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## Chapter 78 Child Support

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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 Commission or the Oneida Child Support Enforcement 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 resolution BC-02-24-10-G and BC-02-23-11-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 Child Support Enforcement Agency established to administer and supervise the Tribe's child support enforcement program.

(b) "Child" shall mean 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.

(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 Commission 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, attorneys' fees and other relief.

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

(f) "Commission" shall mean the Oneida Tribal Judicial system, known as the Oneida Appeals Commission, which is the judicial arm of the Tribe.

(g) "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.

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

(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.

(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) “Nonlegally 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. “Nonlegally responsible relative does not include a relative who has physical custody of a child during a court-order 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 Oneida Indian Reservation as established by the Treaty with the Oneida, 1838.
- (t) “Tribe” or “Tribal” shall mean the Oneida Tribe of Indians of Wisconsin.
- (u) “Wage Withholding” shall mean the process whereby a court order, Commission 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 Commission 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) an individual who consents to the jurisdiction of the Commission by one (1) of the following:
  - (1) Filing an action with the Commission.
  - (2) Knowingly and voluntarily giving written consent to the jurisdiction of the Commission.
  - (3) Entering a notice of appearance before the Commission 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 Commission without asserting the defense of lack of personal jurisdiction.

78.4-2. *Transfer of Cases from Other Courts.* If personal jurisdiction over the parties has been established under 78.4-1, the Commission has jurisdiction over any action transferred to the Commission 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 Commission by either submitting a voluntary agreement to the Commission for approval or by filing a petition for child support with the Commission.

- (a) If a party to the action is a minor or is a legally incompetent adult, the Commission 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 Commission 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 Commission 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 Commission, it shall have the same force as an order issued by the Commission. 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 Commission.

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 Commission:

- (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 nonlegally 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 Commission, at the Commission's request, to provide the Commission with the respondent's address. Any such Commission 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 Commission to have access to the form.

78.5-6. *Hearing Date.* Upon receipt of a petition, the Commission shall schedule a hearing to determine child support to be held not more than seventy-five (75) calendar days, but no sooner than forty-five (45) calendar days, after the filing of the petition.

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 shall be served by certified mail (return receipt requested) or in person within fifteen (15) calendar days after the petition is filed with the Commission. All mailing of notice shall be done in envelopes upon which the clerk's return address appears, with a request to return to that address.

- (a) *Publication.* When the respondent cannot be found after diligent attempts and attempts to serve the respondent by certified mail have failed, the petitioner may ask the Commission to direct the Agency to provide service by publication. If the request is granted, the Agency

shall publish the petition for two (2) consecutive publications of the Kalihwisaks or publish for four (4) consecutive weeks in 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, the Commission shall re-schedule the hearing for not more than sixty (60) calendar days, but not sooner than thirty (30) calendar days after service by publication is complete and may permit extended time deadlines for default orders and for hearings in order to provide for fair notice and opportunity for the respondent 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 Commission 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 Commission 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 Commission makes written findings ordering otherwise;

(f) That any answer to the petition must be filed with the Commission 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 Commission 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 Commission shall issue subpoenas to any person in possession of relevant information to appear or produce documents to the Commission. 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 Commission may make a temporary order for the payment of child support and the child's health care expenses. Before making a temporary order, the Commission shall consider those factors that the Commission is required to consider when granting a final child support order. If the Commission 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 Commission 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 Commission.

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 Commission 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 Commission may modify the amount of child support payments determined by the percentage standards if, after considering the following factors, the Commission 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 Commission 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 Commission 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. *Arrears*. A party may request payment of arrears back to the date his or her child support order was entered. Arrears shall be granted based on the amount due and the income available to pay current support. When arrears are owed and an obligor makes a child support payment, the payment shall first go towards paying the current amount due. After the current amount due is paid in full, any leftover amount shall be applied to arrears.

### **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 Commission 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 Commission.

78.8-2. The Commission 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 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 Commission’s wage withholding order shall be served by the Agency on a payor within three (3) business days of the entry of the order by the Commission.
- (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 Commission 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 Commission order to revoke or suspend a vendor license.

(f) If wage withholding is inapplicable, ineffective or insufficient to ensure payment of child support, the Commission 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 of their right to ask for a review of their child support order. The review is done by the Commission upon the request of the non-custodial parent, custodial parent or any other interested party, if there is a substantial change in circumstance. A substantial change in circumstance 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 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 require the moving party to appear and show cause why the previous decision should be prospectively modified. The order to appear and show cause, together with a copy of the affidavit upon which the order is based shall be served by the moving party on the responding party by prepaid certified mail addressed to the responding party his or her last known address, or by any method provided by law. A hearing date shall be scheduled for not more than thirty-five (35) calendar days but no sooner than twenty (20) 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 Commission 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 Commission 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 Commission shall enforce it as a Commission order.

78.11-4. If a foreign order is brought before the Commission solely for an interpretation of the terms

of the order, and the order has been recognized and given full faith and credit by the Commission, the Commission 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 Commission. The decision of the Commission shall be final.

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

*End.*

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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

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## 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

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#### 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 Child Support Enforcement 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 Commission 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) “Commission” means the Oneida Tribal Judicial system, known as the Oneida Appeals Commission, which is the judicial arm of the Tribe.

(h) “Current 6 month treasury bill rate” means the yield of a U.S. government security with a term of 6 months.

(i) “Dependent household member” means a person for whom a taxpayer is entitled to an exemption for the taxable year under 26 USC 151.

(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.
- (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 Commission determines is not reasonably necessary for the growth of the business, and subtracting business expenses that the Commission 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 Commission uses the monthly support amount provided in the schedule in Appendix A based on the Commission’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 Commission 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 a 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 Commission may adjust a parent’s gross income as follows:

(a) Adding wages paid to dependent household members.

(b) Adding undistributed income that the Commission 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 Commission 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 Commission 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 Commission 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 Commission may impute a reasonable earning potential to a parent's assets if the Commission 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 Commission 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 Commission 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 Commission 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 Commission 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 Commission 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 Commission 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 Commission 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 Commission 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 Commission 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 Commission 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%

	<b>Parent A</b>	<b>Parent B</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. Commission 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  $750 - 255 = \$495$

1.4-4. *Determining the Child Support Obligation of a Low-Income Obligor.*

(a) The Commission 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 Commission 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 Commission 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.*

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## Rule CS 2

### ENFORCEMENT TOOLS

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|------------------------------------|------------------------------------|
| 2.1. Purpose and Effective Date    | 2.6. Seizure of Property           |
| 2.2. Definitions                   | 2.7. Other Enforcement Tools       |
| 2.3. Compliance Plan               | 2.8. Commission Enforcement Action |
| 2.4. Notice of Enforcement Actions | 2.9. Alternative Payment Plans     |
| 2.5. Liens                         |                                    |
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#### **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 Commission.
- (b) “Agency” means the Oneida Child Support Enforcement Agency.
- (c) “Alternative payment plan” or “plan” means a negotiated agreement between the Agency and an obligor, or an order set by the Commission, 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 Commission. 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. Commission 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 Commission for enforcement.

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

(a) Bonds and Other Guarantees. The Commission 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 Commission may approve a claim for past and future support against an obligor's estate.

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

(c) Community Service. The Commission 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 Commission 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 Commission 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 Commission 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 Commission 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 Commission 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 Commission 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 Commission determines that the plan is not reasonable.
- (c) the Commission 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 Commission, 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 Commission 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.*

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Emergency Adopted - BC-06-30-08-C (Expired)

Emergency Extended - BC-12-10-08-H (Expired)

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