

November 13, 2014

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NOV 14 2014
CLERK OF SUPREME COURT
OF WISCONSIN

14-02

Attn: Supreme Court of Wisconsin

To whom it may concern,

It has been brought to my attention that a couple of petitions were submitted and filed to the Clerk of Supreme Court of Wisconsin on July 24, 2014 in the matters of concerns of Oneida Nation Tribal Courts from the following members: Nona Danforth, Candace Danforth, Kerry Danforth, Linda Dallas, Cathy Metoxen, and myself Amanda J Gerondale.

I am an enrolled member of the Oneida Tribe and I am writing this letter requesting my name to be removed due to the fact I was not entirely aware/informed of the entire purpose of the petition. I feel that it is misleading due to missing information. I did not have a chance to review the subject of the matters nor the principle reason/purpose of petitions and have found that I do not comply with what has been stated in these matters. Upon review of these petitions, I have done my research the best of my ability as to why I do not and they are as follows:

There is a lot of notable information that is not included:

In April of 2010 Oneida Tribal members were sent a formal notice from the residing counties of Brown and Outagamie due to federal approval of transfer. It also stated that there was a right to object the transfer along with paperwork to file if wished to do so. If the form was not completed and returned within the 10 days, the residing counties were to sign the order to transfer the case to Oneida Nation.

When these cases transferred, they were seen before a 3 panel of elected judicial officers who were also a part of the community, and some did in fact involve favoritism and nepotism. There were unfair rulings being made in cases and this is why I had become acquainted with the others on the petition. In 2012 at one of our GTC meetings, I had spoken in front of 2033 fellow tribal members as to why I did not agree with how our court system was working and pointed out that we did not have a qualified officer/judge to be handling these types of cases. Some of which involved serious matters. I was hurt and filled with anger that this wasn't thought thoroughly before the cases were transferred by our government officials, but I have also come to the realization that this should have been reviewed by the residing counties and the Supreme Court before the matters were transferred.

Since then, there have been major changes. I am aware that there are always flaws when a new system is in the process of starting up, and have come to realization that it takes time. We have come a very long way in the setup of the court system, I have been working with a few members of the Oneida Business Committee along the way of this process. I have opened my eyes since I have started looking into matters and researching them myself so that I could understand what

was being done. When I was working with the others, there was not detail put into explanation, just the negative effects and I see things a lot differently now.

On January 7th, 2013 the Oneida General Tribal Council had accepted the OBC's motion to create a Family Commission, which was implemented on March 7, 2013. The qualifications had been adjusted for the Judge to have a Juris doctor degree from an accredited law school, a minimum of 5 years' experience in family law to assume jurisdiction of all family law matters, licensed to practice law in Wisconsin and out of state. Robert Collins II was hired and his qualifications are as follows:

- B.A., Sociology (University of Minnesota – Twin Cities) – May 2000
- J.D. (University of Wisconsin) – December 2003
- Is currently licensed to practice law in the State of Wisconsin and am in good standing.
- Law Office of Robert J. Collins II – July 2004 through May 2006
- Represented individuals in criminal, family, and child welfare legal matters.
- Nila Robinson and Associates – May 2006 through December 2008
- Represented individuals in criminal, family, and child welfare legal matters.
- Brown County Corporation Counsel – January 2009 through September 2013 o Prosecuted child in need of protection or services cases.
- Prosecuted termination of parental rights cases. Successfully argued a termination of parental rights case before the Wisconsin Supreme Court.
- Worked on numerous Indian Child Welfare Act cases and developed a strong working relationship with the Oneida and Menominee Tribes.
- Prosecuted mental health, guardianship, and protective placement cases.
- Oneida Family Court – September 2013 through present
- Presided over hearings involving divorce, child support, paternity, legal custody, and physical placement.
- Was a pro tem judge on a Menominee Supreme Court case involving child support (was assigned the task of writing the decision).
- Developed a working relationship between the Oneida Family Court and Family Access Solutions (program that provides supervised visits and exchanges for families with domestic violence).
- Presented to the Wisconsin Clerk's Association on the Indian Child Welfare Acts (state and federal).

The Oneida Family Court law was put into effect on September 1, 2013 in which Honorable Robert Collins II had started to hear cases. Since I have had my case heard in front of him, he has made it very clear that he understands there are reasons as to why the parties do not reside together, but those matters are not why he is overseeing these cases. He is clear when he states

that he is there for the best interest of the children. To my understanding, there are a few that only are complaining because they are not getting their way with how their cases are being handled because of this. I believe that Honorable Robert Collins II is handling these cases with care and responsibly takes the right precautions for the best interest of the children. I have had my case with Collins 3 times, he is fair, and with what we do not currently have written in our laws (it is being worked on) he simply refers to the Federal standings until they are complete. The family court system does work with the residing counties as far as visitation centers etc. for the areas that we do not have established.

Another point that I believe is crucial, to the best of my acknowledgement, I do not believe that Nona Danforth has had her case heard in front of Robert Collins II. Therefore, her rulings are still standing from the 3 panel judicial officers. Once he was hired, papers were sent out to have our cases heard. I believe that they should have submitted these petitions sooner before the changes were made. We as a Sovereign Nation, have already made corrections and still continue to work together for more to come.

As to the matters of the July 8, 2013 attempt to rectify these matters, Brandon Yellowbird Stevens did motion to clear the agenda for the fact that the GTC had already voted on creating the Oneida Family Commission Courts January 7th, 2013 and they were in the process of getting the system created and run properly. This was approved by our governing community, not only the Oneida Business Committee members.

I believe it is important for you to hear and view from others than on the petition. Attached are copies of laws that the Oneida Judicial has created and what we do have available, and the document I had received from Brown Co. regarding the transfer.

If any more information is needed I can be contacted by email: [REDACTED]

Thank you for taking the time to read my concerns.

Amanda J Gerondale

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NOV 14 2014

Oneida Tribe of Indians of Wisconsin

CLERK OF COURT OF APPEALS
OF WISCONSIN



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



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

BC Resolution 05-15-14-E Amendments to the Child Custody, Placement and Visitation Law

- WHEREAS,** the Oneida Tribe of Indians of Wisconsin 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 Tribe of Indians of Wisconsin, 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 Child Custody, Placement and Visitation Law (Law) on June 24, 2009 and made additional amendments in 2010 and 2011, and
- WHEREAS,** GTC Resolution 07-01-13-A gave permission to the Legislative Operating Committee to amend all of the laws and policies that make reference to the Oneida Appeals Commission or the Oneida Tribal Judicial System and replace them with terms that are consistent with the Judiciary Laws adopted by GTC Resolution 01-07-13-B, and
- WHEREAS,** GTC Resolution 01-07-13-B created the Family Court, which will be a part of the Judiciary as of November 1, 2014, and
- WHEREAS,** GTC Resolution 07-01-13-A authorizes the Legislative Operating Committee to bypass the procedural requirements in the Legislative Procedures Act in order to make these changes, and
- WHEREAS,** the only amendments that are being made to the Law are those changing any reference to the Oneida Appeals Commission or the Oneida Tribal Judicial System to making reference to the Family Court.

NOW THEREFORE BE IT RESOLVED, that the attached amendments to the Child Custody, Placement and Visitation Law are hereby adopted.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; 5 members were present at a meeting duly called, noticed and held on the 15th day of May, 2014; that the foregoing resolution was duly adopted at such meeting by a vote of 4 members for, 0 members against, and 0 members not voting; and that said resolution has not been rescinded or amended in any way.

Patricia Hoeff
Patricia Hoeff, Tribal Secretary
Oneida Business Committee

*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."

CHAPTER 79 CHILD CUSTODY, PLACEMENT, AND VISITATION

79.1. Purpose and Policy	79.8. Guardian Ad Litem
79.2. Adoption, Amendment, Conflicts	79.9. Temporary Orders
79.3. Definitions	79.10. Custody and Physical Placement
79.4. General Provisions	79.11. Visitation Rights of Certain Persons
79.5. Jurisdiction	79.12. Revision of Orders
79.6. Commencing a Custody Proceeding	79.13. Enforcement of Physical Placement Orders
79.7. Peacekeeping and Mediation	79.14. Moving the Child's Residence Within or Outside the State

79.1. Purpose and Policy

79.1-1. The purpose of this law is to establish standards for the Family Court to use when creating and modifying legal custody, physical placement, and visitation orders in cases where the Indian Child Welfare Act does not apply.

79.1-2. It is the policy of this law to create fair and equitable legal custody, physical placement, and visitation orders based on the facts surrounding each case and the best interest of the child.

79.2. Adoption, Amendment, Repeal

79.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-24-09-D and amended by resolution BC-02-24-10-H, BC-06-22-11-I, BC-07-13-11-D, and BC-05-15-14-E.

79.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

79.2-3. 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.

79.2-4. 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.

79.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

79.3. Definitions

79.3-1. 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) "Best interest of the child" means the interest of a child to:

- (1) have a full, meaningful, and loving relationship with both parents and family;
- (2) be free from physical, sexual and emotional abuse;
- (3) receive appropriate medical care;
- (4) receive appropriate education;
- (5) be raised in conditions which maximize the chances of the child becoming a contributing member of society; and
- (6) be raised in an environment that is respectful of the child's race(s), culture(s), and heritage(s).

(b) "Child" or "Children" means a person under the age of eighteen (18).

(c) "Court" means the Family Court, which is a branch of the judicial arm of the Tribe.

(d) "Custodian" means a person or agency that has been established as the guardian of a child through a court order or in the absence of the child's parents.

- (e) "Domestic abuse" means the infliction of physical, sexual, or emotional injury, or the creation of a reasonable fear that physical or sexual injury will be inflicted, by a parent or a member or former member of a child's household, against a child or another member of the household.
- (f) "Electronic communication" means the expression or exchange of information through telephone, text messaging, electronic mail, or any other electronic device.
- (g) "Guardian ad litem" means a person appointed by the Court to appear at any peacemaking, mediation, or hearing on behalf of a child.
- (h) "Joint legal custody" means more than one person has the authority to make major decisions on a child's behalf, including decisions about education, spirituality and healthcare.
- (i) "Legal custody" means the authority to make major decisions on a child's behalf, including decisions about education, spirituality and healthcare.
- (j) "Major decisions" means decisions regarding consent to marry, consent to enter military service, consent to obtain a motor vehicle operator's license, authorization for nonemergency health care, choice of school and religion, and other similar activities.
- (k) "Mediation" means a method of dispute resolution that involves a neutral third party who tries to help disputing parties reach an agreement.
- (l) "Parent" means the biological or adoptive parent of a child.
- (m) "Peacemaking" means a method of dispute resolution that is based on traditional methods of dispute resolution and addresses the needs of rebuilding relationships between people.
- (n) "Physical placement" means the condition under which a person has the right to have a child physically placed with that person and has the right and responsibility to make, during that placement, routine daily decisions regarding the child's care, consistent with major decisions made by a person having legal custody.
- (o) "Sole legal custody" means only one person has legal custody and the authority to make major decisions on a child's behalf, including decisions about education, spirituality and healthcare.
- (p) "Stepparent" means the spouse or ex-spouse of a child's parent who is not a biological parent of the child.
- (q) "Tribe" or "Tribal" means the Oneida Tribe of Indians of Wisconsin.

79.4. General Provisions

79.4-1. When it is necessary to determine the legal custody, physical placement, and/or visitation of a child, the Court shall make such provisions as it deems just and reasonable in accordance with this law.

79.4-2. If legal custody and physical placement are uncontested, the parties may submit a voluntary agreement as to the legal custody and physical placement of the child to the Court. The Court shall approve the agreement if it is in the best interest of the child.

79.4-3. All proceedings relating to the custody of children shall comply with the requirements of the Uniform Child Custody Jurisdiction and Enforcement Act.

79.5. Jurisdiction

79.5-1. The Court has jurisdiction over any action brought under this law. Personal jurisdiction over an individual under this law may be established where the parties are any of the following:

- (a) a member of the Tribe; or

- (b) a resident of the Reservation who is also a member of an Indian tribe, band or community which is recognized by a State or the federal government; or
- (c) a resident of the Reservation who is also the biological parent of a child that is enrolled or is eligible for enrollment with the Tribe; or
- (d) a parent, custodian, or potential custodian who consents to the jurisdiction of the Court by one (1) of the following:
 - (1) Filing an action with the Court.
 - (2) Knowingly and voluntarily giving written consent to the jurisdiction of the Court.
 - (3) Entering a notice of appearance before the Court in an action without concurrently preserving the defense of lack of personal jurisdiction or filing a motion to dismiss for lack of personal jurisdiction within thirty (30) days of entering the notice of appearance.
 - (4) Appearing in an action before the Court without asserting the defense of lack of personal jurisdiction.

79.5-2. *Transfer of Cases from Other Courts.* If personal jurisdiction over the parties has been established under 79.5-1, the Court has jurisdiction over any action transferred to the Court from any court of competent jurisdiction.

79.6. Commencing a Custody Proceeding

79.6-1. A child custody proceeding is commenced by a parent by filing a petition to:

- (a) seek custody of a child;
- (b) establish the paternity of a child;
- (c) establish a child support order; or

79.6-2. A person, other than a parent of the child, may seek custody of the child only if:

- (a) the child is not in the physical custody of one of his or her parents; or
- (b) the person has a parent-child relationship with the child; or
- (c) the petition alleges that neither parent is a suitable custodian.

79.6-3. Notice of a child custody proceeding shall be given to the child's parent(s) and any custodian. The Court may, upon a showing of good cause, permit the intervention of other interested parties.

79.6-4. Child custody proceedings initiated independently of another action shall be conducted in accordance with the Court's rules of civil procedure.

79.7. Peacemaking and Mediation

79.7-1. The Court may refer the parties to peacemaking or mediation if the parties agree to attend peacemaking or mediation. The Court shall not refer the parties to peacemaking or mediation if attending the session will cause undue hardship or would endanger the health or safety of a party. The Court shall consider evidence of domestic abuse when determining if peacemaking or mediation would endanger the health or safety of a party. When the parties attend peacemaking or mediation based on a referral from the Court, the Court shall be responsible for the costs of the peacemaking or mediation.

79.7-2. *Peacemaking.* If the parties agree to attend peacemaking, peacemaking shall be provided to the parties by peacemakers recognized by the Cultural Heritage Department of the Tribe or the Court. The parties shall determine what type of peacemaking they will attend.

79.7-3. *Mediation.* If the parties agree to attend mediation, mediation shall be provided to the parties by any person or public or private entity contracted to conduct mediation. Every

mediator shall have not less than twenty-five (25) hours of mediation training or not less than three (3) years of experience in dispute resolution. Every mediator shall have training on domestic violence and the effects of domestic violence on victims and on children.

(a) **Private Mediator.** The parties may, at their own expense, receive mediation services from a mediator other than the mediator they are referred to by the Court. Parties who receive services from a private mediator shall be responsible for the cost and shall sign and file with the clerk a written notice stating the mediator's name and the date of the first meeting with the mediator.

(b) Child support shall not be considered during mediation unless child support is directly related to the legal custody or physical placement of the child and the parties agree, in writing, to consider child support.

(c) **Powers and Duties of a Mediator.** A mediator shall be guided by the best interest of the child and may:

- (1) include the counsel of any party or any appointed guardian ad litem in the mediation.
- (2) interview any child of the parties, with or without a party present.
- (3) require a party to provide written disclosure of facts relating to any legal custody or physical placement issue.
- (4) suspend mediation when necessary.
- (5) terminate mediation if a party does not cooperate or if mediation is not appropriate.

