee land.

601.4-7. *No Waiver of Sovereign Immunity*. Nothing in this law may be construed as a waiver of the Nation’s sovereign immunity.

601.5. Holding of Ownership

601.5-1. Interests in real property by more than one (1) person may be held in the following ways:

(a) *Joint Tenancy with the Right of Survivorship*. Pursuant to this ownership mechanism each owner has an equal, undivided interest in the real property. When an owner dies,

his/her share is divided among the remaining owners; the last living owner owns the entire property.

(1) Real property owned by married persons is held under this mechanism unless they have executed a valid marital property agreement specifically stating that the real property in question is held as tenants in common.

(b) *Tenancy in Common*. Pursuant to this ownership mechanism each owner has a percentage of divided interest in the real property. When an owner dies, his/her interest is divided among his/her devisees or heirs.

(1) Real property owned by more than one (1) person, other than married persons, is owned under this mechanism unless a deed or transfer document specifically states the real property is held as joint tenants with rights of survivorship.

601.6. Legal Descriptions

601.6-1. The legal description for any real property transferred under this law shall be derived from a certified survey map or survey completed by a registered land surveyor according to currently accepted minimum industry standards for property surveys. If the plat of survey changes the legal description of the certified survey map for the same piece of property, the certified survey map's legal description shall be used on transfer documents along with the survey description, which shall be designated as "Also Known As ..." Section, township, range and fourth principal meridian shall be included in all legal descriptions.

601.6-2. Every land survey shall be made in accordance with the county register of deeds' records for fee land, and in accordance with the Oneida Nation Register of Deeds' records for Tribal trust lands and individual trust lands. The surveyor shall acquire data necessary to retrace record title boundaries such as deeds, maps, certificates of title, title status reports, Tribal leases, Tribal home purchase agreements, center line and other boundary line locations.

601.6-3. Legal descriptions defining land boundaries shall be complete, providing unequivocal identification of line or boundaries.

601.6-4. All surveys prepared for the Nation shall comply with survey requirements outlined in the Wisconsin Administrative Code, Chapter A-E7 and indicate setbacks, building locations and encroachments, as applicable.

601.6-5. Legal descriptions shall be used on transfer documents formalizing a purchase, real estate sale, lease, foreclosure, probate transfer, trust acquisition and Tribal resolutions.

601.6-6. When real estate is listed, noticed and/or advertised as available for sale, rent or lease to Tribal members, the address is an adequate legal description of the real property.

601.7. Title Transfer

601.7-1. *Trust Acquisition*. Land Management shall use title companies duly registered with the Department of Interior and approved by the Land Management to update abstracts or provide title insurance on real property scheduled for trust acquisition.

(a) Title companies shall follow general guidelines provided by the federal government in terms of form, content, period of search, destroyed or lost records and abstracter's certificate.

(b) When researching land title for real property within the Reservation which is being considered for trust acquisition, Land Management shall request the title company to search the title back to the original allottee, in order to ensure that patents or Indian deeds were legally issued.

(c) Any valid liens or encumbrances shown by the commitment for title insurance shall be eliminated before the title is transferred into trust.

(d) After land is in trust both a title search of county records and a title status report requested by Land Management from the Bureau of Indian Affairs shall verify all valid encumbrances, if any, on the title. For the purposes of this section, a valid encumbrance is one that has been preapproved, in writing, by Land Management based on a standard operating procedure that is effective upon approval by the Oneida Land Commission.

(e) Land Management applications to convert Tribal fee land into Tribal trust land require an Oneida Land Commission resolution approving the conversion.

601.7-2. *Deeds.* A deed is the formal document used by the Land Management to transfer title from one (1) party to another.

(a) A valid deed shall:

(1) Be in writing;

(2) Identify the grantor (seller) and grantee (buyer);

(3) Provide the legal description of the real property;

(4) Identify the interest conveyed, as well as any conditions, reservations, exceptions, or rights of way attached to the interest;

(5) Be signed by or on behalf of each of the grantors (sellers);

(6) Be signed by or on behalf of each spouse of each of the grantors (sellers), if applicable; and

(7) Be delivered to the grantee (buyer).

(b) In addition to the requirements listed in section 601.7-2(a), a deed prepared for trust acquisition shall include:

(1) The federal authority for trust acquisition;

(2) Any exceptions or exclusions from the State of Wisconsin's fees or other transfer requirements;

(3) The approximate acreage of the real property being transferred to trust; and

(4) The authority and signature of the appropriate Department of Interior official who accepts the real property into trust.

(c) A deed transferring fee simple title shall be recorded in the appropriate register of deeds office, provided that, once the real property is in trust, the title shall be recorded with the Oneida Nation Register of Deeds and the Bureau of Indian Affairs Land Titles and Records Office.

601.7-3. *Involuntary Transfer of Title.* All involuntary transfers of title require a hearing and order from the Judiciary, and may occur in the following ways:

(a) *Eminent Domain.* Eminent domain is the right of the Nation's government to acquire Tribal member individual fee land within the Reservation for public uses without the consent of private owners.

(1) For the purposes of this section, public uses include, but are not limited to, environmental protection, streets, highways, sanitary sewers, public utility/sites, waste treatment facilities and public housing.

(2) Prior to exercising eminent domain, the Nation shall first attempt to negotiate an agreeable taking by making an offer to purchase based on an appraisal of the real property. The appraisal amount may be based on an appraisal provided by the Nation. In the event the property owner objects to the Nation's appraisal, they

may obtain an independent appraisal at their own cost. For the purposes of this section, an appraisal means process for estimating a piece of real property's value.

(3) The Nation's exercise of eminent domain may be appealed to the Judiciary.

(b) *Foreclosure.* Foreclosures may occur subject to the Mortgage and Foreclosure law when a Tribal member ceases payment on a leasehold mortgage.

(c) *Tribal Land Consolidation.* Section 207 of the Indian Land Consolidation Act (Pub.L. No. 97-459, 96 Stat. 2515, and amended on October 30, 1984 by Pub.L. No. 98-608, 98 Stat. 3171) is incorporated into this law, which provides a mechanism for real property within the Reservation to escheat, or pass, to the Nation.

(1) Pursuant to section 207 of the Indian Land Consolidation Act, an ownership interest in real property escheats, or passes, to the Nation under the following circumstances, provided that the Nation shall provide just compensation for the interest:

(A) The real property is within the Reservation boundaries;

(B) The decedent's ownership in the given parcel of land is two percent (2%) or less of the total acreage; and

(C) The interest is incapable of earning one hundred dollars (\$100) in any one (1) of the five (5) years immediately following the decedent's death.

(2) A decedent's heirs may appeal a land consolidation under this section to the Judiciary.

(3) Land consolidation is subject to the probate requirements, as included in this law and accompanying rules.

(d) *Transferring Interests Inherited by Non-Tribal Members.* If the owner of an interest of real property which is held in trust or restricted fee status located within the Reservation devises such interest to a non-Tribal member, the Nation may acquire the interest by paying the fair market value of the interest determined as of the date of the decedent's death. Such transfer is effective upon receipt of an order transferring inherited interests from the Judiciary pursuant to section 205 of the Indian Land Consolidation Act.

(1) An order transferring inherited interests may not be granted if:

(A) While the decedent's estate is pending, the non-Indian devisee denounces his or her interest in favor of a Tribal member person;

(B) The interest is part of a family farm that is devised to a member of the immediate family of the decedent, provided that such a restriction shall be recorded as part of the deed relating to the interest involved; or

(C) The devisee agrees in writing that the Nation may acquire the interest for fair market value only if the interest is offered for sale to a person or entity that is not a member of the immediate family of the owner of the interest.

(e) *Easements for Landlocked Properties.* Land Management and the Oneida Land Commission shall jointly develop rules regarding requests for easements for landlocked properties.

601.7-4. Land Management shall work with the Oneida Law Office in order to pursue an involuntary transfer of title.

601.8. Probate

601.8-1. Land Management shall process and administer probate estates and, where necessary, shall refer probate estates to the Oneida Judiciary for formal administration. Land Management and the Oneida Land Commission shall jointly create any rules necessary to administer probate estates. Land Management shall:

- (a) Process applications for probate administration;
- (b) Receive proof of heirship demonstrating a party is entitled to receive an intestate decedent's property pursuant to applicable laws and rules;
- (c) Receive consent to serve forms and in undisputed matters, issue domiciliary letters;
- (d) Require and receive affidavits of service;
- (e) Receive waiver and consent to probate administration forms and any related affidavits;
- (f) Issue notice to creditors of the probate's administration, receive creditor claims for consideration and settlement, and issue discharge of creditors when appropriate;
- (g) Receive and process all estate inventories;
- (h) Receive and process, when possible, land transactions in accordance with this law and receive proof of recording documents;
- (i) Receive estate receipts;
- (j) In undisputed matters, receive and process statement of personal representative to close estate and issue discharge of personal representative; and
- (k) Refer disputed matters to the Judiciary, transfer probate and related documents, and participate in the Judiciary's proceedings as necessary.

601.8-2. The Judiciary shall hear and administer disputed probate estates or matters requiring appointment of a guardian ad litem and shall have all the above powers conferred upon Land Management in such cases. In addition, the Judiciary shall hear and administer probate estates in which Land Management seeks appointment as a personal representative.

601.9. Leasing of Real Property

601.9-1. In accordance with the Leasing law, Land Management shall administer and process all leasing of Tribal land for agricultural and commercial purposes and the Comprehensive Housing Division shall administer and process all leasing of Tribal land for residential purposes. The Leasing law definition of Tribal land does not include Tribal fee land; however, pursuant to this law, the responsible parties designated herein shall administer and process leases of both Tribal fee land and Tribal trust land in accordance with the Leasing law.

601.10. Records

601.10-1. *Purpose.* Land Management shall oversee the administration of the Oneida Nation Register of Deeds which shall accept and record documents related to real property located within the Reservation, as well as documents related to all Tribal fee land, regardless of where it is located.

601.10-2. *Types of Records.* The Oneida Nation Register of Deeds may only accept documents that provide evidence of activities affecting real property title, preserve the record of a title document and give constructive notice of changes to a title document. Further, such documents shall be originals, signed duplicates or certified copies. The following documents may be accepted by the Oneida Nation Register of Deeds.

- (a) Deeds;

- (b) Probate orders;
- (c) Mortgages and other valid liens;
- (d) Easements, covenants, and restrictions;
- (e) Certified survey maps and plats of survey;
- (f) Patents;
- (g) Declarations of involuntary transfer or taking;
- (h) Satisfactions;
- (i) Leases made pursuant to the Leasing law;
- (j) Home ownership agreements made pursuant to the Landlord-Tenant law;
- (k) Marriage agreements; and
- (l) Correction of title defects.

601.10-3. *Accessibility*. The Oneida Nation Register of Deeds shall provide open access to land records and title documents.

601.10-4. *Trust Land*. All documents pertaining to Tribal trust land and individual trust land shall be recorded with the Oneida Nation Register of Deeds and the Bureau of Indian Affairs Land Titles and Records Office.

601.10-5. *Tribal Seal*. The Nation's Secretary shall provide Land Management with the Nation's seal to be used to authenticate documents which are certified by the Oneida Nation Register of Deeds.

601.11. Real Estate Education Requirements and Certifications

601.11-1. *Wisconsin Real Estate Education and Exam Required*. All persons engaging in the acquisition of Tribal fee land on behalf of the Nation, specifically those performing real estate closings, shall pass the Wisconsin Real Estate License Exam. Such persons are not required to obtain a Wisconsin Real Estate License, but shall fulfill the pre-license education requirement, pass the licensing exam and fulfill a minimum of twelve (12) hours or four (4) courses of continuing education requirements as required of Wisconsin real estate licensees. The Land Management director shall select which continuing education courses are required and the Oneida Law Office shall provide the director with a recommendation. In addition to Wisconsin's minimum education requirements as applied to the Nation's real estate employees in this law, Land Management shall require such employees to attend real estate training specific to the Nation's goals and unique positions as the Oneida Law Office shall offer on an as-needed basis.

(a) While Wisconsin real estate law allows persons engaged in the sale of real estate to earn a commission, persons acquiring Tribal fee land on behalf of the Nation are regular employees of the Nation and, therefore, shall waive any commission for which they might otherwise be eligible.

(b) It is critical to the Oneida Nation's goal to reacquire property within the original Reservation boundaries to have employees educated and experienced in executing real estate transactions. Accordingly, Land Management shall employ a minimum of one (1) employee whose primary focus is real estate acquisitions and shall ensure that a minimum of two (2) employees are educated and trained as backups to the primary.

601.11-2. *TAAMS Certification Required*. All persons responsible for encoding leasing information shall obtain a TAAMS certification, which includes, but is not limited to, the following positions:

- (a) Residential and Commercial Leasing Specialists;
- (b) Land Title and Trust Manager; and

(c) Title Examiner.

601.11-3. *Fiduciary Responsibility*. All persons engaged in the buying or selling of Tribal land shall, at all times, act as a fiduciary to the Nation. Further, all such persons shall comply with all applicable Tribal and federal laws.

601.12. Organization

601.12-1. *Comprehensive Housing Division*. The Comprehensive Housing Division shall oversee all residential transactions within the Reservation and shall process and administer such transactions using the applicable of the Landlord-Tenant law, the Mortgage and Foreclosure law, the Leasing law and/or the Eviction and Termination law; including any corresponding rules. In addition, the Oneida Land Commission and the Comprehensive Housing Division shall exercise joint rulemaking authority to provide process requirements, including but not limited to advertising, notice, prequalification, and selection, that apply in all circumstances when the Nation is selling a residential property.

601.12-2. *Oneida Land Commission*. The Oneida Land Commission is comprised of seven (7) elected Tribal members and shall:

(a) Interpret the provisions of this law and create policy to guide Land Management in implementing the same;

(b) Approve or deny all easements and land use licenses;

(c) Review and adopt Land Management's standard operating procedures for entering into agriculture and commercial leases pursuant to the Leasing law;

(d) Approve or deny all acquisition of Tribal land;

(e) Allocate and assign land uses to all Tribal land, except those uses governed by the Public Use of Tribal Land law, based on the Land Use Technical Unit rules which the Oneida Planning Department shall develop in collaboration with affected Oneida divisions and departments and the Oneida Land Commission; and

(f) Name all buildings, roads, parks and the like on Tribal land.

601.12-3. *Land Management*. Land Management shall implement this law in accordance with the policy directives provided by the Oneida Land Commission. Land Management shall:

(a) Forward requests for easements and land use licenses to the Oneida Land Commission based on the easement and land use license rules jointly developed by Land Management and the Oneida Land Commission;

(b) Administer and oversee the Oneida Nation Register of Deeds;

(c) Enter into and administer agricultural and commercial leases pursuant to the Leasing law and the Eviction and Termination law and any corresponding rules;

(d) Prepare title reports and process trust transactions; and

(e) Process land acquisition transactions as approved by the Oneida Land Commission.

End.

Adopted-BC-05-29-96-A

Amended-BC-03-01-06-D

Amended-BC-04-28-10-E

Amended-BC-02-25-15-C

Amended-BC-05-13-15-B

Amended-BC-02-08-17-A

Amended-BC-06-14-17-A (Temporary Amendments)



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



AGENDA REQUEST FORM

- 1) Request Date: May 2, 2018
- 2) Contact Person(s): Jennifer Falck
 Dept: LRO
 Phone Number: 869-4312 Email: jfalck@oneidanation.org
- 3) Agenda Title: Oneida Personnel Selection Committee
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
On April 22, 2018, the OBC adopted Resolution #04-11-18B. This resolution creates the Personnel
Selection Committee and directs the LOC to create bylaws for the PSC to be placed on the May 23, 2018 OBC
agenda. REQUESTED ACTIONS 1) Add PSC bylaws to active files list as a high priority and 2) Consider
approval of the attached Personnel Selection Committee bylaws.

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

1) <u>Draft Bylaws</u>	3) _____
2) _____	4) _____

- 5) Please list any laws, policies or resolutions that might be affected:
None
- 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:
LOC is directed to have this complete by May 23, 2018

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

Signature of Requester:
Jen Falck

Digitally signed by Jen Falck
 DN: cn=Jen Falck, o, ou, email=jfalck@oneidanation.org, c=US
 Date: 2018.04.24 14:58:25 -05'00'

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

PERSONNEL SELECTION COMMITTEE BY-LAWS

Article I. Authority

- 1-1. *Name.* The name of this entity shall be the Personnel Selection Committee, and may be referred to as the Committee.
- 1-2. *Establishment.* The entity was created by the Oneida Business Committee by resolution #BC-04-11-18B Creation of the Personnel Selection Committee.
- 1-3. *Authority.* The Committee is responsible for preventing nepotism and enforcing Oneida and Indian preference in the Nation's hiring process.
- (a) The Committee does not:
- (1) have authority to score applicants during the interview process,
- (2) have hearing body authority,
- (3) have authority to enter into contracts.
- 1-4. *Office.* The official mailing address of the Committee shall be:
Personnel Selection Committee
P.O. Box 365
Oneida, WI 54155
- 1-5. *Membership.* The Committee shall:
- (a) Consist of eight (8) members.
- (1) The Committee shall in no event be comprised of less than five (5) members.
- (2) Each member shall hold office until his or her term expires, until his or her resignation, or until his or her appointment is terminated in accordance with the Comprehensive Policy Governing Boards, Committees and Commissions.
- (b) Each Committee member shall be appointed in accordance with the Comprehensive Policy Governing Boards, Committees and Commissions to serve a three (3) year term. The first term shall be staggered with three (3) members receiving a one (1) year term, three (3) members receiving a two (2) year term and two (2) members receiving a three (3) year term. Each appointment after the initial staggered terms shall receive a three (3) year term.
- (c) *Vacancies.*
- (1) *Filling of Vacancies.* Vacancies shall be filled in accordance with the Comprehensive Policy Governing Boards, Committees, and Commissions
- (2) *Resignation.* A member may resign at any time verbally at a meeting or by delivering written notice to the Committee.
- (A) *Effective Date of Resignation.* A resignation is effective upon acceptance by motion or delivery of notice.

- (B) *Filling of Vacancies if Resignation is Deferred.* A vacancy that may occur at a specific later date by reason of resignation may be filled before the vacancy occurs, but the new member may not take office until the vacancy occurs.
 - (3) *Terms of Replacement Member.* A replacement member shall hold office through the unexpired portion of the term of the member whom he or she has replaced.
 - (d) *Qualifications.* Committee members shall be appointed by the Oneida Business Committee and shall meet the following qualifications:
 - (1) An enrolled member of the Oneida Nation.
 - (2) Be available for meetings and interviews during the work day, evenings and weekends.
 - (3) 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 Oneida Personnel Policies and Procedures, the Code of Ethics, and the Comprehensive Policy Governing Boards, Committees, and Commissions.
 - (4) A member may not be an employee of the Human Resources Department.
 - (5) Committee members who are employed by the Nation shall take personal or vacation time for all Committee related activities.
- 1-6 *Termination.* A member's appointment may be terminated in accordance with the Comprehensive Policy Governing Boards, Committees and Commissions.
- 1-7 *Trainings.* Committee members shall attend employment related training offered by the Nation as approved by the Oneida Business Committee.

Article II. Officers

- 2-1. *Chairperson, Vice-Chairperson and Secretary.* There shall be a Chairperson, a Vice-Chairperson and a Secretary.
- 2-2. *Responsibilities of the Chairperson.* The responsibility, duties and powers of the Chairperson of the Committee are as follows:
 - (a) Preside at all meetings of the Committee.
 - (b) Shall be an ex officio member of all subcommittees of the Committee, may call emergency meetings, and keep the Committee informed as to the business of the Committee.
 - (c) The Chairperson and the Secretary shall submit reports to the Oneida Business Committee for publication in the General Tribal Council annual and semi-annual reports.
 - (d) Submit quarterly reports as required by the Comprehensive Policy Governing Boards, Committees and Commissions.
 - (e) Forward meeting location, agenda and materials with the assistance of the Secretary.

2-3. *Responsibilities of the Vice-Chairperson.*

- (a) In the absence of the Chairperson, the Vice-Chairperson shall conduct meetings of the Committee.

2-4. *Responsibilities of the Secretary.*

- (a) Secretary Duties. The responsibilities, duties and powers of the Secretary are as follows:
 - (1) Keep minutes of the Committee meetings in an appropriate format.
 - (2) Along with the Chairperson, provide notice of regular and emergency meetings of the Committee.
 - (3) Act as custodian of the records.
 - (4) Attend to all correspondence and present to the Committee all official communications received by the Committee.
 - (5) Along with the Chairperson, submit reports to the Oneida Business Committee for publication in the General Tribal Council annual and semi-annual reports, and submit quarterly reports to the Oneida Business Committee.
 - (6) Work with the Business Committee Support Office to administer the budget.

2-5. *Selection of Officers.* The officers of the Committee shall be appointed by the Committee for a one (1) year term. Officers may hold only one officer position.

- (a) Each officer shall hold his or her office until:
 - (1) the member resigns; or
 - (2) the member has his or her appointment terminated in the manner set out in the Comprehensive Policy Governing Boards, Committees and Commissions.
- (b) A vacancy of any officer shall be filled by the Committee for the unexpired term at the next regular or emergency meeting.

2-6. *No Authorized Personnel.* The Business Committee Support Office shall assist the Committee with administrative duties.

Article III. Meetings

3-1. *Regular Meetings.* Regular meetings shall be determined by the Committee. The regular meeting time, place and agenda shall be determined at a regular meeting. If no alternate designation is made by the Committee, the regular meetings shall be the last Tuesday of every month. Notice of meeting location, agenda and materials shall be forwarded by the Chairperson with the assistance of the Secretary. Meetings shall be run in accordance with Robert's Rules of Order.

3-2. *Emergency Meetings.* Emergency meetings shall only be called when time sensitive issues require immediate action. Emergency meetings of the Committee may be called by the Chairperson or upon written request of any two (2) members. The Chairperson shall designate a time and place for holding an emergency meeting.

- (a) Within seventy-two (72) hours after an emergency meeting, the entity shall provide the Nation's Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular meeting.
- 3-3. *Quorum.* Five (5) of the Committee members shall constitute a quorum for transaction of business, which shall include the Chairperson or Vice-Chairperson.
- 3-4. *Order of Business.* The regular meetings of the Committee shall follow the order of business as set out herein:
 - (a) Call to Order
 - (b) Roll Call
 - (c) Approving of Previous Meeting Minutes
 - (d) Subcommittee Reports
 - (e) Old Business
 - (f) New Business
 - (g) Adjournment
- 3-5. *Voting.* Voting shall be in accordance with the simple majority vote of the Committee members present at a duly called meeting.
 - (a) The Chairperson shall vote only in case of a tie.
 - (b) The committee shall develop an standard operating procedure for any electronic voting it wishes to conduct.

Article IV. Expectations

- 4-1. *Behavior of Members.* Members are expected to treat each other in accordance with kalihwiyo, "The use of the Good Words about ourselves, our nation and our future." Failure to treat each other with respect shall be cause for termination from the Committee. Appointed members of entities serve at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.
- 4-2. *Prohibition of Violence.* Intentionally violent acts committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property during a meeting or when acting in an official capacity are strictly prohibited and grounds for immediate termination of appointment on the Committee and/or the imposition of sanctions and/or penalties according to laws and policies of the Nation.
- 4-3. *Drug and Alcohol Use.* Use of alcohol and illegal drugs by a member of an entity when acting in their official capacity is strictly prohibited.
- 4-4. *Social Media.* Committee members abide by the Nation's Social Media Policy.
- 4-5. *Conflict of Interest.* Committee members shall abide by all laws of the Nation governing

conflicts of interest. Members must submit a Conflict of Interest Disclosure form upon Oath of Office and annually.

Article V. Stipends and Compensation

5-1 *Stipends.* Committee members are eligible for the following stipends:

- (a) One (1) monthly meeting stipend
- (b) One (1) stipend per day for participating in interviews and/or job description pre-screens conducted by the Human Resource Department.
- (c) Stipends for Judiciary hearings
 - (i) A member of an entity may receive a stipend for attending an Oneida Judiciary hearing if that member is specifically subpoenaed.
- (d) Required training offered by the Nation as established by the Oneida Business Committee.

5-2 *Compensation.* Committee members are not eligible for any other type of compensation.

Article VI. Records and Reporting

6-1 *Agenda Items.* Agendas shall be maintained in a consistent format.

6-2 *Minutes.* Minutes shall be typed and in a consistent format that generates an informative record of the Committee's meetings. The Business Committee Support Office shall prepare the minutes within thirty (30) days of the Committee's meeting.

6-3 *Attachments.* Handouts, attachments, memoranda, etc. shall be attached to the corresponding minutes and the agenda. Minutes and attachments shall be kept electronically by the Business Committee Support Office.

6-4 *Oneida Business Committee Liaison.* The Committee shall regularly communicate with the Oneida Business Committee member who is their designated liaison. The frequency and method of communication shall be agreed upon by the Committee and the Liaison.

6-5 *Audio Recordings.* The Committee shall audio record meetings and submit the recordings to the Business Committee Support Office within two (2) business days.

Article VII. Amendments

7-1 *Amendments to By-laws.* Any amendments to bylaws shall conform to the requirements of the Comprehensive Policy Governing Boards, Committees and Commissions and any other policy of the Nation. Amendments to by-laws shall be approved by the Oneida Business Committee prior to implementation.



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



AGENDA REQUEST FORM

- 1) Request Date: May 2, 2018
- 2) Contact Person(s): Jennifer Falck
 Dept: LRO
 Phone Number: 869-4312 Email: jfalck@oneidanation.org
- 3) Agenda Title: Petition: Dallas \$5,000.00 Per Capita Payment
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
On April 25, the OBC approved 4 actions for this petition, one being that a legislative analysis
be completed by the LOC

REQUESTED ACTION: Add Petition: Dallas \$5,000 Per Capita Payment to the AFL as a high priority

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

1) _____	3) _____
2) _____	4) _____

- 5) Please list any laws, policies or resolutions that might be affected:
Per Capita, Back Pay, Garnishment
- 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:

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

Signature of Requester:
Jen Falck

Digitally signed by Jen Falck
 DN: cn=Jen Falck, o=ou, email=jfalck@oneidanation.org, c=US
 Date: 2018.04.24 15:20:25 -05'00'

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



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 19, 2018
- 2) Contact Person(s): Dana McLester
Dept: Comprehensive Housing Division
Phone Number: 869-2227 Email: dmcleste@oneidanation.org
- 3) Agenda Title: Emergency Rule - Residential Leasing
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
See attached.

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

1) <u>Proposed emergency rule</u>	3) <u>Summary Report</u>
2) _____	4) _____

- 5) Please list any laws, policies or resolutions that might be affected:
Leasing law
-
- 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:
The rule needs to be in place when the Leasing law goes into effect.

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

Signature of Requester:

Signature of Requester: Dana McFuster

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

A good mind. A good heart. A strong fire.

MEMORANDUM

TO: Legislative Operating Committee
 FROM: Dana McLester, CHD Division Director
 DATE: April 19, 2018
 RE: Emergency Rule – Residential Leasing

The Leasing law received approval from the Secretary of the Interior and was posted on the Federal Register on April 19, 2018. In accordance with BC Resolution # 10-26-16-C, the effective date of the Leasing law will be May 19, 2018. The Residential Leasing rule, which is associated with the Leasing law, is currently going through the normal rulemaking procedures. A timeline for the rule is as follows:

- March 8, 2018 – The Comprehensive Housing Division addressed the draft of the rule with the Oneida Business Committee at a work meeting.
- March 9, 2018 – The Comprehensive Housing Division met with the Legislative Operating Committee to obtain input on the draft.
- March 12, 2018 – The completed draft went to the Oneida Land Commission for required joint approval.
- March 16-27, 2018 – The Comprehensive Housing Division worked with the Oneida Law Office to revise the draft based on a number of questions and concerns brought forth by the Oneida Land Commission.
- April 9, 2018 – The revised draft was approved by the Oneida Land Commission.
- April 10, 2018 – A request was made for the Legislative Reference Office to complete a Statement of Effect by April 20, 2018.
- May 3, 2018 – Notice for the rule will be published in the Kalihwisaks.
- May 17, 2018 – Public Meeting.
- May 19, 2018 – Leasing law will go into effect.
- May 24, 2018 – Public comment period for the rule will expire and the rest of the normal rulemaking procedures will need to occur.

Pursuant to sections 106.10-1(a) and (b) of the Administrative Rulemaking law, an emergency situation exists that requires the enactment of a rule for the immediate preservation of the general welfare of the Reservation population. Without a rule addressing residential leasing, the Comprehensive Housing Division will not have the set of requirements necessary to enter into residential leases in accordance with the Leasing law. This could negatively impact the Reservation population's ability to secure affordable shelter which would in turn affect the ability to permit self-sufficiency and stability. This enactment is required sooner than would be possible under the normal rulemaking procedures, which are currently underway.

The Comprehensive Housing Division believes that pursuing an emergency rule is preferable to attempting to delay the effective date of the Leasing law.

Please contact me with any questions you may have regarding the emergency rule.

Emergency Rule



Title 6. Property and Land – Chapter 602

LEASING LAW

Rule # 1 – Residential Leasing

- 1.1. Purpose and Policy
- 1.2. Adoption and Authority
- 1.3. Definitions
- 1.4. Residential Lease Eligibility, Cost, Duration, and Application
- 1.5. Application Review and Residential Lease Approval
- 1.6. Residential Lease by Guardian
- 1.7. Residential Lease Transfer
- 1.8. Residential Sublease
- 1.9. Residential Lease Termination
- 1.10 Compensation for Improvements Upon Residential Lease Termination
- 1.11 Residential Leasing Actions

1.1. Purpose and Policy

1.1-1. *Purpose.* The purpose of the Residential Leasing rule is to expand upon the information provided in the Leasing Law regarding eligibility, administration, inheritability, and enforcement related to residential leases.

1.1-2. *Policy.* The policy behind the Residential Leasing program is to provide Tribal member's with access to Tribal land for the purpose of homeownership through policies that build strong, safe, and healthy Oneida neighborhoods and provide a consistent and fair process by which residential lease applications will be reviewed and residential leases awarded.

1.2. Adoption and Authority

1.2-1. This rule was jointly adopted by the Comprehensive Housing Division and the Oneida Land Commission in accordance with the Administrative Rulemaking law.

1.2-2. 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.

1.2-3. Should a provision of this rule or the application of this rule 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 controls.

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

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) "CHD" means the Nation's Comprehensive Housing Division.
- (b) "Department" means the CHD's Residential Leasing Department.
- (c) "Descendant" means the son or daughter of an enrolled Tribal member.
- (d) "Fee Land" means land held in fee status by the Nation.¹

¹ Although the Real Property law indicates that leases for tribal fee land will follow the procedures set forth in the Leasing Law, CHD shall not record residential leases for fee land with the Land Title Records Office as that office only accepts recordings pertaining to trust land.

Emergency Rule

- (e) “Guardian” means a person who has been appointed by a court of competent jurisdiction to be legally responsible for someone who is unable to manage their own affairs, particularly for minors and/or persons declared legally incompetent.
- (f) “Improvement” means buildings, other structures, and associated infrastructure attached to land.
- (g) “Lessee” means the party to an executed and effective residential lease.
- (h) “Nation” means the Oneida Nation.
- (h) “Premises” means the real property subject to a residential lease.
- (i) “Residential Lease” means the legal document issued by the Nation pursuant to the Leasing Law and this rule which establishes a lessee’s right to occupy Tribal land for residential purposes.
- (j) “Tribal land” means fee land and/or trust land.
- (k) “Tribal Member” means an individual who is an enrolled member of the Nation.
- (l) “Trust land” means the surface estate of land or any interest therein held by the United States in trust for the Nation; land held by the Nation subject to federal restrictions against alienation or encumbrance; land reserved for federal purposes; and/or land held by the United States in trust for the Nation under Section 17 of the Indian Reorganization Act, 25 U.S.C §477, et. seq.
- (m) “Ward” means a person under the care and control of a guardian appointed by a court of competent jurisdiction, usually due the person’s status as a minor or a declaration of legal incompetence.

1.4. Residential Lease Eligibility, Cost, Duration, and Application

1.4-1. *Eligibility.* In order for an applicant to be eligible to enter a residential lease, the applicant must satisfy all of the following:

- (a) Be a Tribal member. Non-Tribal members may be a party to a residential lease under the following circumstances:
 - (1) The non-tribal member is married to a Tribal member party to the residential lease;
 - (2) The non-tribal member spouse is awarded the residential lease through a legal separation or divorce judgment;
 - (3) The Oneida Land Commission has approved the CHD to enter a residential lease with a non-Tribal member party;
 - (4) The non-Tribal member is a descendant or other individual that inherited the residential leasehold interest; or
 - (5) as otherwise specified in this rule.
- (b) Have a maximum of two (2) residential leases provided that a second residential lease is only permitted in circumstances where any required residential subleasing meets the requirements provided in this rule.
- (c) Either:
 - (1) Be in good standing with any mortgage/encumbrance upon the improvements which would be subject to the residential lease; or
 - (2) Demonstrate financial ability to secure improvements upon the premises.

1.4-2. *Residential Lease Cost and Duration.* Unless approved otherwise by the Oneida Land Commission, the initial residential lease term shall be for a period of fifty (50) years with one (1) twenty-five (25) year extension available for a maximum term of seventy-five (75) years.

- (a) Tribal members and non-Tribal members who qualify under sections 1.4-1(a)(1), (2),

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(4), or (5) of this rule shall pay a non-refundable residential lease cost prior to execution of the lease of three dollars (\$3.00) per year plus an administrative fee of twenty-five dollars (\$25.00).

(b) Where the lessee is a non-Tribal member that enters into a residential lease pursuant to section 1.4-1(a)(3) of this rule, the cost of the residential lease is as follows:

(1) *Fair Market Value*. Non-Tribal members shall pay a one-time twenty-five dollar (\$25.00) administrative fee plus an annual rate which is the lesser of one thousand five hundred dollars (\$1,500.00) and fair market value of the premises. Payment for residential lease costs may be paid up front or broken down into monthly or quarterly payments.

(A) For the purposes of this section, fair market value is determined by dividing the current appraised value of the premises (excluding any improvements) by fifty (50), which represents the standard residential lease term of fifty (50) years.

(B) Once the annual fair market value is set, it shall be locked in for the term of the residential lease.

(C) Where an updated appraisal is required to calculate the current fair market value, lessee shall pay CHD's cost of appraisal, provided that CHD shall select the appraisal provider.

1.4-3. *Application*. In order to apply for a residential lease, applicants shall submit to the Department a residential lease application, which CHD shall make available in hard copy format at CHD and on its website. When submitting the application, applicants shall submit a copy of their Tribal or state identification card as applicable and, if married, a certified copy of the marriage certificate.

1.5. Application Review and Residential Lease Approval

1.5-1. *Application Review*. Upon receipt of a residential lease application, the Department shall:

(a) Initiate the National Environmental Protection Act (NEPA) and cultural reviews required by the Leasing Law with the Environment, Health, Safety and Land Division and the Cultural Heritage Department respectively;

(b) Pull the legal description for the proposed residential lease premises from the title report, if available, and if not, from the warranty deed, including any potential amendments thereto, with the assistance of the Environment, Health, Safety and Land Division as may be needed;

(c) Pull the legal description for the proposed residential lease premises from the survey map;

(d) Confirm the proposed residential lease premises' legal description in the title report/warranty deed and the legal description in the survey match one another. In the event the legal descriptions do not match, the Department shall use the legal description from the most recent document;

(e) Confirm that the minimum terms and conditions required by the Leasing Law are included in the proposed residential lease; and

(f) If any exceptions have been granted by the Oneida Land Commission, confirm such exceptions with a copy of the Oneida Land Commission minutes.

1.5-2. *Residential Lease Approval*. The CHD shall create a checklist for residential lease review. Upon the Department's completion of the checklist, the Department shall forward the residential lease application, residential lease, and associated review documents to the

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Department's Area Manager for review and approval.

(a) Should the Area Manager approve the satisfaction of the checklist and the residential lease, the Area Manager shall forward the residential lease application, residential lease, and associated review documents to the CHD Director for signature of the residential lease on behalf of the Nation.

(b) Upon signature on behalf of the Nation, the Department shall schedule a meeting with the lessee to review the residential lease terms and to facilitate signature of the lessee, provided that the residential lease may not be signed until the cost of the residential lease has been paid with receipt documented in the residential lease file.

(c) The CHD shall provide the Oneida Land Commission with a quarterly report listing approved residential leases.

1.6. Residential Lease by Guardian

1.6-1. CHD shall permit a guardian to enter a residential lease on behalf of a ward who has either not yet reached the age of majority or who has been deemed incompetent provided that:

(a) The ward must meet the eligibility requirements contained in section 1.4-1 of this rule;

(b) The guardian must provide the Department with a copy of the order appointing them as guardian issued by a court of competent jurisdiction;

(c) The residential lease must require the guardian to provide any updates regarding the scope and status of the guardianship; and

(d) The residential lease must either stay in the name of the ward or transfer to the ward in the event the guardianship is terminated.

1.7. Residential Lease Transfer

1.7-1. *Residential Lease Transfer Outside of Death.* Transfer of a residential lease outside of death may only occur either if all parties involved in the transfer approve of said transfer in writing or if an order from a court of competent jurisdiction requires transfer of the residential lease to an eligible party as defined by this rule.

(a) *Mortgaged Premises.* If the premises is mortgaged, all mortgage parties on the residential lease must remain on the residential lease. Mortgage parties may be removed from the residential lease only if action is taken to remove a party or the parties from the mortgage.

(b) *Residential Lease Transfer Process.* In order to initiate a residential lease transfer, the requesting party must submit a transfer application, which CHD shall make available in-person at CHD and electronically on its website, and pay the twenty-five dollar (\$25.00) transfer fee.

1.7-2. *Residential Lease Transfer Upon Death of Lessee.* Where the lessee dies before the end of the residential lease, the residential lease may be transferred either in reliance on an executed residential lease successor designation form or upon an order from either the Nation's probate hearing body or court of competent jurisdiction assigning the leasehold interest to an eligible heir.

(a) *Eligible Successors.* Unless approved otherwise by the Oneida Land Commission, when assigning a leasehold interest, whether through a successor designation form or a will/probate, in order to be eligible, the successor must meet the requirements of section 1.4-1 of this rule. If the successor has not yet reached the age of majority at the time the lessee becomes deceased, the successor will be required to enter a residential lease by

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guardian until he/she reaches eighteen (18) years of age.

(1) *Successor Designation Form.* CHD shall make successor designation forms available in-person at CHD and electronically on its website. Executing a successor designation form demonstrates intent of the lessee to remove the residential leasehold interest from the estate's probate assets in order to shorten and simplify the transfer process to an eligible successor upon the death of a lessee. Successor designation forms are only available to lessees where the premises is not subject to a mortgage. If a mortgage is entered after executing a successor designation form and the mortgage is not satisfied at the time the lessee dies, the successor designation form shall be invalid.

(A) The successor designation form shall provide an opportunity for the lessee to name up to a maximum of a three (3) successors.

(B) Upon death of a lessee with a successor designation form on file, the Department shall contact the named successors in the order designated by the lessee and shall inform them of their option to accept the leasehold interest, either for the purpose of personal occupancy or for sale of the residence.

(2) *Probate.* Lessees may also chose to transfer a residential leasehold interest upon their death by having it go through the probate process. The probate process will be used to assign a leasehold interest where there is no valid successor designation form on file or where a successor designation form is on file but a will has been executed after the successor designation form was executed which includes the residential leasehold interest. Where the premises is on trust land, the estate must use the Nation's probate process, whereas a premises on fee land may either be handled through the Nation's or the State of Wisconsin's probate process.

(3) *No Eligible Successors.* Where there are no eligible successors to the residential leasehold interest, the CHD shall terminate the residential lease and shall issue payment to the lessee's estate for any improvements upon the premises in accordance with section 1.10 of this rule. The leasehold interest shall then revert to CHD.

(b) *Married Persons.* When a Tribal member spouse predeceases the term of the residential lease:

(1) If both married parties are parties to the residential lease, the remaining lessee shall continue in effect undisturbed; or

(2) If only the deceased Tribal member was a party to the residential lease and the residential lease was not amended to include the spouse, the CHD, absent a valid marital property agreement stating otherwise, will consider the residential lease marital property and the spouse may sign on to the residential lease.

1.8. Residential Sublease

1.8-1. *Eligibility.* In order to enter a residential sublease agreement, the party assuming the premises through the sublease must meet the eligibility requirements contained in section 1.4-1 of this rule.

1.8-2. *Approval of CHD and Lender Required.* Approval of CHD and, if the premises is subject to a mortgage also the lender, is required prior to entering any sublease agreement.

1.8-3. *Sublessee to Consent to Terms of Residential Lease.* In order to enter a sublease

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agreement, the sublessee shall consent to the terms of the residential lease provided that the parties to the sublease agreement may negotiate payment provisions differing from payment terms included in the residential lease.

1.8-4. *Original Lessee Remains Responsible.* In terms of residential lease enforcement and compliance with the residential lease, the original lessee shall at all times remain responsible for ensuring compliance with the terms of the residential lease and any and all enforcement actions taken by CHD and/or the Nation shall be taken against the original lessee. Any dispute as to who is responsible for the non-compliance constitutes a private dispute between the sublease parties and shall exclude CHD and the Nation as a party to the dispute.

1.9. Residential Lease Termination

1.9-2. *Termination.* Any termination of a residential lease is subject to requirements of the Eviction and Termination law and shall require CHD to compensate the lessee for any improvements located upon the premises upon said termination in accordance with section 1.10 of this rule.

1.10. Compensation for Improvements Upon Residential Lease Termination

1.10-1. Any time CHD terminates a residential lease which has improvements fixed to the premises, the Nation shall provide the lessee/lessee's estate with compensation for said improvements upon termination.

(a) *Determining Compensation Amount.* The amount of compensation required for any improvements fixed to the premises shall be calculated using a current appraisal of the improvements only and deducting the following from the appraisal value:

- (1) The cost to satisfy any mortgage/encumbrance upon the premises and/or improvements;
- (2) The cost of the appraisal and home inspection, provided that CHD shall select the service providers;
- (3) The cost to bring the improvements to a minimal health and safety standard in accordance with the determination of the Zoning Department and/or the home inspection; and
- (4) Any debts and/or other administrative costs owed to the Nation by the lessee.

1.11 Residential Leasing Actions

1.11-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this rule.

1.11-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this rule.

1.11-3. In regards to taking actions authorized under this rule, complaints filed with the Oneida Judiciary shall name the CHD's Residential Leasing Department.

End.

Original effective date:

Summary Report for Residential Leasing (Emergency Rule)

Original effective date: N/A

Amendment effective date: N/A

Name of rule: Residential Leasing

Name of law being interpreted: Leasing Law

Rule number: 1

Other laws or rules that may be affected: N/A

Brief summary of the proposed rule: The purpose of this rule is to expand upon the information provided in the Leasing Law regarding eligibility, administration, inheritability, and enforcement related to residential leases.

Statement of Effect: Obtained after requesting from the Legislative Reference Office.

Financial Analysis: See Attached.



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
 Oneida-nsn.gov



Statement of Effect

Leasing Law Rule No.1 – Residential Leasing

Summary

Leasing Law Rule No. 1 – Residential Leasing expands upon the information provided in the Leasing Law regarding eligibility, administration, inheritability, and enforcement related to residential leases.

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

Date: April 20, 2018

Analysis by the Legislative Reference Office

The Leasing law (“the Law”) was adopted by the Oneida Business Committee by resolution BC-05-13-15-C, amended by resolution BC-10-26-16-C, and is set to become effective thirty (30) calendar days after approval by the Secretary of the Interior. The Law was approved by the Secretary of Interior and published on the Federal Register on April 19, 2018.

The Law was adopted for the purpose of setting forth the Nation’s authority to issue, review, approve and enforce leases, in addition to meeting the requirements of the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act) by establishing a process under which the Nation will be able to approve leases on tribal land without additional approval of the Secretary of the Interior. [6 O.C. 602.1-1].

The Law delegates administrative rulemaking authority to Land Management and the Oneida Land Commission as authorized by the Administrative Rulemaking law.

The Law defines Land Management as the Division of Land Management or other entity responsible for entering into leases of tribal land. [6 O.C. 602.3-1(i)]. In regards to residential leases, the Comprehensive Housing Divisions has been the entity delegated the responsibility for entering into leases of tribal land.

The Law requires parties interested in obtaining a residential lease document to submit an application to Land Management pursuant to the rules which Land Management and the Oneida Land Commission shall jointly develop. [6 O.C. 602.5-1]. Land Management is delegated the responsibility to develop, while the Oneida Land Commission is delegated the responsibility to approve, the format and requirements set out in the lease document applications for different types of leases, as well as additional procedures and processes to be followed when offering and awarding lease documents. [6 O.C. 602.5-1(a)].

The Law also allows for Land Management and the Oneida Land Commission to jointly develop rules requiring administrative fees for costs associated with issuing a lease document, or conducting any other administrative transaction. [6 O.C. 602.10-5].

In regards to enforcement, Land Management is delegated all powers necessary and proper to enforce the lease terms, the Law and any rules developed pursuant to the Law, including, but not limited to, the power to enter the premises, assess penalties, assess late payments and cancel leases. [6 O.C. 602.11-1].

The Leasing Law Rule No. 1 – Residential Leases (“the Rule”) expands upon the information provided in the Leasing Law regarding eligibility, administration, inheritability, and enforcement related to residential leases for the purpose of providing Tribal member’s with access to Tribal land for the purpose of homeownership through policies that build strong, safe, and healthy Oneida neighborhoods and provide a consistent and fair process by which residential lease applications will be reviewed and residential leases awarded. [see Rule section 1.1-1 and 1.1-1].

The Rule was jointly adopted by the Comprehensive Housing Division and the Oneida Land Commission. The Rule provides for the following:

- Residential lease eligibility, cost, duration and application [see Rule 1.4];
- Application review and residential lease approval [see Rule 1.5];
- Residential lease by guardian [see Rule 1.6];
- Residential lease transfer [see Rule 1.7];
- Residential sublease [see Rule 1.8];
- Residential lease termination [see Rule 1.9];
- Compensation for improvements upon residential lease termination [see Rule 1.10]; and
- Residential leasing actions [see Rule 1.11].

The provisions of the Rule do not exceed the rulemaking authority granted under the law, as required by the Administrative Rulemaking law. [1 O.C. 106.4-1].

Conclusion

There are no legal bars to adopting the Leasing Law Rule No. 1 – Residential Leases.

Financial Analysis for Residential Leasing Rule (Comprehensive Housing Division)
EMERGENCY RULE

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	Would be absorbed within the current budget.	\$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	One week.	\$0
Other, please explain	N/A	\$0
Total Cost (Annual)		\$0



TO: Legislative Operating Committee (LOC)
FROM: Jennifer Falck, LRO Director
RE: Oneida Personnel Commission Bylaw Amendments
DATE: May 2, 2018

BACKGROUND

On September 6, 2017, the LOC placed the Oneida Personnel Commission (OPC) Bylaw Amendments on the active files list. This item was carried over from the previous term. No action was taken on the amendments, because the LOC has decided not to amend any bylaws until the Comprehensive Policy Governing Boards, Committees, and Commissions is amended. After these amendments are adopted, all the boards, committees, and commissions will need to amend their bylaws. Not amending bylaws until after the amendments are adopted is more efficient.

On April 11, 2018 the Oneida Business Committee adopted Resolution #04-11-18-A Dissolution of the Personnel Commission, Tolling all Timelines in Personnel Related Matters, and Directing the Development of the Emergency Amendments to Existing Laws. This resolution formally dissolved the Oneida Personnel Commission. Because the OPC has been dissolved, it is appropriate to remove their bylaw amendments from the active files list.

REQUESTED ACTION

Remove the Oneida Personnel Commission Bylaw Amendments from the active files list.

April 18, 2018 Legislative Operating Committee E-Poll

June 18, 2018 GTC Special Meeting Materials

From: LOC
Sent: Wednesday, April 18, 2018 2:13 PM
To: David P. Jordan; Leyne C. Orosco; Kirby W. Metoxen; Rosa J. Laster; Jennifer A. Webster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth
Subject: E-Poll Request: June GTC Mtg Materials
Importance: High

Executive Summary

The attached memo has been drafted for the June 18, 2018 General Tribal Council Meeting. The Employment Law was tabled by the GTC on March 19, 2017. Therefore- the packet back up materials will be the same on June 18, 2018, as they were on March 19, 2017- with the attached memo as an addition. The 3/19/17 packet includes a draft of the Employment Law and the Handbook. The back up material is very lengthy. It can be found in your March 19, 2017 GTC Special Meeting packet. In an effort to save paper it has not been attached because that would require several hard copies at the next LOC meeting.

The memo must be approved by the LOC, prior to being sent to the April 25, 2018 Business Committee Meeting for approval. This item cannot be put on the next LOC agenda, because it would not meet the April 18, 2018 submission deadline.

Requested Action

Approve the June 18, 2018 GTC Meeting materials and forward to the Business Committee for approval.

Deadline for Approval

April 19, 2018 at 10:00am

Thank You

E-POLL RESULTS

From: Jennifer A. Webster **Sent:** Wed 4/18/2018 2:52 PM
To: LOC; David P. Jordan; Leyne C. Orosco; Kirby W. Metoxen; Rosa J. Laster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth
Cc:
Subject: RE: E-Poll Request: June GTC Mtg Materials

Approve.
 Jenny

From: Kirby W. Metoxen **Sent:** Wed 4/18/2018 2:52 PM
To: LOC; David P. Jordan; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Webster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth
Cc: Kirby W. Metoxen
Subject: RE: E-Poll Request: June GTC Mtg Materials

Approve and concur with David

Yaw^ko,

From: Daniel P. Guzman **Sent:** Wed 4/18/2018 3:08 PM
To: LOC; David P. Jordan; Leyne C. Orosco; Kirby W. Metoxen; Rosa J. Laster; Jennifer A. Webster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Melinda J. Danforth
Cc:
Subject: Re: E-Poll 2: June GTC Mtg

Oppose. I prefer Chief councils' option of giving authority to BC to make amendments to the handbook.



TO: General Tribal Council
FROM: Oneida Business Committee
DATE: June 18, 2018
RE: Proposed Employment Law- Status Update

BACKGROUND: GTC DIRECTIVE

The proposed Employment Law was on the March 19, 2017 General Tribal Council special meeting agenda. At that time, the GTC approved a motion to *“table this item until the next Business Committee has been elected; the next Business Committee has a chance to review it, and that the Oneida Personnel Commissions has the opportunity the provide input”*.

That directive has been completed, and this is a status update on the proposed Employment Law.

ONEIDA BUSINESS COMMITTEE REVIEW

The new LOC began working on this item in September 2017. The LOC held several work meetings to review the draft law and understand its content. The LOC has reviewed the law and kept the Oneida Business Committee up to date on those efforts.

INPUT PROVIDED BY THE PERSONNEL COMMISSION

The Oneida Personnel Commission (OPC) was invited to provide input. The OPC submitted comments to the Legislative Operating Committee on November 9, 2017 and January 11, 2018. In addition, all Division Directors were invited to provide comments. The Human Resources Department and Gaming submitted comments in January and February of this year.

LEGISLATIVE OPERATING COMMITTEE CONSIDERATIONS

These three considerations are of particular interest to the membership. More changes may come in the future drafts. Right now, the LOC is considering the following changes to the current draft of the law;

1. Personal/Vacation Accrual Rates:

The LOC is considering changing the draft law to reduce the amount of personal and vacation time an employee can accrue, starting on a specific date. Current employees would be exempt from this change. The accrual rates for anyone employed prior to that date, would not see a change in their accrual rates, but people hired after that date, would accrue fewer hours of personal and vacation time. The LOC has been discussing this with the Human Resources Department.

2. **Administrative Rulemaking:**

There are two ways this law can get adopted. One method is through rulemaking. That would mean that the law would be adopted by the General Tribal Council, and the details (what we now call the Blue Book) would be in a separate item. It would be called the Employment Law Handbook. The handbook would be adopted using the Administrative Rulemaking Law. In this scenario, the General Tribal Council would adopt and amend the law as needed. Adopting the handbook would require public input, and once the Handbook is adopted, the Human Resources Department and/or the Chief Executive Director of Administration would make amendments to the Handbook. Any amendments to the law or the handbook would require public input.

The LOC is considering not using the rulemaking method, and instead asking the General Tribal Council to consider adopting both the law and the handbook as one. Using this adoption method would mean that only the General Tribal Council could make amendments to Employment Law.

3. **Personnel Commission/ Personnel Selection Committee:**

In 1990, the Business Committee changed the name of the Personnel Selection Committee to the Personnel Commission (Resolution #BC-4-13-90A. In 1993, the Business Committee expanded the Personnel Commission's responsibilities to act as a hearing body for employment matters (Resolution # BC-05- 12-93-J). In 2013, the General Tribal Council adopted the Judiciary Law, and amended to Oneida Nation Constitution to include language that created an independent Judiciary. The General Tribal Council reaffirmed that action in 2017.

On April 11, 2018, the Oneida Business Committee adopted BC Resolution #04-11-18A: Dissolution of the Personnel Commission, Tolling all Timelines in Personnel Related Matters, and Directing the Development of Emergency Amendments of Existing Laws. This resolution dissolved the Personnel Commission. It also set parameters for pending grievance hearings, and directed the LOC to present emergency amendments to laws that would be impacted.

The Business Committee's goal was to transfer the Personnel Commission's hearing authority to the Oneida Nation Judiciary. This is not unlike the Land Commission and the Environmental Resources Board successfully moving their hearing authority to the Judiciary in 2017. Using the Judiciary to hear grievance cases saves the tribe money. It also reduces the amount of time it takes to complete cases. The Personnel Commission did not express concern about transfer of hearing authority to the Judiciary in their memos of November 11, 2017 or January 11, 2018.

On April 11, 2018, the Oneida Business Committee also adopted Resolution # 04-11-18-B: Creation of the Personnel Selection Committee. In essence, this resolution re-creates the Personnel Selection Committee. The role of this committee will be to protect against issues of nepotism and enforce Oneida and Indian preference laws.

The adoption of these resolutions is consistent with what has been presented to the General Tribal Council with regard to the Employment Law. Since the LOC began its work on the Employment Law, the LOC, in coordination with discussions of the Oneida Business Committee, have been considering a recommendation to return the Personnel Commission responsibilities to its original intent. The goal was to streamline the hiring process, increase efficiency, and save money and time.

The cumulative effect of these actions: 1) transferring hearing body authority to the Judiciary, 2) dissolving the Personnel Commission, and 3) creating the Personnel Selection Committee have essentially achieved the LOC's goal to make hiring more efficient and to save time and resources.

ONEIDA BUSINESS COMMITTEE RECOMMENDATIONS

The Oneida Business Committee has fulfilled the March 19, 2017 GTC Directive and is recommending that the General Tribal Council direct the Oneida Business Committee to continue working on this item and bring it back to the General Tribal Council at a later date.

April 20, 2018 Legislative Operating Committee E-Poll Oneida Judiciary Rules of Civil Procedure Emergency Amendments

From: LOC Sent: Fri 4/20/2018 8:33 AM
 To: David P. Jordan; Leyne C. Orosco; Kirby W. Metoxen; Rosa J. Laster; Jennifer A. Webster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth
 Cc: Clorissa N. Santiago; Brandon M. Wisneski
 Subject: EPOLL 2 OF 4: ONEIDA JUDICIARY RULES OF CIVIL PROCEDURE
 Message Oneida Judiciary Rules of Civil Procedure Emergency Amendments - Adoption Packet.pdf (2 MB)

Good Morning Legislative Operating Committee,

This email serves as the E-Poll for the Oneida Judiciary Rules of Civil Procedure Emergency Amendments.

EXECUTIVE SUMMARY

On April 11, 2018, the Oneida Business Committee dissolved the Personnel Commission through resolution BC-04-11-18-A for the purpose of consolidating employment related grievance hearings into the Judiciary in an effort to increase consistency in hearing processes, efficiency, and reduce overall costs to the Oneida Nation. The Oneida Business Committee felt it was now appropriate to begin consolidating employment related grievance hearings into the Judiciary as the number of current cases in the Personnel Commission was low and the costs of maintaining judicial hearing authorities continues to increase.

Oneida Business Committee resolution BC-04-11-18-A also requires that the Legislative Operating Committee develop and present emergency legislative amendments to fully address the impact of this resolution to the next Oneida Business Committee meeting, April 25, 2018. This resolution states that emergency action to amend legislation to change references to the Personnel Commission to reflect either the Judiciary – Trial Court or the new Personnel Selection Committee is needed to contain expenditures which may go over budget, to provide standards in hearing processes, and provides clear judicial hearing authority.

Additionally, the Oneida Business Committee created the Personnel Selection Committee on April 11, 2018, through resolution BC-04-11-18-B for the purpose of protecting against issues of nepotism and enforcing Oneida and Indian preference

The emergency amendments to the Oneida Judiciary Rules of Civil Procedure removes references to the Personnel Commission and clarifies that the Law applies to proceedings regarding employee grievances, except where the Nation's Personnel Policies and Procedures are more specific, then those shall supersede.

An E-Poll is necessary for this legislative item in order to meet the April 25, 2018, Oneida Business Committee meeting deadline for the submission of emergency amendments for consideration of adoption by the Oneida Business Committee.

REQUESTED ACTION

Approve the emergency adoption packet for the Oneida Judiciary Rules of Civil Procedure Emergency Amendments and forward to the Oneida Business Committee for consideration.

DEADLINE FOR RESPONSE

April 20, 2018, at 10:00 a.m.

All supporting documentation has been attached to this email for your convenience.

E-POLL RESULTS

From:	Jennifer A. Webster	Sent:	Fri 4/20/2018 8:49 AM
To:	LOC; David P. Jordan; Leyne C. Orosco; Kirby W. Metoxen; Rosa J. Laster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth		
Cc:	Clorissa N. Santiago; Brandon M. Wisneski		
Subject:	Re: EPOLL 2 OF 4: ONEIDA JUDICIARY RULES OF CIVIL PROCEDURE		

Approve,
Jenny

From:	Kirby W. Metoxen	Sent:	Fri 4/20/2018 9:59 AM
To:	LOC; David P. Jordan; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Webster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth		
Cc:	Clorissa N. Santiago; Brandon M. Wisneski		
Subject:	Re: EPOLL 2 OF 4: ONEIDA JUDICIARY RULES OF CIVIL PROCEDURE		

Support

From:	David P. Jordan	Sent:	Fri 4/20/2018 10:39 AM
To:	Kirby W. Metoxen; LOC; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Webster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth		
Cc:	Clorissa N. Santiago; Brandon M. Wisneski		
Subject:	Re: EPOLL 2 OF 4: ONEIDA JUDICIARY RULES OF CIVIL PROCEDURE		

Approve

From:	Daniel P. Guzman	Sent:	Fri 4/20/2018 12:46 PM
To:	LOC		
Cc:			
Subject:	Re: EPOLL 2 OF 4: ONEIDA JUDICIARY RULES OF CIVIL PROCEDURE		

Support

*Note: On Friday, April 20, 2018, the Microsoft Outlook email system was down for some time due to hardware failure. MIS then directed all users to the O365 web application and that system went down as well. As a result, not all of these e-poll responses met the 10:00am deadline.



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
 Oneida-nsn.gov



TO: Oneida Business Committee
 FROM: David P. Jordan, LOC Chairperson 
 DATE: April 20, 2018
 RE: Oneida Judiciary Rules of Civil Procedure Emergency Amendments

Please find the following attached backup documentation for your consideration of the Oneida Judiciary Rules of Civil Procedure Emergency Amendments:

1. Resolution: Oneida Judiciary Rules of Civil Procedure Emergency Amendments
2. Statement of Effect: Oneida Judiciary Rules of Civil Procedure Emergency Amendments
3. Oneida Judiciary Rules of Civil Procedure Emergency Amendments Legislative Analysis
4. Oneida Judiciary Rules of Civil Procedure (Redline)
5. Oneida Judiciary Rules of Civil Procedure (Clean)

Overview

An emergency amendment to the Oneida Judiciary Rules of Civil Procedure (the “Law”) is requested in order to address the dissolution of the Personnel Commission through resolution BC-04-11-18-A for the purpose of consolidating employment related grievance hearings into the Judiciary – Trial Court.

The Oneida Business Committee can temporarily enact legislation when necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and when the amendment of legislation is required sooner than would be possible under the Legislative Procedures Act. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5].

The emergency amendment to the Law is necessary for the preservation of the general welfare of the reservation population, in an effort to ensure that the employees of the Nation have due process rights in the absence of the Personnel Commission. Additionally, observance of the adoption requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee, and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

Requested Action

Approve the Resolution: Oneida Judiciary Rules of Civil Procedure Emergency Amendments.