79.7-4. Agreement. Any agreement that resolves issues of legal custody or periods of physical placement between the parties and that is reached as a result of peacemaking or mediation shall be prepared in writing, reviewed by the attorney, if any, for each party and the guardian ad litem, if any, and submitted to the Court to be included in the order as a stipulation. The peacemaker or mediator shall certify that the written agreement accurately reflects the agreement made between the parties. The Court may reject the agreement if it is not in the best interest of the child. The Court shall state in writing its reasons why an agreement is not in the best interest of the child.

(a) If, after peacemaking or mediation, the parties do not reach an agreement on legal custody or periods of physical placement, the parties, the peacemaker, or the mediator shall so notify the Court. The Court shall promptly appoint a guardian ad litem, if necessary. The parties may return to peacemaking or mediation at any time before any trial of or final hearing on legal custody or periods of physical placement.

79.7-5. A person who is awarded periods of physical placement, visitation rights, or legal custody of a child and is having a problem relating to any of these matters may be referred to peacemaking or mediation by the Court for assistance in resolving the problem.

79.8. Guardian Ad Litem

79.8-1. The Court shall be responsible for establishing and administering a program for guardians ad litem.

79.8-2. Appointment. Except as provided for in 79.8-3, the Court shall appoint a guardian ad litem for a child if the Court has reason for special concern for the welfare of the child or the legal custody or physical placement of the child is contested. Preference shall be given to enrolled Tribal members.

79.8-3. The Court is not required to appoint a guardian ad litem if:

- (a) Legal custody or physical placement is contested in an action to modify legal custody or physical placement under 79.12 and 79.14; and

(b) The modification sought would not substantially alter the amount of time that a parent may spend with his or her child; and

(c) The Court determines either of the following:

(1) That the appointment of a guardian ad litem will not assist the Court in the determination regarding legal custody or physical placement because the facts or circumstances of the case make the likely determination clear; or

(2) That a party seeks the appointment of a guardian ad litem solely for a tactical purpose, or for the sole purpose of delay, and not for a purpose that is in the best interest of the child.

79.8-4. *Qualifications.*

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

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

(2) has never been convicted of a felony; and

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

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

(1) an interested party;

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

(3) related to an interested party, an actual party, the Judge for the proceeding, or an appointing Judge. For the purposes of this section, "related to" shall include a spouse, parent, parent-in-law, stepparent, child, son- or daughter-in-law, stepchild, sibling, stepsibling, half-sibling, sibling-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, first cousin, or any similar relationship by blood, adoption, marriage, or social tie that could be reasonably interpreted as a conflict of interest.

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

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

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

79.8-5. *Responsibilities.* The guardian ad litem has none of the rights or duties of a general guardian. The guardian ad litem shall:

(a) be an advocate for the best interests of a child.

(b) consider, but shall not be bound by, the wishes of the child or the positions of others as to the best interests of the child.

(c) investigate the issues and provide a written report to the Court.

(d) communicate to the Court the wishes of the child, unless the child asks the guardian ad litem to do otherwise.

79.8-6. *Status Hearing.* The Court shall schedule a status hearing approximately thirty (30) days, or sooner if practical, after a guardian ad litem is appointed, in order to receive an update on the actions taken and work performed by the guardian ad litem in the matter.

79.8-7. *Compensation.* The guardian ad litem shall be compensated at a rate that the Court determines is reasonable, to be paid by the parties. The Court may apportion the amount that each party shall pay based on the ability to pay or assess the cost equally between the parties.

79.9. *Temporary Orders*

79.9-1. The Court may make temporary custody and placement orders, consistent with this law and any other applicable law.

79.9-2. Notice of motion for a temporary order may be served when the action is commenced, or any time after, and shall be accompanied by an affidavit stating the basis for the request for relief.

79.10. Custody and Physical Placement

79.10-1. In determining legal custody and periods of physical placement, the Court shall consider all facts relevant to the best interest of the child. The Court may not prefer one potential custodian over the other on the basis of the sex or race of the custodian.

79.10-2. *Legal Custody.*

(a) The Court shall presume that joint legal custody is in the best interest of the child. The Court may give joint legal custody to both parties only if it finds that doing so is in the child's best interest and that either of the following applies:

(1) Both parties agree to joint legal custody; or

(2) One (1) party requests joint legal custody or both parties request sole legal custody, and the Court specifically finds all of the following:

(A) Both parties are capable of performing parental duties and responsibilities and wish to have an active role in raising the child.

(B) No conditions exist at the time which would substantially interfere with the exercise of joint legal custody.

(C) The parties will be able to cooperate in the future decision making required under an award of joint legal custody. In making this finding the Court shall consider, along with any other pertinent items, any reasons offered by a party objecting to joint legal custody. Evidence of domestic abuse creates a rebuttable presumption that the parties will not be able to cooperate. This presumption may be rebutted by clear and convincing evidence that the abuse will not interfere with the parties' ability to cooperate in the future decision making required.

(b) The Court shall not give sole legal custody to a party who refuses to cooperate with the other party if the refusal to cooperate is unreasonable.

79.10-3. *Allocation of Physical Placement.* In determining the allocation of periods of physical placement, the Court shall consider each case on the basis of the factors in 79.10-4. The Court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each party and that maximizes the amount of time the child may spend with each party, taking into account geographic separation and accommodations for different households.

(a) A child is entitled to periods of physical placement with both parties unless, after a hearing, the Court finds that physical placement with a party would endanger the child's physical, mental or emotional health.

(b) No Court may deny periods of physical placement for failure to meet, or grant periods of physical placement for meeting, any financial obligation to the child.

(c) If the Court grants periods of physical placement to more than one (1) party, either or both parties may be granted a reasonable amount of electronic communication at reasonable hours during the other party's periods of physical placement with the child. Electronic communication shall not be used as a substitute for a party's periods of physical placement with the child. If the Court grants electronic communication to a party whose physical placement with the child is supervised, the party's electronic communication with the child shall also be supervised.

79.10-4. *Factors in Legal Custody and Physical Placement Determinations.*

(a) The Court shall consider the following factors in determining legal custody and periods of physical placement:

- (1) The wishes of the parties, including the child's parents, or other family members, as shown through testimony or documents submitted to the Court.
- (2) The wishes of the child, which may be communicated by the child or through the child's guardian ad litem or other appropriate professional.
- (3) The relationship of the child with his or her parent or parents, siblings, and any other person who may significantly affect the child's best interest.
- (4) The child's adjustment to the home, school, religion and community.
- (5) Whether the mental or physical health of a party, child, or other person living in a proposed custodial household negatively affects the child's well-being.
- (6) The availability of public or private child care services.
- (7) The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party.
- (8) Whether there is evidence of domestic abuse.
- (9) Whether either party has or had a significant problem with alcohol or drug abuse.
- (10) Such other factors as the Court may, in each individual case, determine to be relevant.

(b) If the Court finds that a party has engaged in a pattern or serious incident of domestic abuse, the safety and well-being of the child and the safety of any party who was the victim of the abuse shall be the paramount concerns in determining legal custody and periods of physical placement.

(c) If a party is a member of the National Guard or of a reserve unit of the U.S. armed forces, the Court shall not consider as a factor in determining the legal custody of a child whether he or she has been or may be called to active duty and consequently is, or in the future will be or may be, absent from home.

79.10-5. *Final Order.* If legal custody or physical placement is contested, the Court shall state in writing why its findings relating to legal custody or physical placement are in the best interest of the child.

(a) In making an order of joint legal custody, upon the request of one (1) party, the Court shall specify who may make major decisions for the child. The Court may give one (1) party sole power to make specified decisions, while both parties retain equal rights and responsibilities for other decisions.

(b) In making an order of joint legal custody and periods of physical placement, the Court may specify one (1) party as the primary caretaker and his or her home as the primary home of the child.

(c) In an order of physical placement, the Court shall specify the right of each party to the physical control of the child in sufficient detail to enable a party deprived of that control to request relief for interference with custody or parental rights.

(d) If the Court finds that a party has engaged in a pattern or serious incident of domestic abuse, the Court shall state in writing whether the presumption against awarding joint or sole legal custody to that party is rebutted and, if so, what evidence rebutted the presumption, and why its findings relating to legal custody and physical placement are in the best interest of the child.

(e) If the Court finds that a party has engaged in a pattern or serious incident of domestic abuse or other activity that endangered the child's physical, mental or emotional health, and the Court awards periods of physical placement to both parties, the Court shall provide for the safety and well-being of the child and for the safety of the party who was the victim of the abuse, if applicable. This may include:

- (1) requiring supervised exchanges of the child;
- (2) requiring supervised physical placement and/or visitation;
- (3) requiring a party to attend and complete a certified treatment program for batterers and/or alcohol or substance abusers;
- (4) prohibiting a party from being under the influence of alcohol or controlled substances during the exchange of the child or prohibiting a person from possessing or using alcohol or controlled substances during the period of physical placement; or
- (5) ordering any other conditions that the Court determines is necessary for the safety and well-being of the child and the party who was the victim of the abuse, if applicable.

79.11. Visitation Rights of Certain Persons

79.11-1. *General.* Upon petition by a grandparent, great-grandparent, stepparent, or person who has maintained a relationship similar to a grandparent-child or parent-child relationship with the child, the Court may grant reasonable visitation rights to that person if:

- (a) the parents have notice of the hearing;
- (b) the parents' objection to the visitation, if any, is considered; and
- (c) it is determined that visitation is in the best interest of the child.

79.11-2. *Parent's Decision.* Whenever possible, the wishes of the child shall be considered when the Court is determining whether to grant visitation rights under 79.11-1 however, it is presumed that a fit parent's decision regarding non-parental visitation is in the best interest of the child.

79.11-3. *Homicide Conviction.* The Court may deny visitation rights to a person if he or she has been convicted of the intentional homicide of a parent of the child, and the conviction has not been reversed, set aside or vacated.

79.12. Revision of Orders

79.12-1. Modifications to a legal custody order or physical placement order shall be made in accordance with this section, unless the modifications are being requested by a parent who is proposing to move or remove a child, in which case section 79.14 shall apply.

79.12-2. *Substantial Modifications.*

(a) *Within Two (2) Years After Final Judgment.* Except as provided in 79.12-3, the Court may not modify any of the following orders before two (2) years after the initial order is entered, unless a party seeking the modification shows by substantial evidence that the modification is necessary because the current custodial conditions are harmful to the best interest of the child:

- (1) An order of legal custody.
- (2) An order of physical placement if the modification would substantially alter the time a party may spend with the child.

(b) *After Two (2) Year Period.* Upon a party's request, the Court may modify an order of legal custody or an order of physical placement where the modification would

substantially alter the time a party may spend with the child if the Court finds all of the following:

- (1) The modification is in the best interest of the child.
 - (2) There has been a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.
- (c) With respect to 79.12-2(b), there is a rebuttable presumption that:
- (1) Continuing the current legal custody order is in the best interest of the child.
 - (2) Continuing the child's physical placement with the party with whom the child resides for the greater period of time is in the best interest of the child.
- (d) A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under 79.12-2(b).

79.12-3. *Modification of Substantially Equal Physical Placement Orders.* If the parties have substantially equal periods of physical placement pursuant to a custody order and circumstances make it impractical for the parties to continue to have substantially equal physical placement, the Court may modify the order within two (2) years after the initial order is entered if it is in the best interest of the child.

79.12-4. *Modification Without Substantial Alterations.* The Court may modify an order of physical placement which does not substantially alter the amount of time a party spends with the child if the Court finds that the modification is in the best interest of the child.

79.12-5. *Denial of Physical Placement.* The Court may deny a party's physical placement rights at any time if it finds that the physical placement rights would endanger the child's physical, mental or emotional health.

79.12-6. *Reasons for Modification.* If a party opposes modification or termination of a legal custody or physical placement order, the Court shall state, in writing, its reasons for the modification or termination.

79.12-7. *Notice.* The Court may not enter an order for modification until notice of the modification request has been given to the child's parents, if they can be found, and to any person having custody of the child.

79.12-8. *Revisions Agreed to by Stipulation.* If after an initial order is entered, the parties agree to a modification in an order of physical placement or legal custody and file a stipulation with the Court that specifies the agreed upon modification, the Court shall incorporate the terms of the stipulation into a revised order of physical placement or legal custody unless the Court finds that the modification is not in the best interest of the child.

79.13. Enforcement of Physical Placement Orders

79.13-1. *Who May File.* A party who has been awarded periods of physical placement may file a motion for enforcement of the physical placement order if the party has had one (1) or more periods of physical placement denied by the other party or substantially interfered with by the other party.

79.13-2. *Motion.* The motion shall allege facts sufficient to show one or more of the criteria in 79.13-1 apply and shall request the imposition of a remedy or any combination of remedies.

79.13-3. *Service on Responding Party.* Upon the filing of a motion under 79.13-2, the moving party shall serve a copy of the motion upon the responding party by personal service. The responding party may respond to the motion either in writing before or at the hearing or orally at the hearing.

79.13-4. The Court shall hold a hearing on the motion no later than thirty (30) days after the motion has been served, unless the time is extended by mutual agreement of the parties or upon the motion of a guardian ad litem and the approval of the Court. The Court may order that a guardian ad litem be appointed for the child prior to the hearing.

(a) If at the conclusion of the hearing, the Court finds that the responding party has intentionally and unreasonably denied the moving party one (1) or more periods of physical placement or that the responding party has intentionally and unreasonably interfered with one (1) or more of the moving party's periods of physical placement, the Court shall:

(1) grant additional periods of physical placement to replace those denied or interfered with; and

(2) award the moving party a reasonable amount for the cost of maintaining an action under this section and for attorney fees.

(b) The Court may:

(1) issue an order specifying the times for the exercise of periods of physical placement;

(2) find the responding party in contempt; and/or

(3) grant an injunction ordering the responding party to strictly comply with the judgment or order relating to the award of physical placement.

(4) issue an order requiring the responding party to pay to the moving party a sum of money sufficient to compensate the moving party for any financial loss or expenses associated with the periods of physical placement that were denied or interfered with.

(c) The Court may not permanently modify an order of legal custody or physical placement in an action under this section.

79.14. Moving the Child's Residence Within or Outside the State

79.14-1. Notice to Other Parent.

(a) Except as provided under 79.14-2 or unless otherwise contained in an order of physical placement or legal custody, if periods of physical placement are granted to more than one parent, a parent with legal custody of and physical placement rights to a child shall provide not less than sixty (60) days written notice to the other parent, with a copy filed at the Court, of his or her intent to:

(1) Establish his or her legal residence with the child at any location outside the State of Wisconsin.

(2) Establish his or her legal residence with the child at any location within the State of Wisconsin that is at a distance of 150 miles or more from the other parent.

(3) Remove the child from the State of Wisconsin for more than ninety (90) consecutive days.

(b) The parent proposing the move or removal shall send the notice under 79.14-1(a) by certified mail. The notice shall state the parent's proposed action, including the specific date and location of the move or specific beginning and ending dates and location of the removal, and that the other parent may object within the time specified in 79.14-3. An affidavit shall also be filed with the notice that sets out the efforts by the parent proposing the move or removal to obtain the other parent's most current available address and the basis for the address used.

(1) Certified service sent to the other parent's most current available address but returned because it was unclaimed or refused shall constitute constructive service. Certified service returned for other reasons shall require service by other methods pursuant to the Rules of Civil Procedure.

(c) When it is necessary to protect a parent's privacy or safety, the parent proposing the move or removal shall petition the Court to provide the other parent with notice as required by 79.14-1(b). The clerk shall forward any objection received to the parent proposing the move or removal.

79.14-2. *Approval without Notification.* The Court may approve a move or removal without notification to the other parent where the move or removal is in the best interest of the child and one (1) or more of the following applies:

- (a) the other parent submits an affidavit consenting to the move or removal;
- (b) the parent proposing the move or removal submits an affidavit stating that the other parent, without undue interference from the parent proposing the move or removal or his or her family, has not exercised his or her rights to periods of physical placement or maintained regular contact with the child in three (3) years and the parent proposing the move or removal provides documentation from a child support agency that the other parent is behind the equivalent of at least one (1) year in child support, for that child;
- (c) the other parent is incarcerated or otherwise institutionalized; or
- (d) the other parent lives out of state.

79.14-3. *Objection; Prohibition; Peacemaking and Mediation.*

- (a) Within fifteen (15) days after receiving the notice under 79.14-1, a parent who objects to the move or removal shall send to the parent proposing the move or removal and file with the Court, a written notice of objection to the proposed action. Such notice shall be sent by first-class mail to the address provided in the initial notice.
- (b) If the Court receives a notice of objection as provided in 79.14-3(a), it shall be deemed to constitute a motion to review. The parent proposing the move or removal may not move with or remove the child pending resolution of the dispute, or final order of the Court under 79.14-4, unless the parent petitions for and obtains a temporary order to do so under 79.9-1.
- (c) Upon receipt of a copy of a notice of objection under 79.14-3(a) the Court shall refer the parents for peacemaking or mediation in accordance with 79.7-1 and may appoint a guardian ad litem in accordance with 79.8-2. Unless the parents agree to extend the time period, if peacemaking or mediation does not resolve the dispute within thirty (30) days after referral, the matter shall proceed to a contested hearing governed by 79.14-4 through 79.14-5.

79.14-4. *Standards for Modification or Prohibition if Move or Removal Contested.*

- (a) The Court shall hold a hearing as soon as possible if peacemaking or mediation is not an option or after receiving notice that peacemaking or mediation has not resolved the dispute.
- (b) The burden of proof is on the parent proposing the move or removal. The Court may allow the move or removal and modify the legal custody or physical placement order as necessary if, after considering the factors under 79.14-5, the Court finds all of the following:
 - (1) The modification is in the best interest of the child.

(2) The move or removal will result in a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.

(c) With respect to 79.14-4(b):

(1) There is a rebuttable presumption that continuing the current allocation of decision making under a legal custody order or continuing the child's physical placement with the parent with whom the child resides for the greater period of time, if applicable, is in the best interest of the child. This presumption may be overcome by:

(A) the parent objecting to the move or removal by a showing that the move or removal is unreasonable and not in the best interest of the child; or

(B) the parent proposing the move or removal by a showing that the move or removal is reasonable and in the best interest of the child.

(2) A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under that section.

(d) The Court may prohibit the move or removal if, after considering the factors under 79.14-5, the Court finds that the prohibition is in the best interest of the child.

79.14-5. *Factors in Court's Determination.* In making its determination under 79.14-4, the Court shall consider all of the following factors:

(a) Whether the purpose of the proposed action is reasonable.

(b) Whether the proposed action will unduly affect the child's ties to his or her tribal community and culture.

(c) The nature and extent of the child's relationship with the other parent and the disruption to that relationship which the proposed action may cause.

(d) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent.

(e) The child's adjustment to the home, school, religion and community.

79.14-6. *Notice Required for Other Removals.* Unless the parents agree otherwise, a parent with legal custody and physical placement rights shall notify the other parent before removing the child from his or her primary residence for at least fourteen (14) consecutive days, but not more than ninety (90) consecutive days.

End.

Adopted – BC-06-24-09-D

Amended– BC-02-24-10-H

Emergency Amended- BC-04-13-11-D

Amended- BC-06-22-11-I

Amended- BC-07-13-11-D

Amended-BC-05-15-14-E

Oneida Tribe of Indians of Wisconsin



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



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

BC Resolution 08-13-14-E Child Support Law Amendments

- WHEREAS,** the Oneida Tribe of Indians of Wisconsin 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 Tribe of Indians of Wisconsin, 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 Child Support Law (Law) on June 24, 2009 to govern the obligation of parents to provide financially for their children, and
- WHEREAS,** the Law has been amended in 2010, 2011 and was most recently amended on October 10, 2012, and
- WHEREAS,** removing the time frame required for the Family Court (Court) to hold a hearing after a petition is filed allows the Court more flexibility in scheduling hearings and allows the Court the ability to better manage its calendar for efficiency, and
- WHEREAS,** the amendment to remove the specific time frames surrounding notice allows the Court to operate more efficiently and still remains consistent with service requirements provided for in the Law, and
- WHEREAS,** other amendments are being made to update the Law to remove the reference to the Oneida Appeals Commission and replace it with the Family Court pursuant to GTC resolution 07-01-13-B, and
- WHEREAS,** a public meeting on these amendments was held on January 30, 2014, in accordance with the Legislative Procedures Act.

NOW THEREFORE BE IT RESOLVED, that the attached amendments to the Child Support law are hereby adopted.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 8 members of whom 5 members constitute a quorum; 8 members were present at a meeting duly called, noticed and held on the 13th day of August, 2014; that the foregoing resolution was duly adopted at such meeting by a vote of 8 members for, 0 members against, and 0 members not voting; and that said resolution has not been rescinded or amended in any way.


Lisa Summers, Tribal Secretary
Oneida Business Committee

*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."

Chapter 78
Child Support
shakoti?nukú'lale? latiksashúha?
They watch over the children

78.1. Purpose and Policy	78.7. Child Support Determination
78.2. Adoption, Amendment, Repeal, Other Laws and Agency Rules	78.8. Content and Effect of Order
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78.1. Purpose and Policy

78.1-1. *Purpose.* The purposes of this law are to:

- (a) Establish the legal responsibility of parents to provide financially for their children's general well-being;
- (b) Make support payments more equitable by ensuring consistent treatment of persons in similar circumstances;
- (c) Make support payments based on the real earning capability of parents; and
- (d) Improve the efficiency of child support establishment and enforcement.

78.1-2. *Policy.* It is the policy of this law to:

- (a) establish an adequate standard of support for children whose paternity has been established or acknowledged.
- (b) encourage the use of voluntary agreements to resolve disputes over child support obligations.
- (c) limit the use and disclosure of personal information received or maintained by the Family Court or the Oneida Tribe Child Support Agency in order to protect the privacy rights of all parties and children who are involved in proceedings or actions under this law.

78.2. Adoption, Amendment, Repeal, Other Laws and Agency Rules

78.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-24-09-B and amended by resolutions BC-02-24-10-G, BC-02-23-11-E, BC-06-22-11-K, BC-10-10-12-C, and 08-13-14-E.

78.2-2. 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.

78.2-3. 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.

78.2-4. In the event of a conflict between a provision of this law and a provision of another law, ordinance, policy, regulation, rule, resolution, or motion, the provisions of this law shall control. Provided that, nothing in this law is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

78.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

78.2-6. Any Agency requirements which would affect individuals outside the Agency and do not relate to the internal management of the Agency shall require Oneida Business Committee approval in the form of a law or rule.

78.3. Definitions

78.3-1. 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) "Agency" shall mean the Oneida Tribe Child Support Agency established to administer and supervise the Tribe's child support enforcement program.

(b) "Child" shall mean a natural or adopted child of the obligor under the age of eighteen (18), or any person who is less than nineteen (19) years old if he or she is pursuing a high school diploma or its equivalent from an accredited course of instruction.

(c) "Child Support" shall mean the total financial obligation a parent has towards his or her child as established through judicial and/or administrative processes.

(d) "Child Support Order" shall mean a judgment of the Family Court or a court of competent jurisdiction ordering payment of child support which provides monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorney's fees and other relief.

(e) "Clerk" shall mean the designated clerk in the Family Court who is identified to carry out certain provisions in this law.

(f) "Custodial Parent" shall mean the parent who exercises physical custody of the child pursuant to a custody order, on the basis of agreement between the parents or in the absence of one parent. A legal guardian with primary physical custody of the child or children and standing in the position of the parent shall have the same rights to child support as a custodial parent.

(g) "Employer" shall mean any individual, business, government, institution, or other entity paying wages to one or more employees.

(h) "Family Court" shall mean the judicial arm of the Tribe that is designated to handle all matters under this Law.

(i) "Gross Income" shall mean any form of payment due to an individual regardless of source, including, but not limited to:

(1) Salary and wages, including overtime pay.

(2) Interest and investment income.

(3) Social Security disability and old age insurance benefits under 42 USC 401 to 433.

(4) Net proceeds resulting from worker's compensation or other personal injury awards intended to replace income.

(5) Unemployment insurance.

(6) Income continuation benefits.

(7) Voluntary deferred compensation and voluntary employee contributions to the following: employee benefit plan, profit-sharing, pension or retirement account.

(8) Military allowances and veterans benefits.

(9) Undistributed income of a corporation or any partnership in which the parent has an ownership interest sufficient to individually exercise control or to access the earnings of the business, unless the income included is an asset.

(10) Per capita distribution payments.

- (11) Lease or rental income.
- (12) Prizes over \$1,000.00.
- (13) All other income, whether taxable or not, except that gross income does not include any of the following:
 - (A) Child support.
 - (B) Foster care payments.
 - (C) Kinship care payments.
 - (D) Public assistance benefits, except that child care subsidy payments shall be considered income to a child care provider.
 - (E) Food stamps.
 - (F) Public assistance or financial hardship payments paid by a county or a tribe.
 - (G) Supplemental Security Income under 42 USC 1381 to 1383(f) and state supplemental payments.
 - (H) Payments made for social services.
- (j) "Legally Incompetent Adult" shall mean a person at least eighteen (18) years old who has been declared incompetent by a court of competent jurisdiction because he or she is temporarily or permanently impaired to the extent that the person lacks sufficient understanding to make or communicate responsible personal decisions.
- (k) "Monthly Income" shall mean the obligor's annual gross income or, if applicable, the obligor's annual income modified for business expenses; plus the obligor's annual income imputed based on earning capacity; plus the obligor's annual income imputed from assets; divided by twelve (12).
- (l) "Non-Cash Payment" shall mean support provided to a family in the nature of goods and/or services, rather than in cash, but which, nonetheless, has a certain and specific dollar value.
- (m) "Non-Custodial Parent" shall mean the parent of a child who does not hold primary care, custody and/or control of a child.
- (n) "Non-legally responsible relative" means a relative who assumes responsibility for the care of a child without legal custody, but is not in violation of a court order. "Non-legally responsible relative" does not include a relative who has physical custody of a child during a court-ordered visitation period.
- (o) "Obligee" shall mean the person or entity to whom child support is owed.
- (p) "Obligor" shall mean the person who is obliged to pay child support to the obligee.
- (q) "Payor" shall mean a person or entity with a legal obligation, as an employer, buyer of goods, debtor, or otherwise, to pay an obligor.
- (r) "Relative" means any person connected with a child by blood, marriage or adoption.
- (s) "Reservation" shall mean all lands 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.
- (t) "Tribe" or "Tribal" shall mean the Oneida Tribe of Indians of Wisconsin.
- (u) "Wage Withholding" shall mean the process whereby a court order, Family Court order or voluntary wage assignment directs an employer, bank or agent holding monies or property of an obligor, to make payments or deliver property to satisfy a child support obligation.

78.4. Jurisdiction

78.4-1. The Family Court has jurisdiction over any action brought under this law. Personal jurisdiction over an individual under this law may be established where one party or a child of the parties is any of the following:

- (a) a member of the Tribe; or
- (b) a resident of the Reservation who is also a member of an Indian tribe, band or community which is recognized by a State or the federal government; or
- (c) a resident of the Reservation who is also the biological parent of a child that is enrolled or is eligible for enrollment with the Tribe; or
- (d) an individual who consents to the jurisdiction of the Family Court by one (1) of the following:
 - (1) Filing an action with the Family Court.
 - (2) Knowingly and voluntarily giving written consent to the jurisdiction of the Family Court.
 - (3) Entering a notice of appearance before the Family Court in an action without concurrently preserving the defense of lack of personal jurisdiction or filing a motion to dismiss for lack of personal jurisdiction within thirty (30) days of entering the notice of appearance.
 - (4) Appearing in an action before the Family Court without asserting the defense of lack of personal jurisdiction.

78.4-2. Personal jurisdiction over the other party may be established using any method provided by law, including long-arm jurisdiction procedures as provided for in Section 201 of the Uniform Interstate Family Support Act as referred to in 42 USC Section 666.

78.4-3. *Transfer of Cases from Other Courts.* If personal jurisdiction over the parties has been established under 78.4-1 or 78.4-2, the Family Court has jurisdiction over any action transferred to the Family Court from any court of competent jurisdiction.

78.5. Child Support Orders

78.5-1. Every parent has a duty to support each and every child of that parent. A child support order may be obtained from the Family Court by either submitting a voluntary agreement to the Family Court for approval or by filing a petition for child support with the Family Court.

- (a) If a party to the action is a minor or is a legally incompetent adult, the Family Court may appoint a guardian ad litem to represent such party in the action, in accordance with section 79.8 of the Child Custody, Placement and Visitation law.

78.5-2. A party may request the services of the Agency or may be referred to the Agency from an entitlement program for assistance in seeking a child support order.

- (a) Within five (5) business days of receiving a completed application for services or a referral, the Agency shall send the non-custodial parent a Letter of Request for Support and Financial Disclosure form.
- (b) If the non-custodial parent fails to respond to or take action on the Letter within ten (10) business days, a second Letter of Request for Support and Financial Disclosure form shall be sent.
- (c) If the non-custodial parent fails to respond to or take action on the second Letter within five (5) business days, the custodial parent, or the Agency when required by federal law, may initiate a hearing in accordance with this law.
- (d) If the non-custodial parent responds within the required time period after receiving a Letter, the parties shall attempt to enter into a voluntary agreement.

78.5-3. Voluntary Agreement.

(a) The parties may enter into a voluntary agreement at any time as to the level of the child support obligation. The Agency shall assist parties in reaching a voluntary agreement upon request or when the parties are referred to the Agency by an entitlement program. Parties may also submit a voluntary agreement to the Family Court for approval without the Agency's assistance.

(b) In order for a voluntary agreement to be valid:

- (1) The agreement shall be in writing, signed and notarized;
- (2) If the parties deviate from the percentage standards, the agreement shall state the amount of support that would have been ordered by the percentage standards and the reasons for deviating from the percentage standards;
- (3) All parties shall sign the agreement free of duress and coercion; and
- (4) The Family Court shall make written findings that the agreement is appropriate, using the criteria for deviating from standard percentages under 78.7-3 as a guideline, if applicable.

(c) After the agreement is approved and filed by the Family Court, it shall have the same force as an order issued by the Family Court. The obligation of the obligor to pay child support shall commence on the date specified in the agreement, but no later than the date the agreement is approved and filed by the Family Court.

78.5-4. Initiating a Hearing. If the parties do not enter into a voluntary agreement, then any of the following may initiate an action for the establishment of child support by filing a petition with the Family Court:

- (a) a custodial parent;
- (b) a child's natural mother;
- (c) a child's father;
- (d) a child's guardian ad litem;
- (e) a child's non-legally responsible relative;
- (f) a legally incompetent adult's guardian ad litem; or
- (g) the Agency when required by federal law.