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____
Oneida Judiciary Rules of Civil Procedure Emergency 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 Oneida Judiciary Rules of Civil Procedure ("the Law") was adopted by the Oneida Business Committee by resolution BC-04-25-14-A; and
- WHEREAS,** the Law governs all civil actions that fall under the jurisdiction of the Nation and provides a consistent set of rules governing the process for civil claims, in order to ensure equal and fair treatment to all persons who come before the Trial Court to have their disputes resolved; and
- WHEREAS,** the Law currently states that this Law shall apply to proceedings conducted by the Tribe's Personnel Commission, except where the personnel policies and procedures are more specific, then those shall supersede; and
- WHEREAS,** the Oneida Business Committee dissolved the Personnel Commission on April 11, 2018, through resolution BC-04-11-18-A in an effort to consolidate employment related grievance hearings into the Judiciary to increase consistency in hearing processes, efficiency, and reduce overall costs to the Oneida Nation; and
- WHEREAS,** resolution BC-04-11-18-A requires the Legislative Operating Committee to develop and present emergency legislative amendments to fully address the impact of this resolution by the April 25, 2018, Oneida Business Committee meeting; and
- WHEREAS,** resolution BC-04-11-18-A states that emergency action to amend legislation to change references to the Personnel Commission to reflect either the Judiciary – Trial Court or the new Personnel Selection Committee is needed to contain expenditures which may go over budget, to provide standards in hearing processes, and provides clear judicial hearing authority; and
- WHEREAS,** the emergency amendment to the Law; clarifies that the Law applies to proceedings regarding employee grievances, except where the Nation's Personnel Policies and Procedures are more specific, then those shall supersede and
- WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis, to be in effect for a period of six (6) months, renewable for an additional six (6) months; and

WHEREAS, the emergency adoption of this amendment to the Law is necessary for the preservation of the public health, safety, or general welfare of the reservation population to ensure that the general welfare and due process rights of employees is preserved; and

WHEREAS, observance of the adoption requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest; and

WHEREAS, the Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation.

NOW THEREFORE BE IT RESOLVED, that the emergency amendment to the Oneida Judiciary Rules of Civil Procedure is hereby adopted on an emergency basis and shall become effective immediately.



Statement of Effect

Oneida Judiciary Rules of Civil Procedure Emergency Amendments

Summary

This Resolution adopts an emergency amendment to the Oneida Judiciary Rules of Civil Procedure which would remove references to the Personnel Commission and clarify that the Law applies to proceedings regarding employee grievances, except where the Nation's laws, policies and rules governing employment are more specific.

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

Date: April 20, 2018

Analysis by the Legislative Reference Office

This resolution adopts an emergency amendment to the Oneida Judiciary Rules of Civil Procedure ("the Law"). The Law was adopted by the Oneida Business Committee on April 25, 2014, through resolution BC-04-25-14-A. The Law governs all civil actions that fall under the jurisdiction of the Nation and provides a consistent set of rules governing the process for civil claims, in order to ensure equal and fair treatment to all persons who come before the Trial Court to have their disputes resolved.

Currently, the Law applies to proceedings conducted by the Nation's Personnel Commission, except where the personnel policies and procedures are more specific, then those shall supersede.

On April 11, 2018, the Oneida Business Committee dissolved the Personnel Commission through resolution BC-04-11-18-A for the purpose of consolidating employment related grievance hearings into the Judiciary in an effort to increase consistency in hearing processes, efficiency, and reduce overall costs to the Oneida Nation. The Oneida Business Committee felt it was now appropriate to begin consolidating employment related grievance hearings into the Judiciary as the number of current cases in the Personnel Commission was low and the costs of maintaining judicial hearing authorities continues to increase.

Oneida Business Committee resolution BC-04-11-18-A also requires that the Legislative Operating Committee develop and present emergency legislative amendments to fully address the impact of this resolution to the next Oneida Business Committee meeting. This resolution states that emergency action to amend legislation to change references to the Personnel Commission to reflect either the Judiciary – Trial Court or the new Personnel Selection Committee is needed to contain expenditures which may go over budget, to provide standards in hearing processes, and provides clear judicial hearing authority.

The emergency amendment to the Law removes references to the Personnel Commission and clarifies that the Law applies to proceedings regarding employee grievances, except where the Nation's Personnel Policies and Procedures are more specific, then those shall supersede.

The Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is “necessary for the immediate preservation of the public health, safety or general welfare of the reservation population” and when “enactment or amendment of legislation is required sooner than would be possible under the Legislative Procedures Act.” [1 O.C. 109.9-5].

The emergency amendment to this Law is necessary for the preservation of the public health, safety, or general welfare of the reservation population in order to ensure that the general welfare and due process rights of employees of the Nation are preserved. Additionally, observance of the adoption requirements under the LPA for adoption of this amendment would be contrary to public interest. Through the resolution BC-04-11-18-A, the Oneida Business Committee has issued a finding of an emergency and has stated the necessity for approving emergency amendments to this Law.

The emergency amendments to the Oneida Judiciary Rules of Civil Procedure will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendments will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

Conclusion

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



Emergency Amendments to Oneida Judiciary Rules of Civil Procedure

SECTION 1. BACKGROUND

REQUESTER: OBC	SPONSOR: David Jordan	DRAFTER: Clorissa Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	The intent of the amendments is to remove references to the Oneida Personnel Commission.		
Purpose	The purpose of the Oneida Judiciary Rules of Civil Procedure is to govern all civil actions that fall under the jurisdiction of the Oneida Nation [see <i>Oneida Judiciary Rules of Civil Procedure</i> , 8 O.C. 803.1].		
Affected Entities	Oneida Judiciary, Oneida Personnel Commission.		
Affected Legislation	Oneida Judiciary Rules of Civil Procedure.		
Enforcement/Due Process	Under the Judiciary Law, judges may be reprimanded for willful disregard of or failure to perform duties, including upholding Tribal law [see <i>Judiciary Law</i> , 8 O.C. 801.12-1]		
Public Meeting	A public hearing is not required for emergency legislation.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. On April 11, 2018, the Oneida Business Committee (OBC) dissolved the Oneida Personnel Commission and directed that the Commission's hearing authority be transferred to the Oneida Judiciary. The OBC directed the LOC to draft emergency amendments to address the impact of this resolution. The OBC placed the commission's pending cases on hold until emergency amendments are adopted [see *BC Resolution 04-11-18-A*]. On the same day, the Oneida Business Committee created the Personnel Selection Committee to assume the Personnel Commission's responsibilities related to job screening and interviews. [see *BC Resolution 04-11-18-B*].
- B. References to the Personnel Commission appear in several of the Nation's laws. Now that the Personnel Commission is dissolved, amendments are necessary to transfer the Personnel Commission's responsibilities to the Oneida Judiciary or to the newly created Personnel Selection Committee.

SECTION 3. CONSULTATION

- A. The Judiciary Law, Personnel Policies and Procedures, Employee Protection Policy, and Military Service Employee Protection Act were reviewed in drafting this analysis.
- B. Personnel Commission staff were consulted regarding the number of pending cases and filing fees.

SECTION 4. PROCESS

- A. This amendment is being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency law where legislation is necessary for the immediate preservation of public health, safety, or general welfare of the reservation population and enactment or amendment of legislation is required sooner than would be possible under this law [see *Legislative Procedures Act*, 1 O.C. 109.9-5].

- 25 **B.** Through resolution BC-04-11-18-A, the OBC has issued a finding of an emergency and has stated the
26 necessity for approving emergency amendments to this policy. Emergency amendments to this policy
27 are necessary for the preservation of the general welfare of the reservation population, in an effort to
28 ensure that employees of the Nation have due process rights in the absence of the Personnel
29 Commission.
- 30 **C.** The Legislative Procedures Act does not require a public meeting or fiscal impact statement when
31 considering emergency legislation; however they will be required when considering permanent
32 adoption of this amendment. Emergency amendments expire six (6) months after adoption and may
33 be renewed for one additional six (6) month period.
- 34 **D.** This law was originally added to the Active Files List on 12/20/2017 and reclassified as emergency
35 amendments on 4/18/2018.
36

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

- 38 **A. *Reference to Personnel Commission Removed.*** There was one reference to the “Personnel
39 Commission” in the current law. This provision stated that the Personnel Commission must follow
40 the Rules of Civil Procedure in their hearings, unless the Personnel Policies and Procedures provided
41 a more specific process [see *Rules of Civil Procedure*, 8 O.C. 803.4-6]. This provision has been
42 amended to remove the Personnel Commission:
- 43 i. “This law applies to proceedings conducted by the Tribe’s Personnel Commission” has been
44 replaced with “this law applies to proceedings regarding employee grievances.” Proceedings
45 regarding employee grievances will now be conducted by the Trial Court, which already
46 follows the Rules of Civil Procedure. [see *Rules of Civil Procedure*, 8 O.C. 803.4-6].
- 47 ii. Personnel Policies and Procedures provide a “more specific process” in regards to grievance
48 procedures, which include timelines for filing appeals, scheduling hearings and submitting
49 documentation. [see *Personnel Policies and Procedures - Section V.6*]. The Trial Court, rather
50 than the Personnel Commission, will be required to follow these procedures for employee
51 grievance hearings.
52

53 **SECTION 6. EFFECT ON EXISTING LEGISLATION**

- 54 **A.** As a result of the dissolution of the Personnel Commission and creation of the Personnel Selection
55 Committee, the following laws must also be amended to remove references to the Personnel
56 Commission:
- 57 i. Oneida Personnel Policies and Procedures
58 ii. Oneida Employee Protection Policy
59 iii. Military Service Employee Protection Act
60

61 **SECTION 8. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR** 62 **OBLIGATIONS**

- 63 **A. *Pending Cases.*** Five cases are currently pending before the Personnel Commission. These cases
64 have been placed on hold until amendments to this and related laws have been adopted. Any
65 timelines associated with these cases have also been placed on hold. Upon adoption, these pending
66 cases and all future cases will be transferred to the Oneida Judiciary Trial Court. The Business

Committee’s resolution indicates that the Judiciary has identified that it is prepared to accept these responsibilities *[see BC Resolution 04-11-18-A]*.

B. Trial Court Filing Fees. The Personnel Commission did not charge filing fees for their services. However, the Trial Court charges a \$50 filing fee for general civil cases. Therefore, individuals may now be charged fees to have their appeals heard under this law.

- i. *Fee Waiver.* If individuals are unable to pay the filing fee, they may request a fee waiver from the court for the following reasons: Unemployed, Health/Medical, Indigent (below poverty level), or “other reasons.”

Title 8. Judiciary - Chapter 803

ONEIDA JUDICIARY RULES OF CIVIL PROCEDURE

803.1. Purpose and Policy
 803.2. Adoption; Amendment; Repeal
 803.3 Definitions
 803.4. General Provisions
 803.5. Commencement of Action; Summons; Service of Process; Filing
 803.6. Computing and Extending Time
 803.7. Pleadings; Form of Pleadings, Motions and Other Papers; Procedure
 803.8. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions
 803.9 Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidated Motions; Waiving Defenses; Pretrial Hearing
 803.10. Counterclaim; Crossclaim; Third-Party Claim;
 803.11. Amended Pleadings
 803.12. Pretrial Meeting and Filing
 803.13. Substitution of Parties
 803.14. Discovery
 803.15. Depositions
 803.16. Interrogatories
 803.17. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

803.18. Physical and Mental Examinations
 803.19. Requests for Admission
 803.20. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions
 803.21. Dismissal of Action
 803.22. Consolidation; Separate Trials
 803.23. Taking Testimony
 803.24. Subpoena
 803.25. Recesses; Personal Conduct
 803.26. Contempt
 803.27. Findings and Conclusions by the Court; Judgment on Partial Findings; Offer of Judgment
 803.28. Judgment; Costs
 803.29. Default; Default Judgment
 803.30. Summary Judgment
 803.31. Entering Judgment; Enforcement
 803.32. Record of Proceedings
 803.33. Relief from a Judgment or Order; Harmless Error
 803.34. Stay of Proceedings to Enforce a Judgment
 803.35. Injunctions and Restraining Orders
 803.36. Behavior, Disability, Disqualification of Judges
 803.37. Guardian Ad Litem
 803.38. Hearing Procedure
 803.39. Appeals

803.1. Purpose and Policy

803.1-1. The purpose of this Law is to govern all civil actions that fall under the jurisdiction of the Oneida Tribe of Indians of Wisconsin.

803.1-2. It is the policy of the Tribe that there should be a consistent set of rules governing the process for civil claims, in order to ensure equal and fair treatment to all persons who come before the Tribal Courts to have their disputes resolved.

803.2. Adoption; Amendment; Repeal

803.2-1. This Law is adopted by the Oneida Business Committee by resolution BC-04-25-14-A and emergency amended by BC- - - -.

803.2-2. This Law may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

803.2-3. 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.

803.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control, except where the specific laws that fall under this Court's jurisdiction provide for more specific rules of procedure, those laws shall supersede.

803.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

803.3 Definitions

803.3-1. The definitions below shall govern the words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Advocate” shall mean an Oneida non-attorney advocate as provided by law and other advocate who is admitted to practice law and is presented to the Court as the representative or advisor to a party.
- (b) “Affidavit” shall mean a written statement voluntarily made under an oath or affirmation administered by a person authorized to do so by law.
- (c) “Affidavit of service” shall mean a document signed under oath or affirmation by the server certifying service which sets out the time, date and place that the party was served.
- (d) “Answer” shall mean a formal written statement addressing the dispute on the merits and presents any defenses and counterclaims.
- (e) “Court of Appeals” shall mean the Court of Appeals of the Judiciary.
- (f) “Attorney” shall mean a person trained and licensed to represent another person in Court, to prepare documents and to give advice or counsel on matters of law.
- (g) “Attorney’s fees” shall mean compensation for legal services performed by an attorney or advocate for a client, in or out of Court.
- (h) “Clerk” shall mean the clerk of the Trial Court including, when appropriate, the Family Court clerk.
- (i) “Complaint” shall mean the initial pleading setting out the case or cause of action on which relief is sought by the plaintiff.
- (j) “Counterclaim” shall mean a claim set up and urged by the defendant in opposition to or reduction of the claim presented by the plaintiff.
- (k) “Court” shall mean the Trial Court of the Oneida Judiciary. All references to “Court” shall also apply to the Family Court unless specified otherwise.
- (l) “Crossclaim” shall mean a claim that is made by a party in a suit that is in opposition to a claim already made.
- (m) “Day” or “days” shall mean calendar days, except where otherwise specified.
- (n) “Defendant” shall mean the party, including a respondent in the Family Court, against whom relief or recovery is sought in an action or suit. All references to “defendant” apply to “respondent.”
- (o) “Deposition” shall mean the taking and recording of testimony of a witness under oath before a Court reporter in a place away from the courtroom before trial.
- (p) “Discovery” shall mean the entire efforts to obtain information before trial through demands for production of documents, depositions, interrogatories, requests for admissions, examination of the scene and the petitions and motions employed to enforce discovery rights.
- (q) “Electronic” shall mean an electronic communication system, including, but is not limited to E-mail, used for filing papers with the Court or serving papers on any other party.
- (r) “Ex Parte” shall mean any contact with the Judge regarding a pending case where the opposing party has not received notice, is not present, and has not consented to the communication.
- (s) “Excusable neglect” shall mean a legitimate excuse for the failure to take some proper step at the proper time. The failure to act shall have been the act of a reasonably prudent person under the same circumstances; however, it shall not include situations brought about by the moving party’s own carelessness or inaction.
- (t) “Family Court” shall mean the Family Court pursuant to the Family Court Law, Chapter 151 of the Oneida Code of Laws. All references to “Court” shall also apply to the Family Court unless specified otherwise.

- (u) “Good cause” shall mean a substantial reason or legal justification for failing to appear, to act, or respond to an action.
- (v) “Interlocutory injunction” shall mean a Court order, made during the trial, to compel or prevent a party from doing certain acts pending the final determination of the case.
- (w) “Interrogatory” shall mean a set of written questions to a party to a lawsuit asked by the opposing party as part of the pre-trial discovery process.
- (x) “Judge” shall mean the person presiding over a case to hear and decide legal matters.
- (y) “Judgment” shall mean a determination of a Court of law including a decree and any order from which an appeal lies. The terms decision, opinion, judgment and order are generally used similarly throughout this Law.
- (z) “Judiciary” shall mean the judicial system that was established by Oneida General Tribal Council resolution GTC #1-07-13-B to administer the judicial authorities and responsibilities of the Tribe.
- (aa) “Motion” shall mean an application to the Court for any order, judgment or other form of relief requested separate from the original complaint.
- (bb) “Notice” shall mean a legal notification in a written format or through a formal announcement with proof of delivery to the recipient making the recipient aware of a legal process affecting their rights, obligations or duties.
- (cc) “Order” shall mean a decision by the Court or Judge, not included in a judgment, which determines some point or directs some step in the proceedings.
- (dd) “Peacemaker” shall mean an individual appointed by the parties or the Court who works with parties in a Court matter to attempt to resolve a dispute in a peaceful manner and in accordance with the customs of the Tribe.
- (ee) “Plaintiff” shall mean the party, including a petitioner initiating an action in the Family Court, who sues in a civil action. All references to “plaintiff” apply to “petitioner.”
- (ff) “Pleading” shall mean the formal allegations by the parties of their respective claims and defenses, for the judgment of the Court.
- (gg) “Proof of service” shall mean proof that a legal document has been delivered and accepted by the party it is intended for by means of filing a copy of the return receipt when certified mail is utilized or by an affidavit of service.
- (hh) “Punitive damages” shall mean monetary compensation awarded to an injured party that goes beyond that which is necessary to compensate the individual for losses and that is intended to punish the wrongdoer.
- (ii) “Purge” shall mean that a person or party has done what the Court required and is no longer in contempt of Court.
- (jj) “Reservation” shall mean all land within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (kk) “Service” shall mean the delivery of a legal document that notifies the recipient of the commencement of a legal action or proceeding in which he or she is involved and is thereby advised or warned of some action or step which he or she is commanded to take or to forbear.
- (ll) “Subject-matter jurisdiction” shall mean that the Court has the authority to hear the type of case or controversy in its Court.
- (mm) “Subpoena” shall mean a formal document that orders a named individual to appear before the Court at a fixed time to give testimony and/or produce documents.
- (nn) “Summary judgment” shall mean a pre-trial Court order ruling that there are no

- disputed material issues of fact and that the movant is entitled to judgment as a matter of law without trial.
- (oo) “Summons” shall mean an order notifying a defendant to appear in person before the Court.
- (pp) “Trial Court” shall mean a Court of the Judiciary where evidence and testimony are first introduced, received, and considered. The Court of Appeals shall not be included in this definition.
- (qq) “Tribal Holiday” shall mean any holiday listed in the Tribe’s Human Resources Department’s published holiday observance schedule or any day designated by the Oneida Business Committee or General Tribal Council as a Tribal Holiday.
- (rr) “Tribal law” shall mean an adopted Tribal code, act, statute or ordinance.
- (ss) “Tribe” or “Tribal” shall mean the Oneida Tribe of Indians of Wisconsin.
- (tt) “Without prejudice” shall mean that none of the rights or privileges of the individual involved are considered to be lost or waived. The parties are free to litigate the matter in a subsequent action, as though the dismissed action had not been started.

803.4. General Provisions

803.4-1. *Forms of Action.* There shall be one (1) form of action, known as a “civil action”.

803.4-2. *Immunity Not Waived.* No section, rule or part thereof, of this Law shall be construed in any way to waive the sovereign immunity of the Tribe or the judicial immunity of the Judges within the Judiciary.

803.4-3. *Other Rules of Procedure Used.* All matters and proceedings not specifically set forth herein shall be handled in accordance with reasonable justice, as determined by the Judiciary. Where this Law is ambiguous or does not address a situation, the Federal Rules of Civil Procedure or Section 801 of the Wisconsin Statutes may be used as a guide. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in Tribal law unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

803.4-4. At every stage of the proceeding, the Court may disregard any technical error or defect in a failure to comply with this Law as long as the error or noncompliance does not affect the substantive rights of the parties; particularly those not represented by an attorney.

803.4-5. All communications, service, etc. shall be directed to a party’s attorney or advocate, if represented by an attorney or advocate.

803.4-6. *Application of this Law.* This Law shall be followed by the Court, except where other Court rules are more specific, then those laws shall supersede. ~~—This Law shall apply to proceedings conducted by the Tribe’s Personnel Commission regarding employee grievances, except where the Tribe Nation’s Personnel Policies and Procedures personnel policies and procedures—~~are more specific, then those shall supersede. This Law shall not apply to the Mediation or Peacekeeping divisions of the Trial Court.

803.4-7. *Jurisdiction.* Jurisdiction shall be established as provided in the Judiciary, Chapter 150 of the Oneida Code of Laws.

803.4-8. *Standard of Proof.* All matters to be decided by the Court shall be proven by a preponderance of the evidence, unless specified otherwise.

803.5. Commencement of Action; Summons; Service of Process; Filing

803.5-1. *Complaint.* A civil action shall be commenced upon the filing of a complaint and payment of a filing fee or other fee where specified by law or Court Rule.

- (a) *Contents.* A complaint shall include the following:

- (1) The name of the Court;
- (2) The full name and address of each plaintiff;
- (3) The full name and address of each defendant;
- (4) Why each defendant is being sued;
- (5) Facts supporting each claim;
- (6) Why this Court has jurisdiction;
- (7) Specifically what relief is sought from each defendant; and
- (8) A summons.

803.5-2. *Summons.* A complaint shall include a summons.

(a) *Contents.* A summons shall:

- (1) Name the Court and the parties;
- (2) Be directed to defendant;
- (3) State the name and address of the plaintiff's attorney or advocate, or if unrepresented, of the plaintiff;
- (4) State the date and time to appear before the Court;
- (5) Notify the defendant that a failure to appear and defend may result in a default judgment against the defendant for the relief demanded in the complaint; and
- (6) Be signed by the clerk, and the plaintiff or plaintiff's attorney or advocate.

(b) *Amendments.* The Court may permit a summons to be amended within ten (10) days of filing such summons.

(c) *Issuance.* At the time of filing the complaint, the plaintiff shall present a summons to the clerk for signature. If the summons is properly completed, the clerk shall sign and issue it to the plaintiff for service on the defendant.

803.5-3. *Service.* Within thirty (30) days after filing the summons and complaint with the Court, the plaintiff shall serve the summons and complaint upon the defendant in accordance with Rule 803.5-6. If the Tribe, or the officers, committees, commissions, boards, or any other department or division of the Tribe is a party, the plaintiff shall also serve notice to the Tribe's Secretary's Office within thirty (30) days.

(a) An additional thirty (30) days to serve the defendant may be requested and shall be in writing. The request may be granted by the Court upon a showing of good cause. The granting of this request is within the discretion of the Court.

(b) Proof of service shall be delivered, by the plaintiff, to the Court within ten (10) days of service upon the defendant. Proof of service shall be in accordance with Rule 803.5-6.

(c) If proof of service is not completed and/or delivered to the Court within thirty (30) days, or sixty (60) days if an extension is granted, then the Court shall, after notice to the plaintiff, dismiss the matter without a hearing. Such dismissal based on a failure to timely serve shall be without prejudice.

803.5-4. *When Service Required.* Unless this Law or other Tribal Law provides otherwise, the filing party shall serve each of the following papers on every party:

- (a) An order that specifically states that service is required;
- (b) A pleading filed after the original complaint including, but not limited to: counterclaims, crossclaims, and third-party claims;
- (c) A discovery paper required to be served on a party, unless the Court orders otherwise;
- (d) A written motion; and
- (e) A written notice, appearance, demand, or offer of judgment or any similar paper.

803.5-5. *If a Party Fails to Appear.* No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party shall be

served on that party according to this Law.

803.5-6. *Effective Service.* Excluding the complaint, summons and answer, a party may serve any other papers by electronic means if the party being served consents in writing to service by electronic means. Such consent shall include the electronic communication system, including the address or number, in which to send such papers. The Consent shall be filed with the Court. Otherwise, service shall be as follows: When possible, service shall be done by personal service as described below. If personal service is not possible, then by mail service. If mail service is not possible, then upon a showing of due diligence to make personal service and service by mail, service by publication may be used as a last resort.

(a) *Personal Service.* Personal service shall consist of delivering to the party a copy of the paper being served by a law enforcement officer or other person, who is not a party to the action and who is at least eighteen (18) years of age. An affidavit of service shall be filed with the Court as proof of service. Personal service shall be completed by hand delivering the required papers to any of the following:

- (1) The party named in the action or proceeding;
- (2) An individual residing at the party's home or usual place of abode, so long as the person signing for delivery is at least eighteen (18) years of age;
- (3) An officer, manager, agent, or partner of a non-individual party; or
- (4) An attorney or advocate of the party, if represented.

(b) *Mail Service.* Service of all papers made by mail from any party shall be by certified mail, with return receipt. However, the Court may provide service by first class mail. The certified mail return receipt shall be filed with the Court as proof of service. The return receipt shall be signed by:

- (1) The party named in the action or proceeding;
- (2) an individual residing at the party's home or usual place of abode, so long as the person signing for delivery is at least eighteen (18) years of age;
- (3) An officer, manager, agent, or partner of a non-individual party; or
- (4) An attorney or advocate of the party, if represented.

(c) *Service by Publication.* When the other party's whereabouts are unknown and cannot be found after diligent effort, service may be completed by publication. The publication shall be in the Tribal newspaper or in a newspaper of general circulation in the area of the party's last known address, and shall be designated as "Legal Notice." This notice shall be published at least two (2) times within a thirty (30) day period. The two (2) notices shall be published at least ten (10) days before the hearing. Copies of the two (2) published notices and an affidavit of service stating the facts surrounding the failure of personal and mail service shall be filed with the Court as proof of service.

- (1) The Court may, on its own, order different time limits for service by publication.

(d) *Service Refused.* If a party being personally served refuses service, service shall be deemed completed if the person serving the papers does all of the following:

- (1) Informs the party of the purpose of the service;
- (2) Offers copies of the papers served;
- (3) Leaves a copy of the papers where convenient; and
- (4) Notes upon a copy of the papers to be filed with the Court or in an affidavit of service, the time, date, and place of the attempted service, that refusal occurred and where the papers were left.

(e) *Admission of Service.* A plaintiff may request any defendant to admit service of a complaint and a summons. The request shall:

- (1) Be in writing;
- (2) Name the defendant;
- (3) Name the Court;
- (4) Include a copy of the complaint and summons, two (2) admission of service forms clearly identifying the requirement that the signature by the defendant must be notarized, and a prepaid means for returning one (1) signed admission of service form;
- (5) Inform the defendant of the consequences of admitting and not admitting service;
- (6) State the date the request is sent;
- (7) Give the party a reasonable time of at least thirty (30) days after the request was sent to return the admission of service; and
- (8) Be delivered in person or by certified mail.

(f) *Consequences of Admission of Service.*

(1) When the plaintiff files an admission of service signed by the defendant, proof of service as otherwise required in this section shall not be required and this Law shall apply as if a complaint and summons had been served at the time of filing the admission of service.

(2) If a defendant timely returns an admission of service, the defendant shall have sixty (60) days, from the time the request was sent, to serve an answer to the complaint.

(3) Signing and admission of service of a summons and complaint shall not waive any objection to personal jurisdiction or to venue.

(g) *Admission of Service other Papers.* A party may request an opposing party to admit service of any other papers required to be served. Such request shall follow the requirements of this section for admitting service except that under (e)(4) above, a copy of the papers subject to the request shall be included and not a copy of the complaint or summons.

803.5-7. *Filing.* Any paper after the complaint that is required to be served, including proof of service, shall be filed with the Court within a reasonable time after service.

(a) *How Filing is Made.* A paper is filed by any of the following:

- (1) Delivering it to the clerk.
- (2) Certified mail.

(A) If a filing is made by certified mail with return receipt but is untimely and the filing party can show that the mailing occurred at least three (3) days prior to the due date, the Court may accept the filing as timely.

(3) *Electronic Filing.* A party may file papers electronically to the electronic address or number, designated for such filings, of the Clerk. A paper filed by electronic means shall constitute a written paper for the purpose of applying this Law. Upon receipt by the Clerk, any paper filed electronically shall be deemed filed, signed and verified by the filing party. A party filing electronically shall have three (3) business days from the day of filing to pay any filing fees associated with such filings.

(b) *Acceptance by the Clerk.* The clerk may refuse to accept any documents submitted for filing where other requirements of this Law or other Tribal laws have not been met including, but not limited to, lack of filing fee or unsigned pleadings. Filing parties shall be responsible for verifying acceptance of their filings with the clerk.

803.6. Computing and Extending Time

803.6-1. *Computing Time.* The following Rules apply in computing any time period specified in this Law.

(a) *Time Period Stated in Days.* When a time period is stated in days:

(1) The day that the period begins shall not be counted and the last day of the period shall be counted;

(A) In computing calendar days, time computation shall include Saturdays, Sundays and Tribal holidays

(B) In computing business days, Saturdays, Sundays or Tribal holidays shall not be counted.; and

(2) If the last day of the period falls on a Saturday, Sunday or Tribal holiday, the period shall be extended to the next day that is not a Saturday, Sunday or Tribal holiday.

(3) If the Clerks' office is inaccessible during part or all of the last day for filing, then the time for filing shall be extended to the first accessible day that is not a Saturday, Sunday or Tribal Holiday.

(b) "*Last Day.*" Unless a different time is set by a Tribal Law or Court order, the last day ends for filing papers with the Judiciary at the close of business on the due date.

803.6-2. *Extending Time.*

(a) When an act may or shall be done within a specified time, the Judge presiding over the matter may, for good cause, extend time:

(1) On its own motion or the motion of any party, with or without notice, if made before the original time or its extension expires; or

(2) On motion made after the time has expired if the party failed to act because of excusable neglect.

(b) *Extension of Time for Mail Service:*

(1) Whenever a party may or shall act within a specified time after service and service is made by mail, three (3) days shall be added after the period would otherwise expire.

(c) Except where otherwise specified by Law, extensions shall not be granted ex parte.

803.7. Pleadings; Form of Pleadings, Motions and Other Papers; Procedure

803.7-1. *General Rules for Pleading.* All pleadings shall be liberally construed by the Court to preserve and promote justice for all parties.

803.7-2. *Pleadings.* Only these pleadings are allowed:

(a) A complaint;

(b) An answer to a complaint;

(c) An answer to a counterclaim designated as a counter claim;

(d) An answer to a crossclaim;

(e) A third-party complaint;

(f) An answer to a third-party complaint; and

(g) If the Court orders one, a reply to an answer.

803.7-3. *Form of Pleadings.* The Rules governing captions and other matters of form in pleadings apply to motions and other papers.

(a) *Claim for Relief.* A pleading that states a claim for relief shall be a short, clear and plainly written statement specifying the following:

(1) The basis upon which the Court has both subject matter jurisdiction over the matter, and personal jurisdiction over the parties;

- 364 (2) The events upon which the claims are based and the grounds upon which
365 relief is sought; and
366 (3) A demand for a judgment granting the relief that is sought and which the
367 plaintiff considers to be just. Multiple forms of relief may be sought in the
368 alternative or hypothetical form and need not be consistent.

369 (b) *Defenses; Admissions and Denials.*

- 370 (1) In responding to a pleading, a party shall:

371 (A) State in short and plain terms its defenses to each claim asserted
372 against it; and

373 (B) Admit or deny the allegations asserted against it by an opposing party.

- 374 (2) *Denials.* A denial shall fairly respond to the substance of the allegation.

- 375 (3) *General and Specific Denials.* A party that intends in good faith to deny all
376 the allegations of a pleading, including the jurisdictional grounds, may do so
377 by a general denial. A party that does not intend to deny all the allegations
378 shall either specifically deny designated allegations or generally deny all
379 except those specifically admitted.

- 380 (4) *Denying Part of an Allegation.* A party that intends in good faith to deny only
381 part of an allegation shall admit the part that is true and deny the rest.

- 382 (5) *Lacking Knowledge or Information.* A party that lacks knowledge or
383 information sufficient to form a belief about the truth of an allegation shall so
384 state, and the statement has the effect of a denial.

- 385 (6) *Effect of Failing to Deny.* An allegation, other than an allegation relating to
386 the amount of damages, is admitted if a responsive pleading is required and
387 the allegation is not denied. If a responsive pleading is not required, an
388 allegation shall be denied or avoided.

389 (c) *Affirmative Defenses.* Responding to a pleading, a party shall affirmatively state any
390 avoidance or affirmative defense, including:

- 391 (1) accord and satisfaction;
392 (2) arbitration and award;
393 (3) assumption of risk;
394 (4) contributory negligence;
395 (5) duress;
396 (6) estoppel;
397 (7) failure of consideration;
398 (8) fraud;
399 (9) illegality;
400 (10) injury by fellow servant;
401 (11) laches;
402 (12) license;
403 (13) payment;
404 (14) release;
405 (15) res judicata;
406 (16) statute of frauds;
407 (17) statute of limitations; and
408 (18) Waiver.

409 (d) *Mistaken Designation.* If a party mistakenly designates a defense as a counterclaim,
410 or a counterclaim as a defense, the Court shall, if justice requires, treat the pleading as
411 though it were correctly designated, and may impose terms for doing so.

(e) *Caption.* Every pleading shall contain a caption heading with the name of the Court, the title of the action, the trial docket number (if known) and a designation as to what kind of pleading it is.

(1) The title of the complaint shall name all the names of the parties, mailing address, phone number and agent or other contact person, if known.

(2) The name of the first party on each side may be used in all pleadings except the initial complaint, which shall include all litigants.

(3) In the interest of judicial efficiency, the Court may amend a caption heading at any time to accurately identify the parties to the action.

(f) *Paragraphs.* All statements of the complaint and answer shall be set forth in separate numbered paragraphs which shall be limited, as close as practicable, to a single occurrence, event, circumstance or issue.

(g) *References and Exhibits.* Pleadings may adopt, by reference, any statements elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit or attachment is a part of the pleading for all purposes. References shall be clear and specific to a particular document or other piece of evidence.

(h) *Paper.* Where possible, all papers filed with the Court shall be on letter sized paper (8.5 x 11), typed with 1.5 line spacing, and have at least a one inch (1") margin on all sides.

(i) *Copies Submitted.* Parties filing papers with the Court shall include one original and one (1) copy for use by the Court.

(1) Parties shall serve one (1) copy of said papers to the opposing party or if represented, to opposing party's attorney or advocate.

(2) Failure to supply sufficient copies to the Court may result in a copy fee assigned to the filing party.

803.7-4. *Form of Motion.* A request for a Court order shall be made by motion. The motion shall:

(a) Be in writing unless made during a hearing or trial;

(b) State with particularity the grounds for seeking the order; and

(c) State the relief sought.

803.7-5. *Procedure.* All parties filing any motion for consideration by the Court shall serve such motion at least fourteen (14) days prior to the hearing and shall adhere to the following procedure, except where the Court determines that the application of the time limits would be impractical in an individual case:

(a) The moving party shall submit the motion to the Court, with proof of service.

(b) From the date that the motion is filed with the Court, the opposing party shall have fourteen (14) days to file with the Court and serve on any opposing party, a written response to the motion.

(c) Non-substantive procedural motions, such as a motion for extension, motion to submit additional pages, notice of representation, etc. may be granted or denied immediately by the Court and without a response from the opposing party.

(d) Motions filed with the Court less than fourteen (14) days prior to a hearing may be considered at or before the hearing, if justice so requires. An opportunity shall be given to the non-moving party to respond verbally or in writing to the motion at or before the hearing.

803.7-6. *Supporting Affidavits.* Any affidavit supporting a motion shall be served with the motion. Any opposing affidavit shall be served at least seven (7) days before the hearing, unless the Court permits service at another time.

803.8. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

803.8-1. *Signature.* Every pleading, motion or other paper shall be signed by the party or the party's attorney or advocate, if represented by an attorney or advocate. Every pleading, motion or other paper shall state the signer's address and telephone number.

(a) The Court shall strike an unsigned paper unless the omission is promptly corrected within a reasonable period of time after being called to the attorney's, advocate's or party's attention.

(b) A pleading need not be verified or accompanied by an affidavit.

803.8-2. *Representations to the Court.* By presenting to the Court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it, an attorney, advocate or unrepresented party certifies that to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances that:

(a) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(b) The claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying or reversing existing law or for establishing new law;

(c) The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(d) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

803.8-3. *Sanctions.*

(a) *In General.* If, after notice and a reasonable opportunity to respond, the Court determines that Rule 803.8-2 has been violated, the Court may impose an appropriate sanction on any attorney, law firm, advocate, or party that violated the Rule or is responsible for the violation. Absent exceptional circumstances, a law firm shall be held jointly responsible for a violation committed by its partner, associate, or employee.

(b) *Motion for Sanctions.* A motion for sanctions shall be made separately from any other motion and shall describe the specific conduct that allegedly violates Rule 803.8-2. The motion shall be served under Rule 803.5-6, but it shall not be filed or be presented to the Court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within twenty-one (21) days after service or within another time the Court sets. If warranted, the Court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(c) *On the Court's Initiative.* On its own, the Court may order an attorney, law firm, advocate, or party to show cause why the representations to the Court have not violated Rule 803.8-2.

(d) *Nature of a Sanction.* A sanction imposed under this Rule shall be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into the Court; or if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(e) *Limitations on Monetary Sanctions.* The Court shall not impose a monetary sanction:

(1) Against a represented party for violating Rule 803.8-2; or

(2) On its own, unless a party failed to show cause under Rule 803.8-3(c).

(f) *Requirements for an Order.* An order imposing a sanction shall describe the sanctioned conduct and explain the basis for the sanction.

803.8-4. *Inapplicability to Discovery.* This Rule, 803.8, shall not apply to disclosures, requests, responses, objections and motions made during discovery under Rules 803.14 through 803.20.

803.9 Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidated Motions; Waiving Defenses; Pretrial Hearing

803.9-1. *Time to Serve a Responsive Pleading.*

(a) *In General.* Except as otherwise provided by this Law or other Tribal Law, the time for serving a responsive pleading is as follows:

(1) A party shall serve an answer to a complaint, counterclaim, crossclaim or third-party claim within twenty (20) days after being served with the pleading that states the complaint, counterclaim, crossclaim or third-party claim.

(2) A party shall serve a reply to an answer within twenty (20) days after being served with an order to reply, unless the order specifies a different time.

(3) A party may answer or reply orally at a hearing with the Court's permission.

(b) *Effect of a Motion.* Unless the Court sets a different time, serving a motion under this Rule alters these periods as follows:

(1) If the Court denies the motion or postpones its disposition until trial, the responsive pleading shall be served within fourteen (14) days after notice of the Court's action; or

(2) If the Court grants a motion for a more definite statement, the responsive pleading shall be served within fourteen (14) days after the more definite statement is served.

803.9-2. *How to Present Defenses.*

(a) Every defense to a claim for relief in any pleading shall be asserted in the responsive pleading if one is required, except those listed below. If a responsive pleading is not required, any defense may be asserted at hearing. A party may assert the following defenses by motion:

(1) Lack of subject-matter jurisdiction;

(2) Lack of personal jurisdiction;

(3) Improper venue;

(4) Insufficient process;

(5) Insufficient service of process;

(6) Failure to state a claim upon which relief can be granted; and

(7) Failure to join a party.

(b) A motion asserting any of these defenses shall be made before pleading if a responsive pleading is required. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one (1) or more other defenses or objections in a responsive pleading or in a motion.

803.9-3. *Motion for Judgment on the Pleadings.* Pleadings are closed when every pleading asserting a claim, counter-claim or crossclaim has been answered. After the pleadings are closed, but early enough not to delay trial, a party may move for judgment on the pleadings.

803.9-4. *Result of Presenting Matters Outside the Pleadings.* If, on a motion under Rule 803.9-2(a)(6) or 803.9-3, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment. All parties shall be given a reasonable

opportunity to present all the material that is pertinent to the motion.

803.9-5. *Motion for a More Definite Statement.* A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion shall be made before filing a responsive pleading and shall point out the defects complained of and the details desired. If the Court orders a more definite statement and the order is not obeyed within fourteen (14) days after notice of the order or within the time the Court sets, the Court may strike the pleading or issue any other appropriate order.

803.9-6. *Motion to Strike.* The Court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The Court may act:

(a) On its own; or

(b) On motion made by a party either before responding to the pleading or, if a response is not allowed, within twenty-one (21) days after being served with the pleading.

803.9-7. *Joining Motions.*

(a) *Right to Join.* A motion under this section may be joined with any other motion allowed by this section.

(b) *Limitation on Further Motions.* Except as required in Rule 803.9-8(b) or (c), a party that makes a motion under Rule 803.9-2(a) shall not make another motion under Rule 803.9-2(a) raising a defense or objection that was available to the party but omitted from its earlier motion.

803.9-8. *Waiving and Preserving Certain Defenses.*

(a) *When Some Are Waived.* A party waives any defense listed in Rule 803.9-2(a)(2)–(5) by:

(1) Omitting it from a motion in the circumstances described in Rule 803.9-7(b); or

(2) Failing to either:

(A) Make it by motion under this Rule; or

(B) Include it in a responsive pleading or in an amendment allowed by Rule 803.11-1 as a matter of course.

(b) *When to Raise Others.* The following may be raised in any pleading, by motion, or at trial:

(1) Failure to state a claim upon which relief can be granted;

(2) Failure to join a necessary party; and/or

(3) Failure to state a legal defense to a claim.

(c) *Lack of Subject-Matter Jurisdiction.* If the Court determines at any time that it lacks subject-matter jurisdiction, the Court shall dismiss the action.

803.9-9. *Hearing Before Trial.* Upon the motion of any party, the Court may hear and decide the following prior to trial, unless the Court orders a deferral until trial:

(a) any defense listed in Rule 803.9-2(a), or

(b) a motion for judgment on the pleadings.

803.10. Counterclaim; Crossclaim; Third-Party Claim;

803.10-1. *Counterclaim.*

(a) A party against whom a claim has been made may assert a claim against the opposing party if the claim:

(1) Arises out of the same transaction or occurrence that is the subject-matter of the opposing party's claim; and

(2) Does not require adding another party over whom the Court cannot acquire

jurisdiction.

(b) *Exception.* The pleader may not assert the claim if the claim is subject to another pending action.

(c) *Relief.* A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

803.10-2. *Crossclaim.* A party against whom a claim is made may assert a claim against a co-party if the claim arises out of the same transaction or occurrence that is the subject-matter of the original action or of a counterclaim.

803.10-3. *Third-Party Claim.* A party against whom a claim is made may assert against a third-party any claim arising out of the same transaction or occurrence, alleging that the third-party is liable for part or the entire claim of the opposing party. A party asserting a third-party claim shall, by motion, obtain the Court's leave if it files the third-party claim more than fourteen (14) days after serving its original answer. If any person or entity believes it should be included in a case, it may motion the Court to be joined as a third-party.

803.11. Amended Pleadings

803.11-1. *Amendments Before Trial.* A party may amend any pleading once within ten (10) days of the original filing, unless an answer has already been filed. If an answer has been filed, any amendments may only be made with the opposing party's written consent or with the Court's permission. The Court shall freely give permission when justice so requires.

(a) Unless the Court orders otherwise, any required response to an amended pleading shall be made within the time remaining to respond to the original pleading or within fourteen (14) days after service of the amended pleading, whichever is later.

803.11-2. *Amendments During and After Trial.*

(a) *Based on an Objection at Trial.* If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the Court may permit the pleadings to be amended. The Court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the Court that the evidence would prejudice that party's action or defense on the merits. The Court may grant a continuance to enable the objecting party to provide evidence to satisfy the Court that the evidence would prejudice their action or defense on the merits.

(b) *For Issues Tried by Consent.* When an issue not raised by the pleadings is tried by the parties' express or implied consent, it shall be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform to the evidence and to raise an unpleaded issue. However, failure to amend shall not affect the outcome of that issue.

803.12. Pretrial Meeting and Filing

803.12-1. *Purposes of a Pretrial Meeting.*

(a) Upon written request of either party or the Court's own initiative, a pretrial meeting shall be scheduled directing the attorneys or advocates and any unrepresented parties to appear, for such purposes as:

- (1) Expediting disposition of the action;
- (2) Establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) Discouraging wasteful pretrial activities;
- (4) Improving the quality of the trial through more thorough preparation,

including a discovery plan. A discovery plan shall state the parties' views and proposals on:

- (A) what changes should be made in the timing, form, or requirement for disclosures under Rules 803.14-2 and 803.14-5, including a statement of when initial disclosures were made or will be made;
- (B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;
- (C) any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;
- (D) any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production— whether to ask the Court to include their agreement in an order;
- (E) what changes should be made in the limitations on discovery imposed under this Law or by local rule, and what other limitations should be imposed; and
- (F) any other orders that the Court should issue under Rule 803.14-6 or under Rules 803.12-1(c) and (e); and

(5) Facilitating settlement.

- (A) If the parties request or agree to participate in peacemaking or mediation, the trial proceedings may be stayed up to forty-five (45) days in order for the parties to work towards reaching an acceptable solution. The Court shall appoint a peacemaker or mediator when necessary.
- (B) If the parties are close to a resolution, but need more time, they may move the Court for an extension of the stay. The extension shall not exceed an additional thirty (30) days.

(b) *Parties' Responsibility.* In conferring, the parties shall consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rules 803.14-2 and 803.14-5; discuss any issues about preserving discoverable information; develop a proposed discovery plan; and prepare a pretrial statement.

(1) The attorneys or advocates of record and all unrepresented parties that have appeared in the case shall be jointly responsible for arranging the meeting, for attempting in good faith to agree on the proposed discovery plan, preparing the pretrial statement, and for submitting to the Court within fourteen (14) days after the meeting a written report outlining the plan and the pretrial statement. The Court may order the parties, advocates or attorneys to attend the meeting in person. The pretrial statement shall contain the following:

- (A) The uncontested facts deemed material;
- (B) The uncontested issues of fact and law as the attorneys or advocates or unrepresented parties can agree are material or applicable;
- (C) A separate statement by each party of other issues of fact or law which that party believes material;
- (D) A list of the witnesses intended to be used by each party during the trial, other than those intended to be used solely for impeachment. No witnesses shall be used at the trial other than those listed, except to prevent injustice; and

(E) A list of the exhibits which each party intends to use at trial, other than those intended to be used solely for impeachment, specifying exhibits which the parties agree are admissible at trial. No exhibits shall be used during the trial other than those listed, except to prevent injustice.

(c) During pretrial meetings, the Court may take appropriate action including, but not limited to:

- (1) Any matters which will aid in the simplification, clarification, settlement or disposition of the case;
- (2) Additional or deleted procedures to be followed at the hearing;
- (3) Settlement discussions;
- (4) The necessity or desirability of amending the pleadings;
- (5) The appropriateness and timing of a summary judgment;
- (6) The control and scheduling of discovery;
- (7) The identification of witnesses and documents, the need and schedule for filing and exchanging of pretrial briefs, the dates for further pretrial meetings and trial;
- (8) The disposition of pending motions;
- (9) The need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;
- (10) Obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence; and
- (11) Facilitating in other ways the just, speedy and inexpensive disposition of the action.

(d) Unless the Court orders otherwise, one (1) pretrial meeting shall be scheduled at least twenty-one (21) days prior to a formal hearing.

(1) Subsequent pretrial meetings may be scheduled at any time before trial, provided that, at least one (1) has taken place earlier than twenty-one (21) days before a formal hearing or other time set by the Court.

(2) The Court may, in its discretion, forgo pretrial meetings under this Rule.

(e) Scheduling Order. The Court shall issue a scheduling order as soon as practicable, but in any event within the earlier of sixty (60) days after any defendant has been served with the complaint or forty-five (45) days after any defendant has appeared. The scheduling order shall limit the time to join other parties, amend the pleadings, complete discovery and file motions. A schedule may be modified only for good cause and with the Court's consent. The scheduling order may include, but is not limited to:

- (1) modifying the timing of disclosures under Rules 803.14-2 and 803.14-5;
- (2) modifying the extent of discovery;
- (3) providing for disclosure or discovery of electronically stored information;
- (4) any agreements the parties reach for asserting claims of privilege or of protection as trial preparation material after information is produced;
- (5) setting dates for pretrial meetings and for trial; and
- (6) other appropriate matters.

803.12-2. *Pretrial Filing Procedure*

(a) *Submission of Documents.* Parties shall submit all documents including, but not limited to, proposed exhibits and other evidence (or copies) that a party plans to use at trial for the Court to review not less than two (2) days prior to a scheduled hearing.

(1) Documents submitted after this time or at the time of the hearing shall only be admitted if the Court determined that:

(A) The documentation has a direct impact upon the outcome of the hearing;

(B) Is admissible under this Law or the Rules of Evidence; and

(C) Good cause is shown as to why the submission is untimely.

803.12-3. *Pretrial Orders.* After any meeting under this Rule, the Court shall issue an order reciting the action taken. This order controls the course of the action unless the Court modifies it.

803.12-4. *Final Pretrial Meeting and Orders.* The Court may hold a final pretrial meeting to formulate a trial plan, including a plan to facilitate the admission of evidence. The meeting shall be held as close to the start of trial as is reasonable, and shall be attended by at least one (1) attorney or advocate who shall conduct the trial for each party and by any unrepresented party. The Court may modify the order issued after a final pretrial meeting only to prevent manifest injustice.

803.12-5. *Sanctions.*

(a) *In General.* On motion or on its own, the Court may issue any just orders, including those authorized by Rule 803.20-2(b)(1), if a party or its attorney or advocate:

(1) Fails to appear at a scheduling or other pretrial meeting;

(2) Is substantially unprepared to participate—or does not participate in good faith—in the meeting; or

(3) Fails to obey a scheduling or other pretrial order.

(b) *Imposing Fees and Costs.* Instead of or in addition to any other sanction, the Court shall order the party, its attorney or advocate, or all to pay the reasonable expenses—including attorney's fees—incurred because of any noncompliance with this Rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

803.13. Substitution of Parties

803.13-1. *Death of a Party.*

(a) *Substitution if the Claim Is Not Extinguished.* If a party dies and the claim is not extinguished, the Court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within ninety (90) days after service, to the Court and all other parties, of a statement noting the death, the action by or against the decedent shall be dismissed.

(b) *Continuation Among the Remaining Parties.* After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action shall not abate, but proceeds in favor of or against the remaining parties. The death shall be noted on the record.

(c) *Service.* A motion to substitute, together with a notice of hearing, shall be served on the parties. A statement noting death shall be served in the same manner.

803.13-2. *Incompetency.* If a party becomes incompetent, the Court may, on its own or on motion, permit the action to be continued by or against the party's representative.

803.13-3. *Transfer of Interest.* If an interest is transferred, the action may be continued by or against the original party unless the Court, on motion, orders the transferee to be substituted in the action or joined with the original party.

803.14. Discovery

803.14-1. *Scope.* Unless otherwise limited by Court order, the scope of discovery is as follows:

(a) Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter.

(b) For good cause, the Court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 803.14-3.

803.14-2. *Required Disclosures.* A party shall, without awaiting a discovery request, provide to the other parties:

(a) The name and, if known, the address and telephone number of each individual likely to have discoverable information along with the subjects of that information that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(b) A copy or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(c) A computation of each category of damages claimed by the disclosing party;

(d) For inspection and copying as under Rule 803.17, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(e) *Exceptions.* Required disclosures under this section may be excused, at the Courts discretion, in a Family Court case.

803.14-3. *Limitations.* On motion or on its own, the Court shall limit the frequency or extent of discovery otherwise allowed by this Law if it determines that:

(a) The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; or

(b) The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(c) The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

803.14-4. *Time for Required Disclosures.* A party shall make the required disclosures at the parties' Rule 803.12 pretrial meeting unless a different time is set by the Court.

803.14-5. *Required Pretrial Disclosures.*

(a) In addition to the disclosures required by Rule 803.14-2, a party shall provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(1) the name and, if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises;

(2) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

(3) an identification of each document or other exhibit, including summaries of

other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.

- (b) *Time for Required Pretrial Disclosures; Objections.* Unless the Court orders otherwise, these disclosures shall be made at least 30 (thirty) days before trial. Within fourteen (14) days after they are made, unless the Court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use of a deposition designated by another party under Rule 803.14-5(a)(2) and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 803.14-5(a)(3). An objection not so made—except for one under Oneida Judiciary Rules of Evidence, Rules 155.7-2 or 155.7-3—is waived unless excused by the Court for good cause.

803.14-6. *Protective Order.* A party or any person or entity from which discovery is sought may move for a protective order from the Court. The motion shall include a certification that the movant has in good faith conferred or attempted to confer with the other parties, persons or entities in an effort to resolve the issue without Court action. The Court may issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one (1) or more of the following:

- (a) Forbidding the disclosure or discovery;
- (b) Specifying terms, including time and place, for the disclosure or discovery;
- (c) Prescribing a discovery method other than the one selected by the party seeking discovery;
- (d) Forbidding inquiry into certain matters, or limiting the scope of disclosure, or discovery to certain matters;
- (e) Designating the persons who may be present while the discovery is conducted;
- (f) Requiring that a deposition be sealed and opened only on Court order;
- (g) Requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the Court directs;
- (h) Redacting sensitive documents; or
- (i) Any other order necessary to ensure discovery is conducted fairly.

803.14-7. *Supplementing Disclosures and Responses.* A party or person who has made a disclosure or who has responded to an interrogatory, request for production, or request for admission, shall supplement or correct its disclosure or response:

- (a) In a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or
- (b) As ordered by the Court.

803.14-8. *Signature Required; Effect of Signature.*

- (a) Every disclosure under Rule 803.14-2 and 803.14-5 and every discovery request, response, or objection shall be signed by at least one (1) attorney or advocate of record in the attorney's or advocate's own name—or by the party personally, if unrepresented—and shall state the signer's address and telephone number. By signing, an attorney, advocate or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry that:

- (1) With respect to a disclosure, it is complete and correct as of the time it is made; and
- (2) With respect to a discovery request, response, or objection, it is:
 - (A) Consistent with this Law and warranted by existing law or by a

nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(B) Not used for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(C) Neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(b) *Failure to Sign.* Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the Court shall strike it unless a signature is promptly supplied after the omission is called to the attorney's, advocate's or party's attention.

803.14-9. *Failure to Disclose.* If a party fails to respond or appear for discovery under this Rule, the opposing party may move for an order to compel the defaulting party to perform. The Court may award costs to the non-defaulting party.

(a) If a party fails to perform after being ordered to do so by the Court, the Court may order any sanction under Rule 803.20-2(b)(1).

803.14-10. *Information Produced.* If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party:

(a) Shall promptly return, sequester, or destroy the specified information and any copies it has;

(b) Shall not use or disclose the information until the claim is resolved;

(c) Shall take reasonable steps to retrieve the information if the party disclosed it before being notified; and

(d) May promptly present the information to the Court under seal for a determination of the claim. The producing party shall preserve the information until the claim is resolved.

803.15. Depositions

803.15-1. *Generally.* All depositions shall be taken under oath or under penalty of perjury before a person authorized to administer oaths or a person appointed by the Court to administer oaths and take testimony.

(a) *When a Deposition May Be Taken.* A party may, by oral and/or written questions, depose any person, including a party, at any time if consented to orally or in writing by such person being deposed, or during the time set during the pretrial meeting under Rule 803.12-1(a).

(b) *Notice.* A party who wants to depose a person shall give reasonable written notice to every other party. The notice shall state the time and place of the deposition and, if known, the deponent's name and address.

(1) Not less than ten (10) days' notice shall be given, if deposing an adverse party or non-party witness.

(c) *Service; Required Notice.*

(1) A party who wants to depose a person by written questions shall serve such questions on every other party.

(2) Any questions to the deponent from other parties shall be served on all parties as follows: cross-questions, within seven (7) days after being served with the notice and direct questions; redirect questions, within seven (7) days after being served with cross-questions; and recross-questions, within seven (7) days after being served with redirect questions. The Court may, for good cause, extend or

shorten these times.

(d) *Producing Documents.* If a subpoena requiring production of documents is to be served on the deponent, the materials designated for production shall be listed in the notice or in an attachment.

(e) *Transcripts.* A transcript of the deposition shall be made and shall be available for use by the parties and the Court. The deposing party bears the cost of recording. Each party shall bear its own cost of obtaining transcripts.

(f) *Objections.* An objection at the time of the examination—whether to evidence, to a party’s conduct, to the manner of taking the deposition, or to any other aspect of the deposition—shall be noted on the record, but the examination shall still proceed; the testimony is taken subject to any objection. An objection shall be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege or to enforce a limitation ordered by the Court.

(g) *Duration.* Unless otherwise stipulated or ordered by the Court, a deposition shall be limited to two (2) days, with questioning occurring for up to seven (7) hours per day.

803.15-2. *Sanction.* The Court may impose an appropriate sanction—including the reasonable expenses and attorney’s fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.

803.15-3. *Motion to Terminate or Limit.*

(a) *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. If the objecting deponent or party so demands, the deposition shall be suspended for the time necessary to obtain an order.

(b) *Order.* The Court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 803.14-6. If terminated, the deposition may be resumed only by order of the Court.

803.16. Interrogatories

803.16-1. *In General.*

(a) Unless otherwise stipulated or ordered by the Court, a party may serve on any other party no more than twenty-five (25) written interrogatories. Parties shall not evade this limitation through the device of joining as “subparts” questions that seek information about separate subjects. However, a question asking about communications of a particular type shall be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each such communication. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 803.14-3. (b) An interrogatory may relate to any matter that may be inquired into under Rule 803.14-1. An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the Court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial meeting or some other time.

803.16-2. *Answers and Objections.*

(a) *Responding Party.* The interrogatories shall be answered by the party to whom they are directed.

(b) *Time to Respond.* The responding party shall serve its answers and any objections within twenty (20) days after being served with the interrogatories. A shorter or longer

time may be ordered by the Court.

(c) *Answering Each Interrogatory.* Each interrogatory shall, to the extent it is not objected to, be answered separately and fully in writing under oath or penalty of perjury.

(d) *Objections.* The grounds for objecting to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the Court, for good cause, excuses the failure.

(e) *Signature.* The person who makes the answers shall sign them, and the person who objects shall sign any objections.

803.17. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

803.17-1. *In General.* A party may serve on any other party a request within the scope of Rule 803.14:

(a) To produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(1) Any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(2) Any designated tangible things.

(b) To permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party or representative may inspect, measure, survey, photograph, record, test, or sample the property or any designated object or operation thereon.

803.17-2. *Procedure.*

(a) *Contents of the Request.* The request:

(1) Shall describe with reasonable particularity each item or category of items to be inspected;

(2) Shall specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(3) May specify the form or forms in which electronically stored information is to be produced.

(b) *Responses and Objections.*

(1) *Time to Respond.* The party to whom the request is directed shall respond in writing within ten (10) days after being served. A shorter or longer time may be ordered by the Court.

(2) *Responding to Each Item.* For each item or category, the response shall either state that inspection and related activities shall be permitted as requested or state an objection to the request, including the reasons.

(3) *Objections.* An objection to part of a request shall specify the part and permit inspection of the rest.

(4) *Responding to a Request for Production of Electronically Stored Information.* The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party shall state the form or forms it intends to use.

(5) *Producing the Documents or Electronically Stored Information.* Unless

otherwise stipulated or ordered by the Court, these procedures apply to producing documents or electronically stored information:

(A) A party shall produce documents as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request;

(B) If a request does not specify a form for producing electronically stored information, a party shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(C) A party need not produce the same electronically stored information in more than one (1) form.

803.17-3. *Nonparties.* A nonparty may be compelled to produce documents and tangible things or to permit an inspection in accordance with this section.

803.18. Physical and Mental Examinations

803.18-1. Order for an Examination.

(a) *In General.* The Court where the action is pending may order a party who's mental or physical condition—including blood group—is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The Court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(b) *Motion and Notice; Contents of the Order.* The order:

(1) May be made only on motion for good cause and on notice to all parties and the person to be examined; and

(2) Shall, unless the Court orders otherwise, specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who shall perform it.

803.18-2. Examiner's Report.

(a) *Request by the Party or Person Examined.* The party who moved for the examination shall, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(b) *Contents.* The examiner's report shall be in writing and shall set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(c) *Request by the Moving Party.* After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(d) *Waiver of Privilege.* By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition.

(e) *Failure to Deliver a Report.* The Court on motion may order—on just terms—that a party deliver the report of an examination. If the report is not provided, the Court may exclude the examiner's testimony at trial.

(f) *Scope.* This section applies also to an examination made by the parties' agreement, unless the agreement states otherwise. This section shall not preclude obtaining an

examiner's report or deposing an examiner under other Rules.

(g) *Exception.* The Court may, in its discretion, limit or amend the requirements under this section.

803.18-3. *Cost of Examination.* The requesting party shall be responsible for the costs of an examination, unless the Court orders otherwise.

803.19. Requests for Admission

803.19-1. *Scope and Procedure.*

(a) *Scope.* A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 803.14-1 relating to:

(1) Facts, the application of law to fact, or opinions about either; and

(2) The genuineness of any described documents.

(b) *Time to Respond; Effect of Not Responding.* A matter is admitted unless, within ten (10) days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party under oath or penalty of perjury. A shorter or longer time for responding may be ordered by the Court.

(c) *Answer.* If a matter is not admitted, the answer shall specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial shall fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer shall specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(d) *Objections.* The grounds for objecting to a request shall be stated. A party shall not object solely on the ground that the request presents a genuine issue for trial.

(e) *Motion Regarding the Sufficiency of an Answer or Objection.* The requesting party may move to determine the sufficiency of an answer or objection. Unless the Court finds an objection justified, it shall order that an answer be served. On finding that an answer does not comply with this Rule, the Court may order either that the matter is admitted or that an amended answer be served. The Court may defer its final decision until a pretrial meeting or a specified time before trial. Rule 803.20-1(e) applies to an award of expenses.

803.19-2. *Effects of an Admission, Withdrawing or Amending it.* A matter admitted under this Rule shall be conclusively established unless the Court, on motion, permits the admission to be withdrawn or amended. The Court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the Court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this Rule is not an admission for any other purpose and shall not be used against the party in any other proceeding.