78.5-5. Petition. The petition to establish child support may be filed as a separate proceeding or in connection with a petition for child custody. The petition to establish child support shall include the following:

- (a) The name, date of birth and address of the petitioner and respondent;
 - (1) If the address of the respondent is unknown, other Tribal departments shall cooperate with the Family Court, at the Family Court's request, to provide the Family Court with the respondent's address. Any such Family Court requests shall be made in such a way which protects the privacy rights of all parties and children who are involved in proceedings or actions under this law.
- (b) A separate form which has the parties and the child's name, date of birth and social security number. This form shall be kept separate from the petition and shall be maintained in a confidential file. The form shall be available only to the parties, their attorneys, the Agency or any person authorized by the Family Court to have access to the form.

78.5-6. Hearing Date. Upon receipt of a petition, the Family Court shall schedule a hearing to determine child support to be held at a time after the filing of the petition and consistent with the manner of service.

78.5-7. Notice. All parties shall be notified of the petition and of all hearings, and shall be given an opportunity to be heard. Notice initiating an action shall be served by certified mail (return

receipt requested) or in person within fifteen (15) calendar days after the petition is filed with the Family Court. All mailing of notice shall include the Family Court clerk's return address, with a request to file answer to that address. Subsequent notice shall be served by first-class mail to the recently verified last-known address of the party.

(a) *Certified mail.* Certified mail sent to a party's most recently verified last-known address but returned because it was unclaimed or refused shall constitute constructive service. Certified mail returned for other reasons shall require service by other methods pursuant to the Rules of Civil Procedure.

(b) *Publication.* When a responding party cannot be found after diligent attempts and attempts to serve the responding party by certified mail have failed, the petitioner may ask the Family Court to direct the Agency to provide service by publication. If the request is granted, the Agency shall publish the petition in the *Kalihwisaks* or a newspaper of general circulation in the county of residence of the respondent, if known. Publication shall be designated as a Legal Notice and confidential information shall be redacted.

(1) If service by publication is permitted and there is insufficient time for notice and answer pursuant to this Law, the Family Court shall re-schedule the hearing appropriately and may permit extended time deadlines for default orders and for hearings in order to provide for fair notice and opportunity for the party to respond.

78.5-8. *Summons and Petition.* The summons to be served on the respondent(s), along with the petition, shall include the following notice, in addition to providing a time and date for appearance:

- (a) That if he or she chooses not to appear at the hearing or enter a defense to the petition challenging the authority of the Family Court to hear the matter by the date of the hearing, the hearing shall proceed on the basis of the petitioner's evidence;
- (b) That a child support order may require the respondent to pay child support until the child reaches eighteen (18) or until the child graduates from high school, or its equivalent, up to age nineteen (19);
- (c) That the respondent's license(s) may be suspended or denied for failure to pay child support, in addition to other enforcement actions;
- (d) That the respondent's employer or others with evidence of the respondent's income may be subpoenaed to provide the Family Court with records of his or her earnings;
- (e) That if the respondent is unemployed, he or she will still be imputed to be able to provide some degree of child support and an order of support will be calculated according to this law unless the Family Court makes written findings ordering otherwise;
- (f) That any answer to the petition must be filed with the Family Court within twenty (20) calendar days of the date of service of the petition, and a copy served on the other party.

78.5-9. *Answers.* Answers shall be filed with the Family Court and served on the petitioner within twenty (20) calendar days of the date of service of the petition.

78.5-10. *Subpoenas.* Upon request of either party, the Family Court shall issue subpoenas to any person in possession of relevant information to appear or produce documents to the Family Court. Failure to comply with such a subpoena may be punishable as contempt.

78.5-11. *Temporary Orders.* At any time after a child's parentage has been established, the Family Court may make a temporary order for the payment of child support and the child's health care expenses. Before making a temporary order, the Family Court shall consider those factors that the Family Court is required to consider when granting a final child support order. If

the Family Court makes a temporary child support order that deviates from the amount of support that would be required by using the percentage standard, the requirements of 78.7-3 shall be complied with.

78.6. Hearing Procedures

78.6-1. The factual determinations made at a hearing shall be limited to the income and expense information necessary to determine the appropriate level of support according to this law.

78.6-2. The Family Court may utilize discovery procedures and contempt powers, as authorized by Tribal law, policy or rule to obtain information relevant to the establishment or enforcement of child support. These procedures may include the following:

- (a) Issue subpoenas requiring necessary and relevant parties to appear in person and provide testimony.
- (b) Issue subpoenas requiring the production of evidence.
- (c) Obtain information about property or assets to assess its value or funding source for lien or seizure actions.
- (d) Obtain information about the income of any party to the action.
- (e) Issue contempt findings for failure to comply with the lawful order of the Family Court.

78.6-3. Both parties have the right to representation at their own expense. The Tribe shall not be required to pay for any fees and/or expenses incurred by any party in connection with proceedings under this law.

78.6-4. *Default.* If the respondent fails to appear at the hearing upon a showing of valid service and the petitioner presents evidence of the obligation by the absent party, a child support order shall be entered pursuant to the evidence.

78.6-5. *Hearings Closed.* Child Support proceedings shall be closed to any person other than those necessary to the action or proceeding.

78.7. Child Support Determination

78.7-1. Except as provided elsewhere in this law, the Family Court shall determine child support payments by using the percentage standards established in this law. The obligor's monthly income shall be considered in determining his or her child support obligation.

78.7-2. *Percentage Standards to Determine the Amount of Child Support.*

(a) The following percentages shall be applied to the portion of an obligor's monthly income available for child support that is less than \$7,000:

- (1) 17% for one (1) child;
- (2) 25% for two (2) children;
- (3) 29% for three (3) children;
- (4) 31% for four (4) children; and
- (5) 34% for five (5) or more children.

(b) The following percentages shall be applied to the portion of an obligor's monthly income available for child support that is greater than or equal to \$7,000 and less than or equal to \$12,500:

- (1) 14% for one (1) child.
- (2) 20% for two (2) children.
- (3) 23% for three (3) children.
- (4) 25% for four (4) children.
- (5) 27% for five (5) or more children.

(c) The following percentages shall be applied to the portion of an obligor's monthly income available for child support that is greater than \$12,500:

- (1) 10% for one (1) child.
- (2) 15% for two (2) children.
- (3) 17% for three (3) children.
- (4) 19% for four (4) children.
- (5) 20% for five (5) or more children.

78.7-3. Deviation from Standard Factors. Upon request by a party, the Family Court may modify the amount of child support payments determined by the percentage standards if, after considering the following factors, the Family Court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to any of the parties:

- (a) The financial resources of the child;
- (b) The financial resources of both parents;
- (c) Maintenance received by either party;
- (d) The needs of each party in order to support himself or herself at a level equal to or greater than that established under 42 USC 9902 (2);
- (e) The needs of any person, other than the child, whom either party is legally obligated to support;
- (f) The standard of living the child would have enjoyed if his or her parents were living together;
- (g) The desirability that the custodial parent remain in the home as a full-time parent;
- (h) The cost of day care if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home;
- (i) The award of substantial periods of physical placement to both parents;
- (j) Extraordinary travel expenses incurred in exercising the right to periods of physical placement;
- (k) The physical, mental, and emotional health needs of the child, including any costs for health insurance;
- (l) The child's educational needs;
- (m) The tax consequences to each party;
- (n) The best interests of the child;
- (o) The earning capacity of each parent, based on each parent's education, training and work experience and the availability of work in or near the parent's community; and
- (p) Any other factors which the Family Court in each case determines are relevant.

Cross-reference: See also Rule CS 1 CHILD SUPPORT PERCENTAGE OF INCOME STANDARD.

78.7-4. Non-Cash Payments.

(a) Non-cash payments may be used to satisfy part or all of a child support order if the parties and the Family Court agree to allow non-cash payments. Non-cash payments shall not be used to fulfill arrears. If non-cash payments are allowed, the order shall:

- (1) state the specific dollar amount of the support obligation;
- (2) state the maximum amount (in dollars) of non-cash payment that the obligee will accept;
- (3) describe the type(s) of non-cash payment that is permitted;
- (4) provide that non-cash payment cannot be used to satisfy assigned child support obligations.

(b) When both parents are in agreement that non-cash payments may be used to satisfy a child support obligation, the non-cash payment may include, but is not limited to the following:

- (1) Clothing.
- (2) Groceries.
- (3) Child Care.
- (4) Deer/Venison.
- (5) Wood.
- (6) Transportation.
- (7) Skilled trades or services, such as car repairs, lawn care and snow removal.

(c) When a non-cash payment is used to satisfy part or all of a child support order, the obligor and obligee shall submit any forms required by the Agency within the month that the non-cash payment is made. If there are less than five (5) business days left in the month when a non-cash payment is made, the obligor and obligee have five (5) business days to submit any required forms to the Agency. The Agency shall be responsible for applying the non-cash payment towards the child support order during the appropriate month.

78.7-5. Past-due and Arrears obligations.

(a) A party may request payment of arrears or past-due child support as follows:

- (1) In an action pursuant to Chapter 77, Paternity, back to the date of birth of the child or date of application, whichever is later;
- (2) In a child support establishment or modification pursuant to this Chapter, back to the date of application, review or referral;
- (3) In an establishment or modification of placement pursuant to Chapter 72 or Chapter 79, back to the date of filing, or as otherwise ordered by the Family Court.

(b) An arrears or past-due payment shall be set based on the amount due and the income available to pay current support.

(c) Once current child support is ended in any manner prescribed by law, child support shall continue to be paid at the same rate, until all arrears or past due child support is paid in full.

78.8. Content and Effect of Order

78.8-1. The child support order shall provide for immediate wage withholding. An order to withhold income shall be binding against future payors upon actual notice of the order through service by personal delivery or certified mail upon the payor. Wages shall not be subject to withholding only where:

(a) One of the parties demonstrates and the Family Court finds that there is good cause not to require wage withholding due to one of the following:

- (1) There is an error in the amount of current or overdue support; or
- (2) The identity of the obligor is mistaken.

(b) The parties reach a written agreement which provides for an alternative arrangement and is approved by the Family Court.

78.8-2. The Family Court may require a party, or both parties, to utilize the services available to him or her to obtain and maintain regular employment and/or job training.

78.8-3. *Support Order Notice Requirements.* Each order for child support shall include an order that the obligor and obligee notify the Agency of any change of address or name change within

ten (10) business days of such change. Each order for child support shall also include an order that the obligor notify the Agency and the obligee of any change of employer or substantial change of income within ten (10) business days of the change. A "substantial change of income" means the obligor has a significant change in his or her finances that would lead to a change in child support of either more than fifteen percent (15%) or fifty dollars (\$50.00) per month. An order under this section is enforceable as contempt.

78.8-4. Collection and Distribution of Child Support. The Agency shall collect and distribute child support monies pursuant to regulations set forth in the Social Security Act 45 CFR 309.115.

78.9. Enforcement of Order

78.9-1. Agency Responsibilities. The Agency shall:

- (a) Track and document the progress of a party who is under an enforcement action.
- (b) Take additional enforcement action when a party fails to comply with a previous enforcement action.
- (c) Document the reasons why an enforcement action is not taken, when such action would have been appropriate under the circumstances.
- (d) Refund amounts that were improperly withheld, terminate wage withholding when appropriate and allocate amounts across multiple cases.

78.9-2. Wage Withholding.

- (a) A copy of the Family Court's wage withholding order shall be sent by the Agency to a payor within three (3) business days of the entry of the order of the Family Court by any business method acceptable to the payor.
- (b) No payor shall refuse to honor a wage withholding order executed pursuant to this law. A payor shall begin withholding immediately after service of a wage withholding order made pursuant to this law. Within five (5) business days after the payor pays the obligor, the payor shall send the amount withheld to the Agency.
- (c) A payor shall be liable for one hundred percent (100%) of the child support order, or the amount of money that should have been withheld from the obligor's earnings, whichever is the lesser amount, if the payor:
 - (1) Fails or refuses, after being served with a wage withholding order, to deduct or promptly remit the amounts of money required in the order; or
 - (2) Fails or refuses to submit an answer to the notice of wage withholding after being served; or
 - (3) Is unwilling to comply with the other requirements of this law.
- (d) A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because he or she is subject to wage withholding. When the Family Court finds that a payor has taken any of these actions, the payor shall be liable for a civil penalty. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by an obligor as a result of the violation, and an obligor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The statute of limitations for actions under this section shall be one (1) year.
- (e) A payor who repeatedly fails to comply with a wage withholding order as required by this law may be subject to a fine, not to exceed \$500.00, or have its Oneida vendor license revoked or suspended, if applicable, until compliance with this law is assured.

The vendor license issuing agency shall comply with the Family Court order to revoke or suspend a vendor license.

(f) If wage withholding is inapplicable, ineffective or insufficient to ensure payment of child support, the Family Court may require the obligor to establish an account for the purpose of transferring child support payments.

(g) The total amount withheld under a wage withholding order shall not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(h) Non-Indian off-reservation payors shall be subject to wage withholding under 28 USC §1738B

78.9-3. In the event that an obligor is at least one (1) month delinquent in paying his or her child support obligation, he or she may be subject to the following enforcement actions:

- (a) increase in amount of wages withheld
- (b) placement on lien docket;
- (c) credit bureau reporting;
- (d) intercept of income and/or other payments;
- (e) seizure of personal property;
- (f) suspension of licenses;
- (g) denial of passport;
- (h) commitment to jail;
- (i) charge of contempt;
- (j) referral for criminal charges;
- (k) any other enforcement action included in this law or in a rule that is established under this law.

Cross-reference: See also Rule CS 2 ENFORCEMENT TOOLS.

78.9-4. *Interest on Arrears.* The Tribe shall not charge a party ordered to pay child support interest on any arrears.

78.10. Modification of Order

78.10-1. Every two (2) years, the Agency shall notify the non-custodial parent, custodial parent and any interested party that a review of their child support order will be conducted. Unless otherwise stipulated by the parties, an order to update the child support obligation will be sought by the Agency if there is a substantial change in circumstances. A substantial change in circumstances means:

- (a) the child's placement is changed;
- (b) either parent or the child has a significant change in his or her finances that would lead to a change in child support of either more than fifteen percent (15%) or fifty dollars (\$50.00) per month;
- (c) the obligee is receiving public assistance benefits and is required to have a current support order in place;
- (d) it has been twenty-four (24) months since the date of the last child support order or revision to the child support order, unless the child support amount is expressed as a percentage; or
- (e) a change has occurred and if the current circumstances had been in place at the time the order was issued, a significantly different order would have been issued.

78.10-2. Either party may file a motion for a modification of a child support order based upon a substantial change of circumstances supported by affidavit. Such motion shall state why the

previous decision should be prospectively modified. The motion and affidavit shall be served by the moving party on the responding party by first-class mail to the recently verified last-known address, or by any method provided by law. A hearing date shall be scheduled no sooner than ten (10) calendar days after the date of service.

78.10-3. If a child support award becomes unjust due to a substantial change in circumstances of the obligor, the obligor has the duty to file a petition or motion with the Family Court for a changed award at that time. He or she may not raise that change in circumstances as a reason not to pay a past due award.

78.10-4. A change in the percentages shall constitute a substantial change in circumstances and shall justify prospective modification of a child support order.

78.11. Full Faith and Credit for Foreign Child Support Orders

78.11-1. Properly issued child support orders, and judgments or decrees of other Indian tribes, tribal organizations and states, that relate to child support shall be recognized and modified in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B.

78.11-2. A foreign order is authenticated by reasonable proof that the document tendered to the Family Court is a true copy of the foreign order as it is recorded in the agency or court of the issuing jurisdiction. An authentication stamp issued by a court clerk or custodian of records, or a court seal, is sufficient evidence of authenticity.