803.20. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

803.20-1. *Motion for an Order Compelling Disclosure or Discovery.*

(a) *In General.* On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion shall include a certification that the movant has in good faith conferred or attempted to confer with the person or party

failing to make disclosure or discovery in an effort to obtain it without Court action.

(b) *Appropriate Court.* A motion for an order to a party or nonparty shall be made in the Court where the action is pending.

(c) *Specific Motions.*

(1) *To Compel Disclosure.* If a party fails to make a disclosure required by Rule 803.14-2 or 803.14-5, any other party may move to compel disclosure and for appropriate sanctions.

(2) *To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(A) A deponent fails to answer a question asked under Rule 803.15;

(B) A party fails to answer an interrogatory submitted under Rule 803.16; or

(C) A party fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 803.17.

(3) *Related to a Deposition.* When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(d) *Evasive or Incomplete Disclosure, Answer, or Response.* For purposes of this section, an evasive or incomplete disclosure, answer, or response shall be treated as a failure to disclose, answer, or respond.

(e) *Payment of Expenses; Protective Orders.*

(1) *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* If the motion is granted, or if the disclosure or requested discovery is provided after the motion was filed, the Court shall, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party, advocate or attorney advising that conduct, or all to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. Provided that the Court shall not order this payment if:

(A) The movant filed the motion before attempting in good faith to obtain the disclosure or discovery without Court action;

(B) The opposing party's nondisclosure, response, or objection was substantially justified; or

(C) Other circumstances make an award of expenses unjust.

(2) *If the Motion Is Denied.* If the motion is denied, the Court may issue any protective order authorized under Rule 803.14-6 and shall, after giving an opportunity to be heard, require the movant, the attorney or advocate filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the Court shall not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(3) *If the Motion Is Granted in Part and Denied in Part.* If the motion is granted in part and denied in part, the Court may issue any protective order authorized under Rule 803.14-6 and may, after giving an opportunity to be heard, apportion the reasonable expenses, including attorney's fees, for the motion.

803.20-2. *Failure to Comply with a Court Order.*

(a) *Sanctions.* If the Court orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of Court.

(b) *Sanctions by the Court.*

(1) *For Not Obeying a Discovery Order.* If a party fails to obey an order to provide or permit discovery, the Court may issue further just orders. They may include the following:

(A) Directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(B) Prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(C) Striking pleadings in whole or in part;

(D) Staying further proceedings until the order is obeyed;

(E) Dismissing the action or proceeding in whole or in part;

(F) Rendering a default judgment against the disobedient party; or

(G) Treating as contempt of Court the failure to obey any order, except an order to submit to a physical or mental examination.

(2) *For Not Producing a Person for Examination.* If a party fails to comply with an order under Rule 803.18-1 requiring it to produce another person for examination, the Court may issue any of the orders listed in Rule 803.20-2(b)(1), unless the disobedient party shows that it cannot produce the other person.

(3) *Payment of Expenses.* Instead of or in addition to the orders above, the Court may order the disobedient party, the attorney or advocate advising that party, or all to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

803.20-3. *Failure to Disclose, to Supplement an Earlier Response, or to Admit.*

(a) *Failure to Disclose or Supplement.* If a party fails to provide information or identify a witness as required by Rules 803.14-2, 803.14-5 or 803.14-7, the party shall not use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the Court, on motion and after giving an opportunity to be heard:

(1) May order payment of the reasonable expenses, including attorney's fees, caused by the failure; and

(2) May impose other appropriate sanctions, including any of the orders listed in Rule 803.20-2(b)(1).

(b) *Failure to Admit.* If a party fails to admit what is requested under Rule 803.19-1(a) and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The Court shall so order unless:

(1) The request was held objectionable under Rule 803.19-1;

(2) The admission sought was of no substantial importance;

(3) The party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(4) There was other good reason for the failure to admit.

803.20-4. *Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Production.*

(a) *In General.*

(1) *Motion; Grounds for Sanctions.* The Court may, on motion, order sanctions

if:

(A) A party fails, after being served with proper notice, to appear for that person's deposition; or

(B) A party, after being properly served with interrogatories or a request for production, fails to serve its answers, objections, or written response.

(2) *Certification*. A motion for sanctions for failing to answer or respond shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without Court action.

(b) *Unacceptable Excuse for Failing to Act*. A failure described in Rule 803.20-4(a)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 803.14-6.

(c) *Types of Sanctions*. Sanctions may include any of the orders listed in Rule 803.20-2(b)(1). Instead of or in addition to these sanctions, the Court shall require the party failing to act, the attorney or advocate advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

803.20-5. *Failure to Provide Electronically Stored Information*. Absent exceptional circumstances, the Court may not impose sanctions under this Law on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

803.20-6. *Failure to Participate in Framing a Discovery Plan or Pretrial Statement*. If a party or its attorney or advocate fails to participate in good faith in developing and submitting a proposed discovery plan or pretrial statement as required by Rule 803.12-1, the Court may, after giving an opportunity to be heard, require that party, advocate or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

803.21. Dismissal of Action

803.21-1. *Voluntary Dismissal*.

(a) *By the Plaintiff*.

(1) *Without a Court Order*. The plaintiff may dismiss an action without a Court order by filing:

(A) A notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(B) A stipulation of dismissal signed by all parties who have appeared.

(2) *Effect*. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any action based on or including the same claim, a notice of dismissal operates as adjudication on the merits.

(b) *By Court Order; Effect*. Except as required in Rule 803.21-1(a)(1), an action may be dismissed at the plaintiff's request only by Court order, on terms that the Court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (b) is without prejudice.

803.21-2. *Involuntary Dismissal; Effect*. If the plaintiff fails to prosecute or to comply with this Law or a Court order, a defendant may move to dismiss the action or any claim against it. Unless

the dismissal order states otherwise, a dismissal under this subdivision 803.21-2 and any dismissal not under this Rule—except one for lack of jurisdiction, improper venue, or failure to join a party—operates as an adjudication on the merits.

803.21-3. *Dismissing a Counterclaim, Crossclaim, or Third-Party Claim.* This Rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 803.21-1(a)(1)(A) shall be made:

(a) Before a responsive pleading is served; or

(b) If there is no responsive pleading, before evidence is introduced at a hearing or trial.

803.21-4. *Costs of a Previously Dismissed Action.* If a plaintiff who previously dismissed an action in any Court files an action based on or including the same claim against the same defendant, the Court:

(a) May order the plaintiff to pay all or part of the costs of that previous action; and

(b) May stay the proceedings until the plaintiff has complied.

803.22. Consolidation; Separate Trials

803.22-1. *Consolidation.* If actions before the Court involve a common question of law or fact, the Court may:

(a) Join for hearing or trial any or all matters at issue in the actions;

(b) Consolidate the actions; or

(c) Issue any other orders to avoid unnecessary cost or delay.

803.22-2. *Separate Trials.* For convenience, to avoid prejudice, or to expedite and economize, the Court may order a separate trial of one (1) or more separate issues, claims, crossclaims, counterclaims, or third-party claims.

803.23. Taking Testimony

803.23-1. *In Open Court.* At trial, the witnesses' testimony shall be taken in open Court unless this Law or other rules adopted by the Tribe provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the Court may permit testimony in open Court by contemporaneous transmission from a different location.

803.23-2. *Affirmation Instead of an Oath.* When this Law requires an oath, a solemn affirmation suffices.

803.23-3. *Evidence on a Motion.* When a motion relies on facts outside the record, the Court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

803.23-4. *Interpreter.* The Court may appoint an interpreter of its choosing; fix reasonable compensation to be paid and designate the compensation as Court costs.

803.24. Subpoena

803.24-1. In General.

(a) *Form and Contents.*

(1) *Requirements—In General.* Every subpoena shall:

(A) State the Court from which it issued;

(B) State the title of the action, the Court in which it is pending, and its civil-action number; and

(C) Command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of

1324 premises.

1325 (2) *Command to Attend a Deposition—Notice of the Recording Method.* A
1326 subpoena commanding attendance at a deposition shall state the method for
1327 recording the testimony.

1328 (3) *Combining or Separating a Command to Produce or to Permit Inspection;*
1329 *Specifying the Form for Electronically Stored Information.* A command to
1330 produce documents, electronically stored information, or tangible things or to
1331 permit the inspection of premises may be included in a subpoena commanding
1332 attendance at a deposition, hearing, or trial, or may be set out in a separate
1333 subpoena. A subpoena shall specify the form or forms in which electronically
1334 stored information is to be produced.

1335 (4) *Command to Produce; Included Obligations.* A command in a subpoena to
1336 produce documents, electronically stored information, or tangible things requires
1337 the responding party to permit inspection, copying, testing, or sampling of the
1338 materials.

1339 (b) *Issued.* A subpoena shall be issued for the following:

1340 (1) Attendance at a hearing or trial;

1341 (2) Attendance at a deposition; and

1342 (3) Production or inspection, if separate from a subpoena commanding a person's
1343 attendance.

1344 (c) *Issued by Whom.* The clerk shall issue a subpoena, signed but otherwise in blank, to
1345 a party who requests it. That party shall complete it before service. An attorney also
1346 may issue and sign a subpoena as an officer of the Court in which the attorney is
1347 authorized to practice.

1348 803.24-2. *Service.*

1349 (a) *By Whom; Tendering Fees; Serving a Copy of Certain Subpoenas.* Any person who
1350 is at least eighteen (18) years old and not a party may serve a subpoena. Serving a
1351 subpoena requires delivering a copy to the named person. If the subpoena commands the
1352 production of documents, electronically stored information, or tangible things or the
1353 inspection of premises before trial, then before it is served, a notice shall be served on
1354 each party.

1355 (b) *Proof of Service.* Proving service, when necessary, requires filing with the Court a
1356 statement showing the date and manner of service and the names of the persons served.
1357 The statement shall be certified by the server.

1358 (c) *Subpoena Fees.* The party issuing the subpoena shall be responsible for tendering, if
1359 applicable, the fees for one (1) day's attendance and mileage. Payment shall be paid at
1360 the time of delivery of the subpoena in the amount as set by Court Rule.

1361 (d) *Place of Service.* A subpoena may be served at any place:

1362 (1) Within the reservation;

1363 (2) Outside the reservation but within one hundred (100) miles of the place
1364 specified for the deposition, hearing, trial, production or inspection; or

1365 (3) That the Court authorizes on motion and for good cause.

1366 803.24-3. *Protecting a Person Subject to a Subpoena.*

1367 (a) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for
1368 issuing and serving a subpoena shall take reasonable steps to avoid imposing undue
1369 burden or expense on a person subject to the subpoena. The Court shall impose an
1370 appropriate sanction—including, but not limited to, lost earnings and reasonable
1371 attorney's fees—on a party or attorney who fails to comply.

(b) *Command to Produce Materials or Permit Inspection.*

(1) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(2) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party, advocate or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection shall be served before the earlier of the time specified for compliance or fourteen (14) days after the subpoena is served. If an objection is made, the following Rules apply:

(A) At any time, on notice to the commanded person, the serving party may move the Court for an order compelling production or inspection.

(B) These acts may be required only as directed in the order, and the order shall protect a person who is not a party from significant expense resulting from compliance.

(c) *Quashing or Modifying a Subpoena.*

(1) *When Required.* On motion, the Court shall quash or modify a subpoena that:

(A) Fails to allow a reasonable time to comply;

(B) requires a person who is not a party to travel more than one hundred (100) miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to Rule 803.24-3(c)(2)(C), the person may be commanded to attend a trial by traveling from any such place within the state of Wisconsin;

(C) Requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(D) Subjects a person to undue burden.

(2) *When Permitted.* To protect a person subject to or affected by a subpoena, the Court may, on motion, quash or modify the subpoena if it requires:

(A) Disclosing a trade secret or other confidential research, development, or commercial information;

(B) Disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(C) A person who is not a party to incur substantial expense to travel more than one hundred (100) miles to attend trial.

(3) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 803.24-3(c)(2), the Court may, instead of quashing or modifying a subpoena, order appearance, inspection or production under specified conditions if the serving party:

(A) Shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(B) Ensures that the subpoenaed person will be reasonably compensated.

803.24-4. *Duties in Responding to a Subpoena.*

(a) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(1) *Documents*. A person responding to a subpoena to produce documents shall produce them as they are kept in the ordinary course of business or shall organize and label them to correspond to the categories in the subpoena.

(2) *Form for Producing Electronically Stored Information Not Specified*. If a subpoena does not specify a form for producing electronically stored information, the person responding shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(3) *Electronically Stored Information Produced in Only One (1) Form*. The person responding need not produce the same electronically stored information in more than one (1) form.

(4) *Inaccessible Electronically Stored Information*. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding shall show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from such sources if the requesting party shows good cause. The Court may specify conditions for the discovery.

(b) *Claiming Privilege or Protection*.

(1) *Information Withheld*. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material shall:

(A) Expressly make the claim; and

(B) Describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(c) *Information Produced*. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party, advocate or attorney shall promptly return, sequester, or destroy the specified information and any copies it has; shall not use or disclose the information until the claim is resolved; shall take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the Court under seal for a determination of the claim. The person who produced the information shall preserve the information until the claim is resolved.

803.24-5. *Contempt*. The issuing Court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey shall be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 803.24-3(c)(1)(B).

803.25. Recesses; Personal Conduct

803.25-1. *Recesses*. The Court may order postponements or recesses in its discretion at any time during the hearing for any reason. Specifically, when objections are made with respect to questions asked or evidence presented, or other motions are made during a hearing, the Court may order a short recess in order to deliberate on any motions or objections raised by a party.

(a) The recess shall continue until a decision is reached, which may be to reserve a ruling for later, at which time the hearing shall reconvene and the decision concerning the objection shall be entered into the record.

(b) A party may enter into the record an objection to the decision reached by the Court in order to preserve the issue on appeal, though such an objection is not required for such preservation.

803.25-2. *Personal Conduct.* Parties, including parties' attorney or advocate, shall present and conduct themselves in a professional manner while before the Court. Parties shall be prepared to present their case, to include evidence, arguments and witnesses at the time of the hearing. Disorderly conduct, insulting or demeaning behavior, or interrupting a speaking judge, party, or party's attorney or advocate may be grounds for contempt and/or other penalties.

803.26. Contempt

803.26-1. *Grounds.* In addition to other grounds for contempt identified in this Law or other Tribal law, the following acts or failures to act may serve as the basis for finding an individual or other entity in contempt:

- (a) Failure to obey a subpoena;
- (b) Refusal to testify or appear when so ordered;
- (c) Refusal to obey any order or judgment of the Court;
- (d) Disorderly, demeaning, or insulting behavior toward a Judge while conducting a hearing which tends to interrupt the course of the proceedings or undermine the dignity of the Court;
- (e) A breach of the peace or loud or boisterous conduct which tends to interrupt the course of a judicial proceeding;
- (f) Deceit or abuse of process or proceedings of the Court by a party, advocate or attorney to a judicial proceeding;
- (g) Any other interference with the process, proceedings, or dignity of the Court or a Judge while in the performance of official duties.

803.26-2. *Relief.* Individuals or other entities found to be in contempt shall be subject to a fine in an amount not to exceed one thousand dollars (\$1,000) per act of contempt, and not to exceed five thousand dollars (\$5,000) per instance of continuing contempt payable to the Judiciary or to the complaining party. When that individual or other entity either pays the money or does whatever the Court orders that person to do, the contempt order shall be purged.

803.26-3. Procedure.

- (a) Direct contempt is one committed in the presence of the Court or so near in presence as to be disruptive of the judicial proceedings, and such may be adjudged and punished summarily. All others are indirect contempt.
- (b) Indirect contempt may be determined after a hearing in which the person accused of contempt is given notice and an opportunity to be heard.
 - (1) The Court may, after testimony is given concerning the reasons for any contemptuous act, allow the person accused one (1) opportunity to comply or be held in contempt.
- (c) The Court may, in its discretion or on motion by a party, resolve issues of indirect contempt through receipt and deliberation of briefs rather than a hearing.

803.27. Findings and Conclusions by the Court; Judgment on Partial Findings; Offer of Judgment

803.27-1. Findings and Conclusions.

- (a) *In General.* The Court shall state the findings of facts and its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the

Court.

(b) *For an Interlocutory Injunction.* In granting or refusing an interlocutory injunction, the Court shall similarly state the findings and conclusions that support its action.

(c) *For a Motion.* The Court is not required to state findings or conclusions when ruling on a motion unless this Law provide otherwise.

(d) *Questioning the Evidentiary Support.* A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

803.27-2. *Amended or Additional Findings.* On a party's motion filed no later than twenty-eight (28) days after the entry of judgment, the Court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may accompany a motion for a new trial.

803.27-3. *Judgment on Partial Findings.* If a party has been fully heard on an issue and the Court finds against the party on that issue, the Court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The Court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings shall be supported by findings of fact and conclusions of law as required by Rule 803.27-1(a).

803.27-4. *Offer of Judgment.*

(a) *Making an Offer; Judgment on an Accepted Offer.* At any time before or during trial, a party may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The Court shall then enter judgment.

(b) *Unaccepted Offer.* An unaccepted offer shall be considered withdrawn, but it shall not preclude a later offer. Evidence of an unaccepted offer shall not be admissible except in a proceeding to determine costs.

803.28. Judgment; Costs

803.28-1. *Generally.* A decision includes any final order or judgment that may be appealed to the Court of Appeals. No special form of judgment is required. A judgment shall not include recitals of pleadings or a record of prior proceedings, unless the Court deems that information necessary.

803.28-2. *Types of Relief.*

(a) Every final decision of the Court shall grant relief based in law and equity to the party in whose favor the decision is rendered. Relief granted need not be identical to the relief demanded in the pleadings or at a hearing.

(b) *Judgment on Multiple Claims or Involving Multiple Parties.* When an action presents more than one (1) claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the Court may direct entry of a final judgment as to one (1) or more, but fewer than all, claims or parties only if the Court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

803.28-3. *Form of Decision.* The Court may issue decisions in the form of fines, orders, penalties, or others the Court deems appropriate, which may include, but not limited to:

- (a) Awarding monetary damages, including punitive damages, to be paid by the party found to be in violation of any Tribal law, to the injured party;
- (b) Directing the surrender of certain property to the injured party which the injured party is found to be legally entitled;
- (c) Directing the performance of some act or the ceasing and desisting from performance of some act for the benefit of the injured party;
- (d) Directing a party in violation of Tribal laws to cease and desist from further violations and cure said violations within a specified period of time;
- (e) Directing the payment of specific monetary fines for violations of Tribal laws, Court orders or agreements made during mediation or peacemaking;
- (f) Directing mandated community service and/or denial of specific Tribal benefits;

803.28-4. *Costs.*

- (a) The Court may, in its discretion, require the non-prevailing party to pay some or all of the reasonable costs of the prevailing party.
- (b) *Attorney's Fees.* The Court shall not award attorney's fees unless:
 - (1) The fees have been specifically provided for by Tribal law, contract or agreement between the parties in dispute;
 - (2) It has been clearly and convincingly shown that the case is frivolous or has been prosecuted in bad faith for purposes of harassment only; or
 - (3) It has been shown that there was no reasonable expectation of success on the part of the claiming party.
- (c) If the Court finds by clear and convincing evidence that the matter before the Court was frivolous or has been prosecuted in bad faith, the Court may assess against the plaintiff, some or all of the Court's and/or defendant's costs in the matter.
- (d) Court costs shall be based on actual cost or set by Court Rule.

803.28-5. *Punitive Damages.* A party may recover punitive damages against another party unless the other party is the Tribe, or an officer or agency of the Tribe. The Court shall only order punitive damages when a party's willful or reckless conduct is exceptionally egregious or malicious and the order will deter that party and others from committing the same or similar acts in the future. Punitive damages shall not exceed an amount greater than four (4) times the amount of any other monetary damages ordered. In cases involving non-economic harm where punitive damages are ordered, the Court shall determine punitive damages by considering:

- (a) The nature of the wrongdoer's behavior;
- (b) The extent of the prevailing party's loss or injury;
- (c) The degree to which the wrongdoer's conduct is offensive to a societal sense of justice and decency; and
- (d) The financial worth of the wrongdoer.

803.29. **Default; Default Judgment**

803.29-1. *Appearance Required.* Parties to a case are required to appear before the Court at any scheduled hearing or proceeding.

- (a) A party may be excused from appearing with the permission of the Court if the party makes a motion seeking permission prior to the hearing or proceeding and shows good cause as to why the party's appearance is not necessary.
- (b) The Court may allow a proceeding to continue without a party's appearance so long as a representative of the party appears, or may postpone the hearing until the party will attend, or may find the party not in attendance in contempt for failing to appear.
- (c) The Court may allow a party to appear by telephone. Requests to appear by telephone

shall be in writing and submitted at least seven (7) days before a hearing or proceeding.

803.29-2. *Defendant*. When a party against whom a judgment for relief is sought has failed to appear, plead or otherwise defend as required in this Law or elsewhere, a default judgment may be granted by the Court upon the receipt of whatever evidence is deemed necessary to establish the claim.

803.29-3. *Plaintiff*. When a party who has filed a claim fails to appear, plead, or prosecute said claim as provided in this Law or elsewhere, a dismissal may be granted by the Court, on its own or on a party's motion, dismissing the claim. For purposes of this section, dismissal shall be treated as default.

803.29-4. *Entering a Default Judgment*. The Court may conduct hearings or make referrals when, to enter or effectuate judgment, it needs to:

- (a) Conduct an accounting;
- (b) Determine the amount of damages;
- (c) Establish the truth of any allegation by evidence; or
- (d) Investigate any other matter.

803.29-5. *Demand for Judgment*. The Court may assign any costs incurred by the non-defaulting party and any hearing costs incurred by the Court, to the defaulting party.

803.29-6. *Setting Aside a Default or a Default Judgment*. The Court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 803.33-2 within one (1) year of entry of default or default judgment.

803.30. Summary Judgment

803.30-1. *Motion for Summary Judgment or Partial Summary Judgment*. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The Court shall state on the record the reasons for granting or denying the motion.

803.30-2. *Time to File a Motion*. Unless a different time is set by the Court, a party may file a motion for summary judgment at any time after commencement of an action, but at least fifteen (15) days prior to the scheduled trial.

803.30-3. *Procedures*.

(a) *Supporting Factual Positions*. A party asserting that a fact cannot be or is genuinely disputed shall support the assertion by:

- (1) Citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
- (2) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(b) *Objection That a Fact Is Not Supported by Admissible Evidence*. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(c) *Materials Not Cited*. The Court need consider only the cited materials, but it may consider other materials in the record.

(d) *Affidavits*. An affidavit used to support or oppose a motion shall be made on personal knowledge, set out facts that would be admissible in evidence, and show that the

affiant is competent to testify on the matters stated.

803.30-4. *When Facts Are Unavailable to the Nonmovant.* If a nonmovant shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the Court may:

- (a) Defer considering the motion or deny it;
- (b) Allow time to obtain affidavits or to take discovery; or
- (c) Issue any other appropriate order.

803.30-5. *Failing to Properly Support or Address a Fact.* If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 803.30-3, the Court may:

- (a) Give an opportunity to properly support or address the fact;
- (b) Consider the fact undisputed for purposes of the motion;
- (c) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or
- (d) Issue any other appropriate order.

803.30-6. *Judgment Independent of the Motion.* After giving notice and a reasonable time to respond, the Court may:

- (a) Grant summary judgment for a nonmovant;
- (b) Grant the motion on grounds not raised by a party; or
- (c) Consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

803.30-7. *Failing to Grant All the Requested Relief.* If the Court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

803.30-8. *Affidavit Submitted in Bad Faith.* If satisfied that an affidavit under this Rule is submitted in bad faith or solely for delay, the Court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, incurred as a result. An offending party, advocate or attorney may also be held in contempt or subjected to other appropriate sanctions.

803.31. Entering Judgment; Enforcement

803.31-1. *Entering Judgment.*

- (a) *Signature.* All decisions shall be signed by the Judge assigned to the case and filed with the clerk.
- (b) *Filing and Notation.* A decision shall be complete and entered for all purposes when it is signed and filed with the clerk for publication, unless the case is nonpublic and/or not subject to publication in which case it is deemed complete and entered upon being signed by the Judge. The clerk shall make a notation of the decision in a case log or index of cases and decisions. If publication occurs more than seven (7) days after entry of the decision, this shall be noted and the date of publication shall be the official date of entry.
- (c) *Death of a Party.* If a party dies after a decision is rendered upon any issue or fact, but before entry of the judgment, judgment may still be entered.
- (d) *Satisfaction of Decision.* The clerk shall file all satisfactions of decisions and note whether whole or partial and the amount thereof in any existing case log or index of cases and decisions. A decision may be satisfied, in whole or part, as to any or all of the non-prevailing parties, when:

- (1) The party awarded the decision files an acknowledgment of satisfaction

specifying the amount paid and whether such is a full or partial satisfaction; or

(2) The Trial Court may order the entry of satisfaction upon the proof of payment by the debtor and failure of the decision creditor to file a satisfaction;

(e) *Effect of Satisfaction.* A decision satisfied in whole shall be entered in the index of decisions as such.

(1) A partially satisfied decision or unsatisfied decision shall continue in effect for four (4) years or until satisfied, whichever occurs sooner.

(2) An action to renew the decision remaining unsatisfied may be maintained any time prior to the expiration of four (4) years and shall extend the period of an additional four (4) years and may be thereafter further extended by the same procedure.

(f) *Written Decisions.* All decisions, opinions, and orders rendered, unless specified otherwise in this Law, shall be in writing and include the findings of fact and conclusions of law.

(1) Upon completion of the hearing or trial, the Court shall complete a written decision within thirty (30) days.

(A) The Court may, upon written notice to all parties, extend this time period to not more than an additional thirty (30) days from the original due date.

803.31-2. *Enforcement.*

(a) *Time.* The non-prevailing party shall have sixty (60) days from entry of the judgment to comply with the order of the Court and/or complete payment of any monetary award or to make arrangements with the prevailing party for payment or installment payments. If the non-prevailing party does not comply and/or satisfy the judgment within sixty (60) days, does not make arrangements to satisfy judgment within sixty (60) days, or fails to make installment payments to satisfy judgment for more than sixty (60) days, then the prevailing party may make a motion to the Court for the enforcement of the decision.

(b) *Means of Enforcement.* The Court shall conduct a hearing on the issue of enforcement of a judgment. The Court may:

(1) Order the garnishment of any non-prevailing party's wages, including but not limited to per capita payments by the Tribe, the amount to be determined by the Court and to be paid to the prevailing party;

(2) Fine the non-prevailing party if the non-prevailing party is found to be in contempt of the judgment. Fines shall be paid to the prevailing party; or

(3) Issue any other order or decision for the purposes of satisfying the judgment which the Court deems just.

(4) If it is determined at this hearing that any of the above options for the enforcement are unavailable or unduly difficult or inequitable, the Court may order the execution and sale of such property of the non-prevailing party's to satisfy the judgment.

(c) *Seizure of Property.* The non-prevailing party shall be ordered to appear before the Court and answer under oath regarding the reasons for failure to satisfy the judgment. If good cause is not shown for the failure to satisfy the judgment, the Court may:

(1) Determine, under Wisconsin law, what property of the non-prevailing party is available for execution;

(2) Issue an order for the seizure of as much of such property as reasonably necessary to pay the judgment amount and costs of seizing and auctioning such property;

- (A) The order for seizure shall be issued to and enforced by the Oneida Police Department (OPD);
- (B) The non-prevailing party shall have, starting on the day after seizure of property, ten (10) days to satisfy the judgment and redeem the property seized from the OPD. If redemption is not made, the OPD shall proceed with the sale of seized property.
- (C) Sale of seized property shall be at public auction conducted by the OPD. The person conducting the auction:
- (i) Shall place public notice in at least three (3) prominent places within the Oneida Reservation and publication in the Tribal newspaper, at least ten (10) days prior to the auction.
 - (ii) Shall sell the property to the highest bidder who shall make payment for the property at the time of sale.
 - (iii) Shall issue a certificate of sale to the purchaser and shall make a report and return to the Court reciting the details of the sale.
 - (iv) May postpone and reschedule the auction, providing notice of the new date as per sub part (i) above, if there is deemed to be inadequate response to the auction or bidding.
- (D) The sale shall not be deemed full satisfaction of the judgment unless such sale actually fully satisfies the judgment. Any excess proceeds from the sale shall be issued to the non-prevailing party.
- (d) *Exemption from Enforcement.* The Court shall only order seizure and sale of such property of the non-prevailing party to satisfy a money judgment, the loss of which shall not impose an immediate and substantial hardship on the non-prevailing party or the non-prevailing party's immediate family.

803.32. Record of Proceedings

803.32-1. *Generally.* All proceedings shall be recorded by audio, video or other means such that an accurate transcript may be produced when needed or requested. The record of the civil action shall include the following:

- (a) All pleadings, motions, orders, and intermediate rulings;
- (b) All evidence received or considered;
- (c) All statements of matters officially noticed;
- (d) All questions and offers of proof, objections and rulings thereon;
- (e) All proposed findings and exceptions;
- (f) All decisions, opinions or reports of the Court; and
- (g) A complete record of the hearing itself, in the form of written transcript, video or audio recordings.

803.32-2. *Open Record.* The records of all hearings and matters shall be available except where they are prohibited from disclosure by this Law, any other Tribal law or Court order or rule.

- (a) The Court shall be construed as a Court of record for purposes of full faith and credit.
- (b) Any person may request to view the record of any case and may receive copies of the record at that person's expense.

(1) Records of cases involving juveniles shall remain confidential and shall only be viewed by the parties or the legal guardian of a party who is a minor and their attorney or advocate, Judges and staff assigned to the case, and those other persons who first obtain a written release from a party to view material contained

in the record.

(2) Copies of final decisions and case file material shall be available for any person's review at that person's expense after the time line for filing a notice of appeal or motion for reconsideration has passed and no such filing has occurred. This shall ensure that the case is concluded and open for public record.

(3) At the request of any party or on its own motion, the Court may seal any part of a case file, preventing public disclosure. A file or part of a file may only be sealed where the safety of a party, witness or other individual may be in jeopardy if the material is not placed under seal.

(c) Deliberations of the Court are confidential, not part of the record and are not subject to reproduction.

803.33. Relief from a Judgment or Order; Harmless Error

803.33-1. *Corrections Based on Clerical Mistakes; Oversights and Omissions.* The Court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The Court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the Court of Appeals and while it is pending, such a mistake may be corrected only with the Court of Appeals' leave.

803.33-2. *Grounds for Relief from a Final Judgment, Order, or Proceeding.* On motion and just terms, the Court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(a) Mistake, inadvertence, surprise, or excusable neglect;

(b) Newly discovered evidence that, with reasonable diligence, could not have been discovered;

(c) Fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(d) The judgment is void;

(e) The judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(f) Any other reason that justifies relief.

803.33-3. *Timing and Effect of the Motion.*

(a) *Timing.* A motion under Rule 803.33-2 shall be made within a reasonable time—and for reasons (a), (b), and (c) no more than one (1) year after the entry of the judgment or order or the date of the proceeding.

(b) *Effect on Finality.* The motion shall not affect the judgment's finality or suspend its operation.

803.33-4. *Other Powers to Grant Relief.* This Rule shall not limit the Court's power to:

(a) Entertain an independent action to relieve a party from a judgment, order, or proceeding;

(b) Grant relief to a defendant who was not personally notified of the action; or

(c) Set aside a judgment for fraud on the Court.

803.33-5. *Harmless Error.* Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the Court or a party—is grounds for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order.

803.34. Stay of Proceedings to Enforce a Judgment

803.34-1. *Automatic Stay; Exceptions for Injunctions.* Except as stated in this Rule, no execution

may issue on a judgment, nor may proceedings be taken to enforce it, until fourteen (14) days have passed after its entry. But unless the Court orders otherwise, interlocutory or final judgments in an action for an injunction are not stayed after being entered, even if an appeal is taken.

803.34-2. *Stay Pending the Disposition of a Motion.* On appropriate terms for the opposing party's security, the Court may stay the execution of a judgment—or any proceedings to enforce it—pending disposition of any of the following motions:

- (a) For judgment as a matter of law;
- (b) To amend the findings or for additional findings;
- (c) For a new trial or to alter or amend a judgment; or
- (d) For relief from a judgment or order.

803.34-3. *Injunction Pending an Appeal.* While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the Court may suspend, modify, restore, or grant an injunction on terms that secure the opposing party's rights.

803.34-4. *Court of Appeals' Power Not Limited.* This Rule shall not limit the power of the Court of Appeals or one (1) of its Judges:

- (a) To stay proceedings—or suspend, modify, restore, or grant an injunction—while an appeal is pending; or
- (b) To issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

803.34-5. *Stay with Multiple Claims or Parties.* The Court may stay the enforcement of a final judgment under Rule 803.28-2(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

803.34-6. *Stay in Favor of the Tribe, or Agency Thereof.* When an appeal is taken by the Tribe, or an officer or agency of the Tribe, and the execution or enforcement of the judgment is stayed; no bond, obligation, or other security shall be required.

803.35 Injunctions and Restraining Orders

803.35-1 Preliminary Injunction.

- (a) *Notice.* The Court may issue a preliminary injunction only on notice to the adverse party.
- (b) *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the Court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.
- (c) *Expediting the Preliminary-Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction shall be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order shall proceed with the motion; if the party does not, the Court shall dissolve the order.

803.35-2. Temporary Restraining Order.

- (a) *Issuing Without Notice.* The Court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney or advocate only if:
 - (1) Specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(2) The movant's attorney or advocate certifies in writing any efforts made to give notice and the reasons why it should not be required to give notice.

(b) *Contents; Expiration.* Every temporary restraining order issued without notice shall state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—not to exceed fourteen (14) days—that the Court sets, unless before that time the Court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension shall be entered in the record.

(d) *Motion to Dissolve.* On two (2) days' notice to the party who obtained the order without notice—or on shorter notice set by the Court—the adverse party may appear and move to dissolve or modify the order. The Court shall then hear and decide the motion as promptly as justice requires.

803.35-3. *Security.* The Court may issue a preliminary injunction or a temporary restraining order only if the movant gives security, unless the movant is the Tribe, or an officer or agency of the Tribe. Security shall be in an amount that the Court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.

803.35-4. *Contents and Scope of Every Injunction and Restraining Order.*

(a) *Contents.* Every order granting an injunction and every restraining order shall:

(1) State the reasons why it issued;

(2) State its terms specifically; and

(3) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(b) *Persons Bound.* The order binds only the following who receive actual notice of it by personal service or otherwise:

(1) The parties;

(2) The parties' officers, agents, servants, employees, and attorneys or advocate; and

(3) Other persons who are in active concert or participation with anyone described in Rule 803.35-4(b)(1) or (2).

803.36. Behavior, Disability, Disqualification of Judges

803.36-1. *Judicial Code of Conduct.* All Judges are subject to the Rules and standards of the Oneida Tribal Judiciary Canons of Judicial Conduct as specified in that document.

803.36-2. *Disability and Disqualification.* Rule 150.12 of the Judiciary law shall govern the reprimand, suspension and/or removal of a Judge.

803.37. Guardian Ad Litem

803.37-1. This section shall govern the appointment, conduct, duties and powers of guardian's ad litem where it is appropriate and authorized under Tribal Law. This section, 803.37, shall apply in every situation where a guardian ad litem is necessary, except where other Tribal Law is more specific regarding guardians ad litem, then those laws shall supersede.

(a) A guardian ad litem shall be an attorney or trained advocate. Before being appointed as guardian ad litem, advocates shall demonstrate an understanding of the role of the guardian ad litem. Such understanding may be demonstrated by passing an examination administered by the Judiciary or by an interview conducted by the Chief Judge, Family Court Judge or such other means determined by the Judiciary.

(b) *Represent Best Interests.* A guardian ad litem shall represent the best interest of the

person for whom he or she is appointed. Representation of best interests may be inconsistent with the wishes of the person whose interest the guardian ad litem represents. The guardian ad litem shall not advocate on behalf of or advise any party so as to create in the mind of a reasonable person the appearance of representing that party as an attorney or an advocate.

(c) *Maintain Independence.* A guardian ad litem shall maintain independence, objectivity and the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom.

(d) *Professional Conduct.* A guardian ad litem shall act in a manner consistent with the Judge's obligations under Rule 1.7 of the Oneida Tribal Judiciary Canons of Judicial Conduct.

(e) *Avoid Conflicts of Interest.* No person who is an interested party in a proceeding, appears as an attorney or advocate in a proceeding on behalf of any party, or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding. A guardian ad litem shall:

(1) Avoid any actual or apparent conflict of interest or impropriety in the performance of guardian ad litem responsibilities.

(2) Avoid self-dealing or association from which a guardian ad litem might directly or indirectly benefit, other than for compensation as guardian ad litem.

(3) Take action immediately to resolve any potential conflict or impropriety and advise the Court and the parties of action taken, resign from the matter, or seek Court direction as may be necessary to resolve the conflict or impropriety.

(4) Not accept or maintain appointment if the performance of the duties of guardian ad litem may be materially limited by the guardian's ad litem responsibilities to another client or a third person, or by the guardian's ad litem own interests.

(f) *Treat parties with respect.* A guardian ad litem is an officer of the Court and as such shall at all times treat the parties with respect, courtesy, fairness and good faith.

(g) *Become informed about case.* A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. A guardian ad litem shall examine material information and sources of information, taking into account the positions of the parties.

(h) *Make requests for evaluations to Court.* A guardian ad litem shall not require any evaluations or tests of any person except as required by Tribal Law or Court order issued following notice and opportunity to be heard.

(i) *Timely inform the Court of relevant information.* A guardian ad litem shall file a written report with the Court and the parties as required by law or Court order, or in any event not later than five (5) business days prior to a hearing for which a report is required. The report shall be accompanied by a written list of documents considered or called to the attention of the guardian ad litem and persons interviewed during the course of the investigation.

(j) *Limit duties to those ordered by Court.* A guardian ad litem shall comply with the Court's instructions as set out in the order appointing a guardian ad litem, and shall not provide or require services beyond the scope of the Court's instruction unless by motion and on adequate notice to the parties, a guardian ad litem obtains additional instruction, clarification or expansion of the scope of such appointment.

(1) A guardian ad litem shall not be called as a witness in any proceeding or hearing in which he/she is a guardian ad litem, except where, with the Court's

1996 permission, clarification is requested regarding the guardian ad litem's report. In
1997 such case, testimony shall be restricted to that which is needed to clarify such
1998 report.

1999 (k) *Inform individuals about role in case.* A guardian ad litem shall identify him or
2000 herself as a guardian ad litem when contacting individuals in the course of a particular
2001 case and inform individuals contacted in a particular case about the role of a guardian ad
2002 litem in the case at the earliest practicable time. A guardian ad litem shall advise
2003 information sources that the documents and information obtained may become part of
2004 Court proceedings.

2005 (l) *Appear at hearings.* The guardian ad litem shall be given notice of all hearings and
2006 proceedings. A guardian ad litem shall appear at any hearing for which the duties of a
2007 guardian ad litem or any issues substantially within a guardian ad litem's duties and
2008 scope of appointment are to be addressed.

2009 (m) *Ex parte communication.* A guardian ad litem shall not have ex parte
2010 communications concerning the case with the Judge(s) involved in the matter except as
2011 permitted by Court Rule or by Tribal Law.

2012 (n) *Maintain privacy of parties.* As an officer of the Court, a guardian ad litem shall
2013 make no disclosures about the case or the investigation except in reports to the Court or
2014 as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall
2015 maintain the confidential nature of identifiers or addresses where there are allegations of
2016 domestic violence or risk to a party's or child's safety. The guardian ad litem may
2017 recommend that the Court seal the report or a portion of the report of the guardian ad
2018 litem to preserve the privacy, confidentiality, or safety of the parties or the person for
2019 whom the guardian ad litem was appointed. The Court may, upon application, and under
2020 such conditions as may be necessary to protect the witnesses from potential harm, order
2021 disclosure or discovery that addresses the need to challenge the truth of the information
2022 received from the confidential source.

2023 (o) *Perform duties in timely manner.* A guardian ad litem shall perform responsibilities
2024 in a prompt and timely manner, and, if necessary, request timely Court reviews and
2025 judicial intervention in writing with notice to parties or affected agencies.

2026 (p) *Maintain documentation.* A guardian ad litem shall maintain documentation to
2027 substantiate recommendations and conclusions and shall keep records of actions taken by
2028 the guardian ad litem.

2029 (q) *Keep records of time and expenses.* A guardian ad litem shall keep accurate records
2030 of the time spent, services rendered, and expenses incurred in each case and file an
2031 itemized statement and accounting with the Court and provide a copy to each party or
2032 other entity responsible for payment. The Court may make provisions for fees and
2033 expenses pursuant to Tribal Law or Court Rule in the Order Appointing Guardian ad
2034 Litem or in any subsequent order.

2035 (r) At final paternity hearings, dispositional hearings and at other times when
2036 appropriate, the guardian ad litem shall provide a written report to the Court with his or
2037 her recommendations. The recommendations shall be based upon a full and independent
2038 investigation of the facts. The report shall include:

2039 (1) The sources of information used by the guardian ad litem;

2040 (2) What home visits were done by the guardian ad litem and the results of the
2041 visits;

2042 (3) Who the guardian ad litem interviewed including parents, relatives and
2043 professionals;

- 2044 (4) Whether the guardian ad litem had contact with the child or children;
2045 (5) Relevant provisions of the law; and
2046 (6) The guardian ad litem's recommendation on the contested issues
- 2047 (s) The appointment of a guardian ad litem terminates upon the entry of the Court's final
2048 order or upon the termination of any appeal in which the guardian ad litem participates.
- 2049 (t) As an officer of the Court, a guardian ad litem has only such authority conferred by
2050 the order of appointment. A guardian ad litem shall have the following authority:
- 2051 (1) *Access to party.* Unless circumstances warrant otherwise, a guardian ad litem
2052 shall have access to the persons for whom a guardian ad litem is appointed and to
2053 all information relevant to the issues for which a guardian ad litem was appointed.
- 2054 (A) The access of a guardian ad litem to the child and all relevant
2055 information shall not be unduly restricted by any person or agency.
- 2056 (B) When the guardian ad litem seeks contact with a party who is
2057 represented by an attorney or advocate, the guardian ad litem shall
2058 notify the attorney or advocate in advance of such contact. The
2059 guardian ad litem's contact with the represented party shall be as
2060 permitted by the party's attorney or advocate, unless otherwise ordered
2061 by the Court.
- 2062 (2) *Timely receipt of case documents.* Until discharged by Court order a guardian
2063 ad litem shall be timely furnished copies of all relevant
2064 pleadings, documents, and reports by the party which served or submitted them.
- 2065 (3) *Timely notification.* A guardian ad litem shall be timely notified of all Court
2066 hearings, administrative reviews, staffing's, investigations, dispositions, and other
2067 proceedings concerning the case by the person or agency scheduling the
2068 proceeding.
- 2069 (4) *Notice of proposed agreements.* A guardian ad litem shall be given notice of,
2070 and an opportunity to indicate his or her agreement or objection to any proposed
2071 agreed order of the parties governing issues substantially related to the duties of a
2072 guardian ad litem.
- 2073 (5) *Participate in all proceedings.* A guardian ad litem shall participate in Court
2074 hearings through submission of written and supplemental oral reports and as
2075 otherwise authorized by Tribal law or Court Rule.
- 2076 (6) *Access to records.* Except as limited by law or unless good cause is shown to
2077 the Court, upon receiving a copy of the order appointing a guardian ad litem, any
2078 person or agency shall permit a guardian ad litem to inspect and copy any and all
2079 records and interview personnel relating to the proceeding for which a guardian
2080 ad litem is appointed. Examples of persons and agencies to whom this provision
2081 applies include but not limited to any hospital, school, child care provider,
2082 organization, department of social and health services, doctor, health care
2083 provider, mental health provider, chemical health program, psychologist,
2084 psychiatrist, or law enforcement agency.
- 2085 (7) *Access to Court files.* Within the scope of appointment, a guardian ad litem
2086 shall have access to all relevant Judiciary files. Access to sealed or confidential
2087 files shall be by separate order. A guardian ad litem's report shall inform the
2088 Court and parties if the report contains information from sealed or confidential
2089 files. The clerk of Court shall provide certified copies of the order of appointment
2090 to a guardian ad litem upon request and without charge.
- 2091 (u) *Rights and powers.* In every case in which a guardian ad litem is appointed, a

guardian ad litem shall have the rights and powers set forth below. These rights and powers are subject to all applicable Tribal laws and Court Rules.

(1) *File documents and respond to discovery.* A guardian ad litem shall have the right to file pleadings, motions, notices memoranda, briefs, and other documents, and may, subject to the Trial Court's discretion engage in and respond to discovery.

(2) *Note motions and request hearings.* A guardian ad litem shall have the right to make motions and request hearings before the Court as appropriate to the best interests of the person(s) for whom a guardian ad litem was appointed.

(3) *Introduce exhibits, examine witnesses, and appeal.* A guardian ad litem shall have the right, subject to the Court's discretion, to introduce exhibits, subpoena witnesses, and conduct direct and cross examination of witnesses.

(4) *Oral argument and submission of reports.* A guardian ad litem shall have the right to fully participate in the proceedings through submission of written reports, and, may with the consent of the Court present oral argument.

(v) *Additional rights and powers in other cases.* For good cause shown, a guardian ad litem may petition the Court for additional authority.

803.38. Hearing Procedure

803.38-1. *General Procedure.* The Court shall follow the procedures contained below for all hearings and trials, but may in its discretion shorten or eliminate procedural steps that are unnecessary for a particular hearing which may not be complex enough to warrant every step contained below.

(a) *Hearing is called to Order.*

(1) The full name of the Court is stated.

(2) The name of the presiding Judge is stated.

(3) A statement of authority and jurisdiction is made, making reference to General Tribal Council Resolution 01-07-13-Band Judiciary Law, Chapter 150 of the Oneida Code of Laws or, if in Family Court, Family Court Law, Chapter 151 of the Oneida Code of Laws.

(4) The docket number of the civil case and the names of all parties are stated for the record. Advocates for parties shall state their name for the record.

(b) *Pending Motions.* All pending motions are resolved prior to the commencement of the full hearing.

(1) Motions filed less than fourteen (14) days prior to the hearing shall only be considered and decided in accordance with Rule 803.7-5(d).

(c) *Stipulations; Additional Documents.* All stipulations or matters officially noted which are known to the parties or Judge prior to the hearing shall be entered into the record.

(1) Either party with additional documents to submit for the Court's review which was not submitted two (2) days prior to the hearing may attempt to submit these documents at this time.

(2) A party attempting to submit additional documents shall have a copy for each Judge and the opposing party and shall show good cause as to why the documents were not submitted prior to the hearing.

(3) The Court may accept or deny the submission of documents immediately, or postpone a decision as to the reasonableness for the untimely submission until the close of the hearing.

2140 803.38-2. *Order of Presentation.* The Parties shall proceed in this order:

- 2141 (a) Parties' Opening Statements;
2142 (1) Plaintiff's opening statement.
2143 (2) Defendant's opening Statement.
2144 (b) The plaintiff's case;
2145 (c) The defendant's case;
2146 (d) Plaintiff rebuttal;
2147 (e) Defendant rebuttal;
2148 (f) Plaintiff closing statement;
2149 (g) Defendant closing statement.

2150
2151 **803.39. Appeals**

2152 803.39-1. *Where to Appeal.* All requests for an appeal from a decision of any lower hearing
2153 body or Court shall be heard by the Court of Appeals.

2154 803.39-2. *Appellate Procedure.* Upon commencement of the appellate action, parties shall be
2155 required to follow the Court of Appeals' Rules of Procedure, Chapter 154 of the Oneida Code of
2156 Laws.

2157
2158 *End.*

2159 Adopted BC-04-25-14-A

2160 Emergency Amended BC- - - -

Title 8. Judiciary - Chapter 803

ONEIDA JUDICIARY RULES OF CIVIL PROCEDURE

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803.1. Purpose and Policy

803.1-1. The purpose of this Law is to govern all civil actions that fall under the jurisdiction of the Oneida Tribe of Indians of Wisconsin.

803.1-2. It is the policy of the Tribe that there should be a consistent set of rules governing the process for civil claims, in order to ensure equal and fair treatment to all persons who come before the Tribal Courts to have their disputes resolved.

803.2. Adoption; Amendment; Repeal

803.2-1. This Law is adopted by the Oneida Business Committee by resolution BC-04-25-14-A and emergency amended by BC-__-__-__-__.

803.2-2. This Law may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

803.2-3. 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.

803.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control, except where the specific laws that fall under this Court's jurisdiction provide for more specific rules of procedure, those laws shall supersede.

803.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

803.3 Definitions

803.3-1. The definitions below shall govern the words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Advocate” shall mean an Oneida non-attorney advocate as provided by law and other advocate who is admitted to practice law and is presented to the Court as the representative or advisor to a party.
- (b) “Affidavit” shall mean a written statement voluntarily made under an oath or affirmation administered by a person authorized to do so by law.
- (c) “Affidavit of service” shall mean a document signed under oath or affirmation by the server certifying service which sets out the time, date and place that the party was served.
- (d) “Answer” shall mean a formal written statement addressing the dispute on the merits and presents any defenses and counterclaims.
- (e) “Court of Appeals” shall mean the Court of Appeals of the Judiciary.
- (f) “Attorney” shall mean a person trained and licensed to represent another person in Court, to prepare documents and to give advice or counsel on matters of law.
- (g) “Attorney’s fees” shall mean compensation for legal services performed by an attorney or advocate for a client, in or out of Court.
- (h) “Clerk” shall mean the clerk of the Trial Court including, when appropriate, the Family Court clerk.
- (i) “Complaint” shall mean the initial pleading setting out the case or cause of action on which relief is sought by the plaintiff.
- (j) “Counterclaim” shall mean a claim set up and urged by the defendant in opposition to or reduction of the claim presented by the plaintiff.
- (k) “Court” shall mean the Trial Court of the Oneida Judiciary. All references to “Court” shall also apply to the Family Court unless specified otherwise.
- (l) “Crossclaim” shall mean a claim that is made by a party in a suit that is in opposition to a claim already made.
- (m) “Day” or “days” shall mean calendar days, except where otherwise specified.
- (n) “Defendant” shall mean the party, including a respondent in the Family Court, against whom relief or recovery is sought in an action or suit. All references to “defendant” apply to “respondent.”
- (o) “Deposition” shall mean the taking and recording of testimony of a witness under oath before a Court reporter in a place away from the courtroom before trial.
- (p) “Discovery” shall mean the entire efforts to obtain information before trial through demands for production of documents, depositions, interrogatories, requests for admissions, examination of the scene and the petitions and motions employed to enforce discovery rights.
- (q) “Electronic” shall mean an electronic communication system, including, but is not limited to E-mail, used for filing papers with the Court or serving papers on any other party.
- (r) “Ex Parte” shall mean any contact with the Judge regarding a pending case where the opposing party has not received notice, is not present, and has not consented to the communication.
- (s) “Excusable neglect” shall mean a legitimate excuse for the failure to take some proper step at the proper time. The failure to act shall have been the act of a reasonably prudent person under the same circumstances; however, it shall not include situations brought about by the moving party’s own carelessness or inaction.
- (t) “Family Court” shall mean the Family Court pursuant to the Family Court Law, Chapter 151 of the Oneida Code of Laws. All references to “Court” shall also apply to the Family Court unless specified otherwise.

- (u) “Good cause” shall mean a substantial reason or legal justification for failing to appear, to act, or respond to an action.
- (v) “Interlocutory injunction” shall mean a Court order, made during the trial, to compel or prevent a party from doing certain acts pending the final determination of the case.
- (w) “Interrogatory” shall mean a set of written questions to a party to a lawsuit asked by the opposing party as part of the pre-trial discovery process.
- (x) “Judge” shall mean the person presiding over a case to hear and decide legal matters.
- (y) “Judgment” shall mean a determination of a Court of law including a decree and any order from which an appeal lies. The terms decision, opinion, judgment and order are generally used similarly throughout this Law.
- (z) “Judiciary” shall mean the judicial system that was established by Oneida General Tribal Council resolution GTC #1-07-13-B to administer the judicial authorities and responsibilities of the Tribe.
- (aa) “Motion” shall mean an application to the Court for any order, judgment or other form of relief requested separate from the original complaint.
- (bb) “Notice” shall mean a legal notification in a written format or through a formal announcement with proof of delivery to the recipient making the recipient aware of a legal process affecting their rights, obligations or duties.
- (cc) “Order” shall mean a decision by the Court or Judge, not included in a judgment, which determines some point or directs some step in the proceedings.
- (dd) “Peacemaker” shall mean an individual appointed by the parties or the Court who works with parties in a Court matter to attempt to resolve a dispute in a peaceful manner and in accordance with the customs of the Tribe.
- (ee) “Plaintiff” shall mean the party, including a petitioner initiating an action in the Family Court, who sues in a civil action. All references to “plaintiff” apply to “petitioner.”
- (ff) “Pleading” shall mean the formal allegations by the parties of their respective claims and defenses, for the judgment of the Court.
- (gg) “Proof of service” shall mean proof that a legal document has been delivered and accepted by the party it is intended for by means of filing a copy of the return receipt when certified mail is utilized or by an affidavit of service.
- (hh) “Punitive damages” shall mean monetary compensation awarded to an injured party that goes beyond that which is necessary to compensate the individual for losses and that is intended to punish the wrongdoer.
- (ii) “Purge” shall mean that a person or party has done what the Court required and is no longer in contempt of Court.
- (jj) “Reservation” shall mean all land within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (kk) “Service” shall mean the delivery of a legal document that notifies the recipient of the commencement of a legal action or proceeding in which he or she is involved and is thereby advised or warned of some action or step which he or she is commanded to take or to forbear.
- (ll) “Subject-matter jurisdiction” shall mean that the Court has the authority to hear the type of case or controversy in its Court.
- (mm) “Subpoena” shall mean a formal document that orders a named individual to appear before the Court at a fixed time to give testimony and/or produce documents.
- (nn) “Summary judgment” shall mean a pre-trial Court order ruling that there are no

- disputed material issues of fact and that the movant is entitled to judgment as a matter of law without trial.
- (oo) “Summons” shall mean an order notifying a defendant to appear in person before the Court.
- (pp) “Trial Court” shall mean a Court of the Judiciary where evidence and testimony are first introduced, received, and considered. The Court of Appeals shall not be included in this definition.
- (qq) “Tribal Holiday” shall mean any holiday listed in the Tribe’s Human Resources Department’s published holiday observance schedule or any day designated by the Oneida Business Committee or General Tribal Council as a Tribal Holiday.
- (rr) “Tribal law” shall mean an adopted Tribal code, act, statute or ordinance.
- (ss) “Tribe” or “Tribal” shall mean the Oneida Tribe of Indians of Wisconsin.
- (tt) “Without prejudice” shall mean that none of the rights or privileges of the individual involved are considered to be lost or waived. The parties are free to litigate the matter in a subsequent action, as though the dismissed action had not been started.

803.4. General Provisions

803.4-1. *Forms of Action.* There shall be one (1) form of action, known as a “civil action”.

803.4-2. *Immunity Not Waived.* No section, rule or part thereof, of this Law shall be construed in any way to waive the sovereign immunity of the Tribe or the judicial immunity of the Judges within the Judiciary.

803.4-3. *Other Rules of Procedure Used.* All matters and proceedings not specifically set forth herein shall be handled in accordance with reasonable justice, as determined by the Judiciary. Where this Law is ambiguous or does not address a situation, the Federal Rules of Civil Procedure or Section 801 of the Wisconsin Statutes may be used as a guide. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in Tribal law unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

803.4-4. At every stage of the proceeding, the Court may disregard any technical error or defect in a failure to comply with this Law as long as the error or noncompliance does not affect the substantive rights of the parties; particularly those not represented by an attorney.

803.4-5. All communications, service, etc. shall be directed to a party’s attorney or advocate, if represented by an attorney or advocate.

803.4-6. *Application of this Law.* This Law shall be followed by the Court, except where other Court rules are more specific, then those laws shall supersede. This Law shall apply to proceedings regarding employee grievances, except where the Nation’s Personnel Policies and Procedures are more specific, then those shall supersede. This Law shall not apply to the Mediation or Peacekeeping divisions of the Trial Court.

803.4-7. *Jurisdiction.* Jurisdiction shall be established as provided in the Judiciary, Chapter 150 of the Oneida Code of Laws.

803.4-8. *Standard of Proof.* All matters to be decided by the Court shall be proven by a preponderance of the evidence, unless specified otherwise.

803.5. Commencement of Action; Summons; Service of Process; Filing

803.5-1. *Complaint.* A civil action shall be commenced upon the filing of a complaint and payment of a filing fee or other fee where specified by law or Court Rule.

- (a) *Contents.* A complaint shall include the following:

- (1) The name of the Court;

- (2) The full name and address of each plaintiff;
- (3) The full name and address of each defendant;
- (4) Why each defendant is being sued;
- (5) Facts supporting each claim;
- (6) Why this Court has jurisdiction;
- (7) Specifically what relief is sought from each defendant; and
- (8) A summons.

803.5-2. *Summons.* A complaint shall include a summons.

(a) *Contents.* A summons shall:

- (1) Name the Court and the parties;
- (2) Be directed to defendant;
- (3) State the name and address of the plaintiff's attorney or advocate, or if unrepresented, of the plaintiff;
- (4) State the date and time to appear before the Court;
- (5) Notify the defendant that a failure to appear and defend may result in a default judgment against the defendant for the relief demanded in the complaint; and
- (6) Be signed by the clerk, and the plaintiff or plaintiff's attorney or advocate.

(b) *Amendments.* The Court may permit a summons to be amended within ten (10) days of filing such summons.

(c) *Issuance.* At the time of filing the complaint, the plaintiff shall present a summons to the clerk for signature. If the summons is properly completed, the clerk shall sign and issue it to the plaintiff for service on the defendant.

803.5-3. *Service.* Within thirty (30) days after filing the summons and complaint with the Court, the plaintiff shall serve the summons and complaint upon the defendant in accordance with Rule 803.5-6. If the Tribe, or the officers, committees, commissions, boards, or any other department or division of the Tribe is a party, the plaintiff shall also serve notice to the Tribe's Secretary's Office within thirty (30) days.

(a) An additional thirty (30) days to serve the defendant may be requested and shall be in writing. The request may be granted by the Court upon a showing of good cause. The granting of this request is within the discretion of the Court.

(b) Proof of service shall be delivered, by the plaintiff, to the Court within ten (10) days of service upon the defendant. Proof of service shall be in accordance with Rule 803.5-6.

(c) If proof of service is not completed and/or delivered to the Court within thirty (30) days, or sixty (60) days if an extension is granted, then the Court shall, after notice to the plaintiff, dismiss the matter without a hearing. Such dismissal based on a failure to timely serve shall be without prejudice.

803.5-4. *When Service Required.* Unless this Law or other Tribal Law provides otherwise, the filing party shall serve each of the following papers on every party:

- (a) An order that specifically states that service is required;
- (b) A pleading filed after the original complaint including, but not limited to: counterclaims, crossclaims, and third-party claims;
- (c) A discovery paper required to be served on a party, unless the Court orders otherwise;
- (d) A written motion; and
- (e) A written notice, appearance, demand, or offer of judgment or any similar paper.

803.5-5. *If a Party Fails to Appear.* No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party shall be served on that party according to this Law.

803.5-6. *Effective Service.* Excluding the complaint, summons and answer, a party may serve any other papers by electronic means if the party being served consents in writing to service by electronic means. Such consent shall include the electronic communication system, including the address or number, in which to send such papers. The Consent shall be filed with the Court. Otherwise, service shall be as follows: When possible, service shall be done by personal service as described below. If personal service is not possible, then by mail service. If mail service is not possible, then upon a showing of due diligence to make personal service and service by mail, service by publication may be used as a last resort.

(a) *Personal Service.* Personal service shall consist of delivering to the party a copy of the paper being served by a law enforcement officer or other person, who is not a party to the action and who is at least eighteen (18) years of age. An affidavit of service shall be filed with the Court as proof of service. Personal service shall be completed by hand delivering the required papers to any of the following:

- (1) The party named in the action or proceeding;
- (2) An individual residing at the party's home or usual place of abode, so long as the person signing for delivery is at least eighteen (18) years of age;
- (3) An officer, manager, agent, or partner of a non-individual party; or
- (4) An attorney or advocate of the party, if represented.

(b) *Mail Service.* Service of all papers made by mail from any party shall be by certified mail, with return receipt. However, the Court may provide service by first class mail. The certified mail return receipt shall be filed with the Court as proof of service. The return receipt shall be signed by:

- (1) The party named in the action or proceeding;
- (2) an individual residing at the party's home or usual place of abode, so long as the person signing for delivery is at least eighteen (18) years of age;
- (3) An officer, manager, agent, or partner of a non-individual party; or
- (4) An attorney or advocate of the party, if represented.

(c) *Service by Publication.* When the other party's whereabouts are unknown and cannot be found after diligent effort, service may be completed by publication. The publication shall be in the Tribal newspaper or in a newspaper of general circulation in the area of the party's last known address, and shall be designated as "Legal Notice." This notice shall be published at least two (2) times within a thirty (30) day period. The two (2) notices shall be published at least ten (10) days before the hearing. Copies of the two (2) published notices and an affidavit of service stating the facts surrounding the failure of personal and mail service shall be filed with the Court as proof of service.

- (1) The Court may, on its own, order different time limits for service by publication.

(d) *Service Refused.* If a party being personally served refuses service, service shall be deemed completed if the person serving the papers does all of the following:

- (1) Informs the party of the purpose of the service;
- (2) Offers copies of the papers served;
- (3) Leaves a copy of the papers where convenient; and
- (4) Notes upon a copy of the papers to be filed with the Court or in an affidavit of service, the time, date, and place of the attempted service, that refusal occurred and where the papers were left.

(e) *Admission of Service.* A plaintiff may request any defendant to admit service of a complaint and a summons. The request shall:

- (1) Be in writing;

(2) Name the defendant;

(3) Name the Court;

(4) Include a copy of the complaint and summons, two (2) admission of service forms clearly identifying the requirement that the signature by the defendant must be notarized, and a prepaid means for returning one (1) signed admission of service form;

(5) Inform the defendant of the consequences of admitting and not admitting service;

(6) State the date the request is sent;

(7) Give the party a reasonable time of at least thirty (30) days after the request was sent to return the admission of service; and

(8) Be delivered in person or by certified mail.

(f) *Consequences of Admission of Service.*

(1) When the plaintiff files an admission of service signed by the defendant, proof of service as otherwise required in this section shall not be required and this Law shall apply as if a complaint and summons had been served at the time of filing the admission of service.

(2) If a defendant timely returns an admission of service, the defendant shall have sixty (60) days, from the time the request was sent, to serve an answer to the complaint.

(3) Signing and admission of service of a summons and complaint shall not waive any objection to personal jurisdiction or to venue.

(g) *Admission of Service other Papers.* A party may request an opposing party to admit service of any other papers required to be served. Such request shall follow the requirements of this section for admitting service except that under (e)(4) above, a copy of the papers subject to the request shall be included and not a copy of the complaint or summons.

803.5-7. *Filing.* Any paper after the complaint that is required to be served, including proof of service, shall be filed with the Court within a reasonable time after service.

(a) *How Filing is Made.* A paper is filed by any of the following:

(1) Delivering it to the clerk.

(2) Certified mail.

(A) If a filing is made by certified mail with return receipt but is untimely and the filing party can show that the mailing occurred at least three (3) days prior to the due date, the Court may accept the filing as timely.

(3) *Electronic Filing.* A party may file papers electronically to the electronic address or number, designated for such filings, of the Clerk. A paper filed by electronic means shall constitute a written paper for the purpose of applying this Law. Upon receipt by the Clerk, any paper filed electronically shall be deemed filed, signed and verified by the filing party. A party filing electronically shall have three (3) business days from the day of filing to pay any filing fees associated with such filings.

(b) *Acceptance by the Clerk.* The clerk may refuse to accept any documents submitted for filing where other requirements of this Law or other Tribal laws have not been met including, but not limited to, lack of filing fee or unsigned pleadings. Filing parties shall be responsible for verifying acceptance of their filings with the clerk.

803.6. Computing and Extending Time

803.6-1. *Computing Time.* The following Rules apply in computing any time period specified in this Law.

(a) *Time Period Stated in Days.* When a time period is stated in days:

(1) The day that the period begins shall not be counted and the last day of the period shall be counted;

(A) In computing calendar days, time computation shall include Saturdays, Sundays and Tribal holidays

(B) In computing business days, Saturdays, Sundays or Tribal holidays shall not be counted.; and

(2) If the last day of the period falls on a Saturday, Sunday or Tribal holiday, the period shall be extended to the next day that is not a Saturday, Sunday or Tribal holiday.

(3) If the Clerks' office is inaccessible during part or all of the last day for filing, then the time for filing shall be extended to the first accessible day that is not a Saturday, Sunday or Tribal Holiday.

(b) "*Last Day.*" Unless a different time is set by a Tribal Law or Court order, the last day ends for filing papers with the Judiciary at the close of business on the due date.

803.6-2. *Extending Time.*

(a) When an act may or shall be done within a specified time, the Judge presiding over the matter may, for good cause, extend time:

(1) On its own motion or the motion of any party, with or without notice, if made before the original time or its extension expires; or

(2) On motion made after the time has expired if the party failed to act because of excusable neglect.

(b) *Extension of Time for Mail Service:*

(1) Whenever a party may or shall act within a specified time after service and service is made by mail, three (3) days shall be added after the period would otherwise expire.

(c) Except where otherwise specified by Law, extensions shall not be granted ex parte.

803.7. Pleadings; Form of Pleadings, Motions and Other Papers; Procedure

803.7-1. *General Rules for Pleading.* All pleadings shall be liberally construed by the Court to preserve and promote justice for all parties.

803.7-2. *Pleadings.* Only these pleadings are allowed:

(a) A complaint;

(b) An answer to a complaint;

(c) An answer to a counterclaim designated as a counter claim;

(d) An answer to a crossclaim;

(e) A third-party complaint;

(f) An answer to a third-party complaint; and

(g) If the Court orders one, a reply to an answer.

803.7-3. *Form of Pleadings.* The Rules governing captions and other matters of form in pleadings apply to motions and other papers.

(a) *Claim for Relief.* A pleading that states a claim for relief shall be a short, clear and plainly written statement specifying the following:

(1) The basis upon which the Court has both subject matter jurisdiction over the matter, and personal jurisdiction over the parties;

(2) The events upon which the claims are based and the grounds upon which

relief is sought; and

- (3) A demand for a judgment granting the relief that is sought and which the plaintiff considers to be just. Multiple forms of relief may be sought in the alternative or hypothetical form and need not be consistent.

(b) *Defenses; Admissions and Denials.*

- (1) In responding to a pleading, a party shall:

(A) State in short and plain terms its defenses to each claim asserted against it; and

(B) Admit or deny the allegations asserted against it by an opposing party.

- (2) *Denials.* A denial shall fairly respond to the substance of the allegation.

- (3) *General and Specific Denials.* A party that intends in good faith to deny all the allegations of a pleading, including the jurisdictional grounds, may do so by a general denial. A party that does not intend to deny all the allegations shall either specifically deny designated allegations or generally deny all except those specifically admitted.

- (4) *Denying Part of an Allegation.* A party that intends in good faith to deny only part of an allegation shall admit the part that is true and deny the rest.

- (5) *Lacking Knowledge or Information.* A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation shall so state, and the statement has the effect of a denial.

- (6) *Effect of Failing to Deny.* An allegation, other than an allegation relating to the amount of damages, is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation shall be denied or avoided.

(c) *Affirmative Defenses.* Responding to a pleading, a party shall affirmatively state any avoidance or affirmative defense, including:

- (1) accord and satisfaction;
- (2) arbitration and award;
- (3) assumption of risk;
- (4) contributory negligence;
- (5) duress;
- (6) estoppel;
- (7) failure of consideration;
- (8) fraud;
- (9) illegality;
- (10) injury by fellow servant;
- (11) laches;
- (12) license;
- (13) payment;
- (14) release;
- (15) res judicata;
- (16) statute of frauds;
- (17) statute of limitations; and
- (18) Waiver.

(d) *Mistaken Designation.* If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the Court shall, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(e) *Caption.* Every pleading shall contain a caption heading with the name of the Court,

the title of the action, the trial docket number (if known) and a designation as to what kind of pleading it is.

(1) The title of the complaint shall name all the names of the parties, mailing address, phone number and agent or other contact person, if known.

(2) The name of the first party on each side may be used in all pleadings except the initial complaint, which shall include all litigants.

(3) In the interest of judicial efficiency, the Court may amend a caption heading at any time to accurately identify the parties to the action.

(f) *Paragraphs.* All statements of the complaint and answer shall be set forth in separate numbered paragraphs which shall be limited, as close as practicable, to a single occurrence, event, circumstance or issue.

(g) *References and Exhibits.* Pleadings may adopt, by reference, any statements elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit or attachment is a part of the pleading for all purposes. References shall be clear and specific to a particular document or other piece of evidence.

(h) *Paper.* Where possible, all papers filed with the Court shall be on letter sized paper (8.5 x 11), typed with 1.5 line spacing, and have at least a one inch (1") margin on all sides.

(i) *Copies Submitted.* Parties filing papers with the Court shall include one original and one (1) copy for use by the Court.

(1) Parties shall serve one (1) copy of said papers to the opposing party or if represented, to opposing party's attorney or advocate.

(2) Failure to supply sufficient copies to the Court may result in a copy fee assigned to the filing party.

803.7-4. *Form of Motion.* A request for a Court order shall be made by motion. The motion shall:

(a) Be in writing unless made during a hearing or trial;

(b) State with particularity the grounds for seeking the order; and

(c) State the relief sought.

803.7-5. *Procedure.* All parties filing any motion for consideration by the Court shall serve such motion at least fourteen (14) days prior to the hearing and shall adhere to the following procedure, except where the Court determines that the application of the time limits would be impractical in an individual case:

(a) The moving party shall submit the motion to the Court, with proof of service.

(b) From the date that the motion is filed with the Court, the opposing party shall have fourteen (14) days to file with the Court and serve on any opposing party, a written response to the motion.

(c) Non-substantive procedural motions, such as a motion for extension, motion to submit additional pages, notice of representation, etc. may be granted or denied immediately by the Court and without a response from the opposing party.

(d) Motions filed with the Court less than fourteen (14) days prior to a hearing may be considered at or before the hearing, if justice so requires. An opportunity shall be given to the non-moving party to respond verbally or in writing to the motion at or before the hearing.

803.7-6. *Supporting Affidavits.* Any affidavit supporting a motion shall be served with the motion. Any opposing affidavit shall be served at least seven (7) days before the hearing, unless the Court permits service at another time.

803.8. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

803.8-1. *Signature.* Every pleading, motion or other paper shall be signed by the party or the party's attorney or advocate, if represented by an attorney or advocate. Every pleading, motion or other paper shall state the signer's address and telephone number.

(a) The Court shall strike an unsigned paper unless the omission is promptly corrected within a reasonable period of time after being called to the attorney's, advocate's or party's attention.

(b) A pleading need not be verified or accompanied by an affidavit.

803.8-2. *Representations to the Court.* By presenting to the Court a pleading, written motion, or other paper-whether by signing, filing, submitting, or later advocating it, an attorney, advocate or unrepresented party certifies that to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances that:

(a) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(b) The claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying or reversing existing law or for establishing new law;

(c) The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(d) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

803.8-3. *Sanctions.*

(a) *In General.* If, after notice and a reasonable opportunity to respond, the Court determines that Rule 803.8-2 has been violated, the Court may impose an appropriate sanction on any attorney, law firm, advocate, or party that violated the Rule or is responsible for the violation. Absent exceptional circumstances, a law firm shall be held jointly responsible for a violation committed by its partner, associate, or employee.

(b) *Motion for Sanctions.* A motion for sanctions shall be made separately from any other motion and shall describe the specific conduct that allegedly violates Rule 803.8-2. The motion shall be served under Rule 803.5-6, but it shall not be filed or be presented to the Court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within twenty-one (21) days after service or within another time the Court sets. If warranted, the Court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(c) *On the Court's Initiative.* On its own, the Court may order an attorney, law firm, advocate, or party to show cause why the representations to the Court have not violated Rule 803.8-2.

(d) *Nature of a Sanction.* A sanction imposed under this Rule shall be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into the Court; or if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(e) *Limitations on Monetary Sanctions.* The Court shall not impose a monetary sanction:

(1) Against a represented party for violating Rule 803.8-2; or

(2) On its own, unless a party failed to show cause under Rule 803.8-3(c).

(f) *Requirements for an Order.* An order imposing a sanction shall describe the sanctioned conduct and explain the basis for the sanction.

803.8-4. *Inapplicability to Discovery.* This Rule, 803.8, shall not apply to disclosures, requests, responses, objections and motions made during discovery under Rules 803.14 through 803.20.

803.9 Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidated Motions; Waiving Defenses; Pretrial Hearing

803.9-1. *Time to Serve a Responsive Pleading.*

(a) *In General.* Except as otherwise provided by this Law or other Tribal Law, the time for serving a responsive pleading is as follows:

(1) A party shall serve an answer to a complaint, counterclaim, crossclaim or third-party claim within twenty (20) days after being served with the pleading that states the complaint, counterclaim, crossclaim or third-party claim.

(2) A party shall serve a reply to an answer within twenty (20) days after being served with an order to reply, unless the order specifies a different time.

(3) A party may answer or reply orally at a hearing with the Court's permission.

(b) *Effect of a Motion.* Unless the Court sets a different time, serving a motion under this Rule alters these periods as follows:

(1) If the Court denies the motion or postpones its disposition until trial, the responsive pleading shall be served within fourteen (14) days after notice of the Court's action; or

(2) If the Court grants a motion for a more definite statement, the responsive pleading shall be served within fourteen (14) days after the more definite statement is served.

803.9-2. *How to Present Defenses.*

(a) Every defense to a claim for relief in any pleading shall be asserted in the responsive pleading if one is required, except those listed below. If a responsive pleading is not required, any defense may be asserted at hearing. A party may assert the following defenses by motion:

(1) Lack of subject-matter jurisdiction;

(2) Lack of personal jurisdiction;

(3) Improper venue;

(4) Insufficient process;

(5) Insufficient service of process;

(6) Failure to state a claim upon which relief can be granted; and

(7) Failure to join a party.

(b) A motion asserting any of these defenses shall be made before pleading if a responsive pleading is required. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one (1) or more other defenses or objections in a responsive pleading or in a motion.

803.9-3. *Motion for Judgment on the Pleadings.* Pleadings are closed when every pleading asserting a claim, counter-claim or crossclaim has been answered. After the pleadings are closed, but early enough not to delay trial, a party may move for judgment on the pleadings.

803.9-4. *Result of Presenting Matters Outside the Pleadings.* If, on a motion under Rule 803.9-2(a)(6) or 803.9-3, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment. All parties shall be given a reasonable opportunity to present all the material that is pertinent to the motion.

803.9-5. *Motion for a More Definite Statement.* A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion shall be made before filing a responsive pleading and shall point out the defects complained of and the details desired. If the Court orders a more definite statement and the order is not obeyed within fourteen (14) days after notice of the order or within the time the Court sets, the Court may strike the pleading or issue any other appropriate order.

803.9-6. *Motion to Strike.* The Court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The Court may act:

- (a) On its own; or
- (b) On motion made by a party either before responding to the pleading or, if a response is not allowed, within twenty-one (21) days after being served with the pleading.

803.9-7. *Joining Motions.*

(a) *Right to Join.* A motion under this section may be joined with any other motion allowed by this section.

(b) *Limitation on Further Motions.* Except as required in Rule 803.9-8(b) or (c), a party that makes a motion under Rule 803.9-2(a) shall not make another motion under Rule 803.9-2(a) raising a defense or objection that was available to the party but omitted from its earlier motion.

803.9-8. *Waiving and Preserving Certain Defenses.*

(a) *When Some Are Waived.* A party waives any defense listed in Rule 803.9-2(a)(2)–(5) by:

- (1) Omitting it from a motion in the circumstances described in Rule 803.9-7(b); or
- (2) Failing to either:
 - (A) Make it by motion under this Rule; or
 - (B) Include it in a responsive pleading or in an amendment allowed by Rule 803.11-1 as a matter of course.

(b) *When to Raise Others.* The following may be raised in any pleading, by motion, or at trial:

- (1) Failure to state a claim upon which relief can be granted;
- (2) Failure to join a necessary party; and/or
- (3) Failure to state a legal defense to a claim.

(c) *Lack of Subject-Matter Jurisdiction.* If the Court determines at any time that it lacks subject-matter jurisdiction, the Court shall dismiss the action.

803.9-9. *Hearing Before Trial.* Upon the motion of any party, the Court may hear and decide the following prior to trial, unless the Court orders a deferral until trial:

- (a) any defense listed in Rule 803.9-2(a), or
- (b) a motion for judgment on the pleadings.

803.10. Counterclaim; Crossclaim; Third-Party Claim;

803.10-1. *Counterclaim.*

(a) A party against whom a claim has been made may assert a claim against the opposing party if the claim:

- (1) Arises out of the same transaction or occurrence that is the subject-matter of the opposing party's claim; and
- (2) Does not require adding another party over whom the Court cannot acquire jurisdiction.

(b) *Exception.* The pleader may not assert the claim if the claim is subject to another pending action.

(c) *Relief.* A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

803.10-2. *Crossclaim.* A party against whom a claim is made may assert a claim against a co-party if the claim arises out of the same transaction or occurrence that is the subject-matter of the original action or of a counterclaim.

803.10-3. *Third-Party Claim.* A party against whom a claim is made may assert against a third-party any claim arising out of the same transaction or occurrence, alleging that the third-party is liable for part or the entire claim of the opposing party. A party asserting a third-party claim shall, by motion, obtain the Court's leave if it files the third-party claim more than fourteen (14) days after serving its original answer. If any person or entity believes it should be included in a case, it may motion the Court to be joined as a third-party.

803.11. Amended Pleadings

803.11-1. *Amendments Before Trial.* A party may amend any pleading once within ten (10) days of the original filing, unless an answer has already been filed. If an answer has been filed, any amendments may only be made with the opposing party's written consent or with the Court's permission. The Court shall freely give permission when justice so requires.

(a) Unless the Court orders otherwise, any required response to an amended pleading shall be made within the time remaining to respond to the original pleading or within fourteen (14) days after service of the amended pleading, whichever is later.

803.11-2. *Amendments During and After Trial.*

(a) *Based on an Objection at Trial.* If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the Court may permit the pleadings to be amended. The Court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the Court that the evidence would prejudice that party's action or defense on the merits. The Court may grant a continuance to enable the objecting party to provide evidence to satisfy the Court that the evidence would prejudice their action or defense on the merits.

(b) *For Issues Tried by Consent.* When an issue not raised by the pleadings is tried by the parties' express or implied consent, it shall be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform to the evidence and to raise an unpleaded issue. However, failure to amend shall not affect the outcome of that issue.

803.12. Pretrial Meeting and Filing

803.12-1. *Purposes of a Pretrial Meeting.*

(a) Upon written request of either party or the Court's own initiative, a pretrial meeting shall be scheduled directing the attorneys or advocates and any unrepresented parties to appear, for such purposes as:

- (1) Expediting disposition of the action;
- (2) Establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) Discouraging wasteful pretrial activities;
- (4) Improving the quality of the trial through more thorough preparation, including a discovery plan. A discovery plan shall state the parties' views and

proposals on:

(A) what changes should be made in the timing, form, or requirement for disclosures under Rules 803.14-2 and 803.14-5, including a statement of when initial disclosures were made or will be made;

(B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(C) any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(D) any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production—whether to ask the Court to include their agreement in an order;

(E) what changes should be made in the limitations on discovery imposed under this Law or by local rule, and what other limitations should be imposed; and

(F) any other orders that the Court should issue under Rule 803.14-6 or under Rules 803.12-1(c) and (e); and

(5) Facilitating settlement.

(A) If the parties request or agree to participate in peacemaking or mediation, the trial proceedings may be stayed up to forty-five (45) days in order for the parties to work towards reaching an acceptable solution. The Court shall appoint a peacemaker or mediator when necessary.

(B) If the parties are close to a resolution, but need more time, they may move the Court for an extension of the stay. The extension shall not exceed an additional thirty (30) days.

(b) *Parties' Responsibility.* In conferring, the parties shall consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rules 803.14-2 and 803.14-5; discuss any issues about preserving discoverable information; develop a proposed discovery plan; and prepare a pretrial statement.

(1) The attorneys or advocates of record and all unrepresented parties that have appeared in the case shall be jointly responsible for arranging the meeting, for attempting in good faith to agree on the proposed discovery plan, preparing the pretrial statement, and for submitting to the Court within fourteen (14) days after the meeting a written report outlining the plan and the pretrial statement. The Court may order the parties, advocates or attorneys to attend the meeting in person. The pretrial statement shall contain the following:

(A) The uncontested facts deemed material;

(B) The uncontested issues of fact and law as the attorneys or advocates or unrepresented parties can agree are material or applicable;

(C) A separate statement by each party of other issues of fact or law which that party believes material;

(D) A list of the witnesses intended to be used by each party during the trial, other than those intended to be used solely for impeachment. No witnesses shall be used at the trial other than those listed, except to prevent injustice; and

(E) A list of the exhibits which each party intends to use at trial, other

than those intended to be used solely for impeachment, specifying exhibits which the parties agree are admissible at trial. No exhibits shall be used during the trial other than those listed, except to prevent injustice.

(c) During pretrial meetings, the Court may take appropriate action including, but not limited to:

- (1) Any matters which will aid in the simplification, clarification, settlement or disposition of the case;
- (2) Additional or deleted procedures to be followed at the hearing;
- (3) Settlement discussions;
- (4) The necessity or desirability of amending the pleadings;
- (5) The appropriateness and timing of a summary judgment;
- (6) The control and scheduling of discovery;
- (7) The identification of witnesses and documents, the need and schedule for filing and exchanging of pretrial briefs, the dates for further pretrial meetings and trial;
- (8) The disposition of pending motions;
- (9) The need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;
- (10) Obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence; and
- (11) Facilitating in other ways the just, speedy and inexpensive disposition of the action.

(d) Unless the Court orders otherwise, one (1) pretrial meeting shall be scheduled at least twenty-one (21) days prior to a formal hearing.

(1) Subsequent pretrial meetings may be scheduled at any time before trial, provided that, at least one (1) has taken place earlier than twenty-one (21) days before a formal hearing or other time set by the Court.

(2) The Court may, in its discretion, forgo pretrial meetings under this Rule.

(e) Scheduling Order. The Court shall issue a scheduling order as soon as practicable, but in any event within the earlier of sixty (60) days after any defendant has been served with the complaint or forty-five (45) days after any defendant has appeared. The scheduling order shall limit the time to join other parties, amend the pleadings, complete discovery and file motions. A schedule may be modified only for good cause and with the Court's consent. The scheduling order may include, but is not limited to:

- (1) modifying the timing of disclosures under Rules 803.14-2 and 803.14-5;
- (2) modifying the extent of discovery;
- (3) providing for disclosure or discovery of electronically stored information;
- (4) any agreements the parties reach for asserting claims of privilege or of protection as trial preparation material after information is produced;
- (5) setting dates for pretrial meetings and for trial; and
- (6) other appropriate matters.

803.12-2. *Pretrial Filing Procedure*

(a) *Submission of Documents.* Parties shall submit all documents including, but not limited to, proposed exhibits and other evidence (or copies) that a party plans to use at trial for the Court to review not less than two (2) days prior to a scheduled hearing.

(1) Documents submitted after this time or at the time of the hearing shall only be

admitted if the Court determined that:

(A) The documentation has a direct impact upon the outcome of the hearing;

(B) Is admissible under this Law or the Rules of Evidence; and

(C) Good cause is shown as to why the submission is untimely.

803.12-3. *Pretrial Orders.* After any meeting under this Rule, the Court shall issue an order reciting the action taken. This order controls the course of the action unless the Court modifies it.

803.12-4. *Final Pretrial Meeting and Orders.* The Court may hold a final pretrial meeting to formulate a trial plan, including a plan to facilitate the admission of evidence. The meeting shall be held as close to the start of trial as is reasonable, and shall be attended by at least one (1) attorney or advocate who shall conduct the trial for each party and by any unrepresented party. The Court may modify the order issued after a final pretrial meeting only to prevent manifest injustice.

803.12-5. *Sanctions.*

(a) *In General.* On motion or on its own, the Court may issue any just orders, including those authorized by Rule 803.20-2(b)(1), if a party or its attorney or advocate:

(1) Fails to appear at a scheduling or other pretrial meeting;

(2) Is substantially unprepared to participate—or does not participate in good faith—in the meeting; or

(3) Fails to obey a scheduling or other pretrial order.

(b) *Imposing Fees and Costs.* Instead of or in addition to any other sanction, the Court shall order the party, its attorney or advocate, or all to pay the reasonable expenses—including attorney's fees—incurred because of any noncompliance with this Rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

803.13. Substitution of Parties

803.13-1. *Death of a Party.*

(a) *Substitution if the Claim Is Not Extinguished.* If a party dies and the claim is not extinguished, the Court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within ninety (90) days after service, to the Court and all other parties, of a statement noting the death, the action by or against the decedent shall be dismissed.

(b) *Continuation Among the Remaining Parties.* After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action shall not abate, but proceeds in favor of or against the remaining parties. The death shall be noted on the record.

(c) *Service.* A motion to substitute, together with a notice of hearing, shall be served on the parties. A statement noting death shall be served in the same manner.

803.13-2. *Incompetency.* If a party becomes incompetent, the Court may, on its own or on motion, permit the action to be continued by or against the party's representative.

803.13-3. *Transfer of Interest.* If an interest is transferred, the action may be continued by or against the original party unless the Court, on motion, orders the transferee to be substituted in the action or joined with the original party.

803.14. Discovery

803.14-1. *Scope.* Unless otherwise limited by Court order, the scope of discovery is as follows:

(a) Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter.

(b) For good cause, the Court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 803.14-3.

803.14-2. *Required Disclosures.* A party shall, without awaiting a discovery request, provide to the other parties:

(a) The name and, if known, the address and telephone number of each individual likely to have discoverable information along with the subjects of that information that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(b) A copy or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(c) A computation of each category of damages claimed by the disclosing party;

(d) For inspection and copying as under Rule 803.17, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(e) *Exceptions.* Required disclosures under this section may be excused, at the Courts discretion, in a Family Court case.

803.14-3. *Limitations.* On motion or on its own, the Court shall limit the frequency or extent of discovery otherwise allowed by this Law if it determines that:

(a) The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; or

(b) The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(c) The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

803.14-4. *Time for Required Disclosures.* A party shall make the required disclosures at the parties' Rule 803.12 pretrial meeting unless a different time is set by the Court.

803.14-5. *Required Pretrial Disclosures.*

(a) In addition to the disclosures required by Rule 803.14-2, a party shall provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(1) the name and, if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises;

(2) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

(3) an identification of each document or other exhibit, including summaries of other evidence—separately identifying those items the party expects to offer

and those it may offer if the need arises.

- (b) *Time for Required Pretrial Disclosures; Objections.* Unless the Court orders otherwise, these disclosures shall be made at least 30 (thirty) days before trial. Within fourteen (14) days after they are made, unless the Court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use of a deposition designated by another party under Rule 803.14-5(a)(2) and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 803.14-5(a)(3). An objection not so made—except for one under Oneida Judiciary Rules of Evidence, Rules 155.7-2 or 155.7-3—is waived unless excused by the Court for good cause.

803.14-6. *Protective Order.* A party or any person or entity from which discovery is sought may move for a protective order from the Court. The motion shall include a certification that the movant has in good faith conferred or attempted to confer with the other parties, persons or entities in an effort to resolve the issue without Court action. The Court may issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one (1) or more of the following:

- (a) Forbidding the disclosure or discovery;
- (b) Specifying terms, including time and place, for the disclosure or discovery;
- (c) Prescribing a discovery method other than the one selected by the party seeking discovery;
- (d) Forbidding inquiry into certain matters, or limiting the scope of disclosure, or discovery to certain matters;
- (e) Designating the persons who may be present while the discovery is conducted;
- (f) Requiring that a deposition be sealed and opened only on Court order;
- (g) Requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the Court directs;
- (h) Redacting sensitive documents; or
- (i) Any other order necessary to ensure discovery is conducted fairly.

803.14-7. *Supplementing Disclosures and Responses.* A party or person who has made a disclosure or who has responded to an interrogatory, request for production, or request for admission, shall supplement or correct its disclosure or response:

- (a) In a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or
- (b) As ordered by the Court.

803.14-8. *Signature Required; Effect of Signature.*

- (a) Every disclosure under Rule 803.14-2 and 803.14-5 and every discovery request, response, or objection shall be signed by at least one (1) attorney or advocate of record in the attorney's or advocate's own name—or by the party personally, if unrepresented—and shall state the signer's address and telephone number. By signing, an attorney, advocate or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry that:

- (1) With respect to a disclosure, it is complete and correct as of the time it is made; and

- (2) With respect to a discovery request, response, or objection, it is:

- (A) Consistent with this Law and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing

law, or for establishing new law;

(B) Not used for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(C) Neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(b) *Failure to Sign.* Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the Court shall strike it unless a signature is promptly supplied after the omission is called to the attorney's, advocate's or party's attention.

803.14-9. *Failure to Disclose.* If a party fails to respond or appear for discovery under this Rule, the opposing party may move for an order to compel the defaulting party to perform. The Court may award costs to the non-defaulting party.

(a) If a party fails to perform after being ordered to do so by the Court, the Court may order any sanction under Rule 803.20-2(b)(1).

803.14-10. *Information Produced.* If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party:

(a) Shall promptly return, sequester, or destroy the specified information and any copies it has;

(b) Shall not use or disclose the information until the claim is resolved;

(c) Shall take reasonable steps to retrieve the information if the party disclosed it before being notified; and

(d) May promptly present the information to the Court under seal for a determination of the claim. The producing party shall preserve the information until the claim is resolved.

803.15. Depositions

803.15-1. *Generally.* All depositions shall be taken under oath or under penalty of perjury before a person authorized to administer oaths or a person appointed by the Court to administer oaths and take testimony.

(a) *When a Deposition May Be Taken.* A party may, by oral and/or written questions, depose any person, including a party, at any time if consented to orally or in writing by such person being deposed, or during the time set during the pretrial meeting under Rule 803.12-1(a).

(b) *Notice.* A party who wants to depose a person shall give reasonable written notice to every other party. The notice shall state the time and place of the deposition and, if known, the deponent's name and address.

(1) Not less than ten (10) days' notice shall be given, if deposing an adverse party or non-party witness.

(c) *Service; Required Notice.*

(1) A party who wants to depose a person by written questions shall serve such questions on every other party.

(2) Any questions to the deponent from other parties shall be served on all parties as follows: cross-questions, within seven (7) days after being served with the notice and direct questions; redirect questions, within seven (7) days after being served with cross-questions; and recross-questions, within seven (7) days after being served with redirect questions. The Court may, for good cause, extend or shorten these times.

(d) *Producing Documents.* If a subpoena requiring production of documents is to be served on the deponent, the materials designated for production shall be listed in the notice or in an attachment.

(e) *Transcripts.* A transcript of the deposition shall be made and shall be available for use by the parties and the Court. The deposing party bears the cost of recording. Each party shall bear its own cost of obtaining transcripts.

(f) *Objections.* An objection at the time of the examination—whether to evidence, to a party’s conduct, to the manner of taking the deposition, or to any other aspect of the deposition—shall be noted on the record, but the examination shall still proceed; the testimony is taken subject to any objection. An objection shall be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege or to enforce a limitation ordered by the Court.

(g) *Duration.* Unless otherwise stipulated or ordered by the Court, a deposition shall be limited to two (2) days, with questioning occurring for up to seven (7) hours per day.

803.15-2. *Sanction.* The Court may impose an appropriate sanction—including the reasonable expenses and attorney’s fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.

803.15-3. *Motion to Terminate or Limit.*

(a) *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. If the objecting deponent or party so demands, the deposition shall be suspended for the time necessary to obtain an order.

(b) *Order.* The Court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 803.14-6. If terminated, the deposition may be resumed only by order of the Court.

803.16. Interrogatories

803.16-1. *In General.*

(a) Unless otherwise stipulated or ordered by the Court, a party may serve on any other party no more than twenty-five (25) written interrogatories. Parties shall not evade this limitation through the device of joining as “subparts” questions that seek information about separate subjects. However, a question asking about communications of a particular type shall be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each such communication. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 803.14-3. (b) An interrogatory may relate to any matter that may be inquired into under Rule 803.14-1. An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the Court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial meeting or some other time.

803.16-2. *Answers and Objections.*

(a) *Responding Party.* The interrogatories shall be answered by the party to whom they are directed.

(b) *Time to Respond.* The responding party shall serve its answers and any objections within twenty (20) days after being served with the interrogatories. A shorter or longer time may be ordered by the Court.

(c) *Answering Each Interrogatory.* Each interrogatory shall, to the extent it is not objected to, be answered separately and fully in writing under oath or penalty of perjury.

(d) *Objections.* The grounds for objecting to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the Court, for good cause, excuses the failure.

(e) *Signature.* The person who makes the answers shall sign them, and the person who objects shall sign any objections.

803.17. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

803.17-1. *In General.* A party may serve on any other party a request within the scope of Rule 803.14:

(a) To produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(1) Any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(2) Any designated tangible things.

(b) To permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party or representative may inspect, measure, survey, photograph, record, test, or sample the property or any designated object or operation thereon.

803.17-2. *Procedure.*

(a) *Contents of the Request.* The request:

(1) Shall describe with reasonable particularity each item or category of items to be inspected;

(2) Shall specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(3) May specify the form or forms in which electronically stored information is to be produced.

(b) *Responses and Objections.*

(1) *Time to Respond.* The party to whom the request is directed shall respond in writing within ten (10) days after being served. A shorter or longer time may be ordered by the Court.

(2) *Responding to Each Item.* For each item or category, the response shall either state that inspection and related activities shall be permitted as requested or state an objection to the request, including the reasons.

(3) *Objections.* An objection to part of a request shall specify the part and permit inspection of the rest.

(4) *Responding to a Request for Production of Electronically Stored Information.* The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party shall state the form or forms it intends to use.

(5) *Producing the Documents or Electronically Stored Information.* Unless otherwise stipulated or ordered by the Court, these procedures apply to producing

documents or electronically stored information:

(A) A party shall produce documents as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request;

(B) If a request does not specify a form for producing electronically stored information, a party shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(C) A party need not produce the same electronically stored information in more than one (1) form.

803.17-3. *Nonparties.* A nonparty may be compelled to produce documents and tangible things or to permit an inspection in accordance with this section.

803.18. Physical and Mental Examinations

803.18-1. *Order for an Examination.*

(a) *In General.* The Court where the action is pending may order a party who's mental or physical condition—including blood group—is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The Court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(b) *Motion and Notice; Contents of the Order.* The order:

(1) May be made only on motion for good cause and on notice to all parties and the person to be examined; and

(2) Shall, unless the Court orders otherwise, specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who shall perform it.

803.18-2. *Examiner's Report.*

(a) *Request by the Party or Person Examined.* The party who moved for the examination shall, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(b) *Contents.* The examiner's report shall be in writing and shall set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(c) *Request by the Moving Party.* After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(d) *Waiver of Privilege.* By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition.

(e) *Failure to Deliver a Report.* The Court on motion may order—on just terms—that a party deliver the report of an examination. If the report is not provided, the Court may exclude the examiner's testimony at trial.

(f) *Scope.* This section applies also to an examination made by the parties' agreement, unless the agreement states otherwise. This section shall not preclude obtaining an examiner's report or deposing an examiner under other Rules.

(g) *Exception.* The Court may, in its discretion, limit or amend the requirements under this section.

803.18-3. *Cost of Examination.* The requesting party shall be responsible for the costs of an examination, unless the Court orders otherwise.

803.19. Requests for Admission

803.19-1. *Scope and Procedure.*

(a) *Scope.* A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 803.14-1 relating to:

(1) Facts, the application of law to fact, or opinions about either; and

(2) The genuineness of any described documents.

(b) *Time to Respond; Effect of Not Responding.* A matter is admitted unless, within ten (10) days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party under oath or penalty of perjury. A shorter or longer time for responding may be ordered by the Court.

(c) *Answer.* If a matter is not admitted, the answer shall specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial shall fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer shall specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(d) *Objections.* The grounds for objecting to a request shall be stated. A party shall not object solely on the ground that the request presents a genuine issue for trial.

(e) *Motion Regarding the Sufficiency of an Answer or Objection.* The requesting party may move to determine the sufficiency of an answer or objection. Unless the Court finds an objection justified, it shall order that an answer be served. On finding that an answer does not comply with this Rule, the Court may order either that the matter is admitted or that an amended answer be served. The Court may defer its final decision until a pretrial meeting or a specified time before trial. Rule 803.20-1(e) applies to an award of expenses.

803.19-2. *Effects of an Admission, Withdrawing or Amending it.* A matter admitted under this Rule shall be conclusively established unless the Court, on motion, permits the admission to be withdrawn or amended. The Court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the Court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this Rule is not an admission for any other purpose and shall not be used against the party in any other proceeding.

803.20. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

803.20-1. *Motion for an Order Compelling Disclosure or Discovery.*

(a) *In General.* On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion shall include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without Court action.

(b) *Appropriate Court.* A motion for an order to a party or nonparty shall be made in the Court where the action is pending.

(c) *Specific Motions.*

(1) *To Compel Disclosure.* If a party fails to make a disclosure required by Rule 803.14-2 or 803.14-5, any other party may move to compel disclosure and for appropriate sanctions.

(2) *To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(A) A deponent fails to answer a question asked under Rule 803.15;

(B) A party fails to answer an interrogatory submitted under Rule 803.16; or

(C) A party fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 803.17.

(3) *Related to a Deposition.* When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(d) *Evasive or Incomplete Disclosure, Answer, or Response.* For purposes of this section, an evasive or incomplete disclosure, answer, or response shall be treated as a failure to disclose, answer, or respond.

(e) *Payment of Expenses; Protective Orders.*

(1) *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* If the motion is granted, or if the disclosure or requested discovery is provided after the motion was filed, the Court shall, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party, advocate or attorney advising that conduct, or all to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. Provided that the Court shall not order this payment if:

(A) The movant filed the motion before attempting in good faith to obtain the disclosure or discovery without Court action;

(B) The opposing party's nondisclosure, response, or objection was substantially justified; or

(C) Other circumstances make an award of expenses unjust.

(2) *If the Motion Is Denied.* If the motion is denied, the Court may issue any protective order authorized under Rule 803.14-6 and shall, after giving an opportunity to be heard, require the movant, the attorney or advocate filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the Court shall not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(3) *If the Motion Is Granted in Part and Denied in Part.* If the motion is granted in part and denied in part, the Court may issue any protective order authorized under Rule 803.14-6 and may, after giving an opportunity to be heard, apportion the reasonable expenses, including attorney's fees, for the motion.

803.20-2. *Failure to Comply with a Court Order.*

(a) *Sanctions.* If the Court orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of Court.

(b) *Sanctions by the Court.*

(1) *For Not Obeying a Discovery Order.* If a party fails to obey an order to

provide or permit discovery, the Court may issue further just orders. They may include the following:

- (A) Directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (B) Prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (C) Striking pleadings in whole or in part;
- (D) Staying further proceedings until the order is obeyed;
- (E) Dismissing the action or proceeding in whole or in part;
- (F) Rendering a default judgment against the disobedient party; or
- (G) Treating as contempt of Court the failure to obey any order, except an order to submit to a physical or mental examination.

(2) *For Not Producing a Person for Examination.* If a party fails to comply with an order under Rule 803.18-1 requiring it to produce another person for examination, the Court may issue any of the orders listed in Rule 803.20-2(b)(1), unless the disobedient party shows that it cannot produce the other person.

(3) *Payment of Expenses.* Instead of or in addition to the orders above, the Court may order the disobedient party, the attorney or advocate advising that party, or all to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

803.20-3. *Failure to Disclose, to Supplement an Earlier Response, or to Admit.*

(a) *Failure to Disclose or Supplement.* If a party fails to provide information or identify a witness as required by Rules 803.14-2, 803.14-5 or 803.14-7, the party shall not use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the Court, on motion and after giving an opportunity to be heard:

- (1) May order payment of the reasonable expenses, including attorney's fees, caused by the failure; and
- (2) May impose other appropriate sanctions, including any of the orders listed in Rule 803.20-2(b)(1).

(b) *Failure to Admit.* If a party fails to admit what is requested under Rule 803.19-1(a) and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The Court shall so order unless:

- (1) The request was held objectionable under Rule 803.19-1;
- (2) The admission sought was of no substantial importance;
- (3) The party failing to admit had a reasonable ground to believe that it might prevail on the matter; or
- (4) There was other good reason for the failure to admit.

803.20-4. *Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Production.*

(a) *In General.*

- (1) *Motion; Grounds for Sanctions.* The Court may, on motion, order sanctions if:

(A) A party fails, after being served with proper notice, to appear for that person's deposition; or

(B) A party, after being properly served with interrogatories or a request for production, fails to serve its answers, objections, or written response.

(2) *Certification.* A motion for sanctions for failing to answer or respond shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without Court action.

(b) *Unacceptable Excuse for Failing to Act.* A failure described in Rule 803.20-4(a)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 803.14-6.

(c) *Types of Sanctions.* Sanctions may include any of the orders listed in Rule 803.20-2(b)(1). Instead of or in addition to these sanctions, the Court shall require the party failing to act, the attorney or advocate advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

803.20-5. *Failure to Provide Electronically Stored Information.* Absent exceptional circumstances, the Court may not impose sanctions under this Law on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

803.20-6. *Failure to Participate in Framing a Discovery Plan or Pretrial Statement.* If a party or its attorney or advocate fails to participate in good faith in developing and submitting a proposed discovery plan or pretrial statement as required by Rule 803.12-1, the Court may, after giving an opportunity to be heard, require that party, advocate or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

803.21. Dismissal of Action

803.21-1. *Voluntary Dismissal.*

(a) *By the Plaintiff.*

(1) *Without a Court Order.* The plaintiff may dismiss an action without a Court order by filing:

(A) A notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(B) A stipulation of dismissal signed by all parties who have appeared.

(2) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any action based on or including the same claim, a notice of dismissal operates as adjudication on the merits.

(b) *By Court Order; Effect.* Except as required in Rule 803.21-1(a)(1), an action may be dismissed at the plaintiff's request only by Court order, on terms that the Court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (b) is without prejudice.

803.21-2. *Involuntary Dismissal; Effect.* If the plaintiff fails to prosecute or to comply with this Law or a Court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision 803.21-2 and any

dismissal not under this Rule—except one for lack of jurisdiction, improper venue, or failure to join a party—operates as an adjudication on the merits.

803.21-3. *Dismissing a Counterclaim, Crossclaim, or Third-Party Claim.* This Rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 803.21-1(a)(1)(A) shall be made:

(a) Before a responsive pleading is served; or

(b) If there is no responsive pleading, before evidence is introduced at a hearing or trial.

803.21-4. *Costs of a Previously Dismissed Action.* If a plaintiff who previously dismissed an action in any Court files an action based on or including the same claim against the same defendant, the Court:

(a) May order the plaintiff to pay all or part of the costs of that previous action; and

(b) May stay the proceedings until the plaintiff has complied.

803.22. Consolidation; Separate Trials

803.22-1. *Consolidation.* If actions before the Court involve a common question of law or fact, the Court may:

(a) Join for hearing or trial any or all matters at issue in the actions;

(b) Consolidate the actions; or

(c) Issue any other orders to avoid unnecessary cost or delay.

803.22-2. *Separate Trials.* For convenience, to avoid prejudice, or to expedite and economize, the Court may order a separate trial of one (1) or more separate issues, claims, crossclaims, counterclaims, or third-party claims.

803.23. Taking Testimony

803.23-1. *In Open Court.* At trial, the witnesses' testimony shall be taken in open Court unless this Law or other rules adopted by the Tribe provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the Court may permit testimony in open Court by contemporaneous transmission from a different location.

803.23-2. *Affirmation Instead of an Oath.* When this Law requires an oath, a solemn affirmation suffices.

803.23-3. *Evidence on a Motion.* When a motion relies on facts outside the record, the Court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

803.23-4. *Interpreter.* The Court may appoint an interpreter of its choosing; fix reasonable compensation to be paid and designate the compensation as Court costs.

803.24. Subpoena

803.24-1. In General.

(a) *Form and Contents.*

(1) *Requirements—In General.* Every subpoena shall:

(A) State the Court from which it issued;

(B) State the title of the action, the Court in which it is pending, and its civil-action number; and

(C) Command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises.

(2) *Command to Attend a Deposition—Notice of the Recording Method.* A subpoena commanding attendance at a deposition shall state the method for recording the testimony.

(3) *Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information.* A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena shall specify the form or forms in which electronically stored information is to be produced.

(4) *Command to Produce; Included Obligations.* A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding party to permit inspection, copying, testing, or sampling of the materials.

(b) *Issued.* A subpoena shall be issued for the following:

(1) Attendance at a hearing or trial;

(2) Attendance at a deposition; and

(3) Production or inspection, if separate from a subpoena commanding a person's attendance.

(c) *Issued by Whom.* The clerk shall issue a subpoena, signed but otherwise in blank, to a party who requests it. That party shall complete it before service. An attorney also may issue and sign a subpoena as an officer of the Court in which the attorney is authorized to practice.

803.24-2. *Service.*

(a) *By Whom; Tendering Fees; Serving a Copy of Certain Subpoenas.* Any person who is at least eighteen (18) years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served, a notice shall be served on each party.

(b) *Proof of Service.* Proving service, when necessary, requires filing with the Court a statement showing the date and manner of service and the names of the persons served. The statement shall be certified by the server.

(c) *Subpoena Fees.* The party issuing the subpoena shall be responsible for tendering, if applicable, the fees for one (1) day's attendance and mileage. Payment shall be paid at the time of delivery of the subpoena in the amount as set by Court Rule.

(d) *Place of Service.* A subpoena may be served at any place:

(1) Within the reservation;

(2) Outside the reservation but within one hundred (100) miles of the place specified for the deposition, hearing, trial, production or inspection; or

(3) That the Court authorizes on motion and for good cause.

803.24-3. *Protecting a Person Subject to a Subpoena.*

(a) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The Court shall impose an appropriate sanction—including, but not limited to, lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(b) *Command to Produce Materials or Permit Inspection.*

(1) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(2) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party, advocate or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection shall be served before the earlier of the time specified for compliance or fourteen (14) days after the subpoena is served. If an objection is made, the following Rules apply:

(A) At any time, on notice to the commanded person, the serving party may move the Court for an order compelling production or inspection.

(B) These acts may be required only as directed in the order, and the order shall protect a person who is not a party from significant expense resulting from compliance.

(c) *Quashing or Modifying a Subpoena.*

(1) *When Required.* On motion, the Court shall quash or modify a subpoena that:

(A) Fails to allow a reasonable time to comply;

(B) requires a person who is not a party to travel more than one hundred (100) miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to Rule 803.24-3(c)(2)(C), the person may be commanded to attend a trial by traveling from any such place within the state of Wisconsin;

(C) Requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(D) Subjects a person to undue burden.

(2) *When Permitted.* To protect a person subject to or affected by a subpoena, the Court may, on motion, quash or modify the subpoena if it requires:

(A) Disclosing a trade secret or other confidential research, development, or commercial information;

(B) Disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(C) A person who is not a party to incur substantial expense to travel more than one hundred (100) miles to attend trial.

(3) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 803.24-3(c)(2), the Court may, instead of quashing or modifying a subpoena, order appearance, inspection or production under specified conditions if the serving party:

(A) Shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(B) Ensures that the subpoenaed person will be reasonably compensated.

803.24-4. *Duties in Responding to a Subpoena.*

(a) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(1) *Documents.* A person responding to a subpoena to produce documents shall

produce them as they are kept in the ordinary course of business or shall organize and label them to correspond to the categories in the subpoena.

(2) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(3) *Electronically Stored Information Produced in Only One (1) Form.* The person responding need not produce the same electronically stored information in more than one (1) form.

(4) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding shall show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from such sources if the requesting party shows good cause. The Court may specify conditions for the discovery.

(b) *Claiming Privilege or Protection.*

(1) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material shall:

(A) Expressly make the claim; and

(B) Describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(c) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party, advocate or attorney shall promptly return, sequester, or destroy the specified information and any copies it has; shall not use or disclose the information until the claim is resolved; shall take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the Court under seal for a determination of the claim. The person who produced the information shall preserve the information until the claim is resolved.

803.24-5. *Contempt.* The issuing Court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey shall be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 803.24-3(c)(1)(B).

803.25. Recesses; Personal Conduct

803.25-1. *Recesses.* The Court may order postponements or recesses in its discretion at any time during the hearing for any reason. Specifically, when objections are made with respect to questions asked or evidence presented, or other motions are made during a hearing, the Court may order a short recess in order to deliberate on any motions or objections raised by a party.

(a) The recess shall continue until a decision is reached, which may be to reserve a ruling for later, at which time the hearing shall reconvene and the decision concerning the objection shall be entered into the record.

(b) A party may enter into the record an objection to the decision reached by the Court in

order to preserve the issue on appeal, though such an objection is not required for such preservation.

803.25-2. *Personal Conduct.* Parties, including parties' attorney or advocate, shall present and conduct themselves in a professional manner while before the Court. Parties shall be prepared to present their case, to include evidence, arguments and witnesses at the time of the hearing. Disorderly conduct, insulting or demeaning behavior, or interrupting a speaking judge, party, or party's attorney or advocate may be grounds for contempt and/or other penalties.

803.26. Contempt

803.26-1. *Grounds.* In addition to other grounds for contempt identified in this Law or other Tribal law, the following acts or failures to act may serve as the basis for finding an individual or other entity in contempt:

- (a) Failure to obey a subpoena;
- (b) Refusal to testify or appear when so ordered;
- (c) Refusal to obey any order or judgment of the Court;
- (d) Disorderly, demeaning, or insulting behavior toward a Judge while conducting a hearing which tends to interrupt the course of the proceedings or undermine the dignity of the Court;
- (e) A breach of the peace or loud or boisterous conduct which tends to interrupt the course of a judicial proceeding;
- (f) Deceit or abuse of process or proceedings of the Court by a party, advocate or attorney to a judicial proceeding;
- (g) Any other interference with the process, proceedings, or dignity of the Court or a Judge while in the performance of official duties.

803.26-2. *Relief.* Individuals or other entities found to be in contempt shall be subject to a fine in an amount not to exceed one thousand dollars (\$1,000) per act of contempt, and not to exceed five thousand dollars (\$5,000) per instance of continuing contempt payable to the Judiciary or to the complaining party. When that individual or other entity either pays the money or does whatever the Court orders that person to do, the contempt order shall be purged.

803.26-3. *Procedure.*

- (a) Direct contempt is one committed in the presence of the Court or so near in presence as to be disruptive of the judicial proceedings, and such may be adjudged and punished summarily. All others are indirect contempt.
- (b) Indirect contempt may be determined after a hearing in which the person accused of contempt is given notice and an opportunity to be heard.
 - (1) The Court may, after testimony is given concerning the reasons for any contemptuous act, allow the person accused one (1) opportunity to comply or be held in contempt.
- (c) The Court may, in its discretion or on motion by a party, resolve issues of indirect contempt through receipt and deliberation of briefs rather than a hearing.

803.27. Findings and Conclusions by the Court; Judgment on Partial Findings; Offer of Judgment

803.27-1. *Findings and Conclusions.*

- (a) *In General.* The Court shall state the findings of facts and its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the Court.

(b) *For an Interlocutory Injunction.* In granting or refusing an interlocutory injunction, the Court shall similarly state the findings and conclusions that support its action.

(c) *For a Motion.* The Court is not required to state findings or conclusions when ruling on a motion unless this Law provide otherwise.

(d) *Questioning the Evidentiary Support.* A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

803.27-2. *Amended or Additional Findings.* On a party's motion filed no later than twenty-eight (28) days after the entry of judgment, the Court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may accompany a motion for a new trial.

803.27-3. *Judgment on Partial Findings.* If a party has been fully heard on an issue and the Court finds against the party on that issue, the Court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The Court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings shall be supported by findings of fact and conclusions of law as required by Rule 803.27-1(a).

803.27-4. *Offer of Judgment.*

(a) *Making an Offer; Judgment on an Accepted Offer.* At any time before or during trial, a party may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The Court shall then enter judgment.

(b) *Unaccepted Offer.* An unaccepted offer shall be considered withdrawn, but it shall not preclude a later offer. Evidence of an unaccepted offer shall not be admissible except in a proceeding to determine costs.

803.28. Judgment; Costs

803.28-1. *Generally.* A decision includes any final order or judgment that may be appealed to the Court of Appeals. No special form of judgment is required. A judgment shall not include recitals of pleadings or a record of prior proceedings, unless the Court deems that information necessary.

803.28-2. *Types of Relief.*

(a) Every final decision of the Court shall grant relief based in law and equity to the party in whose favor the decision is rendered. Relief granted need not be identical to the relief demanded in the pleadings or at a hearing.

(b) *Judgment on Multiple Claims or Involving Multiple Parties.* When an action presents more than one (1) claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the Court may direct entry of a final judgment as to one (1) or more, but fewer than all, claims or parties only if the Court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

803.28-3. *Form of Decision.* The Court may issue decisions in the form of fines, orders, penalties, or others the Court deems appropriate, which may include, but not limited to:

(a) Awarding monetary damages, including punitive damages, to be paid by the party

found to be in violation of any Tribal law, to the injured party;

(b) Directing the surrender of certain property to the injured party which the injured party is found to be legally entitled;

(c) Directing the performance of some act or the ceasing and desisting from performance of some act for the benefit of the injured party;

(d) Directing a party in violation of Tribal laws to cease and desist from further violations and cure said violations within a specified period of time;

(e) Directing the payment of specific monetary fines for violations of Tribal laws, Court orders or agreements made during mediation or peacemaking;

(f) Directing mandated community service and/or denial of specific Tribal benefits;

803.28-4. *Costs.*

(a) The Court may, in its discretion, require the non-prevailing party to pay some or all of the reasonable costs of the prevailing party.

(b) *Attorney's Fees.* The Court shall not award attorney's fees unless:

(1) The fees have been specifically provided for by Tribal law, contract or agreement between the parties in dispute;

(2) It has been clearly and convincingly shown that the case is frivolous or has been prosecuted in bad faith for purposes of harassment only; or

(3) It has been shown that there was no reasonable expectation of success on the part of the claiming party.

(c) If the Court finds by clear and convincing evidence that the matter before the Court was frivolous or has been prosecuted in bad faith, the Court may assess against the plaintiff, some or all of the Court's and/or defendant's costs in the matter.

(d) Court costs shall be based on actual cost or set by Court Rule.

803.28-5. *Punitive Damages.* A party may recover punitive damages against another party unless the other party is the Tribe, or an officer or agency of the Tribe. The Court shall only order punitive damages when a party's willful or reckless conduct is exceptionally egregious or malicious and the order will deter that party and others from committing the same or similar acts in the future. Punitive damages shall not exceed an amount greater than four (4) times the amount of any other monetary damages ordered. In cases involving non-economic harm where punitive damages are ordered, the Court shall determine punitive damages by considering:

(a) The nature of the wrongdoer's behavior;

(b) The extent of the prevailing party's loss or injury;

(c) The degree to which the wrongdoer's conduct is offensive to a societal sense of justice and decency; and

(d) The financial worth of the wrongdoer.

803.29. **Default; Default Judgment**

803.29-1. *Appearance Required.* Parties to a case are required to appear before the Court at any scheduled hearing or proceeding.

(a) A party may be excused from appearing with the permission of the Court if the party makes a motion seeking permission prior to the hearing or proceeding and shows good cause as to why the party's appearance is not necessary.

(b) The Court may allow a proceeding to continue without a party's appearance so long as a representative of the party appears, or may postpone the hearing until the party will attend, or may find the party not in attendance in contempt for failing to appear.

(c) The Court may allow a party to appear by telephone. Requests to appear by telephone shall be in writing and submitted at least seven (7) days before a hearing or proceeding.

803.29-2. *Defendant.* When a party against whom a judgment for relief is sought has failed to appear, plead or otherwise defend as required in this Law or elsewhere, a default judgment may be granted by the Court upon the receipt of whatever evidence is deemed necessary to establish the claim.

803.29-3. *Plaintiff.* When a party who has filed a claim fails to appear, plead, or prosecute said claim as provided in this Law or elsewhere, a dismissal may be granted by the Court, on its own or on a party's motion, dismissing the claim. For purposes of this section, dismissal shall be treated as default.

803.29-4. *Entering a Default Judgment.* The Court may conduct hearings or make referrals when, to enter or effectuate judgment, it needs to:

- (a) Conduct an accounting;
- (b) Determine the amount of damages;
- (c) Establish the truth of any allegation by evidence; or
- (d) Investigate any other matter.

803.29-5. *Demand for Judgment.* The Court may assign any costs incurred by the non-defaulting party and any hearing costs incurred by the Court, to the defaulting party.

803.29-6. *Setting Aside a Default or a Default Judgment.* The Court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 803.33-2 within one (1) year of entry of default or default judgment.

803.30. Summary Judgment

803.30-1. *Motion for Summary Judgment or Partial Summary Judgment.* A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The Court shall state on the record the reasons for granting or denying the motion.

803.30-2. *Time to File a Motion.* Unless a different time is set by the Court, a party may file a motion for summary judgment at any time after commencement of an action, but at least fifteen (15) days prior to the scheduled trial.

803.30-3. *Procedures.*

(a) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed shall support the assertion by:

- (1) Citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
- (2) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(b) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(c) *Materials Not Cited.* The Court need consider only the cited materials, but it may consider other materials in the record.

(d) *Affidavits.* An affidavit used to support or oppose a motion shall be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated.

803.30-4. *When Facts Are Unavailable to the Nonmovant.* If a nonmovant shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the Court may:

- (a) Defer considering the motion or deny it;
- (b) Allow time to obtain affidavits or to take discovery; or
- (c) Issue any other appropriate order.

803.30-5. *Failing to Properly Support or Address a Fact.* If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 803.30-3, the Court may:

- (a) Give an opportunity to properly support or address the fact;
- (b) Consider the fact undisputed for purposes of the motion;
- (c) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or
- (d) Issue any other appropriate order.

803.30-6. *Judgment Independent of the Motion.* After giving notice and a reasonable time to respond, the Court may:

- (a) Grant summary judgment for a nonmovant;
- (b) Grant the motion on grounds not raised by a party; or
- (c) Consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

803.30-7. *Failing to Grant All the Requested Relief.* If the Court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

803.30-8. *Affidavit Submitted in Bad Faith.* If satisfied that an affidavit under this Rule is submitted in bad faith or solely for delay, the Court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, incurred as a result. An offending party, advocate or attorney may also be held in contempt or subjected to other appropriate sanctions.

803.31. Entering Judgment; Enforcement

803.31-1. *Entering Judgment.*

- (a) *Signature.* All decisions shall be signed by the Judge assigned to the case and filed with the clerk.
- (b) *Filing and Notation.* A decision shall be complete and entered for all purposes when it is signed and filed with the clerk for publication, unless the case is nonpublic and/or not subject to publication in which case it is deemed complete and entered upon being signed by the Judge. The clerk shall make a notation of the decision in a case log or index of cases and decisions. If publication occurs more than seven (7) days after entry of the decision, this shall be noted and the date of publication shall be the official date of entry.
- (c) *Death of a Party.* If a party dies after a decision is rendered upon any issue or fact, but before entry of the judgment, judgment may still be entered.
- (d) *Satisfaction of Decision.* The clerk shall file all satisfactions of decisions and note whether whole or partial and the amount thereof in any existing case log or index of cases and decisions. A decision may be satisfied, in whole or part, as to any or all of the non-prevailing parties, when:

- (1) The party awarded the decision files an acknowledgment of satisfaction specifying the amount paid and whether such is a full or partial satisfaction; or

(2) The Trial Court may order the entry of satisfaction upon the proof of payment by the debtor and failure of the decision creditor to file a satisfaction;

(e) *Effect of Satisfaction.* A decision satisfied in whole shall be entered in the index of decisions as such.

(1) A partially satisfied decision or unsatisfied decision shall continue in effect for four (4) years or until satisfied, whichever occurs sooner.

(2) An action to renew the decision remaining unsatisfied may be maintained any time prior to the expiration of four (4) years and shall extend the period of an additional four (4) years and may be thereafter further extended by the same procedure.

(f) *Written Decisions.* All decisions, opinions, and orders rendered, unless specified otherwise in this Law, shall be in writing and include the findings of fact and conclusions of law.

(1) Upon completion of the hearing or trial, the Court shall complete a written decision within thirty (30) days.

(A) The Court may, upon written notice to all parties, extend this time period to not more than an additional thirty (30) days from the original due date.

803.31-2. *Enforcement.*

(a) *Time.* The non-prevailing party shall have sixty (60) days from entry of the judgment to comply with the order of the Court and/or complete payment of any monetary award or to make arrangements with the prevailing party for payment or installment payments. If the non-prevailing party does not comply and/or satisfy the judgment within sixty (60) days, does not make arrangements to satisfy judgment within sixty (60) days, or fails to make installment payments to satisfy judgment for more than sixty (60) days, then the prevailing party may make a motion to the Court for the enforcement of the decision.

(b) *Means of Enforcement.* The Court shall conduct a hearing on the issue of enforcement of a judgment. The Court may:

(1) Order the garnishment of any non-prevailing party's wages, including but not limited to per capita payments by the Tribe, the amount to be determined by the Court and to be paid to the prevailing party;

(2) Fine the non-prevailing party if the non-prevailing party is found to be in contempt of the judgment. Fines shall be paid to the prevailing party; or

(3) Issue any other order or decision for the purposes of satisfying the judgment which the Court deems just.

(4) If it is determined at this hearing that any of the above options for the enforcement are unavailable or unduly difficult or inequitable, the Court may order the execution and sale of such property of the non-prevailing party's to satisfy the judgment.

(c) *Seizure of Property.* The non-prevailing party shall be ordered to appear before the Court and answer under oath regarding the reasons for failure to satisfy the judgment. If good cause is not shown for the failure to satisfy the judgment, the Court may:

(1) Determine, under Wisconsin law, what property of the non-prevailing party is available for execution;

(2) Issue an order for the seizure of as much of such property as reasonably necessary to pay the judgment amount and costs of seizing and auctioning such property;

(A) The order for seizure shall be issued to and enforced by the Oneida

Police Department (OPD);

(B) The non-prevailing party shall have, starting on the day after seizure of property, ten (10) days to satisfy the judgment and redeem the property seized from the OPD. If redemption is not made, the OPD shall proceed with the sale of seized property.