78.11-3. Unless defects in jurisdiction are apparent on the face of the foreign order, the person contesting enforcement of the order has the burden of showing the order is not valid. Upon a failure to respond to notice of the order and to timely contest it, the Family Court shall enforce it as a Family Court order.

78.11-4. If a foreign order is brought before the Family Court solely for an interpretation of the terms of the order, and the order has been recognized and given full faith and credit by the Family Court, the Family Court shall interpret the order by applying the law of the forum that issued the foreign order.

78.12. Right of Appeal

78.12-1. Any enforcement action implemented by the Agency may, within thirty (30) calendar days after the date that the action is enforced, be appealed to the Family Court. The decision of the Family Court shall be final.

78.12-2. If the Family Court conducts a hearing under this law, a party may, within thirty (30) calendar days after the date that the Family Court makes a decision, appeal that decision to the Court of Appeals of the Judiciary. The appellate body review shall be based on the record and the original decision of the Family Court.

End.

Emergency Adopted - BC-06-30-08-C (Expired)
Emergency Extended - BC-12-10-08-H (Expired)
Permanently Adopted- BC-06-24-09-B
Emergency Amended - BC-10-28-09-E
Amended - BC-02-24-10-G
Amended - BC-06-22-11-K
Amended - BC-10-10-12-C
Amended - BC-08-13-14-E

Rule CS 1**DEVIATION FROM CHILD SUPPORT PERCENTAGE STANDARDS**

1.1. Introduction

1.2. Definitions

1.3. Support Orders

1.4. Determining the Child Support Obligation in
Special Circumstances

1.1. Introduction

1.1-1. *Purpose.* This rule is promulgated for the purpose of determining child support when circumstances require a deviation from the percentage standards in Chapter 78.

1.1-2. *Applicability.* This rule applies to any child support order or child support order modification implemented under Chapter 78.

1.1-3. *Effect of Rule Change.* A modification of any provision in this rule shall not in and of itself be considered a substantial change in circumstances sufficient to justify a revision of a judgment or order under Chapter 78. A modification of any provision in this rule shall apply to orders established after the effective date of the modification.

1.1-4. This rule shall be effective June 24, 2009.

1.2. Definitions

1.2-1. In this rule:

- (a) "Adjusted monthly income" means the monthly income at which child support is determined for serial family obligors, which is the obligor's monthly income less the amount of any existing legal obligation for child support.
- (b) "Agency" means the Oneida Tribe Child Support Agency.
- (c) "Basic support costs" means food, shelter, clothing, transportation, personal care, and incidental recreational costs.
- (d) "Child" means a person under the age of eighteen (18), or any person who is less than nineteen (19) years old if he or she is pursuing a high school diploma or its equivalent from an accredited course of instruction.
- (e) "Child support" means the total financial obligation a parent has towards his or her child as established through judicial and/or administrative processes.
- (f) "Child Support Order" means a judgment of the Family Court or a court of competent jurisdiction ordering payment of child support which provides monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, income withholding, attorneys' fees and other relief.
- (g) "Current 6 month treasury bill rate" means the yield of a U.S. government security with a term of 6 months.
- (h) "Dependent household member" means a person for whom a taxpayer is entitled to an exemption for the taxable year under 26 USC 151.
- (i) "Family Court" shall mean the judicial arm of the Tribe that is designated to handle all matters under this Law.
- (j) "Federal dependency exemption" means the deduction allowed in computing taxable income pursuant to 26 USC 151 for a child of the taxpayer who has not attained the age of nineteen (19) or who is a student.
- (k) "Gross income" means any form of payment due to an individual regardless of source, including, but not limited to:
 - (1) Salary and wages, including overtime pay.

- (2) Interest and investment income.
- (3) Social Security disability and old age insurance benefits under 42 USC 401 to 433.
- (4) Net proceeds resulting from worker's compensation or other personal injury awards intended to replace income.
- (5) Unemployment insurance.
- (6) Income continuation benefits.
- (7) Voluntary deferred compensation and voluntary employee contributions to the following: employee benefit plan, profit-sharing, pension or retirement account.
- (8) Military allowances and veterans benefits.
- (9) Undistributed income of a corporation or any partnership in which the parent has an ownership interest sufficient to individually exercise control or to access the earnings of the business, unless the income included is an asset.
- (10) Per capita distribution payments.
- (11) Lease or rental income.
- (12) Prizes over \$1,000.00.
- (13) All other income, whether taxable or not, except that gross income does not include any of the following:
 - (A) Child support.
 - (B) Foster care payments.
 - (C) Kinship care payments.
 - (D) Public assistance benefits, except that child care subsidy payments shall be considered income to a child care provider.
 - (E) Food stamps.
 - (F) Public assistance or financial hardship payments paid by a county or a tribe.
 - (G) Supplemental Security Income under 42 USC 1381 to 1383(f) and state supplemental payments.
 - (H) Payments made for social services.
- (l) "Income imputed based on earning capacity" means the amount of income that exceeds the parent's actual income and represents the parent's ability to earn, based on the parent's education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement, and the availability of work in or near the parent's community.
- (m) "Income imputed from assets" means the amount of income ascribed to assets that are unproductive and to which income has been diverted to avoid paying child support or from which income is necessary to maintain the child or children at the standard of living they would have if they were living with both parents, and that exceeds the actual income from the assets.
- (n) "Income modified for business expenses" means the amount of income after adding wages paid to dependent household members, adding undistributed income that the Family Court determines is not reasonably necessary for the growth of the business, and subtracting business expenses that the Family Court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

- (o) "Intact family" means a family in which the child or children and the obligor reside in the same household and the obligor shares his or her income directly with the child or children and has a legal obligation to support the child or children.
- (p) "Low-income obligor" means an obligor for whom the Family Court uses the monthly support amount provided in the schedule in Appendix A based on the Family Court's determination that the obligor's total economic circumstances limit his or her ability to pay support at the level provided under 78.7-2(a) and the obligor's income is at a level set forth in the schedule in Appendix A.
- (q) "Marital child" means a child born during the marriage of his or her parents. In addition, if the father and mother of a non-marital child enter into a lawful marriage or a marriage which appears and they believe is lawful, except where the parental rights of the mother were terminated before either of these circumstances, the child becomes a marital child and shall enjoy all of the rights and privileges of a marital child as if he or she had been born during the marriage of the parents. The children of all marriages declared void under the law are nevertheless marital children.
- (r) "Monthly income" means the obligor's income available for child support and is the obligor's annual gross income or, if applicable, the obligor's annual income modified for business expenses; plus the obligor's annual income imputed based on earning capacity; plus the obligor's annual income imputed from assets; divided by twelve (12).
- (s) "Parent" means the natural or adoptive parent of the child.
- (t) "Obligee" means the person or entity to whom child support is owed.
- (u) "Obligor" means the person who is obliged to pay child support to the obligee.
- (v) "Serial family obligor" means an obligor with an existing legal obligation for child support who incurs an additional legal obligation for child support in a subsequent family as a result of a child support order.
- (w) "Shared-placement obligor" means a parent who has an ordered period of placement of at least twenty-five percent (25%), is ordered by the Family Court to assume the child's basic support costs in proportion to the time that the parent has placement of the child and is determined to owe a greater support amount than the other parent.
- (x) "Split-placement obligor" means an obligor who has two (2) or more children and who has physical placement of one (1) or more but not all of the children.
- (y) "Variable costs" means the reasonable costs above basic support costs incurred by or on behalf of a child, including but not limited to, the cost of child care, tuition, a child's special needs, and other activities that involve substantial cost.

1.3. Support Orders

1.3-1. *Determining Income Modified for Business Expenses.* In determining a parent's monthly income, the Family Court may adjust a parent's gross income as follows:

- (a) Adding wages paid to dependent household members.
- (b) Adding undistributed income that the Family Court determines is not reasonably necessary for the growth of the business. The parent shall have the burden of proof to show that any undistributed income is reasonably necessary for the growth of the business.
- (c) Reducing gross income by the business expenses that the Family Court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

1.3-2. *Determining Income Imputed Based on Earning Capacity.* When a parent's income is less than the parent's earning capacity or is unknown, the Family Court may impute income to the parent at an amount that represents the parent's ability to earn, based on the parent's education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement and the availability of work in or near the parent's community. If evidence is presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable, the Family Court may impute to the parent the income that a person would earn by working thirty-five (35) hours per week for the federal minimum hourly wage under 29 USC 206 (a)(1). If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent's earning capacity and the parent's gross income or income modified for business expenses.

1.3-3. *Determining Income Imputed From Assets.*

(a) The Family Court may impute a reasonable earning potential to a parent's assets if the Family Court finds both of the following:

(1) The parent has ownership and control over any real or personal property, including but not limited to, life insurance, cash and deposit accounts, stocks and bonds, business interests, net proceeds resulting from worker's compensation or other personal injury awards not intended to replace income, and cash and corporate income in a corporation in which the parent has an ownership interest sufficient to individually exercise control and the cash or corporate income is not included as gross income.

(2) The parent's assets are underproductive and at least one (1) of the following applies:

(a) The parent has diverted income into assets to avoid paying child support.

(b) Income from the parent's assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents.

(b) The Family Court shall impute income to assets by multiplying the total net value of the assets by the current 6-month treasury bill rate or any other rate that the Family Court determines is reasonable and subtracting the actual income from the assets that were included as gross income.

1.3-4. *Adjustment for Child's Social Security.* The Family Court may include benefits received by a child under 42 USC 402(d) based on a parent's entitlement to federal disability or old-age insurance benefits under 42 USC 401 to 433 in the parent's gross income and adjust a parent's child support obligation by subtracting the amount of the child's social security benefit. In no case may this adjustment require the obligee to reimburse the obligor for any portion of the child's benefit.

1.3-5. *Expression of Ordered Support.* The support amount shall be expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the obligor's income and the stipulation requirements of Chapter 78 are satisfied.

1.3-6. *Trust.* The Family Court may protect and promote the best interests of the minor children by setting aside a portion of the child support that either party is ordered to pay in a separate fund or trust for the support, education, and welfare of such children.

1.3-7. *Dependency Exemption.* The Family Court may order the obligee to waive the federal dependency exemption provided that the obligee's execution of the exemption waiver is made contingent on the receipt of child support payments.

1.4. Determining the Child Support Obligation in Special Circumstances

1.4-1. *Determining the Child Support Obligation of a Serial-Family Obligor.*

(a) *Applicability.* This subsection applies only if the additional child support obligation incurred by an obligor is the result of a child support order and the support obligation being calculated is for children from a subsequent family or subsequent paternity judgment or acknowledgment. An obligor may not use the provisions of this section as a basis for seeking modification of an existing order based on a subsequently incurred legal obligation for child support.

(b) *Determination.* For a serial-family obligor, the child support obligation incurred for a marital or nonmarital child in a subsequent family as a result of a child support order may be determined as follows:

- (1) Determine the obligor's monthly income;
- (2) Determine the order of the obligor's legal obligations for child support by listing them according to the date each obligation is incurred. For a marital child, the legal obligation for child support is incurred on the child's date of birth. For a nonmarital child, the legal obligation for child support is incurred on the date of the child support order. For a nonmarital child in an intact family, it is incurred on the date of adoption or the date of the filing of an acknowledgement of paternity. For a nonmarital maternal child in an intact family, it is incurred on the child's date of birth;
- (3) Determine the first child support obligation as follows:
 - (a) If the obligor is subject to an existing support order for that legal obligation, except a shared-placement order, the support for that obligation is the monthly amount of that order; or
 - (b) If the obligor is in an intact family or is subject to a shared-placement order, the support is determined by multiplying the appropriate percentage for that number of children by the obligor's monthly income;
- (4) Adjust the monthly income by subtracting the support for the first legal obligation under (3) from the obligor's monthly income under (1);
- (5) Determine the second child support obligation as follows:
 - (a) If the obligor is subject to an existing support order for that legal obligation, except a shared-placement order, the support for that obligation is the monthly amount of that order; or
 - (b) If the obligor is in an intact family or is subject to a shared-placement order, the support is determined by multiplying the appropriate percentage for that number of children by the obligor's monthly income;
- (6) Adjust the monthly income a second time by subtracting the support for the second legal obligation determined under (5) from the first adjusted monthly income determined under (4);
- (7) Repeat the procedure under (5) and (6) for each additional legal obligation for child support the serial family obligor has incurred;
- (8) Multiply the appropriate percentage for the number of children subject to the new order by the final adjusted monthly income determined in either (6) or (7) to determine the new child support obligation.

Note: The following example shows how the child support obligation is determined for a serial-family obligor whose additional child support obligation has been incurred for a subsequent family.

Assumptions:

- Parent A's current monthly income is \$3000.
- Parent A and Parent B were married, had a child in 1990 and divorced in 1991. Parent A is subject to an existing support order of \$450 per month.
- Parent A remarries and has two children, one born in 1996 and the other in 1997, and remains an intact family.
- Parent A was adjudicated the father in 1998 for a child born in 1995. Child support needs to be established for this child.

Order of parent A's legal obligation for child support:

- First legal obligation: one child (1990) (divorce)
- Second legal obligation: 2 children (1996 and 1997) (intact family)
- Third legal obligation: one child (1998) (paternity)

Calculation:

- Parent A's current monthly income \$3000.
- The first legal obligation is subject to an existing monthly support order (divorce) \$450.
- Adjust the monthly income $\$3000 - 450$
- First adjusted monthly income \$2550
- Determine support for the second legal obligation (intact family) $\$2550 \times .25$ \$637.50
- Adjust the first adjusted monthly income $\$2550 - 637.50$
- Second adjusted monthly income \$1912.50
- Determine support for the third legal obligation (paternity) $\$1912.50 \times .17$ \$325.12

1.4-2. Determining the Child Support Obligations of Shared-Placement Parents.

(a) The shared-placement formula may be applied when both of the following conditions are met:

(1) Both parents have periods of placement of at least twenty-five percent (25%) or ninety-two (92) days a year. The period of placement for each parent shall be determined by calculating the number of overnights or equivalent care ordered to be provided by the parent and dividing that number by 365. The combined periods of placement for both parents shall equal 100%.

(2) Each parent is ordered by the Family Court to assume the child's basic support costs in proportion to the time that the parent has placement of the child.

(b) The child support obligations for parents who meet the requirements of (a) may be determined as follows:

(1) Determine each parent's monthly income. In determining whether to impute income based on earning capacity for an unemployed parent or a parent employed less than full time under 1.3-2, the Family Court shall consider benefits to the child of having a parent remain in the home during periods of placement and the additional variable day care costs that would be incurred if the parent worked more.

- (2) Multiply each parent's monthly income by the appropriate percentage standard under 78.7.
- (3) Multiply each amount determined under (2) by 150%.
- (4) Multiply the amount determined for each parent under (3) by the proportion of the time that the child spends with the other parent to determine each parent's child support obligation.
- (5) Offset resulting amounts under (4) against each other. The parent with a greater child support obligation is the shared-placement obligor. The shared-placement obligor shall pay the lesser of the amount determined under this section or the amount determined using the appropriate percentage standard under 78.7. If the shared-placement obligor is also a low-income obligor, the child support obligation may be the lesser of the amount determined under this section or under 1.4-4.
- (6) In addition to the child support obligation determined under (5), the Family Court shall assign responsibility for payment of the child's variable costs in proportion to each parent's share of physical placement, with due consideration to a disparity in the parents' incomes. The Family Court shall direct the manner of payment of a variable cost order to be either between the parents or from a parent to a third party service provider. The Family Court shall not direct payment of variable costs to be made to the Agency or the Agency's designee, except as incorporated in the fixed sum or percentage expressed child support order.

Note: The following example shows how to calculate the child support obligations of shared-placement parents.

- Number of children: Two
- Parent A: \$2,000 monthly income
- Ordered placement of the child for 219 days a year or 60%
- Parent B: \$3,000 monthly income
- Ordered placement of the child for 146 days a year or 40%

	Parent A	Parent B
1. Monthly income	\$2,000	\$3,000
2. Monthly income X percentage standard for two children	$\$2,000 \times 25\% = \500	$\$3,000 \times 25\% = \750
3. Amount in 2. X 150%.	$\$500 \times 150\% = \750	$\$750 \times 150\% = \1125
4. Amount in 3. X the proportion of time that the child spends with the other parent	$\$750 \times 40\% = \300	$\$1125 \times 60\% = \675
5. Offset	$\$675 - \$300 = \$375$	
6. Family Court also assigns responsibility for payment of the child's variable costs.	Manner of payment is between the parents or from a parent to a third party service provider, except as incorporated in the fixed sum or percentage expressed child support order.	

1.4-3. *Determining the Child Support Obligations of Split-Placement Parents.* For parents who have two (2) or more children and each parent has placement of one (1) or more but not all of the children, the child support obligations may be determined as follows:

- (a) Determine each parent's monthly income.
- (b) Multiply each parent's monthly income by the appropriate percentage for the number of children placed with the other parent to determine each parent's child support obligation.
- (c) Offset resulting amounts under (b) against each other. The parent with a greater child support obligation is the split-placement obligor.

Note: The following example shows how to calculate the amount of child support for split-placement parents:

Assumptions:

- Parent A and B have 3 children.
- Parent A has placement of one child and Parent B has placement of 2 children.
- Parent A's monthly income is \$3,000.
- Parent B's monthly income is \$1,500.

Calculation:

- Parent A's child support obligation is $\$3,000 \times 25\% = 750$
- Parent B's child support obligation is $\$1,500 \times 17\% = 255$
- Parent A owes Parent B $750 - 255 = \$495$

1.A-4. Determining the Child Support Obligation of a Low-Income Obligor.

(a) The Family Court may use the monthly support amount provided in the schedule in Appendix A as the support amount for an obligor with a monthly income at a level set forth in the schedule if the obligor's total economic circumstances limit his or her ability to pay support at the level determined under 78.7. If an obligor's monthly income is below the lowest income level in Appendix A, the Family Court may set an order at an amount appropriate for the obligor's total economic circumstances. This amount may be lower than the lowest support amount in Appendix A.

(b) The Agency shall revise the schedule in Appendix A at least once every four (4) years. The revision shall be based on changes in the federal poverty guidelines since the schedule was last revised.

Note: The schedule in Appendix A provides reduced percentage rates that may be used to determine the child support obligation for obligors with an income below approximately 125% of the federal poverty guidelines. If an obligor's monthly income is below approximately 75% of the federal poverty guidelines, the Family Court may order an amount appropriate for the obligor's total economic circumstances. For monthly income amount for child support between approximately 75% and 125% of the federal poverty guidelines, the percentage rates in the schedule gradually increase as income increases. The percentage rates used in 78.7 apply to obligors with income greater than or equal to approximately 125% of the federal poverty guidelines.

End.

Rule CS 2 ENFORCEMENT TOOLS

2.1. Purpose and Effective Date
2.2 Definition
2.3. Compliance Plan
2.4. Notice of Enforcement Actions
2.5. Liens

2.6. Seizure of Property
2.7. Other Enforcement Tools
2.8. Family Court Enforcement Action
2.9. Alternative Payment Plans

2.1. Purpose and Effective Date

2.1-1. This rule is promulgated for the purpose of establishing the enforcement tools that may be used when an obligor is no longer paying the amount required by a child support order.

2.1-2. This rule shall be effective June 24, 2009.

2.2. Definitions

2.2-1. In this rule:

- (a) "Administrative enforcement actions" means actions authorized by federal regulations which are taken to enforce a child support order without obtaining an order from the Family Court.
- (b) "Agency" means the Oneida Tribe Child Support Agency.
- (c) "Alternative payment plan" or "plan" means a negotiated agreement between the Agency and an obligor, or an order set by the Family Court, to establish terms for the payment of arrears.
- (d) "Equity" means the fair market value of property minus the liens on that property with priority over the child support lien.
- (e) "Lien amount" means the difference between the monthly amount of support due and the arrears in a case.
- (f) "Lien docket" means the registry kept by the State of Wisconsin containing the names of people who owe past-due child support.
- (g) "Monthly amount due" means the sum of court-ordered provisions for periodic payments due in one (1) month, including any arrears payment.
- (h) "Obligee" means the person or entity to whom child support is owed.
- (i) "Obligor" means the person who is obliged to pay child support to the obligee.
- (j) "Ownership interest" means any personal financial interest.
- (k) "Qualified child" means an individual who is no longer a minor but who, while still a minor, was determined to be disabled under Title II or Title XVI of the Social Security Act.
- (l) "Threshold" means an amount, expressed as either a percentage of the monthly amount due, a fixed dollar amount, or both, that the lien amount must equal or exceed before an administrative enforcement action may be used to enforce a child support order.

2.3. Compliance Plan

2.3-1. The Agency shall attempt to meet with a party who is found to be subject to enforcement action as soon as possible by sending a Letter of Non-Compliance within five (5) business days of being informed of a party's failure to either pay support as ordered or to meet a required obligation or action.

- (a) The Letter shall set out the conditions the party has failed to comply with, outline the enforcement actions that may be taken and request the party meet with the Agency.

- (b) If the party does not respond to the Letter within five (5) business days after receipt of the letter, the Agency shall send a second Letter.
- (c) If the party fails to respond to the second Letter within five (5) business days after receipt of the letter, the Agency shall proceed with appropriate enforcement action.
- (d) If the party responds to the Letter, the Agency shall interview the party to determine the reasons and barriers for the non-compliance and create a Compliance Plan. The Compliance Plan may include an increase in payment and/or any activity that is necessary to ensure payment, including programs that focus on:
 - (1) Employment and training;
 - (2) Social service and mental health;
 - (3) Physical and learning disabilities;
 - (4) Tribal traditions and customs;
 - (5) Family counseling.
- (e) If the party successfully completes the Compliance Plan, no further enforcement action is necessary. However, if the party fails to complete the Compliance Plan, the Agency shall proceed with appropriate enforcement action.

2.4. Notice of Enforcement Actions

2.4-1. The enforcement actions in this rule may be applied when an obligor is no longer in compliance with a child support order and is not making efforts to comply with the order. An obligor shall be provided with at least thirty (30) days notice before an enforcement action is utilized, unless another time line is specified within this rule. An enforcement action shall be stayed and/or suspended after notice is given to the obligor if the obligor pays the debt in full or enters into, and maintains, an alternative payment plan.

2.4-2. *Notice of Delinquency.* In the event that an obligor owes a debt equal to or exceeding the monthly amount due, the Agency shall send a notice of delinquency to the obligor.

- (a) The notice shall inform the obligor of the following:
 - (1) The dates that the delinquency accrued;
 - (2) The total amount of the delinquency;
 - (3) Any prior agreement or showing of good cause to not wage withhold may be terminated and the obligor may be subject to wage withholding;
 - (4) The enforcement action that may be taken as a result of the delinquency;
 - (5) The obligor may request, in writing to the Agency, to negotiate an alternative payment plan with the Agency within ten (10) business days after the service of notice in order to stay any enforcement action;
 - (6) The obligor has ten (10) business days after the service of the notice of delinquency to file an objection with the Agency presenting good cause why an arrears payment or other enforcement action should not be implemented. The only allowable objections are:
 - (A) There is an error in the amount of current or overdue support; or
 - (B) The identity of the obligor is mistaken.
- (b) If the obligor does not file an objection or request to negotiate an alternative payment plan:
 - (1) the enforcement action shall be taken; and/or
 - (2) a wage withholding order, or revised order if one is already in place, shall be imposed on the payor. No more than an additional twenty percent (20%) of the current support payment order can be withheld to satisfy the delinquency

provided that the total amount withheld does not exceed forty percent (40%) of the obligor's monthly income.

(c) If a permissible objection is filed, the obligor shall be entitled to a hearing before any enforcement action is taken.

2.4-3. *Use of Mail.* The Agency shall send notices related to the enforcement of a child support order by mail to the last-known mailing address provided by the obligor. If the notice is returned, the Agency shall send notice to the obligor using the current employer mailing address provided by the obligor. If the notice to the obligor mailed to the obligor's employer is returned, the Agency shall use all appropriate tribal, federal, state and local resources to ascertain an obligor's current mailing address. If those resources are used for a period of sixty (60) days and a verified mailing address has not been identified, the Agency may proceed with the administrative enforcement action.

2.4-4. *Notice to the Obligee of Enforcement Proceedings.* The Agency shall provide written notice to the obligee when an enforcement action has been initiated against the obligor or when the obligor requests a hearing and the hearing has been scheduled. The notice to the obligee shall be sent at the same time notice is sent to the obligor.

2.4-5. *Notice to Individuals Other Than the Obligor with a Recorded Ownership Interest in Property.* The Agency shall provide notice related to the seizure of property to any individual, other than the obligor, with a recorded ownership interest in property subject to seizure. The individual may request a hearing for a determination of the proportion of the value of the property that is attributable to his or her net contribution to the property. The hearing shall be requested within thirty (30) days after the notice was received by the individual.

2.5. Liens

2.5-1. The Agency shall have an obligor placed on the lien docket if the obligor owes a debt in one or more of the obligor's cases equal to or exceeding the monthly amount due or \$500.00, whichever is greater.

2.5-2. *Lien Amount.* The lien amount on the lien docket shall equal the sum of lien amounts from the cases in which the lien amount meets or exceeds the lien threshold.

2.5-3. *Filing Date.* The filing date on the lien docket is the date that a lien is first docketed and delivered to the register of deeds. The filing date is the effective date of the lien. The effective date does not change if the lien amount is adjusted up or down within five (5) years after the date that the lien is first docketed.

2.5-4. *Lien Priority.* The child support lien shall have priority over all other liens on property except tax and special assessment liens, purchase money mortgages, construction liens, environmental liens, liens that are filed or recorded before the child support lien becomes effective and any other lien given priority under the law.

(a) Property subject to a lien includes personal property in which the obligor has a recorded ownership interest.

(b) A child support lien is not effective against a good faith purchaser of titled personal property unless the lien is recorded on the title.

2.5-5. *Credit Bureau Reporting.* The Agency may report the total amount of an obligor's liens to the credit bureau, so long as the lien is fully enforceable and the case is not barred from credit bureau reporting.

2.5-6. *Denial of State-issued Grants and Loans.* Wisconsin state agencies may deny grants and loans to an obligor who is placed on the lien docket. These grants and loans include student loans and higher education grants, as well as mortgage loans from the Wisconsin Housing and Economic Development Authority (WHEDA).

2.5-7. The Agency shall, either on its own or in conjunction with the State, be responsible for:

- (a) updating the lien docket periodically.
- (b) providing a copy of the lien docket to the appropriate register of deeds.
- (c) responding to inquiries concerning information recorded on the lien docket.
- (d) ensuring the satisfaction of a lien is recorded on the lien docket.
- (e) renewing a lien if the lien amount equals or exceeds the lien threshold at the end of the five (5) year effective period.
 - (1) When a lien is renewed, the date on which the lien is renewed shall become the effective date of the lien, and a new five (5) year period shall commence.
- (f) sending the obligor a notice when a lien has been renewed.
- (g) developing procedures for releasing a lien and releasing specific property from a lien.

2.5-8. *Financial Record Review.*

- (a) An obligor may request a financial record review, within ten (10) business days of receiving a notice of a lien, to determine the correctness of the financial records in a case. The request shall be made in writing to the Agency.
- (b) Upon receiving a request for a financial record review, the Agency shall, at no charge to the obligor, provide the obligor with:
 - (1) all relevant financial records.
 - (2) information explaining how to interpret the records.
 - (3) a form the obligor may use to identify any alleged errors in the records.
- (c) Within twenty (20) days after receiving the relevant financial records, the obligor may:
 - (1) request a meeting with the Agency to review the financial records and to discuss any alleged errors.
 - (2) provide a statement of alleged error on the documents.
 - (A) The Agency shall review the records to determine whether the alleged error is correct and provide a written determination within sixty (60) days after the obligor's request for a financial record review is received as to whether the lien against the obligor is in the correct amount.
- (d) The Agency may proceed with the lien if:
 - (1) the obligor does not request a meeting with the Agency or provide a statement of alleged error within twenty (20) days after receiving the financial records; or
 - (2) no errors are found in the financial records of the case; or
 - (3) the arrears exceed the required threshold amount after any errors in the financial records are corrected.

2.6. Seizure of Property

2.6-1. When seizing property, the Agency shall presume that an obligor's equity or ownership in the property, whether an account or personal property, is an equal pro-rata share of the equity or ownership based on the number of individuals with a recorded ownership interest in the property.

2.6-2. *Account Seizure.* The Agency may initiate an account seizure if there is a lien against an obligor and the lien amount in the obligor's case equals or exceeds 300% of the monthly amount due in the order or \$1,000, whichever is greater.

- (a) The Agency may not issue a notice of seizure unless the sum of the funds in all of the obligor's financial accounts, minus expected seizure fees and any early withdrawal penalty, exceeds \$500. The first \$500 of each account shall not be frozen and/or seized.
- (b) The notice shall instruct the financial institution of the following:

- (1) The maximum amount frozen in an account may not exceed the amount specified by the Agency in the notice.
- (2) The maximum amount frozen in an account may not exceed the obligor's ownership interest.
- (3) A financial institution is not liable for encumbering or surrendering any assets held by the financial institution in response to instructions from the Agency for the purpose of enforcing a child support order.

2.6-3. *Seizure of Personal Property Other than Financial Accounts.* In addition to the requirements under (a) and (b) below, the Agency may initiate the seizure of personal property if there is a lien against an obligor and the lien amount equals or exceeds 600% of the monthly amount due in the order. Upon issuance of a written order of execution, non-exempt personal property may be seized and sold in a reasonable manner after notice to the owner in payment of a child support obligation that has been adjudicated delinquent by the Family Court. Ceremonial or religious property and real property are exempt from such writs of execution.

(a) *Personal Property.* The Agency may seize personal property if the obligor's equity in the property, minus expected seizure fees, exceeds \$500 per item total.

(b) The Tribe's "Disposition of Excess Tribal Property Policy" shall not apply to any property seized under this law.

2.7. Other Enforcement Tools.

2.7-1. *Attachment of Per Capita Payments.* The Agency may initiate the attachment and/or seizure of per capita payments of tribal members in accordance with applicable law.

2.7-2. License Suspension.

(a) The Agency may initiate the suspension or denial of occupational, fishing, recreational, motor vehicle and/or Oneida-issued licenses if there is a lien against an obligor that equals or exceeds 300% of the monthly amount due in the child support order, or \$1000, whichever is greater. Suspension of an occupational and/or motor vehicle license shall be pursued only as a last resort and the Agency shall not initiate the suspension of a license(s) if:

- (1) there is an order in place that prohibits the suspension of the license(s);
- (2) the obligor has filed for bankruptcy; or
- (3) action has already been taken to suspend the license.

(b) When an Oneida-issued license is suspended, that suspension shall be binding on and given effect by the license issuing agencies. Orders affecting licenses issued by other governmental agencies shall be sent to such agencies for enforcement.