(C) Sale of seized property shall be at public auction conducted by the OPD. The person conducting the auction:

(i) Shall place public notice in at least three (3) prominent places within the Oneida Reservation and publication in the Tribal newspaper, at least ten (10) days prior to the auction.

(ii) Shall sell the property to the highest bidder who shall make payment for the property at the time of sale.

(iii) Shall issue a certificate of sale to the purchaser and shall make a report and return to the Court reciting the details of the sale.

(iv) May postpone and reschedule the auction, providing notice of the new date as per sub part (i) above, if there is deemed to be inadequate response to the auction or bidding.

(D) The sale shall not be deemed full satisfaction of the judgment unless such sale actually fully satisfies the judgment. Any excess proceeds from the sale shall be issued to the non-prevailing party.

(d) *Exemption from Enforcement.* The Court shall only order seizure and sale of such property of the non-prevailing party to satisfy a money judgment, the loss of which shall not impose an immediate and substantial hardship on the non-prevailing party or the non-prevailing party's immediate family.

803.32. Record of Proceedings

803.32-1. *Generally.* All proceedings shall be recorded by audio, video or other means such that an accurate transcript may be produced when needed or requested. The record of the civil action shall include the following:

(a) All pleadings, motions, orders, and intermediate rulings;

(b) All evidence received or considered;

(c) All statements of matters officially noticed;

(d) All questions and offers of proof, objections and rulings thereon;

(e) All proposed findings and exceptions;

(f) All decisions, opinions or reports of the Court; and

(g) A complete record of the hearing itself, in the form of written transcript, video or audio recordings.

803.32-2. *Open Record.* The records of all hearings and matters shall be available except where they are prohibited from disclosure by this Law, any other Tribal law or Court order or rule.

(a) The Court shall be construed as a Court of record for purposes of full faith and credit.

(b) Any person may request to view the record of any case and may receive copies of the record at that person's expense.

(1) Records of cases involving juveniles shall remain confidential and shall only be viewed by the parties or the legal guardian of a party who is a minor and their attorney or advocate, Judges and staff assigned to the case, and those other persons who first obtain a written release from a party to view material contained in the record.

(2) Copies of final decisions and case file material shall be available for any person's review at that person's expense after the time line for filing a notice of appeal or motion for reconsideration has passed and no such filing has occurred. This shall ensure that the case is concluded and open for public record.

(3) At the request of any party or on its own motion, the Court may seal any part of a case file, preventing public disclosure. A file or part of a file may only be sealed where the safety of a party, witness or other individual may be in jeopardy if the material is not placed under seal.

(c) Deliberations of the Court are confidential, not part of the record and are not subject to reproduction.

803.33. Relief from a Judgment or Order; Harmless Error

803.33-1. *Corrections Based on Clerical Mistakes; Oversights and Omissions.* The Court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The Court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the Court of Appeals and while it is pending, such a mistake may be corrected only with the Court of Appeals' leave.

803.33-2. *Grounds for Relief from a Final Judgment, Order, or Proceeding.* On motion and just terms, the Court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
- (b) Newly discovered evidence that, with reasonable diligence, could not have been discovered;
- (c) Fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (d) The judgment is void;
- (e) The judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (f) Any other reason that justifies relief.

803.33-3. *Timing and Effect of the Motion.*

(a) *Timing.* A motion under Rule 803.33-2 shall be made within a reasonable time—and for reasons (a), (b), and (c) no more than one (1) year after the entry of the judgment or order or the date of the proceeding.

(b) *Effect on Finality.* The motion shall not affect the judgment's finality or suspend its operation.

803.33-4. *Other Powers to Grant Relief.* This Rule shall not limit the Court's power to:

- (a) Entertain an independent action to relieve a party from a judgment, order, or proceeding;
- (b) Grant relief to a defendant who was not personally notified of the action; or
- (c) Set aside a judgment for fraud on the Court.

803.33-5. *Harmless Error.* Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the Court or a party—is grounds for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order.

803.34. Stay of Proceedings to Enforce a Judgment

803.34-1. *Automatic Stay; Exceptions for Injunctions.* Except as stated in this Rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until fourteen (14) days

have passed after its entry. But unless the Court orders otherwise, interlocutory or final judgments in an action for an injunction are not stayed after being entered, even if an appeal is taken.

803.34-2. *Stay Pending the Disposition of a Motion.* On appropriate terms for the opposing party's security, the Court may stay the execution of a judgment—or any proceedings to enforce it—pending disposition of any of the following motions:

- (a) For judgment as a matter of law;
- (b) To amend the findings or for additional findings;
- (c) For a new trial or to alter or amend a judgment; or
- (d) For relief from a judgment or order.

803.34-3. *Injunction Pending an Appeal.* While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the Court may suspend, modify, restore, or grant an injunction on terms that secure the opposing party's rights.

803.34-4. *Court of Appeals' Power Not Limited.* This Rule shall not limit the power of the Court of Appeals or one (1) of its Judges:

- (a) To stay proceedings—or suspend, modify, restore, or grant an injunction—while an appeal is pending; or
- (b) To issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

803.34-5. *Stay with Multiple Claims or Parties.* The Court may stay the enforcement of a final judgment under Rule 803.28-2(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

803.34-6. *Stay in Favor of the Tribe, or Agency Thereof.* When an appeal is taken by the Tribe, or an officer or agency of the Tribe, and the execution or enforcement of the judgment is stayed; no bond, obligation, or other security shall be required.

803.35 Injunctions and Restraining Orders

803.35-1 *Preliminary Injunction.*

- (a) *Notice.* The Court may issue a preliminary injunction only on notice to the adverse party.
- (b) *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the Court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.
- (c) *Expediting the Preliminary-Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction shall be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order shall proceed with the motion; if the party does not, the Court shall dissolve the order.

803.35-2. *Temporary Restraining Order.*

- (a) *Issuing Without Notice.* The Court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney or advocate only if:
 - (1) Specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
 - (2) The movant's attorney or advocate certifies in writing any efforts made to

1900 give notice and the reasons why it should not be required to give notice.

1901 (b) *Contents; Expiration.* Every temporary restraining order issued without notice shall
 1902 state the date and hour it was issued; describe the injury and state why it is irreparable;
 1903 state why the order was issued without notice; and be promptly filed in the clerk's office
 1904 and entered in the record. The order expires at the time after entry—not to exceed
 1905 fourteen (14) days—that the Court sets, unless before that time the Court, for good cause,
 1906 extends it for a like period or the adverse party consents to a longer extension. The
 1907 reasons for an extension shall be entered in the record.

1908 (d) *Motion to Dissolve.* On two (2) days' notice to the party who obtained the order
 1909 without notice—or on shorter notice set by the Court—the adverse party may appear and
 1910 move to dissolve or modify the order. The Court shall then hear and decide the motion as
 1911 promptly as justice requires.

1912 803.35-3. *Security.* The Court may issue a preliminary injunction or a temporary restraining
 1913 order only if the movant gives security, unless the movant is the Tribe, or an officer or agency of
 1914 the Tribe. Security shall be in an amount that the Court considers proper to pay the costs and
 1915 damages sustained by any party found to have been wrongfully enjoined or restrained.

1916 803.35-4. *Contents and Scope of Every Injunction and Restraining Order.*

1917 (a) *Contents.* Every order granting an injunction and every restraining order shall:

1918 (1) State the reasons why it issued;

1919 (2) State its terms specifically; and

1920 (3) describe in reasonable detail—and not by referring to the complaint or other
 1921 document—the act or acts restrained or required.

1922 (b) *Persons Bound.* The order binds only the following who receive actual notice of it
 1923 by personal service or otherwise:

1924 (1) The parties;

1925 (2) The parties' officers, agents, servants, employees, and attorneys or advocate;
 1926 and

1927 (3) Other persons who are in active concert or participation with anyone described
 1928 in Rule 803.35-4(b)(1) or (2).

1929

1930 **803.36. Behavior, Disability, Disqualification of Judges**

1931 803.36-1. *Judicial Code of Conduct.* All Judges are subject to the Rules and standards of the
 1932 Oneida Tribal Judiciary Canons of Judicial Conduct as specified in that document.

1933 803.36-2. *Disability and Disqualification.* Rule 150.12 of the Judiciary law shall govern the
 1934 reprimand, suspension and/or removal of a Judge.

1935

1936 **803.37. Guardian Ad Litem**

1937 803.37-1. This section shall govern the appointment, conduct, duties and powers of guardian's
 1938 ad litem where it is appropriate and authorized under Tribal Law. This section, 803.37, shall
 1939 apply in every situation where a guardian ad litem is necessary, except where other Tribal Law is
 1940 more specific regarding guardians ad litem, then those laws shall supersede.

1941 (a) A guardian ad litem shall be an attorney or trained advocate. Before being appointed
 1942 as guardian ad litem, advocates shall demonstrate an understanding of the role of the
 1943 guardian ad litem. Such understanding may be demonstrated by passing an examination
 1944 administered by the Judiciary or by an interview conducted by the Chief Judge, Family
 1945 Court Judge or such other means determined by the Judiciary.

1946 (b) *Represent Best Interests.* A guardian ad litem shall represent the best interest of the
 1947 person for whom he or she is appointed. Representation of best interests may be

inconsistent with the wishes of the person whose interest the guardian ad litem represents. The guardian ad litem shall not advocate on behalf of or advise any party so as to create in the mind of a reasonable person the appearance of representing that party as an attorney or an advocate.

(c) *Maintain Independence.* A guardian ad litem shall maintain independence, objectivity and the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom.

(d) *Professional Conduct.* A guardian ad litem shall act in a manner consistent with the Judge's obligations under Rule 1.7 of the Oneida Tribal Judiciary Canons of Judicial Conduct.

(e) *Avoid Conflicts of Interest.* No person who is an interested party in a proceeding, appears as an attorney or advocate in a proceeding on behalf of any party, or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding. A guardian ad litem shall:

(1) Avoid any actual or apparent conflict of interest or impropriety in the performance of guardian ad litem responsibilities.

(2) Avoid self-dealing or association from which a guardian ad litem might directly or indirectly benefit, other than for compensation as guardian ad litem.

(3) Take action immediately to resolve any potential conflict or impropriety and advise the Court and the parties of action taken, resign from the matter, or seek Court direction as may be necessary to resolve the conflict or impropriety.

(4) Not accept or maintain appointment if the performance of the duties of guardian ad litem may be materially limited by the guardian's ad litem responsibilities to another client or a third person, or by the guardian's ad litem own interests.

(f) *Treat parties with respect.* A guardian ad litem is an officer of the Court and as such shall at all times treat the parties with respect, courtesy, fairness and good faith.

(g) *Become informed about case.* A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. A guardian ad litem shall examine material information and sources of information, taking into account the positions of the parties.

(h) *Make requests for evaluations to Court.* A guardian ad litem shall not require any evaluations or tests of any person except as required by Tribal Law or Court order issued following notice and opportunity to be heard.

(i) *Timely inform the Court of relevant information.* A guardian ad litem shall file a written report with the Court and the parties as required by law or Court order, or in any event not later than five (5) business days prior to a hearing for which a report is required. The report shall be accompanied by a written list of documents considered or called to the attention of the guardian ad litem and persons interviewed during the course of the investigation.

(j) *Limit duties to those ordered by Court.* A guardian ad litem shall comply with the Court's instructions as set out in the order appointing a guardian ad litem, and shall not provide or require services beyond the scope of the Court's instruction unless by motion and on adequate notice to the parties, a guardian ad litem obtains additional instruction, clarification or expansion of the scope of such appointment.

(1) A guardian ad litem shall not be called as a witness in any proceeding or hearing in which he/she is a guardian ad litem, except where, with the Court's permission, clarification is requested regarding the guardian ad litem's report. In

1996 such case, testimony shall be restricted to that which is needed to clarify such
 1997 report.

1998 (k) *Inform individuals about role in case.* A guardian ad litem shall identify him or
 1999 herself as a guardian ad litem when contacting individuals in the course of a particular
 2000 case and inform individuals contacted in a particular case about the role of a guardian ad
 2001 litem in the case at the earliest practicable time. A guardian ad litem shall advise
 2002 information sources that the documents and information obtained may become part of
 2003 Court proceedings.

2004 (l) *Appear at hearings.* The guardian ad litem shall be given notice of all hearings and
 2005 proceedings. A guardian ad litem shall appear at any hearing for which the duties of a
 2006 guardian ad litem or any issues substantially within a guardian ad litem's duties and
 2007 scope of appointment are to be addressed.

2008 (m) *Ex parte communication.* A guardian ad litem shall not have ex parte
 2009 communications concerning the case with the Judge(s) involved in the matter except as
 2010 permitted by Court Rule or by Tribal Law.

2011 (n) *Maintain privacy of parties.* As an officer of the Court, a guardian ad litem shall
 2012 make no disclosures about the case or the investigation except in reports to the Court or
 2013 as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall
 2014 maintain the confidential nature of identifiers or addresses where there are allegations of
 2015 domestic violence or risk to a party's or child's safety. The guardian ad litem may
 2016 recommend that the Court seal the report or a portion of the report of the guardian ad
 2017 litem to preserve the privacy, confidentiality, or safety of the parties or the person for
 2018 whom the guardian ad litem was appointed. The Court may, upon application, and under
 2019 such conditions as may be necessary to protect the witnesses from potential harm, order
 2020 disclosure or discovery that addresses the need to challenge the truth of the information
 2021 received from the confidential source.

2022 (o) *Perform duties in timely manner.* A guardian ad litem shall perform responsibilities
 2023 in a prompt and timely manner, and, if necessary, request timely Court reviews and
 2024 judicial intervention in writing with notice to parties or affected agencies.

2025 (p) *Maintain documentation.* A guardian ad litem shall maintain documentation to
 2026 substantiate recommendations and conclusions and shall keep records of actions taken by
 2027 the guardian ad litem.

2028 (q) *Keep records of time and expenses.* A guardian ad litem shall keep accurate records
 2029 of the time spent, services rendered, and expenses incurred in each case and file an
 2030 itemized statement and accounting with the Court and provide a copy to each party or
 2031 other entity responsible for payment. The Court may make provisions for fees and
 2032 expenses pursuant to Tribal Law or Court Rule in the Order Appointing Guardian ad
 2033 Litem or in any subsequent order.

2034 (r) At final paternity hearings, dispositional hearings and at other times when
 2035 appropriate, the guardian ad litem shall provide a written report to the Court with his or
 2036 her recommendations. The recommendations shall be based upon a full and independent
 2037 investigation of the facts. The report shall include:

2038 (1) The sources of information used by the guardian ad litem;

2039 (2) What home visits were done by the guardian ad litem and the results of the
 2040 visits;

2041 (3) Who the guardian ad litem interviewed including parents, relatives and
 2042 professionals;

2043 (4) Whether the guardian ad litem had contact with the child or children;

- 2044 (5) Relevant provisions of the law; and
- 2045 (6) The guardian ad litem's recommendation on the contested issues
- 2046 (s) The appointment of a guardian ad litem terminates upon the entry of the Court's final
- 2047 order or upon the termination of any appeal in which the guardian ad litem participates.
- 2048 (t) As an officer of the Court, a guardian ad litem has only such authority conferred by
- 2049 the order of appointment. A guardian ad litem shall have the following authority:
- 2050 (1) *Access to party.* Unless circumstances warrant otherwise, a guardian ad litem
- 2051 shall have access to the persons for whom a guardian ad litem is appointed and to
- 2052 all information relevant to the issues for which a guardian ad litem was appointed.
- 2053 (A) The access of a guardian ad litem to the child and all relevant
- 2054 information shall not be unduly restricted by any person or agency.
- 2055 (B) When the guardian ad litem seeks contact with a party who is
- 2056 represented by an attorney or advocate, the guardian ad litem shall
- 2057 notify the attorney or advocate in advance of such contact. The
- 2058 guardian ad litem's contact with the represented party shall be as
- 2059 permitted by the party's attorney or advocate, unless otherwise ordered
- 2060 by the Court.
- 2061 (2) *Timely receipt of case documents.* Until discharged by Court order a guardian
- 2062 ad litem shall be timely furnished copies of all relevant
- 2063 pleadings, documents, and reports by the party which served or submitted them.
- 2064 (3) *Timely notification.* A guardian ad litem shall be timely notified of all Court
- 2065 hearings, administrative reviews, staffing's, investigations, dispositions, and other
- 2066 proceedings concerning the case by the person or agency scheduling the
- 2067 proceeding.
- 2068 (4) *Notice of proposed agreements.* A guardian ad litem shall be given notice of,
- 2069 and an opportunity to indicate his or her agreement or objection to any proposed
- 2070 agreed order of the parties governing issues substantially related to the duties of a
- 2071 guardian ad litem.
- 2072 (5) *Participate in all proceedings.* A guardian ad litem shall participate in Court
- 2073 hearings through submission of written and supplemental oral reports and as
- 2074 otherwise authorized by Tribal law or Court Rule.
- 2075 (6) *Access to records.* Except as limited by law or unless good cause is shown to
- 2076 the Court, upon receiving a copy of the order appointing a guardian ad litem, any
- 2077 person or agency shall permit a guardian ad litem to inspect and copy any and all
- 2078 records and interview personnel relating to the proceeding for which a guardian
- 2079 ad litem is appointed. Examples of persons and agencies to whom this provision
- 2080 applies include but not limited to any hospital, school, child care provider,
- 2081 organization, department of social and health services, doctor, health care
- 2082 provider, mental health provider, chemical health program, psychologist,
- 2083 psychiatrist, or law enforcement agency.
- 2084 (7) *Access to Court files.* Within the scope of appointment, a guardian ad litem
- 2085 shall have access to all relevant Judiciary files. Access to sealed or confidential
- 2086 files shall be by separate order. A guardian ad litem's report shall inform the
- 2087 Court and parties if the report contains information from sealed or confidential
- 2088 files. The clerk of Court shall provide certified copies of the order of appointment
- 2089 to a guardian ad litem upon request and without charge.
- 2090 (u) *Rights and powers.* In every case in which a guardian ad litem is appointed, a
- 2091 guardian ad litem shall have the rights and powers set forth below. These rights and

powers are subject to all applicable Tribal laws and Court Rules.

(1) *File documents and respond to discovery.* A guardian ad litem shall have the right to file pleadings, motions, notices memoranda, briefs, and other documents, and may, subject to the Trial Court's discretion engage in and respond to discovery.

(2) *Note motions and request hearings.* A guardian ad litem shall have the right to make motions and request hearings before the Court as appropriate to the best interests of the person(s) for whom a guardian ad litem was appointed.

(3) *Introduce exhibits, examine witnesses, and appeal.* A guardian ad litem shall have the right, subject to the Court's discretion, to introduce exhibits, subpoena witnesses, and conduct direct and cross examination of witnesses.

(4) *Oral argument and submission of reports.* A guardian ad litem shall have the right to fully participate in the proceedings through submission of written reports, and, may with the consent of the Court present oral argument.

(v) *Additional rights and powers in other cases.* For good cause shown, a guardian ad litem may petition the Court for additional authority.

803.38. Hearing Procedure

803.38-1. *General Procedure.* The Court shall follow the procedures contained below for all hearings and trials, but may in its discretion shorten or eliminate procedural steps that are unnecessary for a particular hearing which may not be complex enough to warrant every step contained below.

(a) *Hearing is called to Order.*

(1) The full name of the Court is stated.

(2) The name of the presiding Judge is stated.

(3) A statement of authority and jurisdiction is made, making reference to General Tribal Council Resolution 01-07-13-Band Judiciary Law, Chapter 150 of the Oneida Code of Laws or, if in Family Court, Family Court Law, Chapter 151 of the Oneida Code of Laws.

(4) The docket number of the civil case and the names of all parties are stated for the record. Advocates for parties shall state their name for the record.

(b) *Pending Motions.* All pending motions are resolved prior to the commencement of the full hearing.

(1) Motions filed less than fourteen (14) days prior to the hearing shall only be considered and decided in accordance with Rule 803.7-5(d).

(c) *Stipulations; Additional Documents.* All stipulations or matters officially noted which are known to the parties or Judge prior to the hearing shall be entered into the record.

(1) Either party with additional documents to submit for the Court's review which was not submitted two (2) days prior to the hearing may attempt to submit these documents at this time.

(2) A party attempting to submit additional documents shall have a copy for each Judge and the opposing party and shall show good cause as to why the documents were not submitted prior to the hearing.

(3) The Court may accept or deny the submission of documents immediately, or postpone a decision as to the reasonableness for the untimely submission until the close of the hearing.

803.38-2. *Order of Presentation.* The Parties shall proceed in this order:

- (a) Parties' Opening Statements;
 - (1) Plaintiff's opening statement.
 - (2) Defendant's opening Statement.
- (b) The plaintiff's case;
- (c) The defendant's case;
- (d) Plaintiff rebuttal;
- (e) Defendant rebuttal;
- (f) Plaintiff closing statement;
- (g) Defendant closing statement.

803.39. Appeals

803.39-1. *Where to Appeal.* All requests for an appeal from a decision of any lower hearing body or Court shall be heard by the Court of Appeals.

803.39-2. *Appellate Procedure.* Upon commencement of the appellate action, parties shall be required to follow the Court of Appeals' Rules of Procedure, Chapter 154 of the Oneida Code of Laws.

End.

Adopted BC-04-25-14-A

Emergency Amended BC-__-__-__

April 20, 2018 Legislative Operating Committee E-Poll Military Service Employee Protection Act Emergency Amendments

From: LOC Sent: Fri 4/20/2018 8:36 AM
 To: David P. Jordan; Leyne C. Orocco; Kirby W. Metoxen; Rosa J. Laster; Jennifer A. Webster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth
 Cc: Clorissa N. Santiago; Brandon M. Wisneski
 Subject: EPOLL 3 OF 4: MILITARY SERVICE EMPLOYEE PROTECTION ACT
 Message Military Service Employee Protection Act Emergency Amendments - Adoption Packet.pdf (1 MB)

Good Morning-

This email serves as the E-Poll for the Military Service Employee Protection Act Emergency Amendments.

EXECUTIVE SUMMARY

On April 11, 2018, the Oneida Business Committee dissolved the Personnel Commission through resolution BC-04-11-18-A for the purpose of consolidating employment related grievance hearings into the Judiciary in an effort to increase consistency in hearing processes, efficiency, and reduce overall costs to the Oneida Nation. The Oneida Business Committee felt it was now appropriate to begin consolidating employment related grievance hearings into the Judiciary as the number of current cases in the Personnel Commission was low and the costs of maintaining judicial hearing authorities continues to increase.

Oneida Business Committee resolution BC-04-11-18-A also requires that the Legislative Operating Committee develop and present emergency legislative amendments to fully address the impact of this resolution to the next Oneida Business Committee meeting, April 25, 2018. This resolution states that emergency action to amend legislation to change references to the Personnel Commission to reflect either the Judiciary – Trial Court or the new Personnel Selection Committee is needed to contain expenditures which may go over budget, to provide standards in hearing processes, and provides clear judicial hearing authority.

Additionally, the Oneida Business Committee created the Personnel Selection Committee on April 11, 2018, through resolution BC-04-11-18-B for the purpose of protecting against issues of nepotism and enforcing Oneida and Indian preference

The emergency amendments to the Military Service Employee Protection Act replace any reference to the Personnel Commission with a reference to the Trial Court, and also provide a definition for Trial Court.

An E-Poll is necessary for this legislative item in order to meet the April 25, 2018, Oneida Business Committee meeting deadline for the submission of emergency amendments for consideration of adoption by the Oneida Business Committee.

REQUESTED ACTION

Approve the emergency adoption packet for the Military Service Employee Protection Act Emergency Amendments and forward to the Oneida Business Committee for consideration.

DEADLINE FOR RESPONSE

April 20, 2018, at 10:00 a.m.

All supporting documentation has been attached to this email for your convenience.

E-POLL RESULTS

From: Jennifer A. Webster Sent: Fri 4/20/2018 8:56 AM
 To: LOC; David P. Jordan; Leyne C. Orosco; Kirby W. Metoxen; Rosa J. Laster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth
 Cc: Clorissa N. Santiago; Brandon M. Wisneski
 Subject: Re: EPOLL 3 OF 4: MILITARY SERVICE EMPLOYEE PROTECTION ACT

Approve,
 Jenny

From: Kirby W. Metoxen Sent: Fri 4/20/2018 9:59 AM
 To: LOC; David P. Jordan; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Webster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth
 Cc: Clorissa N. Santiago; Brandon M. Wisneski
 Subject: Re: EPOLL 3 OF 4: MILITARY SERVICE EMPLOYEE PROTECTION ACT

Support

From: David P. Jordan Sent: Fri 4/20/2018 10:39 AM
 To: Kirby W. Metoxen; LOC; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Webster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth
 Cc: Clorissa N. Santiago; Brandon M. Wisneski
 Subject: Re: EPOLL 3 OF 4: MILITARY SERVICE EMPLOYEE PROTECTION ACT

Approve

From: Daniel P. Guzman Sent: Fri 4/20/2018 12:46 PM
 To: LOC
 Cc:
 Subject: Re: EPOLL 3 OF 4: MILITARY SERVICE EMPLOYEE PROTECTION ACT

Support

***Note:** On Friday, April 20, 2018, the Microsoft Outlook email system was down for some time due to hardware failure. MIS then directed all users to the O365 web application and that system went down as well. As a result, not all of these e-poll responses met the 10:00am deadline.



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson 
DATE: April 20, 2018
RE: Military Service Employee Protection Act Emergency Amendments

Please find the following attached backup documentation for your consideration of the Military Service Employee Protection Act Emergency Amendments:

1. Resolution: Military Service Employee Protection Act Emergency Amendments
2. Statement of Effect: Military Service Employee Protection Act Emergency Amendments
3. Military Service Employee Protection Act Emergency Amendments Legislative Analysis
4. Military Service Employee Protection Act (Redline)
5. Military Service Employee Protection Act (Clean)

Overview

Emergency amendments to the Military Service Employee Protection Act (the “Law”) are requested in order to address the dissolution of the Personnel Commission through resolution BC-04-11-18-A for the purpose of consolidating employment related grievance hearings into the Judiciary – Trial Court.

The Oneida Business Committee can temporarily enact legislation when necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and when the amendment of legislation is required sooner than would be possible under the Legislative Procedures Act. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5].

The emergency amendments to this Law are necessary for the preservation of the general welfare of the reservation population, in an effort to ensure that employees of the Nation have due process rights in the absence of the Personnel Commission. Additionally, observance of the adoption requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest.

The emergency amendments to the Law will become effective immediately upon adoption by the Oneida Business Committee, and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

Requested Action

Approve the Resolution: Military Service Employee Protection Act Emergency Amendments.

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____
Military Service Employee Protection Act Emergency 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 Military Service Employee Protection Act ("the Law") was adopted by the Oneida Business Committee through resolution BC-10-24-07-E; and
- WHEREAS,** the Law intends to minimize the disruption to the lives of employees of the Nation serving in the military as well as to the Nation by providing for the prompt reemployment of such persons upon completion of such service, and prohibits discrimination against people because they serve in the military; and
- WHEREAS,** the Law currently contains references to the Personnel Commission's employee grievance and disciplinary action hearing authority in regards to enforcement of employment or reemployment rights; and
- WHEREAS,** the Oneida Business Committee dissolved the Personnel Commission on April 11, 2018, through resolution BC-04-11-18-A in an effort to consolidate employment related grievance hearings into the Judiciary to increase consistency in hearing processes, efficiency, and reduce overall costs to the Oneida Nation; and
- WHEREAS,** resolution BC-04-11-18-A requires the Legislative Operating Committee to develop and present emergency legislative amendments to fully address the impact of this resolution by the April 25, 2018, Oneida Business Committee meeting; and
- WHEREAS,** resolution BC-04-11-18-A states that emergency action to amend legislation to change references to the Personnel Commission to reflect either the Judiciary – Trial Court or the new Personnel Selection Committee is needed to contain expenditures which may go over budget, to provide standards in hearing processes, and provides clear judicial hearing authority; and
- WHEREAS,** the emergency amendments to the Law replace any reference to the Personnel Commission with a reference to the Trial Court, and provides a definition for Trial Court; and
- WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis, to be in effect for a period of six (6) months, renewable for an additional six (6) months; and

WHEREAS, the emergency adoption of these amendments to the Law are necessary for the preservation of the public health, safety, or general welfare of the reservation population in order to ensure that the general welfare and due process rights of employees of the Nation are preserved in absence of the Personnel Commission; and

WHEREAS, observance of the adoption requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest; and

WHEREAS, the Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation.

NOW THEREFORE BE IT RESOLVED, that the emergency amendments to the Military Service Employee Protection Act are hereby adopted on an emergency basis and shall become effective immediately.



Statement of Effect
Military Service Employee Protection Act Emergency Amendments

Summary

This Resolution adopts emergency amendments to the Military Service Employee Protection Act which would replace any reference to the Personnel Commission with a reference to the Trial Court, and provides a definition for Trial Court.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office
Date: April 20, 2018

Analysis by the Legislative Reference Office

This resolution adopts emergency amendments to the Military Service Employee Protection Act (“the Law”). The Law was adopted by the Oneida Business Committee on October 24, 2007, through resolution BC-10-24-17-E. The Law intends to minimize the disruption to the lives of employees of the Nation serving in the military as well as to the Nation by providing for the prompt reemployment of such persons upon completion of such service, and prohibits discrimination against people because they serve in the military.

Currently, the Law contains references to the Personnel Commission’s employee grievance and disciplinary action hearing authority in regards to enforcement of employment or reemployment rights.

On April 11, 2018, the Oneida Business Committee dissolved the Personnel Commission through resolution BC-04-11-18-A for the purpose of consolidating employment related grievance hearings into the Judiciary in an effort to increase consistency in hearing processes, efficiency, and reduce overall costs to the Oneida Nation. The Oneida Business Committee felt it was now appropriate to begin consolidating employment related grievance hearings into the Judiciary as the number of current cases in the Personnel Commission was low and the costs of maintaining judicial hearing authorities continues to increase.

Oneida Business Committee resolution BC-04-11-18-A also requires that the Legislative Operating Committee develop and present emergency legislative amendments to fully address the impact of this resolution to the next Oneida Business Committee meeting. This resolution states that emergency action to amend legislation to change references to the Personnel Commission to reflect either the Judiciary – Trial Court or the new Personnel Selection Committee is needed to contain expenditures which may go over budget, to provide standards in hearing processes, and provides clear judicial hearing authority.

The emergency amendments to the Law replace any reference to the Personnel Commission with a reference to the Trial Court, and also provide a definition for Trial Court.

The Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is “necessary for the immediate preservation of the public health, safety or general welfare of the reservation population” and when “enactment or amendment of legislation is required sooner than would be possible under the Legislative Procedures Act.” [1 O.C. 109.9-5].

The emergency amendments to this Policy are necessary for the preservation of the public health, safety, or general welfare of the reservation population in order to ensure that the general welfare and due process rights of employees of the Nation are preserved in the absence of the Personnel Commission. Additionally, observance of the adoption requirements under the LPA for adoption of this amendment would be contrary to public interest. Through the resolution BC-04-11-18-A, the Oneida Business Committee has issued a finding of an emergency and has stated the necessity for approving emergency amendments to this Policy.

The emergency amendments to the Military Service Employee Protection Act will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendments will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

Conclusion

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



Emergency Amendments to Military Service Employee Protection Act Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: OBC	SPONSOR: David Jordan	DRAFTER: Clorissa Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	The intent of the amendments is to transfer the Personnel Commission's responsibilities under this law to the Oneida Judiciary Trial Court.		
Purpose	The purpose of the Military Service Employee Protection Act is to minimize disruption of the lives of Tribal employees serving in the military, to provide for prompt reemployment of these individuals upon completion of their service, and to prevent discrimination against people who serve in the military <i>[see Military Service Employee Protection Act, 2 O.C. 213.1-1]</i> .		
Affected Entities	Oneida Judiciary, Oneida Human Resources Department, Oneida Personnel Commission, all Oneida Nation employees who serve in the military.		
Affected Legislation	Military Service Employee Protection Act.		
Enforcement/Due Process	Individuals denied employment or reemployment under this law may file a complaint with their area manager and appeal the area manager's decision to the Trial Court <i>[see Military Service Employee Protection Act, 2 O.C. 213.11]</i>		
Public Meeting	A public hearing is not required for emergency legislation.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. On April 11, 2018, the Oneida Business Committee dissolved the Oneida Personnel Commission and directed that the Commission's hearing authority be transferred to the Oneida Judiciary. The OBC directed the LOC to draft emergency amendments to address the impact of this resolution and placed the commission's pending cases on hold until emergency amendments are adopted *[see BC Resolution 04-11-18-A]*. On the same day, the Oneida Business Committee created the Personnel Selection Committee to assume the Personnel Commission's responsibilities related to job screening and interviews. *[see BC Resolution 04-11-18-B]*.
- B. References to the Personnel Commission appear in several of the Nation's laws. Now that the Personnel Commission is dissolved, amendments are necessary to transfer the Personnel Commission's responsibilities to the Oneida Judiciary or to the newly created Personnel Selection Committee.
- C. These emergency amendments ensure that the Nation's employees who serve in the military will continue to have an avenue to appeal their cases under this law.

SECTION 3. CONSULTATION

- A. The Judiciary Law, Personnel Policies and Procedures, Employee Protection Policy, and Military Service Employee Protection Act were reviewed in drafting this analysis.
- B. Personnel Commission staff were consulted regarding the number of pending cases and filing fees.

SECTION 4. PROCESS

- A. This amendment is being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency law where legislation is necessary for the immediate preservation of public health, safety, or general welfare of the reservation population and enactment or amendment of legislation is required sooner than would be possible under this law [see *Legislative Procedures Act*, 1 O.C. 109.9-5].
- B. Through resolution BC-04-11-18-A, the OBC has issued a finding of an emergency and has stated the necessity for approving emergency amendments to this law. Emergency amendments to this law are necessary for the preservation of the general welfare of the reservation population, in an effort to ensure that employees of the Nation have due process rights in the absence of the Personnel Commission.
- C. The Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation; however they will be required when considering permanent adoption of this amendment. Emergency amendments expire six (6) months after adoption and may be renewed for one additional six (6) month period.
- D. This law was originally added to the Active Files List on 12/20/2017 and reclassified as emergency amendments on 4/18/2018.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. **Removal of Personnel Commission from Appeals Process.** The appeals process in this law has been revised to remove references to the Oneida Personnel Commission and replace them with the Trial Court:
- i. **Definitions.** A definition for “Trial Court” has been added. [see *Military Service Employee Protection Act*, 2 O.C. 213.3(j)].
 - ii. If the area manager does not resolve a complaint within ten (10) working days, an individual may now take their complaint to the Trial Court, rather than the Personnel Commission [see *Military Service Employee Protection Act*, 2 O.C. 213.11-5].
 - iii. If an employee appeals the area manager’s decision under this law, the appeal must now be filed with the Trial Court instead of the Personnel Commission [see *Military Service Employee Protection Act*, 2 O.C. 213.11-6].
 - iv. The Trial Court, rather than the Personnel Commission, must notify the Human Resources Department within one (1) business day when an employee files an appeal [see *Military Service Employee Protection Act*, 2 O.C. 213.11-6].
 - v. The Trial Court, rather than the Personnel Commission, may award relief by requiring the Nation to comply with the provisions of this law or by requiring the Nation to compensate for any back pay or loss of benefits [see *Military Service Employee Protection Act*, 2 O.C. 213.11-7].

SECTION 6. EFFECT ON EXISTING LEGISLATION

- A. As a result of the dissolution of the Personnel Commission and creation of the Personnel Selection Committee, the following laws must also be amended to remove references to the Personnel Commission:

- i. Oneida Personnel Policies and Procedures
- ii. Oneida Employee Protection Policy
- iii. Oneida Judiciary Rules of Civil Procedure

SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

- A. *Pending Cases.*** Five cases are currently pending before the Personnel Commission. These cases have been placed on hold until amendments to this and related laws have been adopted. Any timelines associated with these cases have also been placed on hold. At the time this analysis was drafted, it is not known how many of these pending cases involve the Military Service Employee Protection Act. Upon adoption, these pending cases and all future cases will be transferred to the Oneida Judiciary Trial Court. The Business Committee's resolution indicates that the Judiciary has been notified and is prepared to accept these responsibilities *[see BC Resolution 04-11-18-A]*.
- B. *Trial Court Filing Fees.*** The Personnel Commission did not charge filing fees for their services. The Trial Court, however, charges a \$50 filing fee for general civil cases. Therefore, individuals may now be required to pay filing fees in order to have their cases heard under this law.
- i. *Fee Waiver.* If individuals are unable to pay the filing fee, they may request a fee waiver from the court for the following reasons: Unemployed, Health/Medical, Indigent (below poverty level), or "other reasons."

Title 2. Employment – Chapter 213

MILITARY SERVICE EMPLOYEE PROTECTION ACT

213-1. Purpose and Policy	213-7. Reemployment Positions
213-2. Adoption, Amendment, Repeal	213-8. Benefits of Persons Absent from Employment for Military Service
213-3. Definitions	213-9. Health Plans
213-4. Character of Service	213-10. Retirement Plans
213-5. Discrimination Against Persons Who Serve in the Military Prohibited	213-11. Enforcement of Employment or Reemployment Rights
213-6. Reemployment Rights of Persons who Serve in the Military	

213.1. Purpose and Policy

213.1-1. *Purpose.* The purposes of this law are:

(a) to minimize the disruption to the lives of Tribal employees serving in the military as well as to the Tribe by providing for the prompt reemployment of such persons upon completion of such service; and

(b) to prohibit discrimination against people because they serve in the military.

213.1-2. *Policy.* It is the policy of the Oneida Tribe to reemploy persons who return from military service in the same position, or a substantially similar position, of employment the person held prior to leaving for military service.

213.2. Adoption, Amendment, Repeal

213.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-24-07-E and emergency amended by BC- - - -.

213.2-2. This law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

213.2-3. 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.

213.2-4. Any law, policy, regulation, rule, resolution, or motion, or portion thereof, which directly conflicts with the provisions of this law is hereby repealed to the extent that it is inconsistent with or is contrary to this law.

213.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

213.3. Definitions

213.3-1. 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) AArea Manager@ means the supervisor of the supervisor of an employee who is protected under this law, or, in other words, two levels of supervision in the chain of command above the protected employee, or an individual designated to be the Area Manager by the Division Director (or, in divisions where there is no director, the General Manager) and approved by the Human Resources Department Manager (or designee).

(b) ABenefit@ means any advantage, profit, privilege, gain, or interest (other than wages or salary) that accrues by reason of an employment agreement or an employer policy, plan, or practice and includes rights and benefits under a retirement plan, a health plan, insurance

coverage, incentives, unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

(c) AEmployee@ means any person employed by the Oneida Tribe.

(d) AHealth plan@ means an insurance policy or contract or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(e) AMilitary@ means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

(f) AQualified,@ with respect to an employment position, means having the ability to perform the essential tasks of the position.

(g) AReasonable efforts@, in the case of actions required of the Tribe under this law, means actions, including providing training, that do not place an undue hardship on the Tribe.

(h) ASeniority@ means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.

(i) AService@ or Aservice in the military@ means the performance of duty on a voluntary or involuntary basis in a branch of the military and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, the time a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and the period for which a person is absent from employment for the purpose of performing funeral honors duty.

(j) "Trial Court" means the Court of the Oneida Judiciary where evidence and testimony are first introduced, received, and considered. The Oneida Judiciary was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

(jk) ATribe@ means the Oneida Tribe of Indians of Wisconsin as employer through its divisions, departments, programs, enterprises or other subdivisions of the Tribe.

(kl) AUndue hardship@, in the case of actions taken by the Tribe, means actions requiring significant difficulty or expense, when considered in light of:

(1) the nature and cost of the action needed under this Law;

(2) the overall financial resources of the department involved in the provision of the action; the number of persons employed within the department; the effect on expenses and resources, or the overall impact of such action upon the operation of the department;

(3) the financial resources of the Tribe; the size of the Tribe with respect to how many employees and departments it has; and

(4) the type of operation(s) of the Tribe, including the composition, structure, and functions of the work force of its departments.

213.4. Character of Service

213.4-1. Those who serve in the military are ineligible to receive benefits under this law if they:

(a) receive a dishonorable discharge or a bad conduct discharge; or

(b) receive a dismissal from a general court-martial, or by order of the President; or

(c) are dropped from the rolls because they have been:

(1) absent without authority for at least three months; or

(2) sentenced by a court-martial to confinement for more than six (6) months and have served at least six (6) months; or

(3) sentenced to confinement in a penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

213.5. Discrimination Against Persons Who Serve in the Military Prohibited

213.5-1. The Tribe shall not deny employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of a person's membership, application for membership, performance of service, application for service, or obligation to perform service in the military.

213.5-2. The Tribe may not discriminate in employment against or take any adverse employment action against anyone because such person has exercised a right or taken an action to enforce a protection afforded under this law, has testified or otherwise made a statement in or in connection with any proceeding under this law, or has participated in an investigation under this law.

213.5-3. The Tribe shall not be considered to have engaged in a prohibited action if the same action would have been taken regardless of an employee's military status.

213.5-4. Sections 213.5-1 and 213.5-2 shall apply to any position of employment, including a position that is described in 213.6-4(c).

213.6. Reemployment Rights of Persons Who Serve in the Military

213.6-1. Any person who takes a leave of absence from an employment position to serve in the military shall be entitled to the reemployment benefits and other employment benefits of this law if:

(a) the Tribe receives advance written notice of such service as soon as practicable after the employee receives notice;

(b) the cumulative length of the absence and of all previous absences with the Tribe by reason of service in the military does not exceed five (5) years; and

(c) except as provided in 213.6-6, the person reports to the Tribe in accordance with 213.6-5.

213.6-2. No notice is required under 213.6-1(a) if it is precluded by military necessity or, under all of the relevant circumstances, the giving of notice is otherwise impossible or unreasonable.

213.6-3. When calculating the length of absence under 213.6-1(b) the Tribe shall not include any service:

(a) that is required, beyond five (5) years, to complete an initial period of obligated service;

(b) during which such person was unable to obtain orders releasing such person from a period of service in the military before the expiration of such five (5) year period and such inability was through no fault of such person;

(c) performed as required pursuant to training requirements for reservists and National

Guard members;

(d) performed by a member of the military service who is:

(1) ordered to or retained on active duty involuntarily during domestic emergency or national security related situations;

(2) ordered to or retained on active duty under any provision of law because of a war or national emergency declared by the President of the United States or the Congress;

(3) ordered to active duty in support of an Aoperational mission®, without his or her consent;

(4) ordered to active duty in support of a Acritical mission or requirement® in times other than war or national emergency and when no involuntary call up is in effect; or

(5) called into Federal service by the President as a member of the National Guard to suppress an insurrection, repel an invasion, or execute the laws of the United States.

213.6-4. *Tribe's Right to Not Reemploy.* The Tribe is not required to reemploy a person under this law if:

(a) circumstances have so changed as to make such reemployment impossible or unreasonable;

(b) in the case of a person entitled to reemployment under 213.7-1(c), (d), or 213.7-2, such employment would impose an undue hardship on the Tribe; or

(c) the employment from which the person leaves is for a brief, nonrecurrent period (i.e. seasonal, temporary, limited term) and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

(d) the Tribe shall have the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or nonrecurrent nature of the employment.

213.6-5. Except as provided under 213.6-6, an employee referred to in 213.6-1 shall notify the Tribe of the person's intent to return to a position of employment within ninety (90) days of separation of active duty service and within thirty-one (31) days from completion of training for reservists. The Tribe shall, as soon as practicable after receiving notice, make arrangements with the employee for an employment return date.

213.6-6. A person who is hospitalized for, or recovering from, an illness or injury incurred in, or aggravated during, the performance of service in the military shall, at the end of the period that is necessary for the person to recover from such illness or injury notify the Tribe of the person's intent to return to a position of employment. Such period of recovery may not exceed two (2) years, unless the minimum time required to accommodate the circumstances beyond such person's control is longer than two years, making reporting within the period specified impossible or unreasonable.

213.6-7. A person who fails to report for reemployment within the appropriate period shall not automatically forfeit such person's entitlement to the benefits referred to in section 213.6-1 but shall be subject to the Tribe's policies and procedures pertaining to discipline with respect to absence from scheduled work.

213.6-8. A person who has notified the Tribe of the person's intent to return to a position of employment in accordance with section 213.6-5 shall, upon the request of the Tribe, provide

documentation to establish that:

- (a) the notification is timely;
- (b) the time limits in section 213.6-1(b) have not been exceeded, except as permitted under section 213.6-3; and
- (c) the person's entitlement to benefits has not been terminated pursuant to section 213.4.

213.6-9. The timing, frequency, and duration of a person's training or service, or the nature of such training or service (including voluntary service) in the military, shall not be a basis for denying protection of this law if the service does not exceed the limitations set forth under section 213.6-3 and the notice and notification requirements established in this section are met.

213.6-10. The Human Resources Department shall inform employees of their rights, benefits, and obligations under this law and shall provide assistance to employees with respect to the employment and reemployment benefits to which they are entitled under this law.

213.7. Reemployment Positions

213.7-1. A person entitled to reemployment under section 213.6 shall be promptly reemployed in a position of employment in accordance with the following order of priority:

- (a) In the case of a person whose period of service in the military was for less than ninety-one (91) days:
 - (1) in the position which the person would have been employed if the continuous employment of such person had not been interrupted by such service, the duties of which the person is qualified to perform; or
 - (2) in the position which the person was employed on the date of the commencement of the service in the military, only if the person is not qualified to perform the duties of the position referred to under section 213.7-1(a)(1) after reasonable efforts by the Tribe to qualify the person.
- (b) In the case of a person whose period of service in the military was for more than ninety (90) days:
 - (1) in the position which the person would have been employed if the continuous employment of such person had not been interrupted by such service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform; or
 - (2) in the position which the person was employed on the date of the commencement of the service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of the position referred to under section 213.7-1(b)(1) after reasonable efforts by the Tribe to qualify the person.
- (c) In the case of a person who has a disability incurred in, or aggravated during, service, and after reasonable efforts by the Tribe to accommodate the disability, is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the Tribe had not been interrupted by such service:
 - (1) in any other position which is equivalent in seniority, status, and pay, the duties of which the person is qualified to perform or can become qualified to perform with reasonable efforts by the Tribe; or

(2) in a position which is the nearest approximation to a position referred to in (1) in terms of seniority, status, and pay consistent with such person's case.

(d) In the case of a person who is not qualified to become reemployed under 213.7-1(a) - (c) and cannot become qualified, even with reasonable efforts by the Tribe, in any other position which is the nearest approximation to a position which such person is qualified to perform, with full seniority.

213.7-2. If two or more persons are entitled to reemployment in the same position and more than one of them has reported for reemployment, the person who left the position first shall have the prior right to reemployment in that position.

213.7-3. A person entitled to reemployment who is not reemployed because of section 213.7-2 shall be entitled to reemployment in any other position referred to in section 213.7-1, remaining consistent with the circumstances of such person's case, in the order of priority set out in the appropriate section, with full seniority.

213.8. Benefits of Persons Absent from Employment for Military Service

213.8-1. A person who is reemployed under this law is entitled to the seniority and other benefits determined by seniority that the person had on the date of the commencement of service in the military plus the additional seniority and benefits that such person would have attained if the person had remained continuously employed.

213.8-2. A person who is absent from a position of employment by reason of service in the military shall be:

(a) deemed to be on a leave of absence while performing such service; and

(b) entitled to other benefits not determined by seniority as are generally provided by the Tribe to employees having similar seniority, status, and pay who are on leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.

213.8-3. A person who

(a) is absent from an employment position because of service in the military, and

(b) knowingly provides written notice of intent not to return to a position of employment after service in the military, is not entitled to benefits under this section.

The Tribe has the burden of proving that a person knowingly provided written notice of intent not to return to a position after service in the military and was aware of the specific benefits to be lost.

213.8-4. A person on leave of absence for military service shall not be entitled to any benefits to which the person would not otherwise be entitled if the person had remained continuously employed.

213.8-5. A person may be required to pay the Tribe's cost, if any, of any funded benefit continued to the extent other employees on leave of absence are so required.

213.8-6. A person who is reemployed under this law shall only be terminated in accordance with the Oneida Personnel Policies and Procedures.

213.8-7. Any person whose employment is interrupted by military service shall be permitted to use, during such period of service, any vacation or personal time accrued by the person before the commencement of such service. The Tribe may not require any person to use vacation or personal time during such period of service.

213.8-8. The Tribe shall grant an employee who is a reserve member an unpaid temporary leave of absence in order to perform funeral honors duty. Employees may use vacation or personal time to perform funeral honors duty if eligible.

213.9. Health Plans

213.9-1. If a person, or a person's dependents, has coverage under a health plan through the Tribe and such person is on a leave of absence for military service, the plan shall provide that the coverage may be continued. The maximum period of coverage of a person and the person's dependents shall be the lesser of:

- (a) the eighteen (18) month period beginning on the date on which the person's absence begins; or
- (b) the day after the date on which the person fails to return to a position of employment, as determined under section 213.6-5.

213.9-2. A person who elects to continue health-plan coverage may be required to pay not more than the amount paid by other employees who take a leave of absence, except that in the case of a person who serves in the military for less than thirty-one (31) days, such person may not be required to pay more than the employee share, if any, for such coverage.

213.9-3. If a person's health plan is terminated by reason of military service, an exclusion or waiting period may not be imposed in connection with the reinstatement of such coverage upon reemployment if an exclusion or waiting period would not have been imposed had coverage of such person not been terminated as a result of such service.

- (a) This shall apply to the person who is reemployed and to his or her dependents who are covered under the plan with the reinstatement of coverage of such person.
- (b) This shall not apply to the coverage of any illness or injury incurred in, or aggravated during, performance of service in the military.

213.10. Retirement and Pension Plans

213.10-1. Each period served by a person in the military shall, upon reemployment, be deemed to constitute service for the purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under a retirement or pension plan.

- (a) When a person is absent from a position of employment for more than ninety (90) days and is reemployed, the Tribe may require documentation before treating the person as not having incurred a break in service for retirement or pension plan purposes under this section.

213.10-2. A person reemployed under this law shall be entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals if the person makes payment to a retirement or pension plan with respect to such contributions or deferrals. If the employee makes up the contributions, the Tribe shall make up any required matching contributions. No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the Tribe throughout the period of service. Any payment to a retirement or pension plan shall be made during the period beginning with the date of reemployment and whose duration is three (3) times the period of the person's service in the military, such payment period not to exceed five (5)

years.

213.10-3. For purposes of computing the Tribe's liability or the employee's contributions, the employee's compensation during the period of service shall be computed:

(a) at the rate the employee would have received but for the period of service;

(b) in the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the twelve (12) month period immediately preceding such period (or, if shorter, the period of employment immediately preceding such period).

213.10-4. *Pension Plan*. When a person who participates in a pension plan is reemployed after a period of military service, the Tribe shall be liable to the pension plan for funding any obligation to provide the benefits the employee would have received had they not taken a leave of absence. The Tribe shall allocate the amount of the Tribal contribution for the person in the same manner and to the same extent the allocation occurred for other employees eligible for the pension plan during the period of service. For purposes of determining the amount of such liability and any obligation of the pension plan, earnings and forfeitures shall not be included.

213.11. Enforcement of Employment or Reemployment Rights

213.11.1. The Tribe shall notify, in writing, any person who has been denied employment, reemployment, or benefits under this law.

213.11-2. A person may file a complaint whenever such person claims that:

(a) he or she is entitled to employment or reemployment rights or benefits with respect to employment by the Tribe; or

(b) the Tribe has failed or refused to comply with the provisions of this law.

213.11-3. Such complaint shall be in writing, contain a summary of the allegations that form the basis for the complaint and be filed with the person's area manager and the Oneida Human Resources Manager (or designee) within ten (10) working days from the day the person received a denial of employment and/or benefits by the Tribe .

213.11-4. If the area manager determines that the action alleged in such complaint occurred, the area manager shall attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this law.

213.11-5. If the efforts of the area manager do not resolve the complaint within ten (10) working days from the receipt of the employee's complaint, the complainant shall be notified of the results of the area manager's investigation and the complainant's entitlement to refer the complaint to the ~~Oneida Personnel Commission~~Trial Court. One extension of no more than five (5) working days may be requested of and granted by the Oneida Human Resources Manager (or designee) at his or her discretion.

213.11-6. If an employee appeals the area manager's decision, the appeal must be filed with the ~~Oneida Personnel Commission~~Trial Court within ten (10) working days of the employee's receipt of the Area Manager's decision. The ~~Commission~~Trial Court shall notify the Human Resources Manager (or designee) within one (1) business day when an employee files an appeal.

213.11-7. *Remedies*. In any action relating to this law, relief may be awarded as follows:

(a) Require the Tribe to comply with the provisions of this law; and/or

(b) Require the Tribe to compensate the person for any loss of wages or benefits suffered by reason of the Tribe's failure to comply with the provisions of this law.

347 213.11-8. Any compensation awarded shall be in addition to, and shall not diminish, any of the
348 other benefits provided for under this law.

349
350 *End.*

351
352
353 Adopted - BC-10-24-07-E

354 Emergency Amended – BC- - - - -

Title 2. Employment – Chapter 213

MILITARY SERVICE EMPLOYEE PROTECTION ACT

213-1. Purpose and Policy	213-7. Reemployment Positions
213-2. Adoption, Amendment, Repeal	213-8. Benefits of Persons Absent from Employment for Military Service
213-3. Definitions	213-9. Health Plans
213-4. Character of Service	213-10. Retirement Plans
213-5. Discrimination Against Persons Who Serve in the Military Prohibited	213-11. Enforcement of Employment or Reemployment Rights
213-6. Reemployment Rights of Persons who Serve in the Military	

213.1. Purpose and Policy

213.1-1. *Purpose.* The purposes of this law are:

(a) to minimize the disruption to the lives of Tribal employees serving in the military as well as to the Tribe by providing for the prompt reemployment of such persons upon completion of such service; and

(b) to prohibit discrimination against people because they serve in the military.

213.1-2. *Policy.* It is the policy of the Oneida Tribe to reemploy persons who return from military service in the same position, or a substantially similar position, of employment the person held prior to leaving for military service.

213.2. Adoption, Amendment, Repeal

213.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-24-07-E and emergency amended by BC-__-__-__.

213.2-2. This law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

213.2-3. 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.

213.2-4. Any law, policy, regulation, rule, resolution, or motion, or portion thereof, which directly conflicts with the provisions of this law is hereby repealed to the extent that it is inconsistent with or is contrary to this law.

213.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

213.3. Definitions

213.3-1. 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) AArea Manager@ means the supervisor of the supervisor of an employee who is protected under this law, or, in other words, two levels of supervision in the chain of command above the protected employee, or an individual designated to be the Area Manager by the Division Director (or, in divisions where there is no director, the General Manager) and approved by the Human Resources Department Manager (or designee).

(b) ABenefit@ means any advantage, profit, privilege, gain, or interest (other than wages or salary) that accrues by reason of an employment agreement or an employer policy, plan, or practice and includes rights and benefits under a retirement plan, a health plan, insurance

coverage, incentives, unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

(c) AEmployee@ means any person employed by the Oneida Tribe.

(d) AHealth plan@ means an insurance policy or contract or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(e) AMilitary@ means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

(f) AQualified,@ with respect to an employment position, means having the ability to perform the essential tasks of the position.

(g) AReasonable efforts@, in the case of actions required of the Tribe under this law, means actions, including providing training, that do not place an undue hardship on the Tribe.

(h) ASeniority@ means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.

(i) AService@ or Aservice in the military@ means the performance of duty on a voluntary or involuntary basis in a branch of the military and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, the time a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and the period for which a person is absent from employment for the purpose of performing funeral honors duty.

(j) "Trial Court" means the Court of the Oneida Judiciary where evidence and testimony are first introduced, received, and considered. The Oneida Judiciary was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

(k) ATribe@ means the Oneida Tribe of Indians of Wisconsin as employer through its divisions, departments, programs, enterprises or other subdivisions of the Tribe.

(l) AUndue hardship@, in the case of actions taken by the Tribe, means actions requiring significant difficulty or expense, when considered in light of:

(1) the nature and cost of the action needed under this Law;

(2) the overall financial resources of the department involved in the provision of the action; the number of persons employed within the department; the effect on expenses and resources, or the overall impact of such action upon the operation of the department;

(3) the financial resources of the Tribe; the size of the Tribe with respect to how many employees and departments it has; and

(4) the type of operation(s) of the Tribe, including the composition, structure, and functions of the work force of its departments.

213.4. Character of Service

213.4-1. Those who serve in the military are ineligible to receive benefits under this law if they:

(a) receive a dishonorable discharge or a bad conduct discharge; or

(b) receive a dismissal from a general court-martial, or by order of the President; or

(c) are dropped from the rolls because they have been:

(1) absent without authority for at least three months; or

(2) sentenced by a court-martial to confinement for more than six (6) months and have served at least six (6) months; or

(3) sentenced to confinement in a penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

213.5. Discrimination Against Persons Who Serve in the Military Prohibited

213.5-1. The Tribe shall not deny employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of a person's membership, application for membership, performance of service, application for service, or obligation to perform service in the military.

213.5-2. The Tribe may not discriminate in employment against or take any adverse employment action against anyone because such person has exercised a right or taken an action to enforce a protection afforded under this law, has testified or otherwise made a statement in or in connection with any proceeding under this law, or has participated in an investigation under this law.

213.5-3. The Tribe shall not be considered to have engaged in a prohibited action if the same action would have been taken regardless of an employee's military status.

213.5-4. Sections 213.5-1 and 213.5-2 shall apply to any position of employment, including a position that is described in 213.6-4(c).

213.6. Reemployment Rights of Persons Who Serve in the Military

213.6-1. Any person who takes a leave of absence from an employment position to serve in the military shall be entitled to the reemployment benefits and other employment benefits of this law if:

(a) the Tribe receives advance written notice of such service as soon as practicable after the employee receives notice;

(b) the cumulative length of the absence and of all previous absences with the Tribe by reason of service in the military does not exceed five (5) years; and

(c) except as provided in 213.6-6, the person reports to the Tribe in accordance with 213.6-5.

213.6-2. No notice is required under 213.6-1(a) if it is precluded by military necessity or, under all of the relevant circumstances, the giving of notice is otherwise impossible or unreasonable.

213.6-3. When calculating the length of absence under 213.6-1(b) the Tribe shall not include any service:

(a) that is required, beyond five (5) years, to complete an initial period of obligated service;

(b) during which such person was unable to obtain orders releasing such person from a period of service in the military before the expiration of such five (5) year period and such inability was through no fault of such person;

(c) performed as required pursuant to training requirements for reservists and National

Guard members;

(d) performed by a member of the military service who is:

(1) ordered to or retained on active duty involuntarily during domestic emergency or national security related situations;

(2) ordered to or retained on active duty under any provision of law because of a war or national emergency declared by the President of the United States or the Congress;

(3) ordered to active duty in support of an Aoperational mission@, without his or her consent;

(4) ordered to active duty in support of a Acritical mission or requirement@ in times other than war or national emergency and when no involuntary call up is in effect; or

(5) called into Federal service by the President as a member of the National Guard to suppress an insurrection, repel an invasion, or execute the laws of the United States.

213.6-4. *Tribe's Right to Not Reemploy.* The Tribe is not required to reemploy a person under this law if:

(a) circumstances have so changed as to make such reemployment impossible or unreasonable;

(b) in the case of a person entitled to reemployment under 213.7-1(c), (d), or 213.7-2, such employment would impose an undue hardship on the Tribe; or

(c) the employment from which the person leaves is for a brief, nonrecurrent period (i.e. seasonal, temporary, limited term) and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

(d) the Tribe shall have the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or nonrecurrent nature of the employment.

213.6-5. Except as provided under 213.6-6, an employee referred to in 213.6-1 shall notify the Tribe of the person's intent to return to a position of employment within ninety (90) days of separation of active duty service and within thirty-one (31) days from completion of training for reservists. The Tribe shall, as soon as practicable after receiving notice, make arrangements with the employee for an employment return date.

213.6-6. A person who is hospitalized for, or recovering from, an illness or injury incurred in, or aggravated during, the performance of service in the military shall, at the end of the period that is necessary for the person to recover from such illness or injury notify the Tribe of the person's intent to return to a position of employment. Such period of recovery may not exceed two (2) years, unless the minimum time required to accommodate the circumstances beyond such person's control is longer than two years, making reporting within the period specified impossible or unreasonable.

213.6-7. A person who fails to report for reemployment within the appropriate period shall not automatically forfeit such person's entitlement to the benefits referred to in section 213.6-1 but shall be subject to the Tribe's policies and procedures pertaining to discipline with respect to absence from scheduled work.

213.6-8. A person who has notified the Tribe of the person's intent to return to a position of employment in accordance with section 213.6-5 shall, upon the request of the Tribe, provide

documentation to establish that:

- (a) the notification is timely;
- (b) the time limits in section 213.6-1(b) have not been exceeded, except as permitted under section 213.6-3; and
- (c) the person's entitlement to benefits has not been terminated pursuant to section 213.4.