2.7-3. *Intercept of Lump-Sum Pension Payments, Judgments and Settlements.* The Agency may initiate the intercept of lump-sum pension payments, judgments and/or settlements when an obligor has been placed on the lien docket.

(a) When initiating the intercept of lump-sum pension payments, judgments and/or settlements, the Agency shall specify in the notice that the amount withheld from the lump-sum pension payment, judgment or settlement may not exceed the obligor's ownership interest in the payment.

2.7-4. *Tax and Lottery Intercepts.* The Agency may coordinate with a federal or state agency in order to enforce a child support order through a tax and/or lottery intercept. Once an obligor has been notified that his or her tax refund and/or lottery winnings may be intercepted, that notice is valid until all arrears are paid in full.

(a) **Federal Tax Intercept.** The Agency may certify a federal tax intercept when the requirements pertaining to federal tax intercept contained in an agreement between the State and the Tribe have been met.

(b) **Wisconsin State Tax Intercept.** The Agency may certify a Wisconsin state tax intercept when the following requirements are met:

(1) The arrears shall be at least one hundred fifty dollars (\$150).

(2) The arrears shall be at least thirty (30) days old.

(3) The arrears shall be for a minor child or a child who has reached the age of eighteen (18) within the last twenty (20) years.

(c) **Wisconsin Lottery Intercept.** When a case is certified for Wisconsin state tax intercept, it shall also be automatically certified for Wisconsin lottery intercept for lottery winnings of one thousand dollars (\$1,000) or more.

2.7-5. **Passport Denial.** If a federal tax intercept is in place and the obligor owes five thousand dollars (\$5,000) or more in arrears, an obligor may be denied a passport. The arrears must meet the criteria for federal tax intercept in order for passport denial to be used as an enforcement tool. An obligor shall be removed from the passport denial list if:

(a) The federal tax intercept certification amount is zero (0);

(b) The obligor makes a lump-sum payment and/or negotiates a payment plan with the Agency;

(c) The obligor has to travel abroad because of a life-or-death situation involving an immediate family member, such as the obligor's parent, guardian, step-parent, child, step-child, grandparent, sibling, step-sibling, aunt, uncle or spouse; or

(d) The obligor was denied a passport in error.

2.8. Family Court Enforcement Action

2.8-1. If the Agency does not have the authority to conduct the appropriate enforcement action, or the obligor is unresponsive to the enforcement actions being imposed by the Agency, the case shall be referred to the Family Court for enforcement.

2.8-2. The Family Court may order any of the enforcement actions the Agency is authorized to implement. In addition, the Family Court may order the following to enforce a child support order:

(a) **Bonds and Other Guarantees.** The Family Court may require an obligor to provide a surety, bond or guarantee to secure the payment of arrears, if wage withholding is not applicable, practical or feasible to secure payment of arrears.

(b) **Claims Against Estates.**

(1) The Family Court may approve a claim for past and future support against an obligor's estate.

(2) The Family Court may issue a restraining order against an estate from which an obligor will inherit.

(c) **Community Service.** The Family Court may order an obligor to perform community service. The number of hours of work required may not exceed what would be reasonable considering the amount of arrears the obligor owes. The obligor shall be provided a written statement of the terms of the community service order and that the community service order is monitored. The order shall specify:

(1) how many hours of community service the obligor is required to complete;

(2) the time frame in which the hours must be completed;

(3) how the obligor will report his or her hours; and

(4) any other information the Family Court determines is relevant.

(d) Contempt. An obligor who disobeys a lawful child support order shall be subject to punishment for contempt of court. An obligor found in contempt of court may be fined in an amount not to exceed one thousand dollars (\$1,000.00) per act of contempt and may not exceed five thousand dollars (\$5,000.00) in total. In instances of continuing contempt, each day shall constitute a separate act of contempt.

(e) Incarceration. The Family Court may order an obligor be incarcerated, contingent on the agreements necessary to enable the Tribe to incarcerate individuals. Before a jail sentence is imposed, the Family Court may provide other conditions that require a certain amount of money be paid or action be taken for an obligor to avoid incarceration.

2.8-3. *Criminal Non-Support.* A criminal non-support action may be initiated, in the appropriate county, against an obligor who has the ability to pay child support and willfully or intentionally failed to pay and the obligor knew or reasonably should have known he or she was legally obligated to provide.

2.9. Alternative Payment Plans

2.9-1. *Applicability of Alternative Payment Plans.* When an obligor is subject to administrative enforcement action, he or she may negotiate an alternative payment plan with the Agency.

2.9-2. *Negotiation of an Alternative Payment Plan After Receiving Notice of an Enforcement Action.*

(a) In order to negotiate an alternative payment plan, an obligor shall submit a written request to the Agency. A written request to negotiate an alternative payment plan received by the Agency within ten (10) business days after the date of notice shall stay any administrative enforcement action. If a written request to negotiate an alternative payment plan is received by the Agency more than ten (10) business days after the date of notice, administrative enforcement action may be taken, as long as the requirements of 2.9-3 and 2.9-4 are met.

(b) An obligor may negotiate a plan with the Agency to have a license issued or renewed after it has been restricted, limited, suspended or refused.

(c) The obligor may submit a written request for a hearing on the reasonableness of the plan within ten (10) business days after the terms of the plan are agreed upon.

(d) If the Agency and the obligor are unable to reach agreement on the terms of a plan, a hearing may be conducted. The Family Court may order a plan by setting payments in the amounts and at the times it considers reasonable.

2.9-3. *Staying Administrative Enforcement Actions.* Administrative enforcement actions shall be stayed by the Agency while the obligor and the Agency are negotiating a plan, or, if a hearing is requested, until the Family Court determination has been made. To stay an administrative enforcement action means the following:

(a) The obligor shall not be certified for denial, nonrenewal, restriction, or suspension of professional, occupational, fishing, recreational, motor vehicle and/or Oneida-issued licenses.

(b) Any frozen financial accounts shall remain frozen and shall not be seized.

(c) Personal property that has been seized shall not be sold.

2.9-4. *Suspension of Administrative Enforcement Actions.*

(a) When a plan has been negotiated between the obligor and the Agency, or the Family Court has determined that a plan is reasonable or has ordered a plan, the Agency shall suspend administrative enforcement actions as long as the obligor complies with the plan.

(b) If an obligor makes a full arrears payment, the administrative enforcement action shall be suspended.

2.9-5. *Proceeding with Administrative Enforcement Actions.* The Agency may continue with the administrative enforcement action if:

- (a) the obligor and the Agency are unable to negotiate a plan.
- (b) the Family Court determines that the plan is not reasonable.
- (c) the Family Court does not order a plan.

2.9-6. *Disclosure of Income and Assets.* The request to negotiate a plan shall include an agreement by the obligor to provide the Agency with a full disclosure of income and assets available. The obligor shall provide complete income and assets information to the Agency within five (5) business days of the request to negotiate a payment plan.

2.9-7. *Terms of an Alternative Payment Plan.*

(a) An alternative payment plan may include a lump-sum payment, or periodic payments on the arrears, or both, subject to the following standards:

- (1) The sum of any periodic payment established under the plan and any other payment of support ordered by the Family Court, when subtracted from the obligor's gross income, may not leave the obligor below 100% of the poverty line established under 42 USC 9902 (2) unless the obligor agrees otherwise.
- (2) When establishing an alternative payment plan, the Agency shall consider the factors used by the Family Court in determining whether the use of the percentage standard is unfair to the child or any of the parties.

(b) Periodic payments under the plan may be made through wage withholding in amounts in addition to the amount ordered in the child support order that is in effect.

2.9-8. *Default on an Alternative Payment Plan.* In the event that the obligor defaults on the plan, the Agency shall notify the obligor in writing that an administrative enforcement action shall be implemented unless the lien is paid in full.

2.9-9. *Renegotiation of an Alternative Payment Plan.* After the entry of an alternative payment plan, the plan may be renegotiated upon the written request of the obligor or Agency if the requesting party can show a substantial change in circumstances. A substantial change in circumstances includes any of the following:

- (a) A change in the obligor's income or assets, including the sale or purchase of real or personal property.
- (b) A change in the obligor's earning capacity.
- (c) Any other factor that the Agency determines is relevant.

2.9-10. *Obligors with Cases in Multiple Jurisdictions.*

(a) When multiple child support agencies initiate administrative enforcement actions against the same obligor, and the obligor negotiates an alternative payment plan with one of the agencies, the plan does not preclude any other child support agency from proceeding with its administrative enforcement action.

(b) If a child support agency which has a lien against property of an obligor negotiates an alternative payment plan with the obligor, the agency may receive proceeds from the sale of the obligor's personal property under the lien including, but not limited to, proceeds from administrative enforcement actions taken by other child support agencies.

End.

Emergency Adopted- BC-06-30-08-C (Expired)
 Emergency Extended- BC-12-10-08-H (Expired)
 Permanently Adopted - BC-06-24-09-B
 Emergency Amended- BC-10-28-09-E
 Amended- BC-02-24-10-G
 Amended - BC-02-23-11-E

Amended- BC-06-22-11-K
 Amended - BC-10-10-12-C
 Amended - BC-08-13-14-E

ONEIDA TRIBAL JUDICIAL SYSTEM
TRIAL COURT

In re the Support of: DAKOTAH R. MONTEZ, 11/12/2006

Oneida Child Support Enforcement Agency
P.O. Box 365
Oneida, WI 54155

and

AMANDA J GERONDALE
Petitioners

Case No. 10CS279

vs

MATTHEW G MONTEZ
Respondent

RECEIVED
NOV 14 2014
CLERK OF COURT OF APPEALS
OF WISCONSIN

FINDINGS OF FACT AND ORDER TO ACCEPT JURISDICTION

FINDINGS OF FACT

The Oneida Tribal Judicial System finds the following:

1. The Brown County Circuit Court formerly had jurisdiction of this matter.
2. On 05/18/2010, Honorable Michael G. Grzeca signed an Order transferring jurisdiction from Brown County Circuit Court to the Oneida Tribal Judicial System. A true and correct copy of said Order is attached hereto as Exhibit "A."
3. The Oneida Tribal Judicial System has jurisdiction of this matter pursuant to the Oneida Child Support Ordinance.

ORDER

Now therefore it is hereby ordered that the Oneida Tribal Judicial System has jurisdiction of this matter. It is further ordered that The Oneida Tribal Judicial System hereby adopts and incorporates into the record in this case the most recent order for support issued by the Brown County Circuit Court in Brown County Case Number 0507PA000124 and is attached hereto as Exhibit "B". Said order shall be the order of the Oneida Tribal Judicial System in this case.

Dated this 16 day of June, 2010.

ONEIDA TRIBAL JUDICIAL SYSTEM

By: Mary Adams
Hon. Mary Adams, Hearing Officer

33 pgs.

STATE OF WISCONSIN

CIRCUIT COURT, BRANCH 5

BROWN COUNTY

IN RE THE PATERNITY OF:
DAKOTA ROBERT MONTEZ

ORDER FOR TRANSFER
OF CASE TO TRIBAL
COURT WITH NO
OBJECTION

STATE OF WISCONSIN AND
AMANDA JEAN GERONDALE
CO-PETITIONERS

FILED
MAY 19 2010

CASE NO. 07PA124

VS

IVD CASE: 4552409

MATTHEW GONZALES MONTEZ
RESPONDENT

CLERK OF COURTS
BROWN COUNTY, WI

FINDINGS OF FACT:

279

The Oneida Tribe of Indians of Wisconsin (The Tribe) is receiving funding from the federal government to operate a child support program under Title IV-D of the federal Social Security Act (42 USC 654 et al.) The State is a real party in interest to this action pursuant to s. 787.205(2) Wis. Stats. The court recognizes the Tribe's inherent power to regulate domestic relations among its members. The Tribe has enacted tribal ordinances governing the establishment of paternity, and the establishment and enforcement of child support, medical support, custody and placement orders.

Amanda J. Gerondale is an enrolled member of the Tribe. Pursuant to the standards in P.L. 83-280 and after consideration of the factors in *Montana v. United States*, 450 U.S. 544 (1981), the court finds that the circuit court and the Oneida tribal court have concurrent jurisdiction over this matter.

Notice of intent to transfer this case was provided to the parties by regular mail dated April 19, 2010.

Ten (10) business days having elapsed since the date of notice and no objection having been raised, the court finds that transfer of the post-judgment child support, medical support, custody and placement provisions of this action to The Tribe is warranted.

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CLERK OF COURT OF APPEALS
OF WISCONSIN

IT IS HEREBY ORDERED:

The child support, medical support, custody and placement provisions of this action are transferred to The Tribe, and the Brown County Clerk of Circuit Court is ordered to send a copy of the entire court file in this action to The Tribe.

All proceedings filed after the date of this order related to child support, medical support, custody or placement shall be filed and heard in the tribal court for The Tribe.

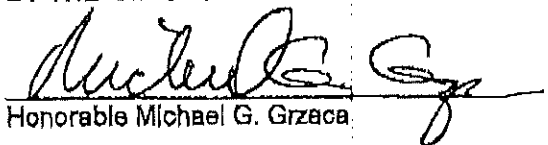
IT IS FURTHER ORDERED:

Any further proceedings in Brown County Circuit Court regarding the issues of child support, medical support, custody and placement in this action are hereby stayed.

Upon the lapse of five (5) years following the last court order entered in Brown County Circuit Court in this action, and there being no further proceedings or motions in said court during said time regarding the issues of child support, medical support, custody and placement, then any further proceedings regarding these issues shall be dismissed.

Dated this 18 day of May, 2010.

BY THE COURT:


Honorable Michael G. Grzaca

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 5

BROWN COUNTY

IN RE THE PATERNITY OF
DAKOTAH ROBERT MONTEZ

STATE OF WISCONSIN AND
AMANDA JEAN GERONDALE
CO-PETITIONERS

VS

MATTHEW GONZALES MONTEZ
RESPONDENT

AFFIDAVIT OF MAILING

Case No. 0507PA000124

IVD CASE-NUMBER(S): 4552409

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CLERK OF COURT OF APPEALS
OF WISCONSIN

UNDER OATH I STATE:

I am an employee of the BROWN County Child Support Agency. On APRIL 19, 2010, I mailed a copy of the following documents, addressed to each of the following persons at the address indicated.

NOTICE OF TRANSFER
REQUEST FOR HEARING FORM
S.801.54 RELEVANT STATUTORY FACTORS

FILED
APR 20 2010
CLERK OF COURTS
BROWN COUNTY, WI

NAME

ADDRESS

AMANDA J GERONDALE

915 CATHERINE ST
GREEN BAY WI 54302

MATTHEW G MONTEZ

928 MAIN ST APT 1
RACINE WI 53403

Cheryl G.
CHERYL G.

Subscribed and sworn to before me on

4-19-10
Date

[Signature]
Notary Public, State of Wisconsin
My commission (is permanent) _____ (expires)

8-01-10

RC

BROWN COUNTY CHILD SUPPORT AGENCY

305 E. Walnut Street
4th Floor
Green Bay, WI

Mailing Address: P.O. Box 23600, Green Bay, WI 54305-3600
http://www.co.brown.wi.us/chlid_support/

TEL: (414) 815-2588
FAX: (920) 448-4101
TDD: (800) 947-3529

April 19, 2010

MATTHEW G MONTEZ
928 MAIN ST APT 1
RACINE, WI 53403

Brown Co Court Case: 0607PA000124
IVD Case: 4552409

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CLERK OF COURT OF APPEALS
OF WISCONSIN

The Oneida Nation recently received federal approval to operate a tribal child support agency. The Tribe has enacted laws authorizing the establishment and enforcement of paternity and child support.