213.6-9. The timing, frequency, and duration of a person's training or service, or the nature of such training or service (including voluntary service) in the military, shall not be a basis for denying protection of this law if the service does not exceed the limitations set forth under section 213.6-3 and the notice and notification requirements established in this section are met.

213.6-10. The Human Resources Department shall inform employees of their rights, benefits, and obligations under this law and shall provide assistance to employees with respect to the employment and reemployment benefits to which they are entitled under this law.

213.7. Reemployment Positions

213.7-1. A person entitled to reemployment under section 213.6 shall be promptly reemployed in a position of employment in accordance with the following order of priority:

- (a) In the case of a person whose period of service in the military was for less than ninety-one (91) days:
 - (1) in the position which the person would have been employed if the continuous employment of such person had not been interrupted by such service, the duties of which the person is qualified to perform; or
 - (2) in the position which the person was employed on the date of the commencement of the service in the military, only if the person is not qualified to perform the duties of the position referred to under section 213.7-1(a)(1) after reasonable efforts by the Tribe to qualify the person.
- (b) In the case of a person whose period of service in the military was for more than ninety (90) days:
 - (1) in the position which the person would have been employed if the continuous employment of such person had not been interrupted by such service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform; or
 - (2) in the position which the person was employed on the date of the commencement of the service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of the position referred to under section 213.7-1(b)(1) after reasonable efforts by the Tribe to qualify the person.
- (c) In the case of a person who has a disability incurred in, or aggravated during, service, and after reasonable efforts by the Tribe to accommodate the disability, is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the Tribe had not been interrupted by such service:
 - (1) in any other position which is equivalent in seniority, status, and pay, the duties of which the person is qualified to perform or can become qualified to perform with reasonable efforts by the Tribe; or

(2) in a position which is the nearest approximation to a position referred to in (1) in terms of seniority, status, and pay consistent with such person's case.

(d) In the case of a person who is not qualified to become reemployed under 213.7-1(a) - (c) and cannot become qualified, even with reasonable efforts by the Tribe, in any other position which is the nearest approximation to a position which such person is qualified to perform, with full seniority.

213.7-2. If two or more persons are entitled to reemployment in the same position and more than one of them has reported for reemployment, the person who left the position first shall have the prior right to reemployment in that position.

213.7-3. A person entitled to reemployment who is not reemployed because of section 213.7-2 shall be entitled to reemployment in any other position referred to in section 213.7-1, remaining consistent with the circumstances of such person's case, in the order of priority set out in the appropriate section, with full seniority.

213.8. Benefits of Persons Absent from Employment for Military Service

213.8-1. A person who is reemployed under this law is entitled to the seniority and other benefits determined by seniority that the person had on the date of the commencement of service in the military plus the additional seniority and benefits that such person would have attained if the person had remained continuously employed.

213.8-2. A person who is absent from a position of employment by reason of service in the military shall be:

(a) deemed to be on a leave of absence while performing such service; and

(b) entitled to other benefits not determined by seniority as are generally provided by the Tribe to employees having similar seniority, status, and pay who are on leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.

213.8-3. A person who

(a) is absent from an employment position because of service in the military, and

(b) knowingly provides written notice of intent not to return to a position of employment after service in the military, is not entitled to benefits under this section.

The Tribe has the burden of proving that a person knowingly provided written notice of intent not to return to a position after service in the military and was aware of the specific benefits to be lost.

213.8-4. A person on leave of absence for military service shall not be entitled to any benefits to which the person would not otherwise be entitled if the person had remained continuously employed.

213.8-5. A person may be required to pay the Tribe's cost, if any, of any funded benefit continued to the extent other employees on leave of absence are so required.

213.8-6. A person who is reemployed under this law shall only be terminated in accordance with the Oneida Personnel Policies and Procedures.

213.8-7. Any person whose employment is interrupted by military service shall be permitted to use, during such period of service, any vacation or personal time accrued by the person before the commencement of such service. The Tribe may not require any person to use vacation or personal time during such period of service.

213.8-8. The Tribe shall grant an employee who is a reserve member an unpaid temporary leave of absence in order to perform funeral honors duty. Employees may use vacation or personal time to perform funeral honors duty if eligible.

213.9. Health Plans

213.9-1. If a person, or a person's dependents, has coverage under a health plan through the Tribe and such person is on a leave of absence for military service, the plan shall provide that the coverage may be continued. The maximum period of coverage of a person and the person's dependents shall be the lesser of:

- (a) the eighteen (18) month period beginning on the date on which the person's absence begins; or
- (b) the day after the date on which the person fails to return to a position of employment, as determined under section 213.6-5.

213.9-2. A person who elects to continue health-plan coverage may be required to pay not more than the amount paid by other employees who take a leave of absence, except that in the case of a person who serves in the military for less than thirty-one (31) days, such person may not be required to pay more than the employee share, if any, for such coverage.

213.9-3. If a person's health plan is terminated by reason of military service, an exclusion or waiting period may not be imposed in connection with the reinstatement of such coverage upon reemployment if an exclusion or waiting period would not have been imposed had coverage of such person not been terminated as a result of such service.

- (a) This shall apply to the person who is reemployed and to his or her dependents who are covered under the plan with the reinstatement of coverage of such person.
- (b) This shall not apply to the coverage of any illness or injury incurred in, or aggravated during, performance of service in the military.

213.10. Retirement and Pension Plans

213.10-1. Each period served by a person in the military shall, upon reemployment, be deemed to constitute service for the purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under a retirement or pension plan.

- (a) When a person is absent from a position of employment for more than ninety (90) days and is reemployed, the Tribe may require documentation before treating the person as not having incurred a break in service for retirement or pension plan purposes under this section.

213.10-2. A person reemployed under this law shall be entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals if the person makes payment to a retirement or pension plan with respect to such contributions or deferrals. If the employee makes up the contributions, the Tribe shall make up any required matching contributions. No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the Tribe throughout the period of service. Any payment to a retirement or pension plan shall be made during the period beginning with the date of reemployment and whose duration is three (3) times the period of the person's service in the military, such payment period not to exceed five (5)

years.

213.10-3. For purposes of computing the Tribe's liability or the employee's contributions, the employee's compensation during the period of service shall be computed:

(a) at the rate the employee would have received but for the period of service;

(b) in the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the twelve (12) month period immediately preceding such period (or, if shorter, the period of employment immediately preceding such period).

213.10-4. *Pension Plan.* When a person who participates in a pension plan is reemployed after a period of military service, the Tribe shall be liable to the pension plan for funding any obligation to provide the benefits the employee would have received had they not taken a leave of absence. The Tribe shall allocate the amount of the Tribal contribution for the person in the same manner and to the same extent the allocation occurred for other employees eligible for the pension plan during the period of service. For purposes of determining the amount of such liability and any obligation of the pension plan, earnings and forfeitures shall not be included.

213.11. Enforcement of Employment or Reemployment Rights

213.11.1. The Tribe shall notify, in writing, any person who has been denied employment, reemployment, or benefits under this law.

213.11-2. A person may file a complaint whenever such person claims that:

(a) he or she is entitled to employment or reemployment rights or benefits with respect to employment by the Tribe; or

(b) the Tribe has failed or refused to comply with the provisions of this law.

213.11-3. Such complaint shall be in writing, contain a summary of the allegations that form the basis for the complaint and be filed with the person's area manager and the Oneida Human Resources Manager (or designee) within ten (10) working days from the day the person received a denial of employment and/or benefits by the Tribe .

213.11-4. If the area manager determines that the action alleged in such complaint occurred, the area manager shall attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this law.

213.11-5. If the efforts of the area manager do not resolve the complaint within ten (10) working days from the receipt of the employee's complaint, the complainant shall be notified of the results of the area manager's investigation and the complainant's entitlement to refer the complaint to the Trial Court. One extension of no more than five (5) working days may be requested of and granted by the Oneida Human Resources Manager (or designee) at his or her discretion.

213.11-6. If an employee appeals the area manager's decision, the appeal must be filed with the Trial Court within ten (10) working days of the employee's receipt of the Area Manager's decision. The Trial Court shall notify the Human Resources Manager (or designee) within one (1) business day when an employee files an appeal.

213.11-7. *Remedies.* In any action relating to this law, relief may be awarded as follows:

(a) Require the Tribe to comply with the provisions of this law; and/or

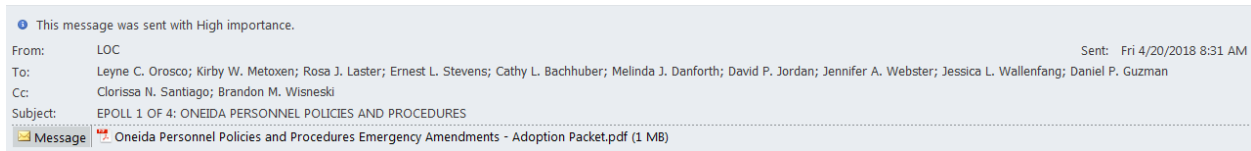
(b) Require the Tribe to compensate the person for any loss of wages or benefits suffered by reason of the Tribe's failure to comply with the provisions of this law.

347 213.11-8. Any compensation awarded shall be in addition to, and shall not diminish, any of the
348 other benefits provided for under this law.

349
350 *End.*

351
352
353 Adopted - BC-10-24-07-E
354 Emergency Amended – BC-__-__-__-__

April 20, 2018 Legislative Operating Committee E-Poll Oneida Personnel, Policies, and Procedures Emergency Amendments



Good Morning Legislative Operating Committee,

This email serves as the E-Poll for the Oneida Personnel Policies and Procedures Emergency Amendments.

EXECUTIVE SUMMARY

On April 11, 2018, the Oneida Business Committee dissolved the Personnel Commission through resolution BC-04-11-18-A for the purpose of consolidating employment related grievance hearings into the Judiciary in an effort to increase consistency in hearing processes, efficiency, and reduce overall costs to the Oneida Nation. The Oneida Business Committee felt it was now appropriate to begin consolidating employment related grievance hearings into the Judiciary as the number of current cases in the Personnel Commission was low and the costs of maintaining judicial hearing authorities continues to increase.

Oneida Business Committee resolution BC-04-11-18-A also requires that the Legislative Operating Committee develop and present emergency legislative amendments to fully address the impact of this resolution to the next Oneida Business Committee meeting, April 25, 2018. This resolution states that emergency action to amend legislation to change references to the Personnel Commission to reflect either the Judiciary – Trial Court or the new Personnel Selection Committee is needed to contain expenditures which may go over budget, to provide standards in hearing processes, and provides clear judicial hearing authority.

Additionally, the Oneida Business Committee created the Personnel Selection Committee on April 11, 2018, through resolution BC-04-11-18-B for the purpose of protecting against issues of nepotism and enforcing Oneida and Indian preference

The emergency amendments to the Oneida Personnel Policies and Procedures replace any reference to the Personnel Commission which refer to actions affecting employees involving adverse employment actions for which a hearing is authorized with a reference to the Judiciary – Trial Court. The emergency amendments also replace any reference to the Personnel Commission which refer to actions involving hiring, including screening and interviews with a reference to the Personnel Selection Committee.

An E-Poll is necessary for this legislative item in order to meet the April 25, 2018, Oneida Business Committee meeting deadline for the submission of emergency amendments for consideration of adoption by the Oneida Business Committee.

REQUESTED ACTION

Approve the emergency adoption packet for the Oneida Personnel Policies and Procedures Emergency Amendments and forward to the Oneida Business Committee for consideration.

DEADLINE FOR RESPONSE

April 20, 2018, at 10:00 a.m.

All supporting documentation has been attached to this email for your convenience.

E-POLL RESULTS

From: Jennifer A. Webster Sent: Fri 4/20/2018 8:47 AM
 To: LOC; Leyne C. Orosco; Kirby W. Metoxen; Rosa J. Laster; Ernest L. Stevens; Cathy L. Bachhuber; Melinda J. Danforth; David P. Jordan; Jessica L. Wallenfang; Daniel P. Guzman
 Cc: Clorissa N. Santiago; Brandon M. Wisneski
 Subject: Re: EPOLL 1 OF 4: ONEIDA PERSONNEL POLICIES AND PROCEDURES

Approved,
 Jenny

From: Kirby W. Metoxen Sent: Fri 4/20/2018 9:58 AM
 To: LOC; Leyne C. Orosco; Rosa J. Laster; Ernest L. Stevens; Cathy L. Bachhuber; Melinda J. Danforth; David P. Jordan; Jennifer A. Webster; Jessica L. Wallenfang; Daniel P. Guzman
 Cc: Clorissa N. Santiago; Brandon M. Wisneski
 Subject: Re: EPOLL 1 OF 4: ONEIDA PERSONNEL POLICIES AND PROCEDURES

support

From: David P. Jordan Sent: Fri 4/20/2018 10:39 AM
 To: Kirby W. Metoxen; LOC; Leyne C. Orosco; Rosa J. Laster; Ernest L. Stevens; Cathy L. Bachhuber; Melinda J. Danforth; Jennifer A. Webster; Jessica L. Wallenfang; Daniel P. Guzman
 Cc: Clorissa N. Santiago; Brandon M. Wisneski
 Subject: Re: EPOLL 1 OF 4: ONEIDA PERSONNEL POLICIES AND PROCEDURES

Approve

From: Daniel P. Guzman Sent: Fri 4/20/2018 12:46 PM
 To: LOC
 Cc:
 Subject: Re: EPOLL 1 OF 4: ONEIDA PERSONNEL POLICIES AND PROCEDURES

Support

***Note:** On Friday, April 20, 2018, the Microsoft Outlook email system was down for some time due to hardware failure. MIS then directed all users to the O365 web application and that system went down as well. As a result, not all of these e-poll responses met the 10:00am deadline.



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson 
DATE: April 20, 2018
RE: Oneida Personnel Policies and Procedures Emergency Amendments

Please find the following attached backup documentation for your consideration of the Oneida Personnel Policies and Procedures Emergency Amendments:

1. Resolution: Oneida Personnel Policies and Procedures Emergency Amendments
2. Statement of Effect: Oneida Personnel Policies and Procedures Emergency Amendments
3. Oneida Personnel Policies and Procedures Emergency Amendments Legislative Analysis
4. Oneida Personnel Policies and Procedures (Redline)
5. Oneida Personnel Policies and Procedures (Clean)

Overview

Emergency amendments to the Oneida Personnel Policies and Procedures are requested in order to address the dissolution of the Personnel Commission through resolution BC-04-11-18-A for the purpose of consolidating employment related grievance hearings into the Judiciary – Trial Court, and the creation of the Personnel Selection Committee through resolution BC-04-11-18-B.

The Oneida Business Committee can temporarily enact legislation when necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and when the amendment of legislation is required sooner than would be possible under the Legislative Procedures Act. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5].

The emergency amendments to the Oneida Personnel Policies and Procedures are necessary for the preservation of the general welfare of the reservation population, in an effort to ensure that employees of the Nation have due process rights in the absence of the Personnel Commission. Additionally, observance of the adoption requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest.

The emergency amendments to the Oneida Personnel Policies and Procedures will become effective immediately upon adoption by the Oneida Business Committee, and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

Requested Action

Approve the Resolution: Oneida Personnel Policies and Procedures Emergency Amendments.

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____
Oneida Personnel Policies and Procedures Emergency 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 Personnel Policy and Procedures Section III governs selection policy for employment in the Nation and references the involvement of the Personnel Commission in the selection and screening of job applicants, as well as the training requirements of the Personnel Commission; and
- WHEREAS,** the Personnel Policy and Procedures Section V governs employee relations, and references the role of the Personnel Commission in the employee grievance process; and
- WHEREAS,** the Oneida Business Committee dissolved the Personnel Commission on April 11, 2018, through resolution BC-04-11-18-A in an effort to consolidate employment related grievance hearings into the Judiciary to increase consistency in hearing processes, efficiency, and reduce overall costs to the Oneida Nation; and
- WHEREAS,** resolution BC-04-11-18-A requires the Legislative Operating Committee to develop and present emergency legislative amendments to fully address the impact of this resolution by the April 25, 2018, Oneida Business Committee meeting; and
- WHEREAS,** resolution BC-04-11-18-A states that emergency action to amend legislation to change references to the Personnel Commission to reflect either the Judiciary – Trial Court or the new Personnel Selection Committee is needed to contain expenditures which may go over budget, to provide standards in hearing processes, and provides clear judicial hearing authority; and
- WHEREAS,** the Oneida Business Committee created the Personnel Selection Committee on April 11, 2018, through resolution BC-04-11-18-B for the purpose of protecting against issues of nepotism and enforcing Oneida and Indian preference; and
- WHEREAS,** the emergency amendments to the Oneida Personnel Policies and Procedures replace any reference to the Personnel Commission which refer to actions affecting employees involving adverse employment actions for which a hearing is authorized with a reference to the Judiciary – Trial Court; and
- WHEREAS,** the emergency amendments to the Oneida Personnel Policies and Procedures replace any reference to the Personnel Commission which refer to actions involving hiring,

including screening and interviews with a reference to the Personnel Selection Committee; and

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

WHEREAS, the emergency adoption of these amendments to the Oneida Personnel Policies and Procedures are necessary for the preservation of the public health, safety, or general welfare of the reservation population in order to ensure that the general welfare and due process rights of employees of the Nation are preserved in absence of the Personnel Commission; and

WHEREAS, observance of the adoption requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest; and

WHEREAS, the Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation.

NOW THEREFORE BE IT RESOLVED, that the emergency amendments to the Oneida Personnel Policies and Procedures are hereby adopted on an emergency basis and shall become effective immediately.



Statement of Effect

Oneida Personnel Policies and Procedures Emergency Amendments

Summary

This Resolution adopts emergency amendments to the Oneida Personnel Policies and Procedures which replace any reference to the Personnel Commission with a reference to the Judiciary - Trial Court or the Personnel Selection Committee.

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

Date: April 20, 2018

Analysis by the Legislative Reference Office

This resolution adopts emergency amendments to the Oneida Personnel Policies and Procedures. The Oneida Personnel Policies and Procedures govern employment related matters of the Nation. Personnel Policy and Procedures Section III governs selection policy for employment in the Nation and references the involvement of the Personnel Commission in the selection and screening of job applicants, as well as the training requirements of the Personnel Commission. Personnel Policy and Procedures Section V governs employee relations, and references the role of the Personnel Commission in the employee grievance process.

On April 11, 2018, the Oneida Business Committee dissolved the Personnel Commission through resolution BC-04-11-18-A for the purpose of consolidating employment related grievance hearings into the Judiciary in an effort to increase consistency in hearing processes, efficiency, and reduce overall costs to the Oneida Nation. The Oneida Business Committee felt it was now appropriate to begin consolidating employment related grievance hearings into the Judiciary as the number of current cases in the Personnel Commission was low and the costs of maintaining judicial hearing authorities continues to increase.

Oneida Business Committee resolution BC-04-11-18-A also requires that the Legislative Operating Committee develop and present emergency legislative amendments to fully address the impact of this resolution to the next Oneida Business Committee meeting. This resolution states that emergency action to amend legislation to change references to the Personnel Commission to reflect either the Judiciary – Trial Court or the new Personnel Selection Committee is needed to contain expenditures which may go over budget, to provide standards in hearing processes, and provides clear judicial hearing authority.

Additionally, the Oneida Business Committee created the Personnel Selection Committee on April 11, 2018, through resolution BC-04-11-18-B for the purpose of protecting against issues of nepotism and enforcing Oneida and Indian preference

The emergency amendments to the Oneida Personnel Policies and Procedures replace any reference to the Personnel Commission which refer to actions affecting employees involving

adverse employment actions for which a hearing is authorized with a reference to the Judiciary – Trial Court. The emergency amendments also replace any reference to the Personnel Commission which refer to actions involving hiring, including screening and interviews with a reference to the Personnel Selection Committee.

The Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is “necessary for the immediate preservation of the public health, safety or general welfare of the reservation population” and when “enactment or amendment of legislation is required sooner than would be possible under the Legislative Procedures Act.” [1 O.C. 109.9-5].

The emergency amendments to the Oneida Personnel Policies and Procedures are necessary for the preservation of the public health, safety, or general welfare of the reservation population in order to ensure that the general welfare and due process rights of employees of the Nation are preserved in the absence of the Personnel Commission. Additionally, observance of the adoption requirements under the LPA for adoption of this amendment would be contrary to public interest. Through the resolution BC-04-11-18-A, the Oneida Business Committee has issued a finding of an emergency and has stated the necessity for approving emergency amendments to the Oneida Personnel Policies and Procedures.

The emergency amendments to the Oneida Personnel Policies and Procedures will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendments will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

Conclusion

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



Emergency Amendments to Personnel Policies and Procedures

SECTION 1. BACKGROUND

REQUESTER: OBC	SPONSOR: David Jordan	DRAFTER: Clorissa Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	The intent of the amendments is to transfer the Oneida Personnel Commission's responsibilities under this law to the Oneida Judiciary and the newly created Personnel Selection Committee.		
Purpose	The purpose of the Personnel Policies and Procedures is to govern the Nation's employment policies regarding recruitment, selection, compensation and benefits, employee relations, safety and health, record keeping and other work standards.		
Affected Entities	Oneida Human Resources Department, Oneida Judiciary, Oneida Personnel Commission, Oneida Personnel Selection Committee, All employees of the Nation, All applicants who interview for jobs with the Nation.		
Affected Legislation	Oneida Personnel Policies and Procedures.		
Enforcement/Due Process	This law includes a disciplinary process for violations. Employees may appeal disciplinary actions to their area manager or Oneida Judiciary Trial Court [see <i>Personnel Policies and Procedures – Section V</i>].		
Public Meeting	A public hearing is not required for emergency legislation.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A.** On April 11, 2018, the Oneida Business Committee (OBC) dissolved the Oneida Personnel Commission and directed that the Commission's hearing authority be transferred to the Oneida Judiciary. The OBC directed the LOC to draft emergency amendments to address the impact of this resolution and placed the commission's pending cases on hold until emergency amendments are adopted [see *BC Resolution 04-11-18-A*]. On the same day, the Oneida Business Committee created the Personnel Selection Committee to assume the Personnel Commission's responsibilities related to job screening and interviews [see *BC Resolution 04-11-18-B*].
- B.** References to the Personnel Commission appear in several of the Nation's laws. Now that the Personnel Commission is dissolved, amendments are necessary to transfer the Personnel Commission's responsibilities to the Oneida Judiciary or to the newly created Personnel Selection Committee.
- C.** These emergency amendments ensure that the Nation's employees may continue to file employment-related grievances. These emergency amendments also ensure that the Nation's job screening and interview process will include participation from the newly created Personnel Selection Committee.

SECTION 3. CONSULTATION

- A.** The Judiciary Law, Personnel Policies and Procedures, Employee Protection Policy, and Military Service Employee Protection Act were reviewed in drafting this analysis.
- B.** Personnel Commission staff were consulted regarding the number of pending cases and filing fees.

SECTION 4. PROCESS

- A. This amendment is being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency law where legislation is necessary for the immediate preservation of public health, safety, or general welfare of the reservation population and enactment or amendment of legislation is required sooner than would be possible under this law [see *Legislative Procedures Act*, 1 O.C. 109.9-5].
- B. Through resolution BC-04-11-18-A, the OBC has issued a finding of an emergency and has stated the necessity for approving emergency amendments to this law. Emergency amendments to this law are necessary for the preservation of the general welfare of the reservation population, in an effort to ensure that employees of the Nation have due process rights in the absence of the Personnel Commission.
- C. The Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation; however they will be required when considering permanent adoption of this amendment. Emergency amendments expire six (6) months after adoption and may be renewed for one additional six (6) month period.
- D. This law was originally added to the Active Files List on 12/20/2017 and reclassified as emergency amendments on 4/18/2018.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. **Section III – Selection Policy.** This section of the law governs the Nation’s procedures regarding hiring, screening, interviewing, and selecting job applicants. All references to the Personnel Commission in this section have been replaced with the Personnel Selection Committee:
- i. **Training.** The Personnel Selection Committee must undergo training and periodic re-training in Equal Employment Opportunity (EEO) and Tribal laws, rules and regulations [see *Personnel Policies and Procedures – Section III(B)(1)*].
 - ii. **Role of Personnel Selection Committee.** The section of this law describing the role of the Personnel Commission has been re-titled to describe the role of the Personnel Selection Committee. This role, which remains unchanged, includes: seeking out the best-matched applicants for each available position and considering only job-related factors when selecting applicants [see *Personnel Policies and Procedures – Section III(B)(2)(b)*].
 - iii. **Screening.** Screening Committees, which conduct screening of job applicants, will now include a member of the Personnel Selection Committee instead of a member of the Personnel Commission [see *Personnel Policies and Procedures – Section III(B)(2)(f)(1)*].
 - iv. **Interviews.** Interview Committees, which conduct interviews of job candidates, will now include a second member of the Personnel Selection Committee instead of a second member of the Personnel Commission. [see *Personnel Policies and Procedures – Section III(B)(2)(g)(1)*].
- B. **Section V – Employee Relations.** This section of the law governs the Nation’s procedures regarding disciplinary actions and employee grievances. All references to the Personnel Commission in this section have been replaced with the Oneida Judiciary Trial Court:
- i. **Appeal Process.** Employees who wish to appeal the area manager’s decision will now take their appeals to the Judiciary Trial Court instead of the Personnel Commission [See *Personnel Policies and Procedures - Section V(D)(6)(b)*].

- 65 ii. *Timelines and Notification Requirements.* All timelines and requirements for notice or delivery
66 of documents remain unchanged. However, all references to the Personnel Commission within
67 these timelines have been replaced with the Judiciary Trial Court:
- 68 a. *Timeline for Appeal.* The timeline for filing appeals remains unchanged at ten (10)
69 working days from date the employee receives the Area Manager's decision. These appeals
70 must now be filed with the Judiciary Trial Court instead of the Personnel Commission. [see
71 *Personnel Policies and Procedures - Section V(D)(6)(b)*].
- 72 b. *Notifying HRD of Appeal.* The Judiciary Trial Court, not the Personnel Commission, must
73 notify HRD that an appeal has been filed within one (1) business day [see *Personnel*
74 *Policies and Procedures - Section V(D)(6)(b)*].
- 75 c. *Delivery of Case Documents.* All information regarding the case must be hand delivered to
76 the Oneida Judiciary Trial Court, instead of the Personnel Commission.
- 77 d. *Notice of Hearing Date.* The Trial Court, rather than the Personnel Commission, will
78 notify petitioners and respondents of their hearing date at least five (5) working days prior
79 to the hearing.
- 80 e. *Delivery of Case Documents.* If a hearing date has been scheduled, all information
81 regarding the case must be hand delivered to the Oneida Judiciary Trial Court at least two
82 (2) working days before the appeal date.
- 83 iii. *Process for New Evidence and Decisions.* The process for introduction of new evidence and
84 rendering decisions remains unchanged, except that references to the Personnel Commission are
85 replaced with the Oneida Judiciary Trial Court:
- 86 a. *New Evidence.* If new evidence is introduced during the Trial Court process, then the
87 hearing will be suspended and the case remanded to the Area Manager to reconsider his or
88 her original decision based on the new evidence [see *Personnel Policies and Procedures*
89 *Section V(D)(6)(b)(4)*].
- 90 b. *Basis of Decision.* The Trial Court, rather than the Personnel Commission, will base their
91 decisions only on the information presented to them [see *Personnel Policies and*
92 *Procedures Section V(D)(6)(b)(4)*].
- 93 c. *Decision.* The decision of the Judiciary Trial Court is final. The Trial court may uphold the
94 disciplinary action or overturn the disciplinary action. If the disciplinary action is
95 overturned, the Trial Court may reinstate the employee with or without back pay [see
96 *Personnel Policies and Procedures Section V(D)(6)(b)(7)*].

98 **SECTION 6. EFFECT ON EXISTING LEGISLATION**

- 99 **A.** As a result of the dissolution of the Personnel Commission and creation of the Personnel Selection
100 Committee, the following laws are also being amended on an emergency basis:
- 101 i. Oneida Employee Protection Policy
102 ii. Military Service Employee Protection Act
103 iii. Oneida Judiciary Rules of Civil Procedure

105 **SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR** 106 **OBLIGATIONS**

- A. Pending Cases.** Five cases are currently pending before the Personnel Commission. These cases have been placed on hold until amendments to this and related laws have been adopted. Any timelines associated with these cases have also been placed on hold. Upon adoption, these pending cases and all future cases will be transferred to the Oneida Judiciary Trial Court. The Business Committee's resolution indicates that the Judiciary has identified that it is prepared to accept these responsibilities [see BC Resolution 04-11-18-A].
- B. Trial Court Filing Fees.** The Personnel Commission did not charge filing fees for their services. The Trial Court, however, charges a \$50 filing fee for general civil cases. Therefore, individuals may now be required to pay filing fees in order to have their case heard.
- i. **Fee Waiver.** If individuals are unable to pay the filing fee, they may request a fee waiver from the court for the following reasons: Unemployed, Health/Medical, Indigent (poverty level), or other reasons.

SECTION 8. OTHER CONSIDERATIONS

- A. Impact on Draft Employment Law.** The Oneida Business Committee and General Tribal Council are currently considering adoption of an Employment Law. A draft of the Employment Law was most recently presented to GTC on 3/19/2017.
- i. **Creation of Personnel Selection Committee.** The draft of the Employment Law dissolves the Personnel Commission and transfers its hearing authority to the Trial Court and all non-hearing related responsibilities to HRD. The draft of the Employment Law and handbook should be updated to reflect the BC's action to dissolve the Personnel Commission and create the Personnel Selection Committee.
- B. Permanent Adoption of Amendments to Personnel Policies and Procedures.** The Oneida Personnel Policies and Procedures can only be permanently amended by the General Tribal Council (GTC). While the OBC may adopt emergency amendments to this law, any permanent amendments to this law should be brought to the GTC for adoption.
- i. Below are examples of previous emergency amendments to Personnel Policies and Procedures that were later adopted by GTC:

Emergency Amendments by OBC:	Permanent Adoption by GTC:	Description of Amendments:
BC Resolution 09-10-03-A	GTC Resolution 02-28-04-A	Emergency amendments to address vagueness and ambiguity regarding the grievance process.
BC Resolution 04-14-10-B and BC Resolution 09-22-10-D	GTC Resolution 05-23-11-A	Emergency amendments to strengthen Indian Preference in Hiring
BC Resolution 09-08-10-C and BC Resolution 02-23-11-D	GTC Resolution 05-23-11-B	Emergency Amendments on Trade Back for Cash of Personal and Vacation Time

- ii. Since the OBC and GTC are already considering revisions to Personnel Policies and Procedures through adoption of the Employment Law, OBC may wish to include these amendments in future drafts and debate on that law.

- 140 **C. *Appeals of Trial Court's Decision.*** The current Personnel Policies and Procedures stated that
141 decisions of the Personnel Commission are final [*see Personnel Policies and Procedures Section*
142 *V(D)(6)(b)(7)*]. However, decisions of the Personnel Commission have previously been appealed to
143 the Oneida Judiciary Appeals Court. Since the Personnel Commission has been replaced with the
144 Trial Court, these amendments now state that decisions of the Trial Court are final. Since the review
145 of orders, sentences and judgments of the Trial Court is within the jurisdiction of the Court of
146 Appeals, the LOC should consider revising this section to state that decisions of the Trial Court may
147 be appealed to the Court of Appeals [*see Judiciary Law, 8 O.C. 801.8-2*].
- 148 **D. *Personnel Selection Committee Bylaws.*** The Oneida Business Committee has directed the LOC to
149 draft the by-laws for the Personnel Selection Committee to be placed on the May 23, 2018 Oneida
150 Business Committee regular meeting agenda or earlier [*see BC Resolution 04-11-18-B*].
- 151 **E. *Historical Caseload of Personnel Commission.*** Based on a review of the Personnel Commission's
152 quarterly reports, the Commission's caseload is provided for informational purposes: In Fiscal Year
153 2017, The Personnel Commission participated in 245 prescreens, 154 job interviews, and heard 20
154 grievance cases.

PERSONNEL POLICIES AND PROCEDURES MANUAL

SECTION I – Introduction



Welcome to the Oneida Nation. We are pleased to have you join us as a partner on a team of people dedicated to providing quality service that enhances the quality of life of the Oneida community. The role you play in your position is important to the overall effort required by your department to meet the goals and objectives of the Oneida Nation. We encourage you to take advantage of the opportunities presented to you, as an employee, to grow and develop both personally and professionally.

The purpose of this “Employee Manual” is to provide you with a ready source of information about employee related Oneida tribal policies and procedures. Although we have tried to make this manual as comprehensive as possible; it does not, and cannot, include policies which address every situation that may arise. The Oneida Nation reserves the right to modify, alter, change or cancel existing policies and procedures or adopt new procedures and policies at any time.

The policies and procedures set forth in this manual apply to all employees. As an employee of the Oneida Nation, you are required to know and abide by these policies and procedures. Tribal departments may have specific and additional procedures enhancing the general policies stated in this manual. Each employee is expected to learn his/her department’s procedures and comply with them. In the event of any conflict between policies in this manual and departmental procedure, the policies in this manual supersede. Each employee is also expected to conform to the professional standards of his/her occupation. Questions regarding this manual, or any employee related policies, should be directed to your supervisor, department head, or to the Human Resources Department at (920) 496-7900.

The Oneida Nation is proud to have you on our staff and we look forward to a fulfilling and successful team relationship.

SECTION II - RECRUITING

A. RECRUITING

1. Recruiting Strategy

- a. The Oneida Tribe shall implement a Recruiting Strategy to increase the potential for hiring the best-qualified and most capable employees possible.
 - 1) The Recruiting Strategy shall target as the first priority applicants in accordance with the Oneida and Indian Preference Policy.
 - 2) The Recruiting Strategy shall have a nationwide focus and will use:
 - a) The Kalihwisaks (national distribution);
 - b) The Oneida Higher Education Office's network of post-secondary school students;
 - c) Local and regional media and public employment agencies.

2. Applicant Pool

- a. The Oneida Tribe shall establish and maintain an Applicant Pool consisting of individuals who have expressed an interest in working for the Oneida Tribe.
 - 1) The Applicant Pool will consist of files containing:
 - a) A Tribal Application Form;
 - b) A summary of career goals and job preferences.
 - 2) The Applicant Pool will be regularly reviewed to:
 - a) Update individual files;
 - b) Remove files where indicated.
 - 3) The Applicant Pool will be cross-referenced by job preferences.
 - a) Notices of job vacancies and an Application Form will be sent to all Applicant Pool members as appropriate.
 - 4) All Applicant Pool members shall have the right to review and update their file upon request.
 - 5) Applicant Pool members shall be apprised of the Tribe's Indian Preference Policy.

B. LABOR POOLS

1. Supervisors that wish to establish a job classification as a Labor Pool Position will work with the HRD to establish the job classification.
2. Each Labor Pool Position shall be advertised as on-going recruitment pool. The HRD shall maintain an updated list of qualified candidates for each Labor Pool Position.
3. The HRD will accept all job applications and verify that each applicant is qualified according to the established job description. All qualified applicants will then be placed in a pool according to the Tribe's Oneida and Indian Preference Policy and the date the application was received. All applicants will be notified of acceptance into or rejection from the pool.
 - a. **PRESCREENING OF LABOR POOL POSITIONS** (HR Interpretation 11-13-12) Applicants who were previously employed by the Oneida Tribe and were terminated for reasons of misconduct or performance issues will be screened out for a period of twelve (12) months following the date of discharge.

4. The HRD will keep an updated list of qualified applicants for each job position.
5. When a vacancy occurs in a Labor Pool Position, the supervisor will notify the HRD of the position to be filled. The HRD Office shall then refer the top three (3) applicants to the immediate supervisor. The top three applicants shall be based first on the Oneida and Indian Preference Policy and, second, the date an application was received. The immediate supervisor will notify the HRD of their selection and the HRD will then offer the position to the applicant. After the position is filled, all ranked candidates will move up on the list. [\(HR Interpretation 7-11-13\)](#)
6. If the applicant refuses the position, the HRD Office will then offer it to the next applicant until the position is filled.
7. If the applicant refuses the job, the applicant may withdraw from the Labor Pool or, if he or she declines to withdraw from the Labor Pool, the date of refusal will be considered the date the application was received and the applicant will be placed in the Labor Pool list according to B.3.
8. Indian (Oneida) Preference will be adhered to in all hiring decisions.

C. EMERGENCY/TEMPORARY POSITIONS

1. The HRD will periodically recruit individuals who are interested in filling temporary positions which consist of the following classifications:
 - a. Emergency/Temp
 - b. Limited Term
 - c. Seasonal
 - d. Substitute/Relief
 - e. Youth Worker
 - f. Student/Intern
2. Creation of Positions
 - a. Creation of positions in the above Temporary Employee Classifications will require that these positions be budgeted for the current fiscal year, or proof through documentation that the budget is adequate to incorporate these positions.
 - b. The positions must be developed in conjunction with the HRD; assuring that all Policies and Procedures are adhered to. Creation of temporary classification requires the approval of the Director, Area Manager, and HRD Manager, or elected official of the Oneida Tribe.
 - c. All newly created temporary positions must be processed through the Wage and Salary system before a position can be filled with a temporary employee.
3. Recruitment/Selection
 - a. Recruitment/selection of applicants for all temporary positions requires a completed Temporary Personnel Requisition form with an updated job description attached.
 - b. The HRD will provide a list of qualified candidates according to the job descriptions to the immediate supervisor. The immediate supervisor will select from the approved list adhering to Indian Preference.
 - c. The HRD will contact the selected candidate and offer the position, following the proper procedures to put the incumbent on payroll.

- d. The selected candidate will sign a statement accepting conditions of temporary employment, and length of employment where applicable.
 - e. Temporary employees will be paid within the Grade in which the job is classified and salary will be negotiated within the first three (3) steps of respective grade.
 - 1) Any negotiated salary beyond step three will require written justification and approval from the respective General Manager. [\(H.R. Interpretation, 12-8-16\)](#)
 - f. Temporary employees are welcome to apply for any regular position within the Tribe that becomes available during the term of their employment.
 - g. Temporary employees that are terminated due to documented cause will have the right to the appeal process as outlined in the Personnel Policies and Procedures.
 - h. All temporary employees are subject to lay-off based upon department job needs and budgets. [\(HR Interpretation – 11-25-13\)](#)
 - i. Supervisors are required to do proficient planning within their respective span of control; as such they must also enforce separation dates and will be monitored by HRD for compliance.
 - j. Supervisors must select the most appropriate category of classification for the job.
 - 1) Moving from one classification to another is prohibited.
4. Benefits
- a. The following employee classifications will be eligible for benefits as defined in the section of the Personnel Policies and Procedures as medical, dental, vacation and personal accrual, holiday pay, premium pay.
 - 1) Limited Term
 - 2) Seasonal
 - b. The following employee classifications will be eligible for benefits as defined in this section of the Personnel Policies and Procedures as Mandatory Benefits and Holiday pay.
 - 1) Emergency/Temporary
 - 2) Substitute/Relief
 - 3) Seasonal Worker (only during their first season)
 - c. The following employee classifications will be eligible for benefits as defined in this section of the Personnel Policies and Procedures as Mandatory Benefits.
 - 1) Youth Worker
 - 2) Student/Intern

SECTION III – SELECTION POLICY

A. ONEIDA PREFERENCE AND INDIAN PREFERENCE STATEMENT OF POLICY

Federal policy since 1834 accords hiring preference to Indians. The purpose of this preference is threefold: 1) to give Indians a greater participation in self-government; 2) to further the Government's trust obligation; and 3) to increase the positive effect of having Indians administer matters that affect Indian tribal life. [\(GTC Resolution – 5-23-11-A\)](#)

More recently, legislation such as the Civil Rights Act (1964) and the Education Amendments of 1972 (passed after the Equal Employment Opportunity Act) continued to specifically provide for preferential hiring of Indians by Indian Tribes.

As an employer, the Tribe seeks to employ individuals who possess the skills, abilities and background to meet the employment needs of the Tribe.

As a sovereign Indian Tribe and a unique cultural group, the Oneida Tribe has determined that a highly desirable employment characteristic is knowledge of Oneida culture that can be attained only by membership (or eligibility for membership) in the Oneida Tribe. Further, the Tribe recognizes the unique, shared culture of Native American Indians and has determined that a desirable employment characteristic is status as a member of an American Indian Tribe. At a minimum, the Tribe has determined that some knowledge of Indian culture is a desirable employment characteristic.

Accordingly, the Oneida Tribe establishes the following policy in regard to Indian Preference for selecting employees to provide services that meet the needs of the Oneida people. This Indian Preference policy shall be specific to staffing decisions made under the Personnel Policies and Procedures and shall not be construed to have an application outside of these policies and procedures.

The Oneida Tribe of Indians of Wisconsin is an equal employment opportunity employer and follows non-discriminatory policies and procedures in personnel decisions. [\(HR Interpretation 5-19-14\)](#) However, the Oneida Tribe exists to serve the needs of the Oneida people and therefore accords Oneida Preference to enrolled Oneida Tribal Members where such preference is not otherwise prohibited. All General Managers and top administrative positions, as defined by HRD, shall be held by enrolled Tribal members. In all other instances, the Tribe applies the following priorities of Indian Preference in staffing decisions:

- 1 Enrolled Oneida Tribal member;
- 2 Oneida Indians eligible for enrollment in the Oneida Tribe;
- 3 Documented first generation Oneida descendant;
- 4 Other Native American Indian;
- 5 Other (non-Indian). [\(HR Interpretation 6-24-11\)](#)

This policy will apply in decisions where the basic requirements for employment are met.

197 B. HIRING PROCEDURE

198 1 Statement of Policy

- 199 a. The Oneida Tribe of Indians of Wisconsin is an equal employment opportunity employer and
200 follows nondiscriminatory policies in hiring.
- 201 b. The Oneida Tribe is a firm advocate of the 1964 Civil Rights Act (as amended) and the 1968
202 Indian Civil Rights Act (as amended) and will make every effort to ensure compliance with
203 each Act; however:
- 204 c. The Oneida Tribe follows the principles of Indian Preference in the implementation of hiring
205 practices (see the Oneida Preference and Indian Preference Statement of Policy).
- 206 | d. The members of the ~~Personnel Commission~~Personnel Selection Committee and all Tribal
207 employees who supervise other Tribal employees shall undergo training in EEO and Tribal
208 laws, rules and regulations.
- 209 1) Training will be knowledge - and skills-based
- 210 | 2) All Personnel ~~Commission~~Selection Committee members and Tribal supervisors will
211 undergo periodic re-training in EEO and Tribal laws, rules and regulations
- 212 e. No person shall be recommended for a position if a conflict of interest or nepotism is
213 created. Nepotism is created by the following relationships: [\(HR Interpretation 08-13-12\)](#)
- | | |
|-----------------|--------------------|
| 214 a) Father | i) Father-in-law |
| 215 b) Mother | j) Mother-in-law |
| 216 c) Husband | k) Brother-in-law |
| 217 d) Wife | l) Sister-in-law |
| 218 e) Brother | m) Son-in-law |
| 219 f) Sister | n) Daughter-in-law |
| 220 g) Son | m) Grandparent |
| 221 h) Daughter | n) Grandchild |

222 2. Hiring Procedures

223 a. HRD Office Responsibilities

- 224 1) Unless specifically noted, the HRD Office will have responsibility for implementing the
225 policies and procedures guiding the selection of Tribal employees.

226 | b. Personnel ~~Commission~~Selection Committee Role

- 227 | 1) The Oneida Tribe established the Personnel ~~Commission~~Selection Committee to
228 represent the Oneida Community-at-large in the selection of tribal employees.
- 229 | a) The Personnel ~~Commission~~Selection Committee is directed to:
- 230 i. Seek out the best-matched applicants for each available position;
- 231 ii. Consider only job-related factors (such as education, experience, past job
232 performance, skills and abilities, and compatibility with the position and
233 potential co-workers) when selecting candidates.

234 c. Identification of Vacancies and Development of Job Descriptions [\(Work Standard, 11-16-11\)](#)

- 235 1) Supervisors may inform the HRD Office of pending vacancies as soon as they are
236 identified.

- 238
- 239 2) For existing positions, the HRD Manager (or designate), the supervisor and the Area
- 240 Manager (at his/her option) will review the job description to ensure compliance with:
- 241 a) The Tribal job structure;
- 242 b) The needs and requirements of the job.
- 243 3) For new positions, the HRD Manager, the appropriate Area Manager, and the supervisor
- 244 shall develop the job description.
- 245 **a) The new job description shall conform to the Tribal job structure.**
- 246 b) The new job description will be reviewed by the General Manager.
- 247 [\(HR Interpretation, 12-8-16\)](#)
- 248 4) All job descriptions shall contain the following information:
- 249 a) Job title, division/department, location, supervisor's title;
- 250 b) Posting date, application deadline, preferred starting date, date of job, description
- 251 review;
- 252 c) Pay level (grade, step, hourly rate);
- 253 d) A brief job summary;
- 254 e) Duties and responsibilities;
- 255 f) Qualifications;
- 256 g) Inquiry address;
- 257 h) Statement of compliance with EEO and Indian Preference policies.
- 258 d. Applications
- 259 1) All inquiries for job vacancies will be responded to with a Tribal Application Form which
- 260 will consist of:
- 261 a) Job vacancy title;
- 262 b) Applicant biographical data;
- 263 c) A request for a resume (where applicable).
- 264 2) The Application Form shall be accompanied by a Statement of Policy regarding Oneida
- 265 Preference and Indian Preference.
- 266 3) Hand-delivered applications will be accepted at the HRD Office until 4:30 p.m. on the
- 267 deadline date; mailed applications must be postmarked on or before the deadline date.
- 268 4) All applications will be acknowledged.
- 269 e. Advertising
- 270 1) Position vacancies will be advertised as widely as possible including:
- 271 a) The Kalihwisaks;
- 272 b) Statewide, through print and electronic media and public employment agencies;
- 273 c) Through targeted recruiting efforts including:
- 274 i. Major metropolitan areas (i.e. Milwaukee, Chicago, Minneapolis, etc.)
- 275 ii. The Bureau of Indian Affairs;
- 276 iii. The Oneida Higher Education Office.
- 277
- 278

- 279
- 280 d) Other postings targeted toward special recruiting categories (such as professions)
- 281 shall be carried out at the discretion of the HRD Office with the advice and consent
- 282 of the affected department.
- 283 2) Unless otherwise prohibited by external grant source or federal law, the first posting
- 284 for a position vacancy shall be limited to enrolled Oneida members and shall be posted
- 285 for a minimum of seven (7) calendar days.
- 286 3) The second posting for a position vacancy shall be posted for a minimum of ten (10)
- 287 calendar days and shall be open to the general public, unless the position must be filled
- 288 by an enrolled Oneida Tribal member. (HR Interpretation 8-9-11)
- 289 4) All vacancies requiring re-posting shall be referred back to B-2.c (Identification of
- 290 Vacancies and Development of Job description) to begin the re-posting process.
- 291 f. Screening of Applicants (HR Interpretation 11-16-12) (HR Interpretation 10-22-12)
- 292 1) A Screening Committee consisting of the HRD Manager (or designate), the position
- 293 supervisor, the Area Manager (at his/her option), and a member of the Personnel
- 294 ~~Commission~~ Selection Committee shall be convened to conduct the screening of
- 295 applicants. The Screening process will begin as soon as practical following the closing of
- 296 the position. This Committee will:
- 297 a) Verify that all applications are complete, are accurate and were submitted on time.
- 298 i. Applications that are incomplete, inaccurate, or were not submitted on or
- 299 before the posted deadline date may be screened out.
- 300 b) Analyze the job description to establish screening criteria. These criteria will
- 301 include qualifications listed on the job description determined by the supervisor
- 302 and Area Manager to be essential to the job. (T.O.E. WS - 5-6-13)
- 303 c) Screen verified applications
- 304 d) Recommend a list of applicants to be interviewed.
- 305 2) The HRD Office shall notify screened out applicants within five (5) working days after
- 306 the initial screening and reserve these applications in the general recruiting pool.
- 307 3) The HRD Office will arrange for interviews with the listed candidates.
- 308 g. Candidate Interviews
- 309 1) An Interview Committee will be convened and will consist of the members of the
- 310 Screening Committee except that the HRD Manager will be replaced with a second
- 311 member of the Personnel ~~Commission~~ Selection Committee. The Interview Committee
- 312 will:
- 313 a) Construct an interview format consisting of:
- 314 i. A set of questions related to the screening criteria qualifications;
- 315 ii. An interview rating scale designed to objectively evaluate each candidate's
- 316 qualifications.
- 317 b) Interview candidates and evaluate each individually
- 318 2) The HRD Manager (or designee) will total the evaluation rating scale to rank order of the
- 319 candidates.

- 320
321
322 h. Selection [\(Interpretation - Disqualification of Applicant 10-24-2013\)](#)
323 1) The supervisor shall select one of the top two (2) candidates as ranked through the
324 rating scale. [\(HR Interpretation - 10-17-12\)](#)
325 a) The supervisor may conduct an additional personal interview with the top two (2)
326 candidates.
327 b) The selection decision shall be governed by the Oneida Preference and Indian
328 Preference Policy. [\(HR Interpretation - 6-6-11\)](#)
329 c) The HRD Office will notify the selected candidate and offer the candidate the job
330 within five (5) working days of the selection decision by the supervisor.
331 i. Should the supervisor's first choice refuse the offer, the HRD Office will offer
332 the job to the second ranked candidate.
333 2) Should both of the top two ranked candidates refuse the job offer, the supervisor may:
334 a) Repeat the process outlined in B.2.h.1. above; or
335 b) Re-post the position.
336 3) The HRD Office will notify those candidates interviewed but not selected of the
337 decision to hire the best-qualified candidate.
338 4) All newly hired employees will be listed in the HR newsletter.
339 C. TRANSFERS AND PROMOTIONS POLICY - The Oneida Tribe encourages transfers and promotions
340 within and among units in order to make the best possible use of human resources to meet Tribal
341 goals and objectives. Supervisors and employees are encouraged to work together to create an
342 environment in which employees constantly strive to improve their skills and abilities and managers
343 constantly seek to provide challenging and rewarding work experiences.
344 1. Procedure
345 a. Internal Posting and Bidding
346 1) Open positions as determined by a supervisor and his/her Area Manager will be posted
347 internally for five (5) working days. This internal posting will be concurrent with the
348 external (public) posting of positions.
349 a) Positions will be posted in prominent locations in each Tribal building
350 2) Tribal employees may bid for transfers by notifying their immediate supervisor and
351 submitting an Application Form to the HRD Office.
352 a) The HRD Manager will inform all affected Area Managers of each transfer bid.
353 3) At the end of the five (5) day internal posting period, the HRD Manager will schedule a
354 conference with the open position's supervisor and the Area Manager.
355 a) The conference committee will consist of the supervisor, the Area Manager and the
356 HRD Manager (or designate) acting as this Committee will:
357 i. Establish selection criteria; and
358 ii. Review each bid.
359 b) The Committee may select the best-qualified applicant but is not required to
360 choose an applicant to fill the open position from those employees who have

- 361 submitted an application for a transfer or promotion.
- 362
- 363 c) If the Committee does not fill the position from the transfer/promotion process,
- 364 the process will continue through the full advertising, screening and interview
- 365 steps.
- 366 i. Any decision will be governed by the Indian Preference Policy.
- 367 4) Employees who are transferred or promoted will not lose any benefits; however:
- 368 a) An employee may be required to continue serving in his/her present position until
- 369 a replacement can be found;
- 370 b) An employee who is transferred to a position lower on the Tribal Job Structure will
- 371 be paid at the grade level corresponding to the new position;
- 372 c) An employee must have completed one year of service to the Tribe before being
- 373 eligible for a promotion or transfer (requests for transfers for documented medical
- 374 conditions will be handled on a case by case basis and only when in the best
- 375 interests of both the employee and the Tribe);
- 376 d) The newly transferred or promoted employee shall be required to complete a three
- 377 (3) month probation period (all conditions of the Tribe's Probation Policy shall
- 378 apply).
- 379 b. Applicant Pool Process
- 380 1) New and vacant positions will be advertised through the Tribal Applicant Pool.
- 381 2) The job description will be sent to persons whose applications are maintained in the
- 382 Applicant Pool.
- 383 a) The Tribal Applicant Pool will consist of open (unspecified) applications from Tribal
- 384 members who wish to be considered for employment by the Tribe.
- 385 b) Advertising through the Tribal Applicant Pool will follow the format and time
- 386 conditions set forth in the Hiring Policy.
- 387 2. Reassignments
- 388 a. Title Reassignments
- 389 1) Title Reassignments may be made by supervisors to:
- 390 a) More accurately describe or define an existing job; or
- 391 b) Make minor adjustments in jobs within a unit or operating division.
- 392 2) Title Reassignments may be made at any time with the approval of the Area Manager
- 393 and HRD Manager.
- 394 b. Job Reassignments
- 395 1) Job Reassignments may be made by supervisors to make more efficient and effective
- 396 use of human resources.
- 397 2) Job Reassignments may be supervisor-initiated or employee-initiated but must be
- 398 made in the best interests of the operating unit.
- 399 3) Job Reassignments may be made at any time with the approval of the Area Manager
- 400 and after a review of each affected job by the Personnel Evaluation Committee.
- 401 c. Interim Job Reassignments [\(Work Standard 7-11-13\)](#)

D. PROBATION ([Work Standard 1-20-2011](#))

1. The first three (3) months after an employee's starting date shall be considered a period of probation. At the end of six (6) weeks, the employee's performance shall be reviewed with him/her by the supervisor by completing an employee evaluation.
 - a. At the end of the three-month probation period, a second performance evaluation will be conducted. This evaluation will recommend the end of probation and regular status for the employee, an extension of probation, or termination for cause.
2. Status as a Probationary Employee
 - a. Probationary employees will be paid at five percent (5%) below the posted pay rate for the position.
 - 1) New employees hired under a negotiated salary will receive a salary one step below the agreed upon salary during the probationary period.
 - b. Probationary employees will accrue vacation/personal days during the probation period and will receive holiday pay.
 - c. Probationary employees may be terminated for cause at any time during the probation period. Cause must consist of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position. This termination is subject to appeal. ([BC Action 3-20-92](#))
3. Completion of Probation Period
 - a. Satisfactory completion of probation will result in the employee receiving the regular salary for the position.
 - b. Employees who are terminated during the probation period will receive credit for accrued vacation/personal days in their final paycheck.
 - c. Extensions of probation periods will not affect accrual of or use of benefits as explained under D.2.

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

1. Tribal Job and Salary Structure

- a. An ongoing plan will be instituted based on standard employee grades and step levels to assure that a uniform approach is taken to establish equitable salary and wage levels.
- b. Employee performance evaluations will be a resource in determining whether an employee receives an increase in pay for the upcoming year. An overall satisfactory rating must be attained in order to be granted an increase in pay.
- c. Merit increase shall be granted upon the recommendation of the supervisor, the Area Manager, the HRD Manager and the General Manager.

2. Workday (Work Standard, 10-17-12)

- a. The regular Tribal workday is from 8:00 a.m. to 4:30 p.m. with an hour for lunch. The exception to these hours occurs only if the program/enterprise hours must vary for the purpose of providing service (such as retail hours beyond 4:30 p.m.). Shifts will be developed as needed, and the shift hours will then become the regular workday for assigned employees for that program/enterprise.
- b. Employees are expected to be at work each scheduled work day.
 - 1) Employees who do not report for work because of inclement weather or unforeseen circumstances will not be paid for that day. Employees may elect to use personal day(s) to cover this absence. (Work Standard, 11-8-12)
 - 2) In case of an unavoidable delay or absence, the supervisor must be notified no later than thirty (30) minutes after the scheduled starting time. Employees are encouraged to notify their supervisor before their scheduled starting time.
 - i. Employees failing to report to their assigned jobs or failing to call in within the thirty (30) minute time allowed will be subject to disciplinary action.
 - ii. Permission to leave early must be obtained by the employee from his/her supervisor.

3. Overtime

- a. Any and all overtime will be kept to a minimum and must be approved by the Supervisor and Area Manager.
 - 1) In the case of potential overtime that may occur at night, on holidays or on weekends, supervisors will delegate this authority to a specific employee and outline specific situations and actions that warrant overtime.
- b. All overtime must be reported to the supervisor for evaluation.
- c. Overtime will be approved only if the program or enterprise budget is capable of paying it.
- d. Overtime will be approved only for hours worked in excess of forty (40) hours per week. Personal/vacation days and holidays will not count toward the forth (40) hour requirements.
- e. Tribal employees are expected to work overtime if required. Time and one-half will be paid for this overtime.

- 485 f. Exempt employees are not eligible for overtime.
486 1) The HRD Office will maintain a list of exempt employees.
- 487 4. Holidays [\(Work Standard, 4-15-11\)](#)
- 488 a. Tribal holidays consist of the following:
- 489 1) One-half day Christmas Eve
490 2) Christmas Day
491 3) New Year's Day
492 4) Memorial Day
493 5) Veteran's Day
494 6) Independence Day
495 7) Labor day
496 8) Thanksgiving Day
497 9) Indian Day (day after Thanksgiving)
498 10) One-half day Good Friday
499 11) Code Talker's Day (Oneida Day, Friday prior to Memorial Day)
500 [\(BC Resolution – 12-11-13A\)](#)
- 501 b. To be eligible for a paid holiday, employees must work the preceding and following
502 scheduled work days (except for employees who are on a prescheduled work leave or an
503 approved extended sick leave.) Employees who are granted a sick day directly prior to a
504 holiday must certify that they were capable of working the holiday in order to qualify for a
505 paid holiday.
- 506 c. All regular employees will be given holiday pay for the maximum pay of eight (8) hours per
507 day.
- 508 d. Holidays falling on a Saturday will be observed the preceding Friday; holidays falling on a
509 Sunday will be observed on the following Monday. [\(2017 Holiday Observance Calendar\)](#) [\(2016 Holiday Observance](#)
510 [Calendar\)](#)
- 511 e. The Oneida Tribe acknowledges its responsibility to make a reasonable accommodation to
512 employees who wish time off to observe religious holidays. Requests for such time off will
513 be granted where possible, based on the scheduling and staffing needs of affected
514 departments. Employees wishing to take time off work for religious observances should
515 inform their supervisor as early as possible. Employees may use personal time for such
516 requests if eligible; otherwise the time off will be treated as unpaid leave.
- 517 5. Vacation/Personal Days
- 518 a. Every Tribal employee, except temporary employees, shall be allowed personal and vacation
519 days with pay to the extent that personal days and vacation are accumulated. Temporary
520 employees shall be allowed personal and vacation days in accordance with Section II.C.4.
521 [\(GTC Resolution – 7-02-12-A\)](#)
- 522 b. The amount of personal and vacations days shall be determined by continuous service for
523 the Tribe. A "lay-off" from tribal employment shall not be considered in interruption in
524 continuous service where the lay-off is in accordance with the Tribe's Layoff Policy, nor shall
525 a preapproved leave of absence. [\(Accruals Interpretation, 3-6-12\)](#)

- c. Except as provided for in section g, the accrual of personal days shall be as follows:
[\(BC Resolution, 4-13-11F\)](#)
- 1) 0-3 years of service - 6 days per year;
 - 2) 4-7 years of service - 8 days per year;
 - 3) 8-14 years of service - 10 days per year;
 - 4) 15+ years of service - 12 days per year;
- d. Except as provided for in section g, the accrual of vacation days shall be as follows:
- 1) 0-3 years of service - 12 days per year
 - 2) 4-7 years of service - 15 days per year;
 - 3) 8-15 years of service - 20 days per year;
 - 4) 15+ years of service - 25 days per year.
- e. Part-time employees accrue personal and vacation days for time actually worked at a ratio of a full-time employee.
- f. Service is defined as working for Programs/Enterprises which are contracted by the Tribe of specifically sponsored by the Tribe.
- g. Vacation and personal days shall be capped at 280 hrs. [\(BC Resolution, 11-10-10D\)](#) An employee shall cease to accrue vacation and personal hours when he or she has reached 280 total hours. Supervisors shall notify their employees when said employees have accumulated 200 total hours of vacation and personal time.
- 1) An employee may trade back accumulated vacation and personal hours in accordance with Section IV.A.5.n. below. [\(GTC Resolution – 5-23-11-B\)](#)
- h. Upon termination from Tribal employment, employees will be paid for any unused personal and/or vacation days.
- 1) Employees who have used the Tribally-sponsored loan program will be required to honor the terms of the loan agreement.
- i. Personal Days can be used for any reason so long as the request is approved by the employee's supervisor at least twenty-four (24) hours in advance (unless the absence is due to illness or unforeseen circumstances).
- 1) In the case of illness or unforeseen circumstance, the supervisor shall be notified no later than fifteen (15) minutes before the scheduled starting time.
 - 2) Programs and enterprises may institute stricter standards of notification. These standards will be submitted to and approved by the Personnel Department.
- j. An employee shall notify his/her supervisor of an intent to use personal days in the following ways:
- 1) Three (3) to five (5) days - one (1) week advance notification
 - 2) Six (6) days or more - two (2) weeks advance notification.
- k. An employee shall notify his/her supervisor one (1) day in advance if he/she will take off one (1) or two (2) days of vacation. Programs and enterprises may institute stricter standards of notification.
- 1) Three (3) to five (5) days of vacation require a one (1) week advance notification.
 - 2) Six (6) or more days of vacation require at least two (2) weeks advance notification.

- 567 I. The burden shall be on the supervisor to show that a denial of a personal day or a vacation
568 day is based upon interference with the business of the Tribe.
- 569 m. Personal or Vacation Days cannot be taken when an employee is on probation.
- 570 n. Trade-back for Cash - Each fiscal year, the Oneida Business Committee shall analyze fiscal
571 conditions to determine whether employees may trade back personal and/or vacation hours
572 for cash that fiscal year. [\(Work Standard, 10-11-11\)](#)
- 573 1) If the Oneida Business Committee approves trade-back for cash, they shall also
574 determine whether (a) and/or (b) applies:
- 575 i. All employees will have the opportunity to trade-back hours one time that year.
- 576 1. By August 15, each employee who has accumulated twenty-four (24) hours
577 or more of vacation and/or personal days may opt to trade in his/her hours
578 for cash.
- 579 2. Employees will receive their trade back on or before September 30 of that
580 year.
- 581 ii. Only those employees who are unable to utilize their personal and/or vacation time
582 due to working conditions, such as a shortage in staffing, as determined by the HRD
583 Manager or designee, will have the opportunity to trade back hours on a quarterly
584 basis.
- 585 1. Employees will receive their trade back within sixty (60) days after opting to
586 trade back hours.
- 587 2) When trade-back for cash is approved by the Oneida Business Committee, the following
588 standards shall apply:
- 589 i. Employees must decide which status (vacation or personal or both) from which their
590 trade-back will be drawn.
- 591 ii. Employees may not trade for cash more than eighty (80) hours in one year.
592 [\(GTC Resolution 5-23-11-B\)](#)
- 593 o. Additional Duties Compensation
- 594 p. Travel Time Compensation [\(Work Standard - 3-20-13\)](#)
- 595
- 596 B. INSURANCES [\(see separate publication\)](#) for information on Tribal Insurance plans.
597 [\(Separating Employees WS 5-6-13\)](#)
- 598 C. RETIREMENT PLAN [\(See separate publication for information on Tribal Retirement Plan\).](#)
- 599 D. LEAVES
- 600 1. Meeting Attendance
- 601 a. Approval for attending any meetings inside normal working hours must be approved in
602 advance by the employee's immediate supervisor. [\(BC Action, 5-16-89\)](#)
- 603 b. Employees who receive stipends or honoraria in excess of \$50.00 for attending meetings
604 during working hours will forfeit the amount in excess of \$50.00 from their regular
605 paycheck. Stipends for travel or per diem will not be deducted if accompanied by receipts
606 for such expenses.
- 607 c. Stipends or honoraria for intra-tribal meetings during normal working hours will results in

the employee's paycheck being reduced by the full amount of the stipend.

2. Funeral Leave ([Work Standard, 8-2-11](#))

- a. All regular employees will be given a three (3) day leave without loss of pay for funeral services for immediate family. Immediate family includes:

Husband	Mother	Brother	great-grandparent
Wife	Father	Sister	great-grandchildren
Mother-in-law	Son	Grandparent	Spouse's great-grandparents
Father-in-law	Daughter	Grandchild	Spouse's grandparents
Daughter-in-law	Sister-in-law	Brother-in-law	
- b. Three (3) day leave for other persons will be given only if the employee is responsible for making funeral arrangements, subject to prior approval of supervisor.
- c. All other funeral leave will be limited to no more than one (1) day with pay subject to the notification and approval of the immediate supervisor. ([Management Directive, 12-17-2009](#))

3. Leave of Absence ([Work Standard, 6-10-14](#))

- a. A leave of absence without pay may be granted to employees for a justifiable reason (including caring for a child, spouse or parent with a serious health condition) and when in the best interest of the Tribe.
 - 1) Leaves of absence will not exceed three (3) months.
 - i. All leaves of absence must be approved by the supervisor, Area Manager, HRD Manager and General Manager. ([HR Interpretation, 12-8-16](#))
 - ii. Requests must be documented and submitted to the supervisor with as much advance notice as possible.
 - iii. Disposition of requests will be made on the basis of staffing requirements.
 - 2) Upon returning, the employee will be reinstated in the former position with full status and benefits. Holiday, vacation, and sick leave will not be accrued during the leave of absence.
 - 3) No later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position. Notice must be presented to the supervisor.
 - i. Failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process. ([HR Interpretation 11-21-11](#))

4. Maternity Leave

- a. Maternity leave will be granted for a period of six (6) weeks without pay.
 - 1) An employee may elect to cover any portion of this time by using accumulated sick days.
 - 2) Any maternity-related absences for longer than six (6) weeks must be taken as a medical leave of absence.

5. Military Leave

- a. In addition to the following provisions, the Tribe's Military Service Protection Act shall govern Military Leave.

- 649
- 650
- 651 b. A Military Leave of Absence is afforded employees entering active duty without
- 652 accumulation of holiday, vacation or personal time during the period of leave. Any
- 653 accumulated benefits prior to leave will be maintained for the employee.
- 654 c. Time off for inactive duty training, examinations to determine fitness for duty and funeral
- 655 honors duty shall be afforded to employees without the accumulation or loss of holiday,
- 656 vacation or personal time. An employee will receive pay from the Tribe for any hours work
- 657 that the employee was required to miss due to reservist training.
- 658 1) Any pay received for performing any of the above duties shall be deducted from the
- 659 employee's pay. [\(GTC Resolution - 1-26-08A\)](#)
- 660 6. Jury Duty
- 661 a. During a period of jury duty, an employee will receive pay from the Tribe for any hours of
- 662 work missed due to jury duty.
- 663 1) Jury duty pay will be deducted from the employee's paycheck when determining the
- 664 amount of pay
- 665 2) No overtime will be allowed in determining employee pay while serving on jury duty.
- 666 7. Educational Leave [\(BC Action, 5-4-90\)](#)
- 667 a. A leave of absence for education purposes will not exceed one (1) year.
- 668 8. Parent Policy Leave [\(BC Action, 3-2-94A\)](#)
- 669 a. Employees who are parents, guardians, or those individuals specifically referred to as
- 670 "immediate family" as defined in Section IV, page 6 of these Personnel Policies and
- 671 Procedures which includes husband, wife, mother, father, brother, sister, son, daughter,
- 672 mother-in-law, father-in-law, grandparent and grandchild may request to participate in their
- 673 child(ren)'s educationally sanctioned events not to exceed four (4) hours per employee per
- 674 month
- 675 1) These four (4) hours shall not accumulate.
- 676 b. Approval to utilize the four (4) hours must be obtained from the supervisor.
- 677 1) An employee shall request his/her supervisor to utilize this leave with a minimum of
- 678 twenty-four (24) hours' notice.
- 679 2) The Supervisor may request verification of
- 680 i. Guardianship of the child(ren) and/or
- 681 ii. The attendance of the employee at their child(ren)'s educationally sanctioned -
- 682 event.
- 683 c. The burden shall be on the supervisor to show that a denial of the Parent Policy Leave which
- 684 is based upon interference with the business of the Tribe.
- 685 d. This leave shall not be paid as overtime. The supervisor may have the option to use flex time
- 686 to cover this time off to attend their child(ren)'s educationally sanctioned events.
- 687 e. All employees, except Emergency/Temporary, Youth Workers, Student Interns, and Seasonal
- 688 Workers during their first season, and Substitute Reliefs are eligible to participate in this
- 689 benefit.

SECTION V – EMPLOYEE RELATIONS

A. ORIENTATION POLICY

The Oneida Tribe reflects the unique culture and character of the Oneida Nation. The Tribe recognizes that this may present special problems and difficulties for a new employee. The Tribe therefore provides an Orientation Program designed to ease the new employee's transition into a job and enable the new employee to become effective and productive as quickly as possible.

1. Orientation Program Outline

- a. Overview
- b. Tribal Government and Procedures
- c. Key Policies and Procedures
- d. Benefits
- e. Safety, Health and Security
- f. Departmental Orientation

2. Responsibilities

- a. The HRD Office will administer the General Orientation Program
 - 1) The HRD Office will assist Divisions in administering Departmental Orientation Programs.
- b. The HRD Office will develop and establish an Employee Mentor Program with each Division.
 - 1) Employee Mentors will be responsible for conducting the Departmental Orientation.
 - 2) Employee Mentors will assist new employees throughout their probation period as a source of references and referrals.
- c. The HRD Office will annually review the General Orientation Program and each Departmental Orientation Program to:
 - 1) Evaluate the effectiveness of each Program,
 - 2) Modify programs as necessary.
 - 3) Requirements
 - a) The HRD Office will provide a copy of the Employee Policy and Procedures Manual to new employees before (if possible) the scheduled starting date.
 - b) The General Orientation Program will be completed in appropriate stages within the first month of the new employee's starting date.
 - i. The Departmental Orientation will be completed within the first week of the starting date.
 - c) The HRD Office will administer a NEW Employee Reporting Form to provide information for the purposes of maintaining a Tribal wide skills assessment inventory and a management succession plan.

B. EVALUATIONS

1. Evaluation reports will be used in determining all promotions, transfers and salary adjustments.
2. Annual evaluation reports for each employee will be submitted to the HRD Office by August 1 of

each year. (Work Standard – 6-4-14)

a. Evaluation reports will be retained in each employee's personnel file.

3. All Tribal employees will be evaluated at least once a year.

a. Employee performance evaluations will be conducted by each employee's immediate supervisor. The Business Committee will conduct the performance evaluation of the General Manager. (HR Interpretation – 12-8-16)

b. The supervisor will discuss the evaluation with each employee. The evaluation will then be signed by the employee and the supervisor and forwarded to the HRD Office.

4. Satisfactory evaluations may result in the employee receiving an increase in pay within their grade level provided that the employee has not attained the highest step within the grade.

a. Unsatisfactory evaluations will result in probation status for the employee. The supervisor shall provide documentation to the Area Manager and to the employee detailing the deficiency(s). A repeat evaluation will be conducted three (3) months after the unsatisfactory evaluation. This second evaluation will result in the employee:

- 1) Being removed from probation and receiving a salary increase if the second evaluation results in an overall satisfactory rating; or
- 2) Receiving appropriate disciplinary actions if the second evaluation also results in an unsatisfactory rating.

b. Employees may appeal unsatisfactory evaluations to the HRD Manager. The HRD Manager will consult with the supervisor and the employee to negotiate an appropriate resolution (Work Standard 6-21-11)

C. CAREER DEVELOPMENT

1. Tribal employees are encouraged to develop their skills and abilities by pursuing education at a local educational institution. (BC Action – 9-9-92)

a. Tribal employees must provide a general Career Development Plan to the supervisor listing the goals and objectives of the training and education to be undertaken.

2. Tribal employees may be eligible for assistance for one (1) course per semester. The employee must attempt to arrange to take the class outside his/her normal working hours.

a. Where a class conflicts with the employee's work schedule, the needs of the Tribal unit take precedence; however, the supervisor shall attempt to accommodate the employee's request.

b. In no case shall the accommodation exceed actual class hours plus reasonable travel time.

c. Employees must obtain the approval of their immediate supervisor to take a course on Tribal time.

3. The supervisor's approval and estimated cost must be submitted to the HRD Office, the Area Manager and the General Manager. (HR Interpretation – 12-8-16)

4. The cost of the books, tuition and fees for the course shall be paid by the Tribe through funds budgeted in programs or through the Higher Education program.

a. Reimbursement for books, tuition and fees is contingent upon the employee receiving at least a C (2.0 on a 4.0 point scale).

b. Employees who receive less than the required grade point will be required to reimburse the

program for whatever costs were incurred.

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Disciplinary procedures provide a systematic process for handling problem employees.

(Work Standard – 5-6-13) Disciplinary procedures serve to correct unacceptable behavior and to protect the Tribe. Grievance procedures provide a systematic process for hearing and evaluating job related disputes. Grievance procedures serve to protect employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances.

(HR Interpretation – 2-4-13) (HR Interpretation - 1-29-14)

1. Complaints

- a. Should an employee have a disagreement with another employee, he/she may lodge an informal (verbal) or formal (written) complaint with the employee's supervisor.
- b. The supervisor will investigate the complaint and attempt to resolve the disagreement.
- c. If the employee lodging the complaint is dissatisfied with the attempted resolution, he/she may ask the Area Manager to attempt a resolution.
- d. There is no further appeal of this process.

2. Disciplinary Actions

- a. Disciplinary actions will be initiated by an immediate supervisor for the purpose of correcting unacceptable work performance. The supervisor will always discuss the action with the employee being disciplined to ensure that the employee:
 - 1) Understands the reason for the disciplinary action;
 - 2) Understands the expected work performance in light of the disciplinary action;
 - 3) Understands the consequences of continued unacceptable behavior.
- b. A supervisor shall initiate disciplinary actions commensurate with the seriousness of the unsatisfactory performance. A supervisor must consider each disciplinary action in progressive order and justify a deviance from that recommended progression.
- c. The actions listed below are examples of unacceptable work performance and do not constitute a comprehensive or exhaustive list. The actions in parentheses are guidelines for a supervisor to use in administering disciplinary actions. (W = written warning; S = suspension; T = termination):
 - 1) Work Performance
 - a) Insubordination (including disobedience) or failure/refusal to carry out assignments or instructions. (W/S/T)
 - b) Loafing, loitering, sleeping or engaging in personal business. (W/S/T)
 - c) Unauthorized disclosure of confidential information or records. (S/T)
 - d) Falsifying records or giving false information to departments and/or employees responsible for Recordkeeping. (S/T)
 - e) Failure to provide accurate and complete information where such information is required by an authorized person. (S/T)

- 813 f) Failure to comply with health, safety and sanitation requirements, rules and
814 regulations. (W/S/T)
- 815 g) Negligence in the performance of assigned duties. (W/S/T)
- 816 2) Attendance and Punctuality
- 817 a) Failure to report promptly and observe work schedules (such as starting time,
818 quitting time, rest and meal breaks) without the specific approval of the supervisor.
819 (W/S/T)
- 820 b) A pattern of unexcused or excessive absenteeism and/or tardiness. (W/S/T)
- 821 3) Use of Property
- 822 a) Unauthorized or improper use of Tribal property or equipment (for example, Tribal
823 vehicles, telephone, mail services, etc.) (W/S/T)
- 824 b) Unauthorized possession, removal or willful destruction of Tribal or another
825 employee's property (including improper use of possession of uniforms,
826 identification cards, badges, permits or weapons). (Willful destruction of property
827 may subject the violator to applicable liability laws.) (T)
- 828 c) Unauthorized use, lending, borrowing or duplicating of Tribal keys. (T)
- 829 d) Unauthorized entry of Tribal property, including unauthorized entry outside of
830 assigned hours of work or entry into restricted areas without prior supervisory
831 approval. (S/T)
- 832 e) Theft or property shall include theft, embezzlement, cheating, defrauding, pilfering,
833 robbery, extortion, racketeering, swindling or any of these actions, or conspiracy to
834 commit such actions with Tribal employees or other persons against the Tribe, its
835 guests, employee, members, customers and/or clients while on or about Tribal
836 premises. (S/T) [\(BC Action – 12-2-88\)](#)
- 837 4) Personal Actions and Appearance
- 838 a) Threatening, attempting, or doing bodily harm to another person. (T)
- 839 b) Intimidating, interfering with or using abusive language toward customers, clients,
840 co-workers or others. (S/T)
- 841 c) Making false or malicious statements concerning other employees, supervisors or
842 program heads. (W/S/T)
- 843 d) Use of alcohol or illegal controlled substances during work hours. (S/T)
844 [\(GTC Resolution – 01-05-09A\)](#)
- 845 e) Reporting for work under the influence of alcohol or illegal controlled substances.
846 (S/T) [\(GTC Resolution – 01-05-09A\)](#)
- 847 f) Failure to immediately report any work-related injuries to the immediate supervisor.
848 (W/S)
- 849 g) Direct involvement in political campaigning during scheduled work hours. Violations
850 include:
- 851 i. Use of Tribal employment title in Tribal campaign activities. (W/S/T)
- 852 1. Political materials include: leaflets, brochures, etc. which solicit support for
853 candidates for office.

2. Resolutions or petitions which propose that a political action be initiated.

3. Leaflets, newsletters, or other written materials the purpose of which is to espouse political views or opinions.

h) The acceptance of gifts or gratuities for personal gain in the course of official duties. (Customers are allowed to tip Bingo workers, Oneida Tobacco Enterprise workers, and Museum Workers.) (W/S/T)

i) Inappropriate dress or personal hygiene which adversely affects the proper performance of duties or constitutes a health or safety hazard. (W/S)

j) Failure to exercise proper judgment. (W/S/T)

k) Failure to be courteous in dealing with fellow employees or the general public. (W/S/T)

l) Any of the following acts by employees: Arson, bribery, perjury, obstruction or interference with an investigation authorized by the Oneida Tribe. (S/T)

(BC Action – 12-2-88)

m) The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol, and/or controlled substances on or about Tribal premises. (S/T)

(BC Action – 12-2-88)

n) Any violation of duly adopted Tribal ordinances. (W/S/T) (BC Action – 12-2-88)

5) Sexual Harassment Policy

It is the Oneida Tribe's Policy that all employees have a right to work in an environment free of discrimination which includes freedom from harassment, more specifically sexual harassment. The Oneida Tribe considers sexual harassment, in whatever form, in the workplace to be a serious violation of an individual's dignity and personal rights. In all matters, where complaint of sexual harassment is lodged against an employee, the Oneida Tribe has a duty and obligation to conduct a thorough investigation using discretion, good judgment and the principles and practice of strict confidentiality. If sexual harassment has been committed, the progressive disciplinary process is as follows (W/S/T).

Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

a) Sexual Harassment (W/S/T)

i. Procedure

a. Should an employee have a complaint, he/she should file a formal (written) complaint with the Human Resources Department.

- 895
- 896
- 897 b. The Human Resources Department is obligated to investigate the
- 898 complaint which is to be held in the strictest confidence. This
- 899 investigation shall be done within five (5) working days from receiving
- 900 the formal written complaint.
- 901 c. After investigating the complaint and the Human Resources Department
- 902 finds cause to take disciplinary action due to sexual harassment
- 903 violation, the employee will be disciplined accordingly by their
- 904 supervisor. This disciplinary action shall be initiated within five (5)
- 905 working days from the date the supervisor receives the report from the
- 906 Human Resource Department. [\(BC Actions – 7-16-93\)](#)
- 907 3. Accumulated Disciplinary Actions Warranting Termination [\(HR Interpretation – 1-29-14\)](#) (Provided that the
- 908 Drug and Alcohol Free Workplace Policy shall govern disciplinary actions warranting termination
- 909 for drug and alcohol related violations.) [\(GTC Resolution – 01-05-09A\)](#)
- 910 a. The accumulation of three (3) upheld warning notices within any twelve (12) month period.
- 911 (T)
- 912 b. The accumulation of two (2) upheld suspensions within any twelve (12) month period. (T)
- 913 c. The accumulation of three (3) of any combination of upheld warning notices and/or upheld
- 914 suspensions within any twelve (12) month period. (T)
- 915 4. Substance Abuse Disciplinary Procedure - Section was deleted. [\(GTC Resolution – 01-05-09-A\)](#)
- 916 [Click here](#) for Drug and Alcohol Free Workplace Policy.
- 917 5. Disciplinary Procedure [\(Disciplinary Flowchart\)](#)
- 918 The following procedure shall be adhered to whenever disciplinary action is taken.
- 919 a. Supervisor becomes aware of unsatisfactory work performance or violation.
- 920 1) Supervisor investigates through a meeting with the employees and determines whether
- 921 disciplinary action is warranted.
- 922 b. If disciplinary action is warranted, within five (5) working days the supervisor will fill out the
- 923 five (5) part disciplinary action form stating the behavior for which the action is being taken,
- 924 the time and date of its occurrence, and the specific policy section under which action is
- 925 being taken.
- 926 c. The form will be discussed with the employee and a corrective action will be identified.
- 927 d. The employee being disciplined will sign the form.
- 928 1) Should an employee being disciplined refuse to discuss the action with his/her
- 929 supervisor, the supervisor shall so note this, with date of refusal, on the form and
- 930 distribute as in 5.e.
- 931 e. Copies will be given to the employee, the HRD Manager, the supervisor, the Area Manager
- 932 and General Manager within twenty-four (24) hours of the conference with the employee.
- 933 [\(HR Interpretation – 12-8-16\)](#)
- 934 f. Should a disciplinary action result in the suspension or termination of an employee, the
- 935 following guidelines shall apply:

- 936 1) The supervisor shall consult with the HRD Manager to mutually determine the length of
937 the suspension.
- 938 a) Suspensions will be limited to a maximum of three (3) weeks.
- 939 b) Suspension/terminations that are overturned in the appeal process shall result in
940 the employee receiving back pay for the days he/she was suspended/terminated.
- 941 6. Grievance [\(Grievance Flowchart\)](#)
- 942 An employee who receives a disciplinary action which he/she believes is unfair may grieve the
943 action. The Grievance process (including appeals of disciplinary action) shall be conducted with
944 utmost consideration for due process (within the time limits set forth herein) but will allow and
945 account for recognized Tribal holidays and unforeseen circumstances (such as illnesses, deaths
946 in the immediate family of principals, etc.). The HRD office will make every attempt to ensure
947 that grievance procedures are concluded within forty-five (45) working days; however,
948 extensions granted for reasonable unforeseen circumstances (as determined by the HRD
949 Manager) may extend the process. The Grievance process will be governed by the following
950 guidelines: [\(HR Interpretation – 8-19-2011\)](#) [\(HR Interpretation – 1-29-2014\)](#)
- 951 a. For all disciplinary actions, regardless of severity:
- 952 1) The employee (petitioner) must file an appeal in writing.
- 953 a) The employee may seek the assistance of a spokesperson or advocate at any time
954 after the disciplinary action has been issued in order to aid in the resolution of the
955 grievance process.
- 956 b) The appeal must be filed with the Area Manager and the HRD Manager (or
957 designee) within ten (10) working days from the day the employee receives the
958 disciplinary action.
- 959 2) The Area Manager, for all disciplinary action investigations, will have ten (10) working
960 days from the receipt of the employee's appeal to complete the investigation. One
961 extension of no more than five (5) working days may be requested of and granted by the
962 HRD Manager (or designee) at his or her discretion.
- 963 3) The Area Manager will do one of the following:
- 964 a) Uphold the disciplinary action; or
- 965 b) Modify the disciplinary action; or
- 966 c) Overturn the disciplinary action. If a suspension or termination is overturned, the
967 employee (petitioner) shall be reinstated with full back pay.
- 968 4) The Area Manager will file a decision with the employee and the HRD Manager (or
969 designee) and will include a reason for the decision, an explanation of the decision and
970 the action to be taken as a result of it.
- 971 b. The employee may appeal the Area Manager's decision to the [Oneida Personnel Judiciary –](#)
972 [Trial Court Commission](#). The appeal must be filed with the [Oneida Personnel](#)
973 [Commission Judiciary – Trial Court](#) within ten (10) working days from employee's receipt of
974 the Area Manager's decision. Upon receipt of the appeal the [Commission Judiciary – Trial](#)
975 [Court](#) shall, within one business day, notify the HRD Manager (or designee) that an appeal
976 has been filed by the employee. [\(GTC Resolution – 2-28-04A\)](#)

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980 1) Copies of all information of the subject case upon which the disciplinary action was
981 upheld by the Area Manager will be hand delivered to the ~~members of the Personnel~~
982 ~~Commission~~Judiciary – Trial Court. The ~~Personnel Commission~~Judiciary – Trial Court will
983 hear an appeal only if one or both of the following conditions exist:
984 a) The decision of the Area Manager is clearly against the weight of the evidence
985 and/or
986 b) Procedural irregularities were exhibited during the appeal process that may have
987 been harmful to one of the parties to the grievance.
988 2) If one or both of the above conditions are present, the ~~HRD Office will convene the~~
989 ~~Personnel Commission~~Judiciary – Trial Court will ~~to~~ hear the grievance.
990 a) If neither of the above conditions is present, the ~~Personnel Commission~~Judiciary –
991 Trial Court will deny the appeal for a hearing and affirm the decision of the Area
992 Manager.
993 3) At least five (5) working days prior to the hearing date, the petitioner, ~~and~~ respondent
994 ~~and Personnel Commission~~ will receive notification of the hearing date.
995 4) Copies of all information on the subject case upon which the disciplinary action was
996 upheld will be hand-delivered to the ~~members of the Personnel Commission~~Judiciary –
997 Trial Court at least two (2) working days prior to the appeal date. The petitioner and
998 respondent will have access to this information in the HRD Office at least two (2) days
999 prior to the appeal date.
1000 a) If new evidence which was previously unavailable is introduced at any point during
1001 the ~~Personnel Commission~~Judiciary – Trial Court appeal process, the ~~Commission~~
1002 Judiciary – Trial Court hearing will be suspended and the case will be remanded to
1003 the Area Manager for reconsideration.
1004 i. The Area Manager will reconsider his/her decision in light of the new evidence
1005 and issue a decision within three (3) working days.
1006 ii. This procedure may be invoked only once. Thereafter, the appeal process will
1007 continue to a conclusion based on the information originally presented and the
1008 newly introduced evidence.
1009 5) The petitioner shall have the right to be represented by an advocate if he/she so
1010 chooses. The expenses of the advocate shall be the total responsibility of the petitioner.
1011 The respondent and/or area manager who is party to the grievance action shall have
1012 access to an advocate for consultation and/or representation. Should the petitioner
1013 engage outside professional legal representation, the respondent and/or area manager
1014 shall have access to professional legal representation.
1015 a) Should the petitioner and his/her representative both fail to appear for any
1016 scheduled hearing without justifiable cause, the decision of the Area Manager shall
1017 be upheld and the grievance dismissed.

b) Should the respondent and his/her representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be overturned.

- 6) The decision of the ~~Personnel Commission~~ Judiciary – Trial Court shall be based solely on the information presented to them before the appeal hearing, the record of the prior proceedings and any new evidence (if introduced appropriately through the provisions of 6.b.4.a. above).
- 7) The decision of the ~~Personnel Commission~~ Judiciary – Trial Court shall be final. The ~~Personnel Commission~~ Judiciary – Trial Court may:
- a) Uphold the disciplinary action; or
 - b) Overturn the disciplinary action and:
 - i. Reinstatement the employee (petitioner) with full back pay for any lost time;
 - ii. Reinstatement the employee (petitioner) without back pay.
- 8) The petitioner and respondent have a right to a speedy hearing and decision; therefore, notification of the final decision will be made within five (5) working days following the hearing.
- a) Notification of the final decision will include:
- i. The final decision;
 - ii. The reason(s) for the final decision; and
 - iii. The action to be taken as a result of the final decision.
- 9) The HRD Office shall:
- a) Keep all records of the hearing;
 - b) Provide copies of administrative advocacy rules, procedural rules, and time line rules to interested parties.

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1060 **SECTION VI – SAFETY AND HEALTH**
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1062 A. POLICY

1063 The personal safety and health of each employee, customer and client of the Oneida Tribe is of primary
1064 importance. The prevention of injuries and illnesses is of such importance that it will take precedence
1065 over operating productivity whenever necessary.
1066

1067 The Oneida Tribe will maintain a safety and health program conforming to the best practices available.
1068 To be successful, this program will work to develop the proper attitudes toward on-the-job injury and
1069 illness prevention on the part of supervisors and employees. This program will strive to develop a high
1070 level of cooperation in all safety and health matters between supervisors and employees and among
1071 employees.
1072

1073 The objective of this program is a safe and healthy environment that will reduce the number of job-
1074 related injuries and illnesses to an absolute minimum. The Tribe's goal is zero
1075 accidents and illnesses.
1076

1077 B. PROCEDURES

1078 The Tribal Safety Committee will adopt and enforce through the Personnel Department
1079 procedures related to the education of the Tribal work force in matters of safety and health.
1080 These procedures will include all education and prevention activities, assessments and
1081 evaluations, and reporting.
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1099 **SECTION VII – PROGRAM/ENTERPRISE RULES & REGULATIONS**
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1101 A. Enterprises and programs may establish internal rules and regulations to facilitate the
1102 administration of Tribal Personnel Policies and Procedures.

- 1103
1104 1. In no case will these internal rules and/or regulations conflict with or take the
1105 place of Tribal Personnel Policies and Procedures.
1106 2. Enterprises and programs which establish internal rules and regulations will
1107 file a copy of the rules and regulations with the Personnel Department.
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SECTION VIII – RECORD KEEPING

A. PERSONNEL OFFICE

1. Basic records to be retained include:
 - a. Reference Data
 - b. Job Descriptions
 - c. Resumes and Applications
 - d. Interview notes/selection information
 - e. Resignations
 - f. Employee tax exemption claims
 - g. Disciplinary action information
 - h. Performance evaluations
 - i. Insurance coverage/changes
 - j. Transfers
2. The Personnel Office shall keep and maintain a complete record of each employee throughout his/her term of employment.
 - a. Tribal employees shall have access to their employment file.
 - b. Employment files kept by the Personnel Office shall be considered confidential information. Release of any information to a third party must have the consent of the employee in writing.

B. ACCOUNTING DEPARTMENT

1. Basic records to be retained include:
 - a. Attendance records
 - b. Employee Time Sheets
 - c. Earnings - in the form of computer printouts
 - d. Travel - in the form of complete travel authorization forms.
 - 1) Time sheets and travel reports shall be filled out by every employee for pay period, collected by the program head, and forwarded to the Department.
2. The Accounting Department shall retain all records for a period of seven (7) years. (Archived 29, October 2010) (BC Action, 10-14-09B)

PERSONNEL POLICIES AND PROCEDURES MANUAL

SECTION I – Introduction



Welcome to the Oneida Nation. We are pleased to have you join us as a partner on a team of people dedicated to providing quality service that enhances the quality of life of the Oneida community. The role you play in your position is important to the overall effort required by your department to meet the goals and objectives of the Oneida Nation. We encourage you to take advantage of the opportunities presented to you, as an employee, to grow and develop both personally and professionally.

The purpose of this “Employee Manual” is to provide you with a ready source of information about employee related Oneida tribal policies and procedures. Although we have tried to make this manual as comprehensive as possible; it does not, and cannot, include policies which address every situation that may arise. The Oneida Nation reserves the right to modify, alter, change or cancel existing policies and procedures or adopt new procedures and policies at any time.

The policies and procedures set forth in this manual apply to all employees. As an employee of the Oneida Nation, you are required to know and abide by these policies and procedures. Tribal departments may have specific and additional procedures enhancing the general policies stated in this manual. Each employee is expected to learn his/her department’s procedures and comply with them. In the event of any conflict between policies in this manual and departmental procedure, the policies in this manual supersede. Each employee is also expected to conform to the professional standards of his/her occupation. Questions regarding this manual, or any employee related policies, should be directed to your supervisor, department head, or to the Human Resources Department at (920) 496-7900.

The Oneida Nation is proud to have you on our staff and we look forward to a fulfilling and successful team relationship.

SECTION II - RECRUITING

A. RECRUITING

1. Recruiting Strategy

- a. The Oneida Tribe shall implement a Recruiting Strategy to increase the potential for hiring the best-qualified and most capable employees possible.
 - 1) The Recruiting Strategy shall target as the first priority applicants in accordance with the Oneida and Indian Preference Policy.
 - 2) The Recruiting Strategy shall have a nationwide focus and will use:
 - a) The Kalihwisaks (national distribution);
 - b) The Oneida Higher Education Office's network of post-secondary school students;
 - c) Local and regional media and public employment agencies.

2. Applicant Pool

- a. The Oneida Tribe shall establish and maintain an Applicant Pool consisting of individuals who have expressed an interest in working for the Oneida Tribe.
 - 1) The Applicant Pool will consist of files containing:
 - a) A Tribal Application Form;
 - b) A summary of career goals and job preferences.
 - 2) The Applicant Pool will be regularly reviewed to:
 - a) Update individual files;
 - b) Remove files where indicated.
 - 3) The Applicant Pool will be cross-referenced by job preferences.
 - a) Notices of job vacancies and an Application Form will be sent to all Applicant Pool members as appropriate.
 - 4) All Applicant Pool members shall have the right to review and update their file upon request.
 - 5) Applicant Pool members shall be apprised of the Tribe's Indian Preference Policy.

B. LABOR POOLS

1. Supervisors that wish to establish a job classification as a Labor Pool Position will work with the HRD to establish the job classification.
2. Each Labor Pool Position shall be advertised as on-going recruitment pool. The HRD shall maintain an updated list of qualified candidates for each Labor Pool Position.
3. The HRD will accept all job applications and verify that each applicant is qualified according to the established job description. All qualified applicants will then be placed in a pool according to the Tribe's Oneida and Indian Preference Policy and the date the application was received. All applicants will be notified of acceptance into or rejection from the pool.
 - a. **PRESCREENING OF LABOR POOL POSITIONS** (HR Interpretation 11-13-12) Applicants who were previously employed by the Oneida Tribe and were terminated for reasons of misconduct or performance issues will be screened out for a period of twelve (12) months following the date of discharge.

4. The HRD will keep an updated list of qualified applicants for each job position.
5. When a vacancy occurs in a Labor Pool Position, the supervisor will notify the HRD of the position to be filled. The HRD Office shall then refer the top three (3) applicants to the immediate supervisor. The top three applicants shall be based first on the Oneida and Indian Preference Policy and, second, the date an application was received. The immediate supervisor will notify the HRD of their selection and the HRD will then offer the position to the applicant. After the position is filled, all ranked candidates will move up on the list. [\(HR Interpretation 7-11-13\)](#)
6. If the applicant refuses the position, the HRD Office will then offer it to the next applicant until the position is filled.
7. If the applicant refuses the job, the applicant may withdraw from the Labor Pool or, if he or she declines to withdraw from the Labor Pool, the date of refusal will be considered the date the application was received and the applicant will be placed in the Labor Pool list according to B.3.
8. Indian (Oneida) Preference will be adhered to in all hiring decisions.

C. EMERGENCY/TEMPORARY POSITIONS

1. The HRD will periodically recruit individuals who are interested in filling temporary positions which consist of the following classifications:
 - a. Emergency/Temp
 - b. Limited Term
 - c. Seasonal
 - d. Substitute/Relief
 - e. Youth Worker
 - f. Student/Intern
2. Creation of Positions
 - a. Creation of positions in the above Temporary Employee Classifications will require that these positions be budgeted for the current fiscal year, or proof through documentation that the budget is adequate to incorporate these positions.
 - b. The positions must be developed in conjunction with the HRD; assuring that all Policies and Procedures are adhered to. Creation of temporary classification requires the approval of the Director, Area Manager, and HRD Manager, or elected official of the Oneida Tribe.
 - c. All newly created temporary positions must be processed through the Wage and Salary system before a position can be filled with a temporary employee.
3. Recruitment/Selection
 - a. Recruitment/selection of applicants for all temporary positions requires a completed Temporary Personnel Requisition form with an updated job description attached.
 - b. The HRD will provide a list of qualified candidates according to the job descriptions to the immediate supervisor. The immediate supervisor will select from the approved list adhering to Indian Preference.
 - c. The HRD will contact the selected candidate and offer the position, following the proper procedures to put the incumbent on payroll.

- 117 d. The selected candidate will sign a statement accepting conditions of temporary
118 employment, and length of employment where applicable.
- 119 e. Temporary employees will be paid within the Grade in which the job is classified and salary
120 will be negotiated within the first three (3) steps of respective grade.
- 121 1) Any negotiated salary beyond step three will require written justification and approval
122 form the respective General Manager. (H.R. Interpretation, 12-8-16)
- 123 f. Temporary employees are welcome to apply for any regular position within the Tribe that
124 becomes available during the term of their employment.
- 125 g. Temporary employees that are terminated due to documented cause will have the right to
126 the appeal process as outlined in the Personnel Policies and Procedures.
- 127 h. All temporary employees are subject to lay-off based upon department job needs and
128 budgets. (HR Interpretation – 11-25-13)
- 129 i. Supervisors are required to do proficient planning within their respective span of control; as
130 such they must also enforce separation dates and will be monitored by HRD for compliance.
- 131 j. Supervisors must select the most appropriate category of classification for the job.
132 1) Moving from one classification to another is prohibited.
- 133 4. Benefits
- 134 a. The following employee classifications will be eligible for benefits as defined in the section
135 of the Personnel Policies and Procedures as medical, dental, vacation and personal accrual,
136 holiday pay, premium pay.
- 137 1) Limited Term
- 138 2) Seasonal
- 139 b. The following employee classifications will be eligible for benefits as defined in this section
140 of the Personnel Policies and Procedures as Mandatory Benefits and Holiday pay.
- 141 1) Emergency/Temporary
- 142 2) Substitute/Relief
- 143 3) Seasonal Worker (only during their first season)
- 144 c. The following employee classifications will be eligible for benefits as defined in this section
145 of the Personnel Policies and Procedures as Mandatory Benefits.
- 146 1) Youth Worker
- 147 2) Student/Intern
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SECTION III – SELECTION POLICY

A. ONEIDA PREFERENCE AND INDIAN PREFERENCE STATEMENT OF POLICY

Federal policy since 1834 accords hiring preference to Indians. The purpose of this preference is threefold: 1) to give Indians a greater participation in self-government; 2) to further the Government's trust obligation; and 3) to increase the positive effect of having Indians administer matters that affect Indian tribal life. [\(GTC Resolution – 5-23-11-A\)](#)

More recently, legislation such as the Civil Rights Act (1964) and the Education Amendments of 1972 (passed after the Equal Employment Opportunity Act) continued to specifically provide for preferential hiring of Indians by Indian Tribes.

As an employer, the Tribe seeks to employ individuals who possess the skills, abilities and background to meet the employment needs of the Tribe.

As a sovereign Indian Tribe and a unique cultural group, the Oneida Tribe has determined that a highly desirable employment characteristic is knowledge of Oneida culture that can be attained only by membership (or eligibility for membership) in the Oneida Tribe. Further, the Tribe recognizes the unique, shared culture of Native American Indians and has determined that a desirable employment characteristic is status as a member of an American Indian Tribe. At a minimum, the Tribe has determined that some knowledge of Indian culture is a desirable employment characteristic.

Accordingly, the Oneida Tribe establishes the following policy in regard to Indian Preference for selecting employees to provide services that meet the needs of the Oneida people. This Indian Preference policy shall be specific to staffing decisions made under the Personnel Policies and Procedures and shall not be construed to have an application outside of these policies and procedures.

The Oneida Tribe of Indians of Wisconsin is an equal employment opportunity employer and follows non-discriminatory policies and procedures in personnel decisions. [\(HR Interpretation 5-19-14\)](#) However, the Oneida Tribe exists to serve the needs of the Oneida people and therefore accords Oneida Preference to enrolled Oneida Tribal Members where such preference is not otherwise prohibited. All General Managers and top administrative positions, as defined by HRD, shall be held by enrolled Tribal members. In all other instances, the Tribe applies the following priorities of Indian Preference in staffing decisions:

- 1 Enrolled Oneida Tribal member;
- 2 Oneida Indians eligible for enrollment in the Oneida Tribe;
- 3 Documented first generation Oneida descendant;
- 4 Other Native American Indian;
- 5 Other (non-Indian). [\(HR Interpretation 6-24-11\)](#)

This policy will apply in decisions where the basic requirements for employment are met.

B. HIRING PROCEDURE

1 Statement of Policy

- a. The Oneida Tribe of Indians of Wisconsin is an equal employment opportunity employer and follows nondiscriminatory policies in hiring.
- b. The Oneida Tribe is a firm advocate of the 1964 Civil Rights Act (as amended) and the 1968 Indian Civil Rights Act (as amended) and will make every effort to ensure compliance with each Act; however:
- c. The Oneida Tribe follows the principles of Indian Preference in the implementation of hiring practices (see the Oneida Preference and Indian Preference Statement of Policy).
- d. The members of the Personnel Selection Committee and all Tribal employees who supervise other Tribal employees shall undergo training in EEO and Tribal laws, rules and regulations.
 - 1) Training will be knowledge - and skills-based
 - 2) All Personnel Selection Committee members and Tribal supervisors will undergo periodic re-training in EEO and Tribal laws, rules and regulations
- e. No person shall be recommended for a position if a conflict of interest or nepotism is created. Nepotism is created by the following relationships: [\(HR Interpretation 08-13-12\)](#)
 - a) Father
 - b) Mother
 - c) Husband
 - d) Wife
 - e) Brother
 - f) Sister
 - g) Son
 - h) Daughter
 - i) Father-in-law
 - j) Mother-in-law
 - k) Brother-in-law
 - l) Sister-in-law
 - m) Son-in-law
 - n) Daughter-in-law
 - m) Grandparent
 - n) Grandchild

2. Hiring Procedures

a. HRD Office Responsibilities

- 1) Unless specifically noted, the HRD Office will have responsibility for implementing the policies and procedures guiding the selection of Tribal employees.

b. Personnel Selection Committee Role

- 1) The Oneida Tribe established the Personnel Selection Committee to represent the Oneida Community-at-large in the selection of tribal employees.
 - a) The Personnel Selection Committee is directed to:
 - i. Seek out the best-matched applicants for each available position;
 - ii. Consider only job-related factors (such as education, experience, past job performance, skills and abilities, and compatibility with the position and potential co-workers) when selecting candidates.

c. Identification of Vacancies and Development of Job Descriptions [\(Work Standard, 11-16-11\)](#)

- 1) Supervisors may inform the HRD Office of pending vacancies as soon as they are identified.

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- 239 2) For existing positions, the HRD Manager (or designate), the supervisor and the Area
- 240 Manager (at his/her option) will review the job description to ensure compliance with:
- 241 a) The Tribal job structure;
- 242 b) The needs and requirements of the job.
- 243 3) For new positions, the HRD Manager, the appropriate Area Manager, and the supervisor
- 244 shall develop the job description.
- 245 a) **The new job description shall conform to the Tribal job structure.**
- 246 b) The new job description will be reviewed by the General Manager.
- 247 [\(HR Interpretation, 12-8-16\)](#)
- 248 4) All job descriptions shall contain the following information:
- 249 a) Job title, division/department, location, supervisor's title;
- 250 b) Posting date, application deadline, preferred starting date, date of job, description
- 251 review;
- 252 c) Pay level (grade, step, hourly rate);
- 253 d) A brief job summary;
- 254 e) Duties and responsibilities;
- 255 f) Qualifications;
- 256 g) Inquiry address;
- 257 h) Statement of compliance with EEO and Indian Preference policies.
- 258 d. Applications
- 259 1) All inquiries for job vacancies will be responded to with a Tribal Application Form which
- 260 will consist of:
- 261 a) Job vacancy title;
- 262 b) Applicant biographical data;
- 263 c) A request for a resume (where applicable).
- 264 2) The Application Form shall be accompanied by a Statement of Policy regarding Oneida
- 265 Preference and Indian Preference.
- 266 3) Hand-delivered applications will be accepted at the HRD Office until 4:30 p.m. on the
- 267 deadline date; mailed applications must be postmarked on or before the deadline date.
- 268 4) All applications will be acknowledged.
- 269 e. Advertising
- 270 1) Position vacancies will be advertised as widely as possible including:
- 271 a) The Kalihwisaks;
- 272 b) Statewide, through print and electronic media and public employment agencies;
- 273 c) Through targeted recruiting efforts including:
- 274 i. Major metropolitan areas (i.e. Milwaukee, Chicago, Minneapolis, etc.)
- 275 ii. The Bureau of Indian Affairs;
- 276 iii. The Oneida Higher Education Office.
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- 278

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- 280 d) Other postings targeted toward special recruiting categories (such as professions)
- 281 shall be carried out at the discretion of the HRD Office with the advice and consent
- 282 of the affected department.
- 283 2) Unless otherwise prohibited by external grant source or federal law, the first posting
- 284 for a position vacancy shall be limited to enrolled Oneida members and shall be posted
- 285 for a minimum of seven (7) calendar days.
- 286 3) The second posting for a position vacancy shall be posted for a minimum of ten (10)
- 287 calendar days and shall be open to the general public, unless the position must be filled
- 288 by an enrolled Oneida Tribal member. [\(HR Interpretation 8-9-11\)](#)
- 289 4) All vacancies requiring re-posting shall be referred back to B-2.c (Identification of
- 290 Vacancies and Development of Job description) to begin the re-posting process.
- 291 f. Screening of Applicants [\(HR Interpretation 11-16-12\)](#) [\(HR Interpretation 10-22-12\)](#)
- 292 1) A Screening Committee consisting of the HRD Manager (or designate), the position
- 293 supervisor, the Area Manager (at his/her option), and a member of the Personnel
- 294 Selection Committee shall be convened to conduct the screening of applicants. The
- 295 Screening process will begin as soon as practical following the closing of the position.
- 296 This Committee will:
- 297 a) Verify that all applications are complete, are accurate and were submitted on time.
- 298 i. Applications that are incomplete, inaccurate, or were not submitted on or
- 299 before the posted deadline date may be screened out.
- 300 b) Analyze the job description to establish screening criteria. These criteria will
- 301 include qualifications listed on the job description determined by the supervisor
- 302 and Area Manager to be essential to the job. [\(T.O.E. WS - 5-6-13\)](#)
- 303 c) Screen verified applications
- 304 d) Recommend a list of applicants to be interviewed.
- 305 2) The HRD Office shall notify screened out applicants within five (5) working days after
- 306 the initial screening and reserve these applications in the general recruiting pool.
- 307 3) The HRD Office will arrange for interviews with the listed candidates.
- 308 g. Candidate Interviews
- 309 1) An Interview Committee will be convened and will consist of the members of the
- 310 Screening Committee except that the HRD Manager will be replaced with a second
- 311 member of the Personnel Selection Committee. The Interview Committee will:
- 312 a) Construct an interview format consisting of:
- 313 i. A set of questions related to the screening criteria qualifications;
- 314 ii. An interview rating scale designed to objectively evaluate each candidate's
- 315 qualifications.
- 316 b) Interview candidates and evaluate each individually
- 317 2) The HRD Manager (or designee) will total the evaluation rating scale to rank order of the
- 318 candidates.
- 319

h. Selection [\(Interpretation - Disqualification of Applicant 10-24-2013\)](#)

- 1) The supervisor shall select one of the top two (2) candidates as ranked through the rating scale. [\(HR Interpretation - 10-17-12\)](#)
 - a) The supervisor may conduct an additional personal interview with the top two (2) candidates.
 - b) The selection decision shall be governed by the Oneida Preference and Indian Preference Policy. [\(HR Interpretation - 6-6-11\)](#)
 - c) The HRD Office will notify the selected candidate and offer the candidate the job within five (5) working days of the selection decision by the supervisor.
 - i. Should the supervisor's first choice refuse the offer, the HRD Office will offer the job to the second ranked candidate.
- 2) Should both of the top two ranked candidates refuse the job offer, the supervisor may:
 - a) Repeat the process outlined in B.2.h.1. above; or
 - b) Re-post the position.
- 3) The HRD Office will notify those candidates interviewed but not selected of the decision to hire the best-qualified candidate.
- 4) All newly hired employees will be listed in the HR newsletter.

C. TRANSFERS AND PROMOTIONS POLICY - The Oneida Tribe encourages transfers and promotions within and among units in order to make the best possible use of human resources to meet Tribal goals and objectives. Supervisors and employees are encouraged to work together to create an environment in which employees constantly strive to improve their skills and abilities and managers constantly seek to provide challenging and rewarding work experiences.

1. Procedure

a. Internal Posting and Bidding

- 1) Open positions as determined by a supervisor and his/her Area Manager will be posted internally for five (5) working days. This internal posting will be concurrent with the external (public) posting of positions.
 - a) Positions will be posted in prominent locations in each Tribal building
- 2) Tribal employees may bid for transfers by notifying their immediate supervisor and submitting an Application Form to the HRD Office.
 - a) The HRD Manager will inform all affected Area Managers of each transfer bid.
- 3) At the end of the five (5) day internal posting period, the HRD Manager will schedule a conference with the open position's supervisor and the Area Manager.
 - a) The conference committee will consist of the supervisor, the Area Manager and the HRD Manager (or designate) acting as this Committee will:
 - i. Establish selection criteria; and
 - ii. Review each bid.
 - b) The Committee may select the best-qualified applicant but is not required to choose an applicant to fill the open position from those employees who have submitted an application for a transfer or promotion.

- 361
- 362 c) If the Committee does not fill the position from the transfer/promotion process,
- 363 the process will continue through the full advertising, screening and interview
- 364 steps.
- 365 i. Any decision will be governed by the Indian Preference Policy.
- 366 4) Employees who are transferred or promoted will not lose any benefits; however:
- 367 a) An employee may be required to continue serving in his/her present position until
- 368 a replacement can be found;
- 369 b) An employee who is transferred to a position lower on the Tribal Job Structure will
- 370 be paid at the grade level corresponding to the new position;
- 371 c) An employee must have completed one year of service to the Tribe before being
- 372 eligible for a promotion or transfer (requests for transfers for documented medical
- 373 conditions will be handled on a case by case basis and only when in the best
- 374 interests of both the employee and the Tribe);
- 375 d) The newly transferred or promoted employee shall be required to complete a three
- 376 (3) month probation period (all conditions of the Tribe's Probation Policy shall
- 377 apply).
- 378 b. Applicant Pool Process
- 379 1) New and vacant positions will be advertised through the Tribal Applicant Pool.
- 380 2) The job description will be sent to persons whose applications are maintained in the
- 381 Applicant Pool.
- 382 a) The Tribal Applicant Pool will consist of open (unspecified) applications from Tribal
- 383 members who wish to be considered for employment by the Tribe.
- 384 b) Advertising through the Tribal Applicant Pool will follow the format and time
- 385 conditions set forth in the Hiring Policy.
- 386 2. Reassignments
- 387 a. Title Reassignments
- 388 1) Title Reassignments may be made by supervisors to:
- 389 a) More accurately describe or define an existing job; or
- 390 b) Make minor adjustments in jobs within a unit or operating division.
- 391 2) Title Reassignments may be made at any time with the approval of the Area Manager
- 392 and HRD Manager.
- 393 b. Job Reassignments
- 394 1) Job Reassignments may be made by supervisors to make more efficient and effective
- 395 use of human resources.
- 396 2) Job Reassignments may be supervisor-initiated or employee-initiated but must be
- 397 made in the best interests of the operating unit.
- 398 3) Job Reassignments may be made at any time with the approval of the Area Manager
- 399 and after a review of each affected job by the Personnel Evaluation Committee.
- 400 c. Interim Job Reassignments [\(Work Standard 7-11-13\)](#)
- 401

D. PROBATION ([Work Standard 1-20-2011](#))

1. The first three (3) months after an employee's starting date shall be considered a period of probation. At the end of six (6) weeks, the employee's performance shall be reviewed with him/her by the supervisor by completing an employee evaluation.
 - a. At the end of the three-month probation period, a second performance evaluation will be conducted. This evaluation will recommend the end of probation and regular status for the employee, an extension of probation, or termination for cause.
2. Status as a Probationary Employee
 - a. Probationary employees will be paid at five percent (5%) below the posted pay rate for the position.
 - 1) New employees hired under a negotiated salary will receive a salary one step below the agreed upon salary during the probationary period.
 - b. Probationary employees will accrue vacation/personal days during the probation period and will receive holiday pay.
 - c. Probationary employees may be terminated for cause at any time during the probation period. Cause must consist of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position. This termination is subject to appeal. ([BC Action 3-20-92](#))
3. Completion of Probation Period
 - a. Satisfactory completion of probation will result in the employee receiving the regular salary for the position.
 - b. Employees who are terminated during the probation period will receive credit for accrued vacation/personal days in their final paycheck.
 - c. Extensions of probation periods will not affect accrual of or use of benefits as explained under D.2.

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

1. Tribal Job and Salary Structure

- a. An ongoing plan will be instituted based on standard employee grades and step levels to assure that a uniform approach is taken to establish equitable salary and wage levels.
- b. Employee performance evaluations will be a resource in determining whether an employee receives an increase in pay for the upcoming year. An overall satisfactory rating must be attained in order to be granted an increase in pay.
- c. Merit increase shall be granted upon the recommendation of the supervisor, the Area Manager, the HRD Manager and the General Manager.

2. Workday [\(Work Standard, 10-17-12\)](#)

- a. The regular Tribal workday is from 8:00 a.m. to 4:30 p.m. with an hour for lunch. The exception to these hours occurs only if the program/enterprise hours must vary for the purpose of providing service (such as retail hours beyond 4:30 p.m.). Shifts will be developed as needed, and the shift hours will then become the regular workday for assigned employees for that program/enterprise.
- b. Employees are expected to be at work each scheduled work day.
 - 1) Employees who do not report for work because of inclement weather or unforeseen circumstances will not be paid for that day. Employees may elect to use personal day(s) to cover this absence. [\(Work Standard, 11-8-12\)](#)
 - 2) In case of an unavoidable delay or absence, the supervisor must be notified no later than thirty (30) minutes after the scheduled starting time. Employees are encouraged to notify their supervisor before their scheduled starting time.
 - i. Employees failing to report to their assigned jobs or failing to call in within the thirty (30) minute time allowed will be subject to disciplinary action.
 - ii. Permission to leave early must be obtained by the employee from his/her supervisor.

3. Overtime

- a. Any and all overtime will be kept to a minimum and must be approved by the Supervisor and Area Manager.
 - 1) In the case of potential overtime that may occur at night, on holidays or on weekends, supervisors will delegate this authority to a specific employee and outline specific situations and actions that warrant overtime.
- b. All overtime must be reported to the supervisor for evaluation.
- c. Overtime will be approved only if the program or enterprise budget is capable of paying it.
- d. Overtime will be approved only for hours worked in excess of forty (40) hours per week. Personal/vacation days and holidays will not count toward the forth (40) hour requirements.
- e. Tribal employees are expected to work overtime if required. Time and one-half will be paid for this overtime.
- f. Exempt employees are not eligible for overtime.

- 485 1) The HRD Office will maintain a list of exempt employees.
- 486 4. Holidays [\(Work Standard, 4-15-11\)](#)
- 487 a. Tribal holidays consist of the following:
- 488 1) One-half day Christmas Eve
- 489 2) Christmas Day
- 490 3) New Year's Day
- 491 4) Memorial Day
- 492 5) Veteran's Day
- 493 6) Independence Day
- 494 7) Labor day
- 495 8) Thanksgiving Day
- 496 9) Indian Day (day after Thanksgiving)
- 497 10) One-half day Good Friday
- 498 11) Code Talker's Day (Oneida Day, Friday prior to Memorial Day)
- 499 [\(BC Resolution – 12-11-13A\)](#)
- 500 b. To be eligible for a paid holiday, employees must work the preceding and following
- 501 scheduled work days (except for employees who are on a prescheduled work leave or an
- 502 approved extended sick leave.) Employees who are granted a sick day directly prior to a
- 503 holiday must certify that they were capable of working the holiday in order to qualify for a
- 504 paid holiday.
- 505 c. All regular employees will be given holiday pay for the maximum pay of eight (8) hours per
- 506 day.
- 507 d. Holidays falling on a Saturday will be observed the preceding Friday; holidays falling on a
- 508 Sunday will be observed on the following Monday. [\(2017 Holiday Observance Calendar\)](#) [\(2016 Holiday Observance](#)
- 509 [Calendar\)](#)
- 510 e. The Oneida Tribe acknowledges its responsibility to make a reasonable accommodation to
- 511 employees who wish time off to observe religious holidays. Requests for such time off will
- 512 be granted where possible, based on the scheduling and staffing needs of affected
- 513 departments. Employees wishing to take time off work for religious observances should
- 514 inform their supervisor as early as possible. Employees may use personal time for such
- 515 requests if eligible; otherwise the time off will be treated as unpaid leave.
- 516 5. Vacation/Personal Days
- 517 a. Every Tribal employee, except temporary employees, shall be allowed personal and vacation
- 518 days with pay to the extent that personal days and vacation are accumulated. Temporary
- 519 employees shall be allowed personal and vacation days in accordance with Section II.C.4.
- 520 [\(GTC Resolution – 7-02-12-A\)](#)
- 521 b. The amount of personal and vacations days shall be determined by continuous service for
- 522 the Tribe. A "lay-off" from tribal employment shall not be considered in interruption in
- 523 continuous service where the lay-off is in accordance with the Tribe's Layoff Policy, nor shall
- 524 a preapproved leave of absence. [\(Accruals Interpretation, 3-6-12\)](#)
- 525 c. Except as provided for in section g, the accrual of personal days shall be as follows:

(BC Resolution, 4-13-11F)

- 1) 0-3 years of service - 6 days per year;
 - 2) 4-7 years of service - 8 days per year;
 - 3) 8-14 years of service - 10 days per year;
 - 4) 15+ years of service - 12 days per year;
- d. Except as provided for in section g, the accrual of vacation days shall be as follows:
- 1) 0-3 years of service - 12 days per year
 - 2) 4-7 years of service - 15 days per year;
 - 3) 8-15 years of service - 20 days per year;
 - 4) 15+ years of service - 25 days per year.
- e. Part-time employees accrue personal and vacation days for time actually worked at a ratio of a full-time employee.
- f. Service is defined as working for Programs/Enterprises which are contracted by the Tribe of specifically sponsored by the Tribe.
- g. Vacation and personal days shall be capped at 280 hrs. [\(BC Resolution, 11-10-10D\)](#) An employee shall cease to accrue vacation and personal hours when he or she has reached 280 total hours. Supervisors shall notify their employees when said employees have accumulated 200 total hours of vacation and personal time.
- 1) An employee may trade back accumulated vacation and personal hours in accordance with Section IV.A.5.n. below. [\(GTC Resolution – 5-23-11-B\)](#)
- h. Upon termination from Tribal employment, employees will be paid for any unused personal and/or vacation days.
- 1) Employees who have used the Tribally-sponsored loan program will be required to honor the terms of the loan agreement.
- i. Personal Days can be used for any reason so long as the request is approved by the employee's supervisor at least twenty-four (24) hours in advance (unless the absence is due to illness or unforeseen circumstances).
- 1) In the case of illness or unforeseen circumstance, the supervisor shall be notified no later than fifteen (15) minutes before the scheduled starting time.
 - 2) Programs and enterprises may institute stricter standards of notification. These standards will be submitted to and approved by the Personnel Department.
- j. An employee shall notify his/her supervisor of an intent to use personal days in the following ways:
- 1) Three (3) to five (5) days - one (1) week advance notification
 - 2) Six (6) days or more - two (2) weeks advance notification.
- k. An employee shall notify his/her supervisor one (1) day in advance if he/she will take off one (1) or two (2) days of vacation. Programs and enterprises may institute stricter standards of notification.
- 1) Three (3) to five (5) days of vacation require a one (1) week advance notification.
 - 2) Six (6) or more days of vacation require at least two (2) weeks advance notification.
- l. The burden shall be on the supervisor to show that a denial of a personal day or a vacation

- day is based upon interference with the business of the Tribe.
- m. Personal or Vacation Days cannot be taken when an employee is on probation.
 - n. Trade-back for Cash - Each fiscal year, the Oneida Business Committee shall analyze fiscal conditions to determine whether employees may trade back personal and/or vacation hours for cash that fiscal year. [\(Work Standard, 10-11-11\)](#)
 - 1) If the Oneida Business Committee approves trade-back for cash, they shall also determine whether (a) and/or (b) applies:
 - i. All employees will have the opportunity to trade-back hours one time that year.
 - 1. By August 15, each employee who has accumulated twenty-four (24) hours or more of vacation and/or personal days may opt to trade in his/her hours for cash.
 - 2. Employees will receive their trade back on or before September 30 of that year.
 - ii. Only those employees who are unable to utilize their personal and/or vacation time due to working conditions, such as a shortage in staffing, as determined by the HRD Manager or designee, will have the opportunity to trade back hours on a quarterly basis.
 - 1. Employees will receive their trade back within sixty (60) days after opting to trade back hours.
 - 2) When trade-back for cash is approved by the Oneida Business Committee, the following standards shall apply:
 - i. Employees must decide which status (vacation or personal or both) from which their trade-back will be drawn.
 - ii. Employees may not trade for cash more than eighty (80) hours in one year. [\(GTC Resolution 5-23-11-B\)](#)
 - o. Additional Duties Compensation
 - p. Travel Time Compensation [\(Work Standard - 3-20-13\)](#)
- B. INSURANCES [\(see separate publication\)](#) for information on Tribal Insurance plans. [\(Separating Employees WS 5-6-13\)](#)
- C. RETIREMENT PLAN [\(See separate publication for information on Tribal Retirement Plan\).](#)
- D. LEAVES
- 1. Meeting Attendance
 - a. Approval for attending any meetings inside normal working hours must be approved in advance by the employee's immediate supervisor. [\(BC Action, 5-16-89\)](#)
 - b. Employees who receive stipends or honoraria in excess of \$50.00 for attending meetings during working hours will forfeit the amount in excess of \$50.00 from their regular paycheck. Stipends for travel or per diem will not be deducted if accompanied by receipts for such expenses.
 - c. Stipends or honoraria for intra-tribal meetings during normal working hours will result in the employee's paycheck being reduced by the full amount of the stipend.