You or the other parent in your case is a member of the Oneida Tribe. Therefore, your child support case may be transferred to the Oneida Nation Child Support Agency. If it is transferred, the issues of legal custody, physical placement and child support will be under the jurisdiction of the Oneida Tribe of Indians of Wisconsin.

This is your formal notice of Brown County's intent to transfer your case to the Oneida Nation Child Support Agency. You have a right to object to this transfer. Enclosed is a copy of statute outlining the factors the court will consider if you do object and request a hearing.

If you want to dispute this transfer, you *must* complete the enclosed *Request for Hearing*. Then, within ten (10) business days of the date of this letter, you *must* send the completed *Request for Hearing* to the Brown County Child Support Agency, P.O. Box 23600, Green Bay, WI 54305-3600. If you return the request within the appropriate time period, a hearing will be scheduled in Brown County Court, and all parties will be sent a notice of the hearing date, time and location.

If you do not complete and return the *Request for Hearing* form on a timely basis, we will ask Brown County Court to sign an order transferring your case to the Oneida Nation Child Support Agency.

This agency is an equal opportunity employer and service provider. If you have a disability and need information in an alternative format, or if you need it translated to another language, please contact us at the phone number or address listed at the top of this letter.

Sincerely,

Diane L. Matecha
Attorney, Brown County Child Support

Enclosures



BROWN COUNTY CHILD SUPPORT AGENCY

305 E. Walnut Street
4th Floor
Green Bay, WI

Mailing Address: P.O. Box 23600, Green Bay, WI 54305-3600
http://www.co.brown.wi.us/chld_support/

TEL: (414) 815-2588
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TDD: (800) 947-3529

April 19, 2010

AMANDA J GERONDALE
915 CATHERINE ST
GREEN BAY, WI 54302

Brown Co Court Case: 0507PA000124
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OF WISCONSIN

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Sincerely,


Diane L. Matache

Attorney, Brown County Child Support

Enclosures



PRINT in INK

STATE OF WISCONSIN, CIRCUIT COURT, BROWN COUNTY
CIRCUIT COURT BRANCH

For Official Use

In RE: _____
Petitioner: _____
-vs- _____
Respondent: _____

Amended

Request for Hearing on
Case Transfer to
The Oneida Tribe

Case No. 07FA124

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CLERK OF COURT OF APPEALS
OF WISCONSIN

TO THE CIRCUIT COURT JUDGE OF BROWN COUNTY:

I request a hearing to contest the transfer of my case regarding the issues of legal custody, physical placement and child support to the (Name of Tribe) ONEIDA Tribe of Indians.

Signature

Name Printed or Typed

Date

FOR AGENCY USE ONLY

The above requested hearing is scheduled for:

Date: _____

Time: _____

Room: 230

Presiding Official: HONORABLE MICHAEL G. GRZECA

Address: BROWN COUNTY COURTHOUSE
100 S. JEFFERSON STREET
GREEN BAY, WI 54301

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CLERK OF COURT OF APPEALS
OF WISCONSIN**§801.54 Discretionary transfer of civil actions to tribal court.**

(1) **SCOPE.** In a civil action where a circuit court and a court or judicial system of a federally recognized American Indian tribe or band in Wisconsin ("tribal court") have concurrent jurisdiction, this rule authorizes the circuit court, in its discretion, to transfer the action to the tribal court under sub. (2m) or when transfer is warranted under the factors set forth in sub. (2). This rule does not apply to any action in which controlling law grants exclusive jurisdiction to either the circuit court or the tribal court.

(2) **DISCRETIONARY TRANSFER.** When a civil action is brought in the circuit court of any county of this state, and when, under the laws of the United States, a tribal court has concurrent jurisdiction of the matter in controversy, the circuit court may, on its own motion or the motion of any party and after notice and hearing on the record on the issue of the transfer, cause such action to be transferred to the tribal court. The circuit court must first make a threshold determination that concurrent jurisdiction exists. If concurrent jurisdiction is found to exist, unless all parties stipulate to the transfer, in the exercise of its discretion the circuit court shall consider all relevant factors, including but not limited to:

(a) Whether issues in the action require interpretation of the tribe's laws, including the tribe's constitution, statutes, bylaws, ordinances, resolutions, or case law.

(b) Whether the action involves traditional or cultural matters of the tribe.

(c) Whether the action is one in which the tribe is a party, or whether tribal sovereignty, jurisdiction, or territory is an issue in the action.

(d) The tribal membership status of the parties.

(e) Where the claim arises.

(f) Whether the parties have by contract chosen a forum or the law to be applied in the event of a dispute.

(g) The timing of any motion to transfer, taking into account the parties' and court's expenditure of time and resources, and compliance with any applicable provisions of the circuit court's scheduling orders.

(h) The court in which the action can be decided most expeditiously.

(i) The institutional and administrative interests of each court.

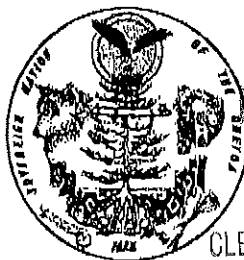
(j) The relative burdens on the parties, including cost, access to and admissibility of evidence, and matters of process, practice, and procedure, including where the action will be heard and decided most promptly.

(k) Any other factors having substantial bearing upon the selection of a convenient, reasonable and fair place of trial.

Oneida Tribe of Indians of Wisconsin



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



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CLERK OF COURT OF APPEALS
OF WISCONSIN



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

BC Resolution 08-08-13-A Adoption of the Family Court Law

- WHEREAS,** the Oneida Tribe of Indians of Wisconsin 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 Tribe of Indians of Wisconsin, 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,** Oneida Business Committee Resolution 5-02-90 established the Administrative Procedures Act, Oneida Tribal Judicial System and the authority to establish regulations to enhance the Oneida judicial decision making process, and
- WHEREAS,** on August 19, 1991, the Oneida General Tribal Council adopted Resolution 8-19-91-A and an addendum to the Resolution, which reauthorized the adoption of the Administrative Procedures Act and the creation of the Oneida Appeals Commission, also known as the Oneida Tribal Judicial System, and
- WHEREAS,** the Oneida Tribal Judicial System has, through Tribal law, been given additional authority to hear and adjudicate additional civil and regulatory matters, and
- WHEREAS,** the General Tribal Council adopted the Legislative Procedures Act, repealing those related portions of the Administrative Procedures Act, on January 7, 2013 for implementation on March 7, 2013, and
- WHEREAS,** the General Tribal Council adopted the Judiciary, repealing those related portions of the Administrative Procedures Act and the Addendum to GTC-8-19-91-A creating the Oneida Tribal Judicial System on January 7, 2013 for implementation on November 1, 2014, and
- WHEREAS,** on January 7, 2013, the Oneida General Tribal Council accepted the Oneida Business Committee motion to direct the Legislative Operating Committee to create a Family Commission wherein the Judicial Officer shall have a Juris doctor degree from an accredited law school and a minimum of five (5) years of experience in family law to assume jurisdiction of all Family Law matters, and
- WHEREAS,** the Family Court shall be a branch of the Judiciary when the Judiciary goes into effect on November 1, 2014, and
- WHEREAS,** a public meeting was held for the proposed Family Court on April 4, 2013 in accordance with the Legislative Procedures Act, and

NOW THEREFORE BE IT RESOLVED, that the attached Family Court law is hereby adopted and shall be effective September 1, 2013.

BE IT FURTHER RESOLVED, that the Oneida Business Committee hereby implements the following Transition Plan:

- (1) *Appointment.* The appointment of the Judge shall take place as is reasonably possible. The appointment of the Judge shall fall under the appointment process, but said Judge shall be bound by an employment contract that shall abide by the Attorney Contract policy.
- (2) *Swearing In.* The Judge shall be sworn into office at the first Oneida Business Committee meeting after the appointment is made and the contract is executed by all required parties.
- (3) *Court Opening.* The Family Court shall accept cases that are filed with the Oneida Tribal Judicial System beginning on September 1, 2013.
 - (a) Beginning September 1, 2013, the Oneida Tribal Judicial System shall no longer accept new filings on any matters under Chapters 72, 77, 78.

(b) The Oneida Tribal Judicial System shall, no later than July 1, 2013, notify all parties to any case on its docket that the Oneida Tribal Judicial System will no longer be handling their case as of September 1, 2013, and that all cases shall be transferred to the new Family Court effective that day. This shall also include notice that any party may request a De Novo review of their last order in accordance with 151.8-6.

(c) The Judge shall begin hearing cases no later than October 1, 2013.

(4) *Location.* The Family Court shall utilize and share the current space of the Oneida Tribal Judicial System. The two judicial bodies shall coordinate a court calendar.

(5) *Reprimand, Suspension or Removal.* Until the Family Court becomes a branch of the Judiciary on November 1, 2014, the Family Court shall adopt section 150.12 of the Judiciary Law and follow its requirements for Reprimand, Suspension or Removal in the event a complaint of an ethical violation is filed prior to November 1, 2014.

(6) *Oneida Tribal Judicial System Personnel.* In compliance with Oneida General Tribal Council Resolution 01-07-13-B, the Oneida Tribal Judicial System personnel who handle the aforementioned family law matters, that are not Judicial Officers, shall carry over into the Family Court and shall simultaneously work for both entities during the Transition Period and then for the Family Court after the Transition Period has concluded.

(7) *Appointment of Peacemaker.* The appointment of a Peacemaker in family court matters shall be appointed pursuant to the current process of the Oneida Appeals Commission utilizing a peacemaker appointed from another tribe, or the new Judge shall create temporary rules for the appointment of a peacemaker until the Family Court becomes a branch of the Judiciary on November 1, 2014.

(8) *Appeals.* Until the Family Court becomes a branch of the Judiciary on November 1, 2014, appeals of a Family Court decision shall follow the current process for appeals but shall be heard by pro tem judges.

BE IT FURTHER RESOLVED, that Resolution #GTC-01-07-13-B set forth timeliness for the adoption of the following rules which are being adjusted to earlier deadlines as set out below:

(1) By July 1, 2013, adoption of Judicial Canons of Ethics by the Oneida Business Committee.
 (2) By September 1, 2013, adoption by the Oneida Business Committee or the General Tribal Council of the following:

(a) Rules of Civil Procedure;

(b) Evidence Code; and

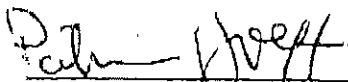
(c) Administrative procedures for the Family Court. After the initial adoption of these administrative procedures, the Judiciary shall be responsible for maintaining and amending them.

BE IT FURTHER RESOLVED, that beginning with the Fiscal Year 2014 budget, the expenses associated with the implementation and maintenance of the Family Court shall be included in the Judiciary's annual budget.

BE IT FINALLY RESOLVED, that the Oneida Business Committee is authorized to make such modifications and additions to the above Transition Plan as it deems necessary to implement the Family Court in accordance with the proposed timeline.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 8 members of whom 5 members constitute a quorum; 8 members were present at a meeting duly called, noticed and held on the 8th day of May, 2013; that the foregoing resolution was duly adopted at such meeting by a vote of 8 members for; 0 members against; and 0 members not voting; and that said resolution has not been rescinded or amended in any way.



Patricia Hoft, Tribal Secretary
 Oneida Business Committee

*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."

**Chapter 151
FAMILY COURT**

- 151.1. Purpose and Policy
- 151.2. Adoption, Amendment, Repeal
- 151.3. Definitions
- 151.4. General Provisions
- 151.5. Jurisdiction

- 151.6. Appeal of a Family Court Decision
- 151.7. Judge
- 151.8. Powers of the Court and Duties of the Judge and Procedure
- 151.9. Rules of Pleading, Practice and Procedure
- 151.10. Reprimand, Suspension, and Termination of Judge
- 151.11. Retirement

151.1. Purpose and Policy

151.1-1. The purpose of this law is to establish a Family Court, and to provide for the administration of law, justice, judicial procedures and practices by the Oneida Tribe as a sovereign nation by exercising the inherent power to make, execute, apply and enforce its own law, and to apply its own customs and traditions in matters affecting the Oneida people as it pertains to the family and/or to our children.

150.1-2. It is the policy of the Tribe to provide a knowledgeable, fair, and impartial forum for the resolution of all family law matters that come before it pursuant to a grant of authorization by law.

151.2. Adoption, Amendment, Repeal

151.2-1. This law is adopted by BC resolution BC-05-08-13-A as directed by the Oneida General Tribal Council at its annual meeting on January 7, 2013.

151.2-2. This law may be amended by the Oneida Business Committee or the Oneida General Tribal Council in accordance with Tribal law.

151.2-3. 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.

151.2-4. 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 as provided in 151.4-4(c).

151.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

151.3 Definitions

151.3-1. 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) "Background investigation" shall mean the process utilized by the Tribe's Background Investigations Department.
- (b) "Constitution" shall mean the Constitution and By-laws of the Oneida Tribe of Indians of Wisconsin as amended.
- (c) "Court" shall mean the Family Court.
- (d) "Indian" shall mean any person who is an enrolled member of any federally recognized Indian Tribe.
- (e) "Judge" shall mean the person(s) appointed by the Oneida Business Committee to hear and decide legal matters in the Family Court.
- (f) "Judiciary" shall mean the judicial system that was established by the Oneida General Tribal Council resolution GTC #1-07-13-B to administer the judicial authorities and responsibilities of the Tribe.
- (g) "Peacemaker" shall mean an individual appointed by a Family Court Judge 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.

(h) "Pro Tem Judge" shall mean a decision maker that is not currently a Family Court Judge that is appointed on a temporary (*pro tempore*) case-by-case basis to hear and decide matters in the Family Court, and meet the minimum education and experience requirements in section 151.7-1.

(i) "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.

(j) "Tribe" shall mean the Oneida Tribe of Indians of Wisconsin.

(k) "Tribal law" shall mean a code, act, statute, rule, regulation, policy or ordinance enacted by the Oneida General Tribal Council or the Oneida Business Committee.

151.4. General Provisions

151.4-1. *Establishment.* There is hereby established a Family Court, which shall administer the judicial authorities and responsibilities of the Tribe over all matters pertaining to the family, children and elders, except for probate matters. The Family Court shall support a separation of Tribal governmental powers.

151.4-2. *Seal of the Court.* The Court shall adopt a seal to be used to authenticate its respective judgments and other documents.

151.4-3. *Court Generally Closed to the Public.* The proceedings of the Court shall be closed to the public, except that divorce, child support and post-divorce matters may be attended by members of the general public. However, in any case where the presiding Judge determines that there are safety or confidentiality concerns, the Judge may exclude from the proceedings all individuals not necessarily present as parties or witnesses.

151.4-4. Civil Contempt.

(a) Any person who willfully disrupts, obstructs, or otherwise interferes with the conduct of any proceeding by the Court, or who obstructs or interferes with the administration of justice by the Court, or who disobeys or resists or interferes with any lawful summons, subpoena, process, order, rule, decree or command of the Court shall be subject to punishment for contempt of court.

(b) Any person found in contempt of court may be fined 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. In instances of continuing contempt, each day shall constitute a separate act of contempt.

(c) Where the specific laws that fall under this Court's jurisdiction provide for more specific contempt remedies, those laws shall supersede this section.

151.4-5. *Court Personnel.* Court personnel shall serve and shall be governed in accordance with the Tribe's employment laws; this includes, but is not limited to, the Clerk of the Court.

151.5. Jurisdiction

151.5-1. *General.* This section generally outlines the jurisdiction of the Family Court. To the extent that another more specific provision of law is provided for in any Oneida law that applies to family matters, the more specific provision shall govern with respect