2. Funeral Leave [\(Work Standard, 8-2-11\)](#)

- a. All regular employees will be given a three (3) day leave without loss of pay for funeral services for immediate family. Immediate family includes:

Husband	Mother	Brother	great-grandparent
Wife	Father	Sister	great-grandchildren
Mother-in-law	Son	Grandparent	Spouse's great-grandparents
Father-in-law	Daughter	Grandchild	Spouse's grandparents
Daughter-in-law	Sister-in-law	Brother-in-law	
- b. Three (3) day leave for other persons will be given only if the employee is responsible for making funeral arrangements, subject to prior approval of supervisor.
- c. All other funeral leave will be limited to no more than one (1) day with pay subject to the notification and approval of the immediate supervisor. [\(Management Directive, 12-17-2009\)](#)

3. Leave of Absence [\(Work Standard, 6-10-14\)](#)

- a. A leave of absence without pay may be granted to employees for a justifiable reason (including caring for a child, spouse or parent with a serious health condition) and when in the best interest of the Tribe.
 - 1) Leaves of absence will not exceed three (3) months.
 - i. All leaves of absence must be approved by the supervisor, Area Manager, HRD Manager and General Manager. [\(HR Interpretation, 12-8-16\)](#)
 - ii. Requests must be documented and submitted to the supervisor with as much advance notice as possible.
 - iii. Disposition of requests will be made on the basis of staffing requirements.
 - 2) Upon returning, the employee will be reinstated in the former position with full status and benefits. Holiday, vacation, and sick leave will not be accrued during the leave of absence.
 - 3) No later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position. Notice must be presented to the supervisor.
 - i. Failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process. [\(HR Interpretation 11-21-11\)](#)

4. Maternity Leave

- a. Maternity leave will be granted for a period of six (6) weeks without pay.
 - 1) An employee may elect to cover any portion of this time by using accumulated sick days.
 - 2) Any maternity-related absences for longer than six (6) weeks must be taken as a medical leave of absence.

5. Military Leave

- a. In addition to the following provisions, the Tribe's Military Service Protection Act shall govern Military Leave.

- 649
- 650 b. A Military Leave of Absence is afforded employees entering active duty without
- 651 accumulation of holiday, vacation or personal time during the period of leave. Any
- 652 accumulated benefits prior to leave will be maintained for the employee.
- 653 c. Time off for inactive duty training, examinations to determine fitness for duty and funeral
- 654 honors duty shall be afforded to employees without the accumulation or loss of holiday,
- 655 vacation or personal time. An employee will receive pay from the Tribe for any hours work
- 656 that the employee was required to miss due to reservist training.
- 657 1) Any pay received for performing any of the above duties shall be deducted from the
- 658 employee's pay. [\(GTC Resolution - 1-26-08A\)](#)
- 659 6. Jury Duty
- 660 a. During a period of jury duty, an employee will receive pay from the Tribe for any hours of
- 661 work missed due to jury duty.
- 662 1) Jury duty pay will be deducted from the employee's paycheck when determining the
- 663 amount of pay
- 664 2) No overtime will be allowed in determining employee pay while serving on jury duty.
- 665 7. Educational Leave [\(BC Action, 5-4-90\)](#)
- 666 a. A leave of absence for education purposes will not exceed one (1) year.
- 667 8. Parent Policy Leave [\(BC Action, 3-2-94A\)](#)
- 668 a. Employees who are parents, guardians, or those individuals specifically referred to as
- 669 "immediate family" as defined in Section IV, page 6 of these Personnel Policies and
- 670 Procedures which includes husband, wife, mother, father, brother, sister, son, daughter,
- 671 mother-in-law, father-in-law, grandparent and grandchild may request to participate in their
- 672 child(ren)'s educationally sanctioned events not to exceed four (4) hours per employee per
- 673 month
- 674 1) These four (4) hours shall not accumulate.
- 675 b. Approval to utilize the four (4) hours must be obtained from the supervisor.
- 676 1) An employee shall request his/her supervisor to utilize this leave with a minimum of
- 677 twenty-four (24) hours' notice.
- 678 2) The Supervisor may request verification of
- 679 i. Guardianship of the child(ren) and/or
- 680 ii. The attendance of the employee at their child(ren)'s educationally sanctioned -
- 681 event.
- 682 c. The burden shall be on the supervisor to show that a denial of the Parent Policy Leave which
- 683 is based upon interference with the business of the Tribe.
- 684 d. This leave shall not be paid as overtime. The supervisor may have the option to use flex time
- 685 to cover this time off to attend their child(ren)'s educationally sanctioned events.
- 686 e. All employees, except Emergency/Temporary, Youth Workers, Student Interns, and Seasonal
- 687 Workers during their first season, and Substitute Reliefs are eligible to participate in this
- 688 benefit.
- 689

SECTION V – EMPLOYEE RELATIONS

A. ORIENTATION POLICY

The Oneida Tribe reflects the unique culture and character of the Oneida Nation. The Tribe recognizes that this may present special problems and difficulties for a new employee. The Tribe therefore provides an Orientation Program designed to ease the new employee's transition into a job and enable the new employee to become effective and productive as quickly as possible.

1. Orientation Program Outline

- a. Overview
 - b. Tribal Government and Procedures
 - c. Key Policies and Procedures
 - d. Benefits
 - e. Safety, Health and Security
 - f. Departmental Orientation
- #### **2. Responsibilities**
- a. The HRD Office will administer the General Orientation Program
 - 1) The HRD Office will assist Divisions in administering Departmental Orientation Programs.
 - b. The HRD Office will develop and establish an Employee Mentor Program with each Division.
 - 1) Employee Mentors will be responsible for conducting the Departmental Orientation.
 - 2) Employee Mentors will assist new employees throughout their probation period as a source of references and referrals.
 - c. The HRD Office will annually review the General Orientation Program and each Departmental Orientation Program to:
 - 1) Evaluate the effectiveness of each Program,
 - 2) Modify programs as necessary.
 - 3) Requirements
 - a) The HRD Office will provide a copy of the Employee Policy and Procedures Manual to new employees before (if possible) the scheduled starting date.
 - b) The General Orientation Program will be completed in appropriate stages within the first month of the new employee's starting date.
 - i. The Departmental Orientation will be completed within the first week of the starting date.
 - c) The HRD Office will administer a NEW Employee Reporting Form to provide information for the purposes of maintaining a Tribal wide skills assessment inventory and a management succession plan.

B. EVALUATIONS

1. Evaluation reports will be used in determining all promotions, transfers and salary adjustments.
2. Annual evaluation reports for each employee will be submitted to the HRD Office by August 1 of each year. [\(Work Standard – 6-4-14\)](#)

- a. Evaluation reports will be retained in each employee's personnel file.
- 3. All Tribal employees will be evaluated at least once a year.
 - a. Employee performance evaluations will be conducted by each employee's immediate supervisor. The Business Committee will conduct the performance evaluation of the General Manager. [\(HR Interpretation – 12-8-16\)](#)
 - b. The supervisor will discuss the evaluation with each employee. The evaluation will then be signed by the employee and the supervisor and forwarded to the HRD Office.
- 4. Satisfactory evaluations may result in the employee receiving an increase in pay within their grade level provided that the employee has not attained the highest step within the grade.
 - a. Unsatisfactory evaluations will result in probation status for the employee. The supervisor shall provide documentation to the Area Manager and to the employee detailing the deficiency(s). A repeat evaluation will be conducted three (3) months after the unsatisfactory evaluation. This second evaluation will result in the employee:
 - 1) Being removed from probation and receiving a salary increase if the second evaluation results in an overall satisfactory rating; or
 - 2) Receiving appropriate disciplinary actions if the second evaluation also results in an unsatisfactory rating.
 - b. Employees may appeal unsatisfactory evaluations to the HRD Manager. The HRD Manager will consult with the supervisor and the employee to negotiate an appropriate resolution [\(Work Standard 6-21-11\)](#)

C. CAREER DEVELOPMENT

- 1. Tribal employees are encouraged to develop their skills and abilities by pursuing education at a local educational institution. [\(BC Action – 9-9-92\)](#)
 - a. Tribal employees must provide a general Career Development Plan to the supervisor listing the goals and objectives of the training and education to be undertaken.
- 2. Tribal employees may be eligible for assistance for one (1) course per semester. The employee must attempt to arrange to take the class outside his/her normal working hours.
 - a. Where a class conflicts with the employee's work schedule, the needs of the Tribal unit take precedence; however, the supervisor shall attempt to accommodate the employee's request.
 - b. In no case shall the accommodation exceed actual class hours plus reasonable travel time.
 - c. Employees must obtain the approval of their immediate supervisor to take a course on Tribal time.
- 3. The supervisor's approval and estimated cost must be submitted to the HRD Office, the Area Manager and the General Manager. [\(HR Interpretation – 12-8-16\)](#)
- 4. The cost of the books, tuition and fees for the course shall be paid by the Tribe through funds budgeted in programs or through the Higher Education program.
 - a. Reimbursement for books, tuition and fees is contingent upon the employee receiving at least a C (2.0 on a 4.0 point scale).
 - b. Employees who receive less than the required grade point will be required to reimburse the program for whatever costs were incurred.

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Disciplinary procedures provide a systematic process for handling problem employees.

[\(Work Standard – 5-6-13\)](#) Disciplinary procedures serve to correct unacceptable behavior and to protect the Tribe. Grievance procedures provide a systematic process for hearing and evaluating job related disputes. Grievance procedures serve to protect employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances.

[\(HR Interpretation – 2-4-13\)](#) [\(HR Interpretation - 1-29-14\)](#)

1. Complaints

- a. Should an employee have a disagreement with another employee, he/she may lodge an informal (verbal) or formal (written) complaint with the employee's supervisor.
- b. The supervisor will investigate the complaint and attempt to resolve the disagreement.
- c. If the employee lodging the complaint is dissatisfied with the attempted resolution, he/she may ask the Area Manager to attempt a resolution.
- d. There is no further appeal of this process.

2. Disciplinary Actions

- a. Disciplinary actions will be initiated by an immediate supervisor for the purpose of correcting unacceptable work performance. The supervisor will always discuss the action with the employee being disciplined to ensure that the employee:
 - 1) Understands the reason for the disciplinary action;
 - 2) Understands the expected work performance in light of the disciplinary action;
 - 3) Understands the consequences of continued unacceptable behavior.
- b. A supervisor shall initiate disciplinary actions commensurate with the seriousness of the unsatisfactory performance. A supervisor must consider each disciplinary action in progressive order and justify a deviance from that recommended progression.
- c. The actions listed below are examples of unacceptable work performance and do not constitute a comprehensive or exhaustive list. The actions in parentheses are guidelines for a supervisor to use in administering disciplinary actions. (W = written warning; S = suspension; T = termination):
 - 1) Work Performance
 - a) Insubordination (including disobedience) or failure/refusal to carry out assignments or instructions. (W/S/T)
 - b) Loafing, loitering, sleeping or engaging in personal business. (W/S/T)
 - c) Unauthorized disclosure of confidential information or records. (S/T)
 - d) Falsifying records or giving false information to departments and/or employees responsible for Recordkeeping. (S/T)
 - e) Failure to provide accurate and complete information where such information is required by an authorized person. (S/T)
 - f) Failure to comply with health, safety and sanitation requirements, rules and

813 regulations. (W/S/T)

814 g) Negligence in the performance of assigned duties. (W/S/T)

815 2) Attendance and Punctuality

816 a) Failure to report promptly and observe work schedules (such as starting time,
817 quitting time, rest and meal breaks) without the specific approval of the supervisor.
818 (W/S/T)

819 b) A pattern of unexcused or excessive absenteeism and/or tardiness. (W/S/T)

820 3) Use of Property

821 a) Unauthorized or improper use of Tribal property or equipment (for example, Tribal
822 vehicles, telephone, mail services, etc.) (W/S/T)

823 b) Unauthorized possession, removal or willful destruction of Tribal or another
824 employee's property (including improper use of possession of uniforms,
825 identification cards, badges, permits or weapons). (Willful destruction of property
826 may subject the violator to applicable liability laws.) (T)

827 c) Unauthorized use, lending, borrowing or duplicating of Tribal keys. (T)

828 d) Unauthorized entry of Tribal property, including unauthorized entry outside of
829 assigned hours of work or entry into restricted areas without prior supervisory
830 approval. (S/T)

831 e) Theft or property shall include theft, embezzlement, cheating, defrauding, pilfering,
832 robbery, extortion, racketeering, swindling or any of these actions, or conspiracy to
833 commit such actions with Tribal employees or other persons against the Tribe, its
834 guests, employee, members, customers and/or clients while on or about Tribal
835 premises. (S/T) [\(BC Action – 12-2-88\)](#)

836 4) Personal Actions and Appearance

837 a) Threatening, attempting, or doing bodily harm to another person. (T)

838 b) Intimidating, interfering with or using abusive language toward customers, clients,
839 co-workers or others. (S/T)

840 c) Making false or malicious statements concerning other employees, supervisors or
841 program heads. (W/S/T)

842 d) Use of alcohol or illegal controlled substances during work hours. (S/T)
843 [\(GTC Resolution – 01-05-09A\)](#)

844 e) Reporting for work under the influence of alcohol or illegal controlled substances.
845 (S/T) [\(GTC Resolution – 01-05-09A\)](#)

846 f) Failure to immediately report any work-related injuries to the immediate supervisor.
847 (W/S)

848 g) Direct involvement in political campaigning during scheduled work hours. Violations
849 include:

850 i. Use of Tribal employment title in Tribal campaign activities. (W/S/T)

851 1. Political materials include: leaflets, brochures, etc. which solicit support for
852 candidates for office.

853 2. Resolutions or petitions which propose that a political action be initiated.

- 854
- 855 3. Leaflets, newsletters, or other written materials the purpose of which is to
- 856 espouse political views or opinions.
- 857 h) The acceptance of gifts or gratuities for personal gain in the course of official duties.
- 858 (Customers are allowed to tip Bingo workers, Oneida Tobacco Enterprise workers,
- 859 and Museum Workers.) (W/S/T)
- 860 i) Inappropriate dress or personal hygiene which adversely affects the proper
- 861 performance of duties or constitutes a health or safety hazard. (W/S)
- 862 j) Failure to exercise proper judgment. (W/S/T)
- 863 k) Failure to be courteous in dealing with fellow employees or the general public.
- 864 (W/S/T)
- 865 l) Any of the following acts by employees: Arson, bribery, perjury, obstruction or
- 866 interference with an investigation authorized by the Oneida Tribe. (S/T)
- 867 (BC Action – 12-2-88)
- 868 m) The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol,
- 869 and/or controlled substances on or about Tribal premises. (S/T)
- 870 (BC Action – 12-2-88)
- 871 n) Any violation of duly adopted Tribal ordinances. (W/S/T) (BC Action – 12-2-88)
- 872 5) Sexual Harassment Policy
- 873 It is the Oneida Tribe's Policy that all employees have a right to work in an environment
- 874 free of discrimination which includes freedom from harassment, more specifically sexual
- 875 harassment. The Oneida Tribe considers sexual harassment, in whatever form, in the
- 876 workplace to be a serious violation of an individual's dignity and personal rights. In all
- 877 matters, where complaint of sexual harassment is lodged against an employee, the
- 878 Oneida Tribe has a duty and obligation to conduct a thorough investigation using
- 879 discretion, good judgment and the principles and practice of strict confidentiality. If
- 880 sexual harassment has been committed, the progressive disciplinary process is as
- 881 follows (W/S/T).
- 882
- 883 Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors,
- 884 and other verbal or physical conduct of a sexual nature when (1) submission to such
- 885 conduct is made either explicitly or implicitly a term or condition of an individual's
- 886 employment, (2) submissions to or rejection of such conduct by an individual is used as
- 887 the basis for employment decisions affecting such individuals, or (3) such conduct has
- 888 the purpose or effect of substantially interfering with an individual's work performance
- 889 or creating an intimidating, hostile, or offensive work environment.
- 890 a) Sexual Harassment (W/S/T)
- 891 i. Procedure
- 892 a. Should an employee have a complaint, he/she should file a formal
- 893 (written) complaint with the Human Resources Department.
- 894

- 895
- 896 b. The Human Resources Department is obligated to investigate the
- 897 complaint which is to be held in the strictest confidence. This
- 898 investigation shall be done within five (5) working days from receiving
- 899 the formal written complaint.
- 900 c. After investigating the complaint and the Human Resources Department
- 901 finds cause to take disciplinary action due to sexual harassment
- 902 violation, the employee will be disciplined accordingly by their
- 903 supervisor. This disciplinary action shall be initiated within five (5)
- 904 working days from the date the supervisor receives the report from the
- 905 Human Resource Department. [\(BC Actions – 7-16-93\)](#)
- 906 3. Accumulated Disciplinary Actions Warranting Termination [\(HR Interpretation – 1-29-14\)](#) (Provided that the
- 907 Drug and Alcohol Free Workplace Policy shall govern disciplinary actions warranting termination
- 908 for drug and alcohol related violations.) [\(GTC Resolution – 01-05-09A\)](#)
- 909 a. The accumulation of three (3) upheld warning notices within any twelve (12) month period.
- 910 (T)
- 911 b. The accumulation of two (2) upheld suspensions within any twelve (12) month period. (T)
- 912 c. The accumulation of three (3) of any combination of upheld warning notices and/or upheld
- 913 suspensions within any twelve (12) month period. (T)
- 914 4. Substance Abuse Disciplinary Procedure - Section was deleted. [\(GTC Resolution – 01-05-09-A\)](#)
- 915 [Click here](#) for Drug and Alcohol Free Workplace Policy.
- 916 5. Disciplinary Procedure [\(Disciplinary Flowchart\)](#)
- 917 The following procedure shall be adhered to whenever disciplinary action is taken.
- 918 a. Supervisor becomes aware of unsatisfactory work performance or violation.
- 919 1) Supervisor investigates through a meeting with the employees and determines whether
- 920 disciplinary action is warranted.
- 921 b. If disciplinary action is warranted, within five (5) working days the supervisor will fill out the
- 922 five (5) part disciplinary action form stating the behavior for which the action is being taken,
- 923 the time and date of its occurrence, and the specific policy section under which action is
- 924 being taken.
- 925 c. The form will be discussed with the employee and a corrective action will be identified.
- 926 d. The employee being disciplined will sign the form.
- 927 1) Should an employee being disciplined refuse to discuss the action with his/her
- 928 supervisor, the supervisor shall so note this, with date of refusal, on the form and
- 929 distribute as in 5.e.
- 930 e. Copies will be given to the employee, the HRD Manager, the supervisor, the Area Manager
- 931 and General Manager within twenty-four (24) hours of the conference with the employee.
- 932 [\(HR Interpretation – 12-8-16\)](#)
- 933 f. Should a disciplinary action result in the suspension or termination of an employee, the
- 934 following guidelines shall apply:
- 935 1) The supervisor shall consult with the HRD Manager to mutually determine the length of

the suspension.

a) Suspensions will be limited to a maximum of three (3) weeks.

b) Suspension/terminations that are overturned in the appeal process shall result in the employee receiving back pay for the days he/she was suspended/terminated.

6. Grievance [\(Grievance Flowchart\)](#)

An employee who receives a disciplinary action which he/she believes is unfair may grieve the action. The Grievance process (including appeals of disciplinary action) shall be conducted with utmost consideration for due process (within the time limits set forth herein) but will allow and account for recognized Tribal holidays and unforeseen circumstances (such as illnesses, deaths in the immediate family of principals, etc.). The HRD office will make every attempt to ensure that grievance procedures are concluded within forty-five (45) working days; however, extensions granted for reasonable unforeseen circumstances (as determined by the HRD Manager) may extend the process. The Grievance process will be governed by the following guidelines: [\(HR Interpretation – 8-19-2011\)](#) [\(HR Interpretation – 1-29-2014\)](#)

a. For all disciplinary actions, regardless of severity:

1) The employee (petitioner) must file an appeal in writing.

a) The employee may seek the assistance of a spokesperson or advocate at any time after the disciplinary action has been issued in order to aid in the resolution of the grievance process.

b) The appeal must be filed with the Area Manager and the HRD Manager (or designee) within ten (10) working days from the day the employee receives the disciplinary action.

2) The Area Manager, for all disciplinary action investigations, will have ten (10) working days from the receipt of the employee's appeal to complete the investigation. One extension of no more than five (5) working days may be requested of and granted by the HRD Manager (or designee) at his or her discretion.

3) The Area Manager will do one of the following:

a) Uphold the disciplinary action; or

b) Modify the disciplinary action; or

c) Overturn the disciplinary action. If a suspension or termination is overturned, the employee (petitioner) shall be reinstated with full back pay.

4) The Area Manager will file a decision with the employee and the HRD Manager (or designee) and will include a reason for the decision, an explanation of the decision and the action to be taken as a result of it.

b. The employee may appeal the Area Manager's decision to the Judiciary – Trial Court. The appeal must be filed with the Judiciary – Trial Court within ten (10) working days from employee's receipt of the Area Manager's decision. Upon receipt of the appeal the Judiciary – Trial Court shall, within one business day, notify the HRD Manager (or designee) that an appeal has been filed by the employee. [\(GTC Resolution – 2-28-04A\)](#)

- 977
- 978 1) Copies of all information of the subject case upon which the disciplinary action was
- 979 upheld by the Area Manager will be hand delivered to the Judiciary – Trial Court. The
- 980 Judiciary – Trial Court will hear an appeal only if one or both of the following conditions
- 981 exist:
- 982 a) The decision of the Area Manager is clearly against the weight of the evidence
- 983 and/or
- 984 b) Procedural irregularities were exhibited during the appeal process that may have
- 985 been harmful to one of the parties to the grievance.
- 986 2) If one or both of the above conditions are present, the Judiciary – Trial Court will hear
- 987 the grievance.
- 988 a) If neither of the above conditions is present, the P Judiciary – Trial Court will deny
- 989 the appeal for a hearing and affirm the decision of the Area Manager.
- 990 3) At least five (5) working days prior to the hearing date, the petitioner, and respondent
- 991 will receive notification of the hearing date.
- 992 4) Copies of all information on the subject case upon which the disciplinary action was
- 993 upheld will be hand-delivered to the Judiciary – Trial Court at least two (2) working days
- 994 prior to the appeal date. The petitioner and respondent will have access to this
- 995 information in the HRD Office at least two (2) days prior to the appeal date.
- 996 a) If new evidence which was previously unavailable is introduced at any point during
- 997 the Judiciary – Trial Court appeal process, the Judiciary – Trial Court hearing will be
- 998 suspended and the case will be remanded to the Area Manager for reconsideration.
- 999 i. The Area Manager will reconsider his/her decision in light of the new evidence
- 1000 and issue a decision within three (3) working days.
- 1001 ii. This procedure may be invoked only once. Thereafter, the appeal process will
- 1002 continue to a conclusion based on the information originally presented and the
- 1003 newly introduced evidence.
- 1004 5) The petitioner shall have the right to be represented by an advocate if he/she so
- 1005 chooses. The expenses of the advocate shall be the total responsibility of the petitioner.
- 1006 The respondent and/or area manager who is party to the grievance action shall have
- 1007 access to an advocate for consultation and/or representation. Should the petitioner
- 1008 engage outside professional legal representation, the respondent and/or area manager
- 1009 shall have access to professional legal representation.
- 1010 a) Should the petitioner and his/her representative both fail to appear for any
- 1011 scheduled hearing without justifiable cause, the decision of the Area Manager shall
- 1012 be upheld and the grievance dismissed.
- 1013 Should the respondent and his/her representative both fail to appear for any
- 1014 scheduled hearing without justifiable cause, the decision of the Area Manager shall
- 1015 be overturned.
- 1016 6) The decision of the Judiciary – Trial Court shall be based solely on the information
- 1017 presented to them before the appeal hearing, the record of the prior proceedings and

any new evidence (if introduced appropriately through the provisions of 6.b.4.a. above).

- 7) The decision of the Judiciary – Trial Court shall be final. The Judiciary – Trial Court may:
- a) Uphold the disciplinary action; or
 - b) Overturn the disciplinary action and:
 - i. Reinstatement the employee (petitioner) with full back pay for any lost time;
 - ii. Reinstatement the employee (petitioner) without back pay.
- 8) The petitioner and respondent have a right to a speedy hearing and decision; therefore, notification of the final decision will be made within five (5) working days following the hearing.
- a) Notification of the final decision will include:
- i. The final decision;
 - ii. The reason(s) for the final decision; and
 - iii. The action to be taken as a result of the final decision.
- 9) The HRD Office shall:
- a) Keep all records of the hearing;
 - b) Provide copies of administrative advocacy rules, procedural rules, and time line rules to interested parties.

SECTION VI – SAFETY AND HEALTH

A. POLICY

The personal safety and health of each employee, customer and client of the Oneida Tribe is of primary

importance. The prevention of injuries and illnesses is of such importance that it will take precedence over operating productivity whenever necessary.

The Oneida Tribe will maintain a safety and health program conforming to the best practices available. To be successful, this program will work to develop the proper attitudes toward on-the-job injury and illness prevention on the part of supervisors and employees. This program will strive to develop a high level of cooperation in all safety and health matters between supervisors and employees and among employees.

The objective of this program is a safe and healthy environment that will reduce the number of job-related injuries and illnesses to an absolute minimum. The Tribe's goal is zero accidents and illnesses.

B. PROCEDURES

The Tribal Safety Committee will adopt and enforce through the Personnel Department procedures related to the education of the Tribal work force in matters of safety and health. These procedures will include all education and prevention activities, assessments and evaluations, and reporting.

SECTION VII – PROGRAM/ENTERPRISE RULES & REGULATIONS

A. Enterprises and programs may establish internal rules and regulations to facilitate the administration of Tribal Personnel Policies and Procedures.

1. In no case will these internal rules and/or regulations conflict with or take the place of Tribal Personnel Policies and Procedures.
2. Enterprises and programs which establish internal rules and regulations will file a copy of the rules and regulations with the Personnel Department.

SECTION VIII – RECORD KEEPING

A. PERSONNEL OFFICE

1. Basic records to be retained include:
 - a. Reference Data
 - b. Job Descriptions

- 1130 c. Resumes and Applications
- 1131 d. Interview notes/selection information
- 1132 e. Resignations
- 1133 f. Employee tax exemption claims
- 1134 g. Disciplinary action information
- 1135 h. Performance evaluations
- 1136 i. Insurance coverage/changes
- 1137 j. Transfers
- 1138
- 1139 2. The Personnel Office shall keep and maintain a complete record of each employee
- 1140 throughout his/her term of employment.
- 1141 a. Tribal employees shall have access to their employment file.
- 1142 b. Employment files kept by the Personnel Office shall be considered confidential
- 1143 information. Release of any information to a third party must have the consent
- 1144 of the employee in writing.
- 1145 B. ACCOUNTING DEPARTMENT
- 1146 1. Basic records to be retained include:
- 1147 a. Attendance records
- 1148 b. Employee Time Sheets
- 1149 c. Earnings - in the form of computer printouts
- 1150 d. Travel - in the form of complete travel authorization forms.
- 1151 1) Time sheets and travel reports shall be filled out by every employee for pay
- 1152 period, collected by the program head, and forwarded to the Department.
- 1153 2. The Accounting Department shall retain all records for a period of seven (7)
- 1154 years. [\(Archived 29, October 2010\)](#) [\(BC Action, 10-14-09B\)](#)

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April 20, 2018 Legislative Operating Committee E-Poll Employee Protection Emergency Amendments

From: LOC Sent: Fri 4/20/2018 9:57 AM
 To: David P. Jordan; Leyne C. Orosco; Kirby W. Metoxen; Rosa J. Laster; Jennifer A. Webster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth
 Cc: Clorissa N. Santiago; Brandon M. Wisneski
 Subject: EPOLL 4 OF 4: EMPLOYEE PROTECTION POLICY-RESENT
 Message Employee Protection Policy Emergency Amendments - Adoption Packet.pdf (1,005 KB)

Good Morning-

This email serves as the E-Poll for the Employee Protection Policy Emergency Amendments.

EXECUTIVE SUMMARY

On April 11, 2018, the Oneida Business Committee dissolved the Personnel Commission through resolution BC-04-11-18-A for the purpose of consolidating employment related grievance hearings into the Judiciary in an effort to increase consistency in hearing processes, efficiency, and reduce overall costs to the Oneida Nation. The Oneida Business Committee felt it was now appropriate to begin consolidating employment related grievance hearings into the Judiciary as the number of current cases in the Personnel Commission was low and the costs of maintaining judicial hearing authorities continues to increase.

Oneida Business Committee resolution BC-04-11-18-A also requires that the Legislative Operating Committee develop and present emergency legislative amendments to fully address the impact of this resolution to the next Oneida Business Committee meeting, April 25, 2018. This resolution states that emergency action to amend legislation to change references to the Personnel Commission to reflect either the Judiciary " Trial Court or the new Personnel Selection Committee is needed to contain expenditures which may go over budget, to provide standards in hearing processes, and provides clear judicial hearing authority.

Additionally, the Oneida Business Committee created the Personnel Selection Committee on April 11, 2018, through resolution BC-04-11-18-B for the purpose of protecting against issues of nepotism and enforcing Oneida and Indian preference

The emergency amendments to the Employee Protection Policy replace any reference to the Personnel Commission with a reference to the Trial Court, and also provide a definition for Trial Court.

An E-Poll is necessary for this legislative item in order to meet the April 25, 2018, Oneida Business Committee meeting deadline for the submission of emergency amendments for consideration of adoption by the Oneida Business Committee.

REQUESTED ACTION

Approve the emergency adoption packet for the Employee Protection Policy Emergency Amendments and forward to the Oneida Business Committee for consideration.

DEADLINE FOR RESPONSE

April 20, 2018, at 10:30 a.m.

All supporting documentation has been attached to this email for your convenience.

E-POLL RESULTS

From: Kirby W. Metoxen Sent: Fri 4/20/2018 9:59 AM
To: LOC; David P. Jordan; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Webster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth
Cc: Clorissa N. Santiago; Brandon M. Wisneski
Subject: Re: EPOLL 4 OF 4: EMPLOYEE PROTECTION POLICY-RESENT

Support

 You replied to this message on 4/20/2018 10:45 AM.

From: David P. Jordan Sent: Fri 4/20/2018 10:39 AM
To: Kirby W. Metoxen; LOC; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Webster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth
Cc: Clorissa N. Santiago; Brandon M. Wisneski
Subject: Re: EPOLL 4 OF 4: EMPLOYEE PROTECTION POLICY-RESENT

Approve

From: Jennifer A. Webster Sent: Fri 4/20/2018 10:46 AM
To: David P. Jordan; Kirby W. Metoxen; LOC; Leyne C. Orosco; Rosa J. Laster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth
Cc: Clorissa N. Santiago; Brandon M. Wisneski
Subject: RE: EPOLL 4 OF 4: EMPLOYEE PROTECTION POLICY-RESENT

Approve,
Jenny

From: Daniel P. Guzman Sent: Fri 4/20/2018 12:46 PM
To: LOC
Cc:
Subject: Re: EPOLL 4 OF 4: EMPLOYEE PROTECTION POLICY

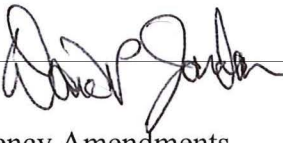
Support

***Note:** On Friday, April 20, 2018, the Microsoft Outlook email system was down for some time due to hardware failure. MIS then directed all users to the O365 web application and that system went down as well. As a result, not all of these e-poll responses met the 10:30am deadline.



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



TO: Oneida Business Committee
 FROM: David P. Jordan, LOC Chairperson 
 DATE: April 20, 2018
 RE: Employee Protection Policy Emergency Amendments

Please find the following attached backup documentation for your consideration of the Employee Protection Policy Emergency Amendments:

1. Resolution: Employee Protection Policy Emergency Amendments
2. Statement of Effect: Employee Protection Policy Emergency Amendments
3. Employee Protection Policy Emergency Amendments Legislative Analysis
4. Employee Protection Policy (Redline)
5. Employee Protection Policy (Clean)

Overview

Emergency amendments to the Employee Protection Policy (the “Policy”) are requested in order to address the dissolution of the Personnel Commission through resolution BC-04-11-18-A for the purpose of consolidating employment related grievance hearings into the Judiciary – Trial Court.

The Oneida Business Committee can temporarily enact legislation when necessary for the immediate preservation of the public health, safety or general welfare of the Reservation population and when the amendment of legislation is required sooner than would be possible under the Legislative Procedures Act. A fiscal impact statement and public meeting are not required for emergency legislation. [1 O.C. 109.9-5].

The emergency amendments to this Policy are necessary for the preservation of the general welfare of the reservation population, in an effort to ensure that employees of the Nation have due process rights in the absence of the Personnel Commission. Additionally, observance of the adoption requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest.

The emergency amendments to the Policy will become effective immediately upon adoption by the Oneida Business Committee, and will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

Requested Action

Approve the Resolution: Employee Protection Policy Emergency Amendments.

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____
Employee Protection Policy Emergency 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 Employee Protection Policy ("the Policy") was adopted by the Oneida Business Committee on an emergency basis through resolution BC-04-20-95-B, and then on a permanent basis through resolution BC-12-06-95-B, and then amended by resolution BC-01-20-99-B, BC-06-30-04-J, and BC-02-25-15-C; and
- WHEREAS,** the Policy provides protection to employees who give information that is intended to protect the Oneida Nation, or its agencies from fraud, theft or other detrimental effects; and
- WHEREAS,** the Policy currently states that the Personnel Commission is an appropriate agency to be delegated the authority to receive disclosures, and references the Personnel Commission's employee grievance and disciplinary action hearing authority; and
- WHEREAS,** the Oneida Business Committee dissolved the Personnel Commission on April 11, 2018, through resolution BC-04-11-18-A in an effort to consolidate employment related grievance hearings into the Judiciary to increase consistency in hearing processes, efficiency, and reduce overall costs to the Oneida Nation; and
- WHEREAS,** resolution BC-04-11-18-A requires the Legislative Operating Committee to develop and present emergency legislative amendments to fully address the impact of this resolution by the April 25, 2018, Oneida Business Committee meeting; and
- WHEREAS,** resolution BC-04-11-18-A states that emergency action to amend legislation to change references to the Personnel Commission to reflect either the Judiciary – Trial Court or the new Personnel Selection Committee is needed to contain expenditures which may go over budget, to provide standards in hearing processes, and provides clear judicial hearing authority; and
- WHEREAS,** the emergency amendments to the Policy replace any reference to the Personnel Commission with a reference to the Trial Court, and provides a definition for Trial Court; and
- WHEREAS,** the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis, to be in effect for a period of six (6) months, renewable for an additional six (6) months; and

WHEREAS, the emergency adoption of these amendments to the Policy are necessary for the preservation of the public health, safety, or general welfare of the reservation population in order to ensure that the general welfare and due process rights of employees of the Nation are preserved in absence of the Personnel Commission; and

WHEREAS, observance of the adoption requirements under the Legislative Procedures Act for adoption of this amendment would be contrary to public interest; and

WHEREAS, the Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation.

NOW THEREFORE BE IT RESOLVED, that the emergency amendments to the Employee Protection Policy are hereby adopted on an emergency basis and shall become effective immediately.



Statement of Effect

Employee Protection Policy Emergency Amendments

Summary

This Resolution adopts emergency amendments to the Employee Protection Policy (the “Policy”) which would replace any reference to the Personnel Commission with a reference to the Trial Court, and provides a definition for Trial Court.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office
Date: April 20, 2018

Analysis by the Legislative Reference Office

This resolution adopts emergency amendments to the Employee Protection Policy (“the Policy”). The Law was adopted by the Oneida Business Committee on an emergency basis through resolution BC-04-20-95-B, and then on a permanent basis through resolution BC-12-06-95-B, and then amended by resolution BC-01-20-99-B, BC-06-30-04-J, and BC-02-25-15-C. The Policy provides protection to employees who give information that is intended to protect the Oneida Nation, or its agencies from fraud, theft or other detrimental effects.

Currently, the Policy states that the Personnel Commission is an appropriate agency to be delegated the authority to receive disclosures, and references the Personnel Commission’s employee grievance and disciplinary action hearing authority.

On April 11, 2018, the Oneida Business Committee dissolved the Personnel Commission through resolution BC-04-11-18-A for the purpose of consolidating employment related grievance hearings into the Judiciary in an effort to increase consistency in hearing processes, efficiency, and reduce overall costs to the Oneida Nation. The Oneida Business Committee felt it was now appropriate to begin consolidating employment related grievance hearings into the Judiciary as the number of current cases in the Personnel Commission was low and the costs of maintaining judicial hearing authorities continues to increase.

Oneida Business Committee resolution BC-04-11-18-A also requires that the Legislative Operating Committee develop and present emergency legislative amendments to fully address the impact of this resolution to the next Oneida Business Committee meeting. This resolution states that emergency action to amend legislation to change references to the Personnel Commission to reflect either the Judiciary – Trial Court or the new Personnel Selection Committee is needed to contain expenditures which may go over budget, to provide standards in hearing processes, and provides clear judicial hearing authority.

The emergency amendments to the Policy replace any reference to the Personnel Commission with a reference to the Trial Court, and also provide a definition for Trial Court.

The Legislative Procedures Act (LPA) allows the Oneida Business Committee to take emergency action where it is “necessary for the immediate preservation of the public health, safety or general welfare of the reservation population” and when “enactment or amendment of legislation is required sooner than would be possible under the Legislative Procedures Act.” [1 O.C. 109.9-5].

The emergency amendments to this Policy are necessary for the preservation of the public health, safety, or general welfare of the reservation population in order to ensure that the general welfare and due process rights of employees of the Nation are preserved in the absence of the Personnel Commission. Additionally, observance of the adoption requirements under the LPA for adoption of this amendment would be contrary to public interest. Through the resolution BC-04-11-18-A, the Oneida Business Committee has issued a finding of an emergency and has stated the necessity for approving emergency amendments to this Policy.

The emergency amendments to the Employee Protection Policy will take effect immediately upon adoption by the Oneida Business Committee. The emergency amendments will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

Conclusion

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



Emergency Amendments to Employee Protection Policy Legislative Analysis

SECTION 1. BACKGROUND

REQUESTER: OBC	SPONSOR: David Jordan	DRAFTER: Clorissa Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	The intent of the amendments is to transfer the Personnel Commission's responsibilities under this law to the Oneida Judiciary Trial Court.		
Purpose	The purpose of the Employee Protection Policy is to give protection to employees who give information that is intended to protect the Oneida Nation, or its agencies from fraud, theft, or other detrimental effects <i>[see Employee Protection Policy 211.1-1]</i> .		
Affected Entities	Oneida Judiciary, Oneida Human Resources Department, Employees of the Oneida Nation, Oneida Personnel Commission.		
Affected Legislation	Employee Protection Policy.		
Enforcement/Due Process	Corrective measures available under this law include disciplinary and civil actions by the Judiciary, garnishment by the Oneida Business Committee, or criminal prosecutions in federal or state courts. <i>[see Employee Protection Policy, 2 O.C. 211.4-7]</i> .		
Public Meeting	A public hearing is not required for emergency legislation.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. On April 11, 2018, the Oneida Business Committee dissolved the Oneida Personnel Commission and directed that the Commission's hearing authority be transferred to the Oneida Judiciary. The OBC directed the LOC to draft emergency amendments to address the impact of this resolution and placed the commission's pending cases on hold until emergency amendments are adopted *[see BC Resolution 04-11-18-A]*. On the same day, the Oneida Business Committee created the Personnel Selection Committee to assume the Personnel Commission's responsibilities related to job screening and interviews. *[see BC Resolution 04-11-18-B]*.
- B. References to the Personnel Commission appear in several of the Nation's laws. Now that the Personnel Commission is dissolved, amendments are necessary to transfer the Personnel Commission's responsibilities to the Oneida Judiciary or to the newly created Personnel Selection Committee.
- C. These emergency amendments ensure that the Nation's employees may continue to file grievances when subjected to retaliation in the workplace.

SECTION 3. CONSULTATION

- A. The Judiciary Law, Personnel Policies and Procedures, Employee Protection Policy, and Military Service Employee Protection Act were reviewed in drafting this analysis.
- B. Personnel Commission staff were consulted regarding the number of pending cases and filing fees.

SECTION 4. PROCESS

- A. This amendment is being considered on an emergency basis. The Oneida Business Committee may temporarily enact an emergency law where legislation is necessary for the immediate preservation of public health, safety, or general welfare of the reservation population and enactment or amendment of legislation is required sooner than would be possible under this law [see *Legislative Procedures Act*, 1 O.C. 109.9-5].
- B. Through resolution BC-04-11-18-A, the OBC has issued a finding of an emergency and has stated the necessity for approving emergency amendments to this policy. Emergency amendments to this policy are necessary for the preservation of the general welfare of the reservation population, in an effort to ensure that employees of the Nation have due process rights in the absence of the Personnel Commission.
- C. The Legislative Procedures Act does not require a public meeting or fiscal impact statement when considering emergency legislation; however they will be required when considering permanent adoption of this amendment. Emergency amendments expire six (6) months after adoption and may be renewed for one additional six (6) month period.
- D. This law was originally added to the Active Files List on 12/20/2017 and reclassified as emergency amendments on 4/18/2018.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. ***Personnel Commission Replaced with Trial Court.*** All references to the duties and responsibilities of the “Personnel Commission” or “Personnel Commission Hearing Body” are deleted and replaced with “Trial Court”:
- i. ***Definitions.*** The following definitions have been revised:
 - The definition of “Appropriate agency” is revised to remove “Personnel Commission” and add “Trial Court.”
 - The definition of “Judiciary” is removed and replaced with a definition for “Trial Court,” which means the Court of the Oneida Judiciary where evidence and testimony are first introduced, received, and considered [see *Employee Protection Policy*, 2 O.C. 211.3].
 - ii. The Trial Court, rather than the Personnel Commission, has the authority to take corrective measures under this law [see *Employee Protection Policy*, 2 O.C. 211.4-7(b)].
 - iii. Employees protected by this law will now take their grievances to the Trial Court instead of the Personnel Commission [see *Employee Protection Policy*, 2 O.C. 211.5-2(b)].
 - iv. The Trial Court, rather than the Personnel Commission, is now authorized to proceed with any alleged retaliation grievance placed before them by an employee [see *Employee Protection Policy*, 2 O.C. 211.5-3].
 - v. The Trial Court, rather than the Personnel Commission, may issue a protective order for protected employees who have been retaliated against. The protective order remains in place until a final decision is issued by the Trial Court [see *Employee Protection Policy*, 2 O.C. 211.5-5].

SECTION 6. EFFECT ON EXISTING LEGISLATION

- A. As a result of the dissolution of the Personnel Commission and creation of the Personnel Selection Committee, the following laws must also be amended to remove references to the Personnel Commission:
- i. Oneida Personnel Policies and Procedures
 - ii. Military Service Employee Protection Act
 - iii. Oneida Judiciary Rules of Civil Procedure

SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

- A. **Pending Cases.** Five cases are currently pending before the Personnel Commission. These cases have been placed on hold until amendments to this and related laws have been adopted. Any timelines associated with these cases have also been placed on hold. At the time this analysis was drafted, it is not known how many of these pending cases involve the Employee Protection Policy. Upon adoption, pending cases and all future cases will be transferred to the Oneida Judiciary Trial Court. The Business Committee's resolution indicates that the Judiciary has been notified and is prepared to accept these responsibilities [see BC Resolution 04-11-18-A].
- B. **Trial Court Filing Fees.** The Personnel Commission did not charge filing fees for their services. The Trial Court, however, charges a \$50 filing fee for general civil cases. Therefore, individuals may now be charged fees to have their cases heard under this law.
- i. **Fee Waiver.** If individuals are unable to pay the filing fee, they may request a fee waiver from the court for the following reasons: Unemployed, Health/Medical, Indigent (below poverty level), or "other reasons."

SECTION 8. OTHER CONSIDERATIONS

- A. **Impact on Draft Employment Law.** The Oneida Business Committee and General Tribal Council are currently considering adoption of an Employment Law. A draft of the Employment Law was most recently presented to GTC on 3/19/2017.
- i. **Repeal of Employee Protection.** The draft of the Employment Law repeals the Employee Protection Policy in its entirety and instead places a revised Employee Protection process into the proposed Employee Handbook. The draft policy in the handbook does not include the Trial Court. Whether to update the draft handbook to include the Trial Court is a policy decision.
 - ii. **Creation of Personnel Selection Committee.** The draft of the Employment Law dissolves the Personnel Commission and transfers its hearing authority to the Trial Court and all non-hearing related responsibilities to HRD. The draft of the Employment Law and handbook should be updated to reflect the BC's action to dissolve the Personnel Commission and create the Personnel Selection Committee.

Title 2. Employment – Chapter 211

EMPLOYEE PROTECTION POLICY

211.1 Purpose and Policy
211.2 Adoption, Amendment, Repeal
211.3 Definitions

211.4 Disclosure
211.5 Protection

211.1 Purpose and Policy

211.1-1. The purpose of this policy is to give protection to employees who give information that is intended to protect the Oneida Nation, or its agencies from fraud, theft or other detrimental effects.

211.1-2. It is the policy of the Oneida Nation to extend protection to employees who act within this policy to protect the Nation's interests.

211.2 Adoption, Amendment, Repeal

211.2-1. This policy shall become effective upon adoption.

211.2-2. This policy shall supersede, repeal, rescind any prior law or policy regarding employee protection. Provided, that the law or policy is in direct conflict or extends lesser protection than this Employee Protection Policy.

211.2-3. This policy may be amended or repealed by the Oneida Business Committee pursuant to the Oneida Administrative Procedures Act.

211.3 Definitions

211.3-1. This section shall govern the definitions of words as phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Abuse of authority" means using the authority, whether real or assumed, of any position, whether actual or assumed, to obtain information, goods or services to the detriment of the tribe, or using the authority as described above to directly or indirectly punish any person or employee for disclosing information as described below.

(b) "Appropriate agency" means a delegated person or officer to receive disclosures in the Internal Auditing, Gaming Commission, Tribal School Board, Police Commission and ~~-Trial Court~~ Personnel Commission.

(c) "Disciplinary action" means any action by an employer affecting an employee to their detriment, including, but not limited to - dismissal, demotion, transfer, removal of duty, refuse to restore, suspend, reprimand.

(d) "Disclosure" means to reveal otherwise non-public information or other information that would otherwise remain concealed during a period which it should be brought to light.

(e) "Employee" means any person working for the Oneida Nation in its programs, enterprises, and governmental functions, whether elected, appointed, or hired as a limited term employee, vendor, or contractor.

(f) "Information" means the specific time, date, who, when, where, what, how in any disclosure that would prevent detrimental actions being taken against the Oneida Nation.

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

~~(hg)~~ "Merit further investigation" means that point at which a person(s) hearing the information believes that it requires further action.

(h) “Mismanagement” means failure to use reasonable good sense in using the authority granted through the job description, delegated authority by any supervisor, and/or personal judgment to advance the economic, financial, and political value of the Oneida Nation by properly using employee time, equipment, funds, and their own time.

(i) “Retaliatory action” means any action, either disciplinary or otherwise, taken against any employee, whether supervisory or supervised, for that employee's disclosure of information as directed within this policy, excluding any action that can be reasonably justified as taken in good faith based on documented employee performance. Action other than disciplinary action that may be retaliatory, by way of example, could be loss of hours, rescheduling shifts outside of normal shift changes, change of job requirements without notice, verbal or physical harassment, reduction of pay, denial of educational benefits, reassignment, failure to increase base pay.

(j) “Substantial waste of public funds” means any use of funds in a manner not directed by policy, including any preference laws adopted by the Oneida Nation.

(k) “Trial Court” means the Court of the Oneida Judiciary where evidence and testimony are first introduced, received, and considered. The Oneida Judiciary was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

211.4 Disclosure

211.4-1. General. The Oneida Tribe recognizing the negative impact on the employee that may arise from presenting information that protects the Oneida Tribe from adverse actions of its elected officials, employees, contractual employees, and contractors and offers the processes in this Policy to protect employees against retaliation in the event information is presented. This Policy is effective after presentation of information and protects against retaliation. No identification of a protected status is necessary when information is properly presented. And no protection can be extended unless information is properly presented.

211.4-2. An employee is protected under this policy when the disclosure of the information is given, in confidence, in written form, dated, and signed, to the any of the following persons:

- (a) Supervisor
- (b) appropriate agency or entity
- (c) law enforcement agency
- (d) attorney retained by the employee.
- (e) Employee Advocates

Provided that, disclosure, through circumstances other than in person, the employee shall fully identify themselves.

211.4-3. A protected disclosure includes the following elements:

- (a) identity of person making the disclosure
- (b) identity of person or persons against whom disclosure is being made
- (c) to the best of the employees knowledge, the date and times at which the disclosed action occurred, and d. summary of the disclosed action.

211.4-4. All disclosures shall be kept confidential, until such time as action is being taken against the person or persons identified in the disclosed information.

211.4-5. Disclosures made in reference to section 211.4-1 of this policy shall be directed as soon as possible to the appropriate agency or entity, with the permission of the disclosing person/persons. The disclosed information will be in a sealed envelope, which may be hand carried, mailed certified or delivered by law enforcement. A receipt shall be required to be signed, and dated by the recipient.

211.4-6. Disclosures made in reference to 211.4-2(d) of this policy shall be with the understanding that no attorney shall be directed to act in a manner that the attorney finds to be in conflict with any professional responsibility or rule.

211.4-7. The appropriate agency shall send a written decision to the disclosing party that the disclosure has or does not have merit, along with any further action that will be taken within twenty (20) business days. If a disclosure merits further action, the disclosing party will be notified that they may be called by the appropriate agency to give additional testimony at a closed meeting and on approximately what date. Further, appropriate agencies will follow the hearing procedures set out in the Administrative Procedures Act for a Hearing of Record. Appropriate agencies are authorized to use their full powers to take corrective measures where disclosures merit action, and to utilize all Tribal agencies to effectively correct any and all problems found. This includes, but is not limited to, the following action:

- (a) Oneida Business Committee garnishment action to recover lost funds,
- ~~(b) Personnel Commission for disciplinary action,~~
- ~~(e)b~~ Judiciary for appropriate disciplinary and civil actions,
- ~~(dc)~~ Criminal prosecutions, where indicated, in appropriate federal or state courts.

211.5 Protection

211.5-1. Any employee who discloses information in the manner described in this policy shall be protected from any and all employment related retaliation to the fullest extent of this section.

211.5-2. Any employee who believes that retaliatory action is being taken against them may follow procedures set out below:

- (a) This policy supersedes those complaint procedures set out in the Personnel Policy and Procedures Manual and the employee may go directly to their Division Director and state, in person and in writing, or written only, the action that employee believes is retaliatory, or
- (b) If a disciplinary action, that employee may go directly to the Trial Court Personnel Commission with their grievance.

211.5-3. The ~~Personnel Commission~~Trial Court is authorized through this policy to proceed immediately with any alleged retaliation grievance placed before them by any employee. Any resolution of a retaliation grievance must be written and placed in all parties files. All parties include, but are not limited to, persons actively involved with knowingly implementing any retaliation action and named by the grieving party.

211.5-4. Any person acting under the authority of another, who has a good faith belief of the correctness of their actions, is a legal defense against any retaliation grievance and, if accepted by the ~~Personnel Commission~~Trial Court, bars placement of the results of the action in that employee's file. Provided that, the person was not found to be actively involved in an retaliatory action. Provided further, that the employee acting in good faith has not asked that the results of any retaliation hearing be placed in their file.

211.5-5. If a disclosing employee files a grievance alleging a protected status as a result of a disclosure and that retaliation has occurred, the disclosing employee may request a protective order which may be as follows:

The ~~Personnel Commission Hearing Body~~Trial Court hereby orders that the Human Resources Department shall monitor (name of supervisor/job title)'s actions in regard to (name of disclosing employee/job title). This employee has alleged a protected status under the Employee Protection Policy which the ~~Personnel Commission Hearing Body~~Trial Court has determined that sufficient evidence exists to prove that such a status exists.

139 This protective order shall remain in place until such time as a final decision is issued
140 | by this ~~Personnel Commission Hearing Body~~ Trial Court.

141 *End.*

142

143 Emergency Adopted~~ion~~ - BC-4-20-95-B

144 Permanent~~ly~~ Adopted~~ion~~ - BC-12-6-95-B

145 ~~Amendments~~ Amended - BC-1-20-99-B

146 ~~Amendments~~ Amended - BC-6-30-04-J

147 ~~Amendments~~ Amended - BC-02-25-15-C

148 Emergency Amended – BC- - - -

Title 2. Employment – Chapter 211

EMPLOYEE PROTECTION POLICY

211.1 Purpose and Policy

211.2 Adoption, Amendment, Repeal

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211.1 Purpose and Policy

211.1-1. The purpose of this policy is to give protection to employees who give information that is intended to protect the Oneida Nation, or its agencies from fraud, theft or other detrimental effects.

211.1-2. It is the policy of the Oneida Nation to extend protection to employees who act within this policy to protect the Nation's interests.

211.2 Adoption, Amendment, Repeal

211.2-1. This policy shall become effective upon adoption.

211.2-2. This policy shall supersede, repeal, rescind any prior law or policy regarding employee protection. Provided, that the law or policy is in direct conflict or extends lesser protection than this Employee Protection Policy.

211.2-3. This policy may be amended or repealed by the Oneida Business Committee pursuant to the Oneida Administrative Procedures Act.

211.3 Definitions

211.3-1. This section shall govern the definitions of words as phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Abuse of authority" means using the authority, whether real or assumed, of any position, whether actual or assumed, to obtain information, goods or services to the detriment of the tribe, or using the authority as described above to directly or indirectly punish any person or employee for disclosing information as described below.

(b) "Appropriate agency" means a delegated person or officer to receive disclosures in the Internal Auditing, Gaming Commission, Tribal School Board, Police Commission and Trial Court.

(c) "Disciplinary action" means any action by an employer affecting an employee to their detriment, including, but not limited to - dismissal, demotion, transfer, removal of duty, refuse to restore, suspend, reprimand.

(d) "Disclosure" means to reveal otherwise non-public information or other information that would otherwise remain concealed during a period which it should be brought to light.

(e) "Employee" means any person working for the Oneida Nation in its programs, enterprises, and governmental functions, whether elected, appointed, or hired as a limited term employee, vendor, or contractor.

(f) "Information" means the specific time, date, who, when, where, what, how in any disclosure that would prevent detrimental actions being taken against the Oneida Nation.

(g) "Merit further investigation" means that point at which a person(s) hearing the information believes that it requires further action.

(h) "Mismanagement" means failure to use reasonable good sense in using the authority granted through the job description, delegated authority by any supervisor, and/or personal judgment to advance the economic, financial, and political value of the Oneida Nation by properly using employee time, equipment, funds, and their own time.

(i) “Retaliatory action” means any action, either disciplinary or otherwise, taken against any employee, whether supervisory or supervised, for that employee's disclosure of information as directed within this policy, excluding any action that can be reasonably justified as taken in good faith based on documented employee performance. Action other than disciplinary action that may be retaliatory, by way of example, could be loss of hours, rescheduling shifts outside of normal shift changes, change of job requirements without notice, verbal or physical harassment, reduction of pay, denial of educational benefits, reassignment, failure to increase base pay.

(j) “Substantial waste of public funds” means any use of funds in a manner not directed by policy, including any preference laws adopted by the Oneida Nation.

(k) “Trial Court” means the Court of the Oneida Judiciary where evidence and testimony are first introduced, received, and considered. The Oneida Judiciary was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

211.4 Disclosure

211.4-1. General. The Oneida Tribe recognizing the negative impact on the employee that may arise from presenting information that protects the Oneida Tribe from adverse actions of its elected officials, employees, contractual employees, and contractors and offers the processes in this Policy to protect employees against retaliation in the event information is presented. This Policy is effective after presentation of information and protects against retaliation. No identification of a protected status is necessary when information is properly presented. And no protection can be extended unless information is properly presented.

211.4-2. An employee is protected under this policy when the disclosure of the information is given, in confidence, in written form, dated, and signed, to the any of the following persons:

- (a) Supervisor
- (b) appropriate agency or entity
- (c) law enforcement agency
- (d) attorney retained by the employee.
- (e) Employee Advocates

Provided that, disclosure, through circumstances other than in person, the employee shall fully identify themselves.

211.4-3. A protected disclosure includes the following elements:

- (a) identity of person making the disclosure
- (b) identity of person or persons against whom disclosure is being made
- (c) to the best of the employees knowledge, the date and times at which the disclosed action occurred, and d. summary of the disclosed action.

211.4-4. All disclosures shall be kept confidential, until such time as action is being taken against the person or persons identified in the disclosed information.

211.4-5. Disclosures made in reference to section 211.4-1 of this policy shall be directed as soon as possible to the appropriate agency or entity, with the permission of the disclosing person/persons. The disclosed information will be in a sealed envelope, which may be hand carried, mailed certified or delivered by law enforcement. A receipt shall be required to be signed, and dated by the recipient.

211.4-6. Disclosures made in reference to 211.4-2(d) of this policy shall be with the understanding that no attorney shall be directed to act in a manner that the attorney finds to be in conflict with any professional responsibility or rule.

211.4-7. The appropriate agency shall send a written decision to the disclosing party that the disclosure has or does not have merit, along with any further action that will be taken within

twenty (20) business days. If a disclosure merits further action, the disclosing party will be notified that they may be called by the appropriate agency to give additional testimony at a closed meeting and on approximately what date. Further, appropriate agencies will follow the hearing procedures set out in the Administrative Procedures Act for a Hearing of Record. Appropriate agencies are authorized to use their full powers to take corrective measures where disclosures merit action, and to utilize all Tribal agencies to effectively correct any and all problems found. This includes, but is not limited to, the following action:

- (a) Oneida Business Committee garnishment action to recover lost funds,
- (b) Judiciary for appropriate disciplinary and civil actions,
- (c) Criminal prosecutions, where indicated, in appropriate federal or state courts.

211.5 Protection

211.5-1. Any employee who discloses information in the manner described in this policy shall be protected from any and all employment related retaliation to the fullest extent of this section.

211.5-2. Any employee who believes that retaliatory action is being taken against them may follow procedures set out below:

- (a) This policy supersedes those complaint procedures set out in the Personnel Policy and Procedures Manual and the employee may go directly to their Division Director and state, in person and in writing, or written only, the action that employee believes is retaliatory, or
- (b) If a disciplinary action, that employee may go directly to the Trial Court with their grievance.

211.5-3. The Trial Court is authorized through this policy to proceed immediately with any alleged retaliation grievance placed before them by any employee. Any resolution of a retaliation grievance must be written and placed in all parties files. All parties include, but are not limited to, persons actively involved with knowingly implementing any retaliation action and named by the grieving party.

211.5-4. Any person acting under the authority of another, who has a good faith belief of the correctness of their actions, is a legal defense against any retaliation grievance and, if accepted by the Trial Court, bars placement of the results of the action in that employee's file. Provided that, the person was not found to be actively involved in an retaliatory action. Provided further, that the employee acting in good faith has not asked that the results of any retaliation hearing be placed in their file.

211.5-5. If a disclosing employee files a grievance alleging a protected status as a result of a disclosure and that retaliation has occurred, the disclosing employee may request a protective order which may be as follows:

The Trial Court hereby orders that the Human Resources Department shall monitor (name of supervisor/job title)'s actions in regard to (name of disclosing employee/job title). This employee has alleged a protected status under the Employee Protection Policy which the Trial Court has determined that sufficient evidence exists to prove that such a status exists.

This protective order shall remain in place until such time as a final decision is issued by this Trial Court.

End.

- 140 Amended - BC-6-30-04-J
- 141 Amended – BC-02-25-15-C
- 142 Emergency Amended – BC-__-__-__-__

April 2018

April 2018

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

May 2018

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
Apr 1 - 7	Apr 1	2	3	4	5	6	7
		9:00am 3:00pm LOC (BC_Conf_Room) - LOC					
Apr 8 - 14	8	9	10	11	12	13	14
				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)			
Apr 15 - 21	15	16	17	18	19	20	21
		1:30pm 4:30pm LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	3:00pm 4:30pm LOC Prep (BC_Conf_Room) - LOC 3:00pm 4:30pm LOC Prep (BC_Exec_Conf_Room) - LOC	9:00am 3:00pm LOC (BC_Conf_Room) - LOC			
Apr 22 - 28	22	23	24	25	26	27	28
				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)		9:00am 12:00pm LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	
Apr 29 - May 5	29	30	May 1	2	3	4	5
		3:00pm 4:30pm FW: LOC Prep (BC_Exec_Conf_Room) - Jennifer A. Falck					

May 2018

May 2018							June 2018						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5						1	2
6	7	8	9	10	11	12	3	4	5	6	7	8	9
13	14	15	16	17	18	19	10	11	12	13	14	15	16
20	21	22	23	24	25	26	17	18	19	20	21	22	23
27	28	29	30	31			24	25	26	27	28	29	30

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
	Apr 29	30	May 1	2	3	4	5
Apr 29 - May 5				9:00am 3:00pm LOC (BC_Conf_Room) - LOC	5:00pm 7:30pm Sanctions & Penalties Community Discussion and 5:00pm 7:30pm Sanctions and Penalties Law Commun	8:30am 11:00am LOC Work Meeting (BC_Exec_Conf_Room) - Jennifer A. Falck	
	6	7	8	9	10	11	12
May 6 - 12				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)		8:30am 11:00am LOC Work Meeting (BC_Exec_Conf_Room) - Jennifer A. Falck	10:00am 3:00pm GTC (Radisson)
	13	14	15	16	17	18	19
May 13 - 19			3:00pm 4:30pm LOC Prep (BC_Conf_Room) - LOC 3:00pm 4:30pm LOC Prep (BC_Exec_Conf_Room) - LOC	9:00am 3:00pm LOC (BC_Conf_Room) - LOC		8:30am 11:00am LOC Work Meeting (BC_Exec_Conf_Room) - Jennifer A. Falck	
	20	21	22	23	24	25	26
May 20 - 26				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)			
	27	28	29	30	31	Jun 1	2
May 27 - Jun 2							