



#### SUMMARY

About 400 of the 574 federally recognized Native American tribes administer and operate tribal courts that are empowered to apply and interpret laws, resolve conflict, and help administer justice. Wisconsin's 11 tribal courts play a crucial role in providing access to justice for thousands of state residents, both Indians and non-Indians.

This article focuses on the Oneida Judiciary, the tribal court for the Oneida Nation. The court's characteristics include a code of laws separate from the Wisconsin Statutes, the use of jurisdictional allocation conferences when state court and tribal court jurisdiction overlap, reliance on the peacemaking process for willing parties, and admission-to-practice requirements for attorneys already admitted in Wisconsin or another state.

BY HON. ROBERT J. COLLINS II

# Tsi?latiliwahslu•nihe kayanlahsla?

(Of the place they make matters or  
issues right)

## Knowing more about tribal courts is useful for all Wisconsin attorneys concerned about access to justice, conflict resolution, and jurisdictional allocation issues.

**O**f the 574 federally recognized Native American tribes, approximately 400 administer and operate a tribal court that is empowered to apply and interpret laws, resolve conflict, and help administer justice.<sup>1</sup> Within Wisconsin, there are 11 tribal courts created by tribal ordinance or by virtue of the tribe's constitution. One of those tribal courts is the Oneida Judiciary.

### History of the Oneida Judiciary

On Aug. 19, 1991, the Oneida General Tribal Council, which is the governing body of the Oneida Nation and is made up of enrolled voting age members, adopted a resolution creating a judicial system known as the Oneida Appeals Commission.<sup>2</sup> The judicial system was created to enhance and protect the self-government and sovereignty of the Oneida Nation while also providing for a governmental separation of powers.

On Jan. 7, 2013, the Oneida General Tribal Council reaffirmed and strengthened the Oneida Nation's judicial authority by establishing the Oneida Judiciary, designed to better serve the needs of the Oneida community by expanding the exercise of the Oneida Nation's authority.<sup>3</sup> The creation of the Oneida Judiciary was built on the foundation that was laid by the Oneida Appeals Commission by granting the Trial Court and Court of Appeals expanded subject matter jurisdiction while further developing a process for peacemaking, a traditional method of dispute resolution aimed at rebuilding relationships between people.

The Oneida General Tribal Council also established the Oneida Family Court, a branch of the Oneida Judiciary that addresses matters

affecting the Oneida people as it pertains to the family and children.<sup>4</sup>

In May 2015, the Oneida Nation amended its constitution. One of the amendments established the Oneida Judiciary as the judicial authority of the Oneida Nation. The Oneida Judiciary, which is now embedded in the Constitution and Bylaws of the Oneida Nation as a branch of government, is tasked with providing a fair, orderly, and neutral forum for the resolution of disputes. It is guided by the wisdom of the Oneida Nation's customs and traditions as well as the requirements of modern circumstances and law.

### The Oneida Family Court

The Oneida Family Court was assigned all the family law matters that were heard by the Oneida Appeals Commission and started hearing cases in October 2013. The Oneida Family Court, which conducts approximately 550 hearings per year, exercises subject matter jurisdiction over several issues including divorce, legal separation, paternity, child support, legal custody, physical placement, visitation, children in need of protection or services, minor guardianships, suspension or termination of parental rights, and adoption.

The Oneida Nation has exercised its inherent sovereign power by adopting a code of laws that allow the Oneida Family Court to exercise personal jurisdiction over all Indians and non-Indians in certain circumstances. The Oneida Code of Laws, available for review on the Oneida Nation's website,<sup>5</sup> differ from the Wisconsin Statutes. For example, when both parents agree, a non-cash payment such as clothing, venison, or wood may be used to satisfy a child support obligation;<sup>6</sup> interest is not charged on child support arrears;<sup>7</sup>

guardians ad litem are not required to be licensed attorneys;<sup>8</sup> and adoptions may be customary or closed.<sup>9</sup> Also, the Oneida Family Court currently exercises personal jurisdiction over only those child welfare legal matters where the child, who must be enrolled or eligible for enrollment with the Oneida Nation, is present or resides within the boundaries of Brown or Outagamie County.<sup>10</sup>

### Jurisdictional Allocation

For practitioners who do not routinely practice in tribal court, it is important to note that due to interactions between tribal members and non-members, disputes concerning overlapping state and

cooperation and respect for the proceedings of another system of government, is held by the state and tribal court judges to determine which court should proceed so the parties do not end up with competing orders. The two judges consider several factors, including where the action was first filed, the parties' and courts' expenditures of time and resources in each court, the tribal membership status of the parties, and the relative burdens on the parties. After the hearing, the two judges must decide which court should continue to exercise its jurisdiction.

For example, in a situation where one spouse files a petition for divorce

the Oneida Family Court stays the tribal court matter and contacts the state court judge and their judicial assistant to schedule a hearing.

### Admission to Practice

For practitioners interested in taking cases in tribal court, the process to be admitted to practice in the Oneida Judiciary is quite simple. An attorney must submit a written application, available on the Oneida Judiciary's website,<sup>12</sup> to the court administrator along with a certificate of good standing from the state in which the attorney is licensed to practice law. There is a one-time non-refundable application fee of \$100.

Once admitted, practitioners should recognize that the Oneida Nation has its own laws<sup>13</sup> and the Oneida Judiciary has developed its own court forms. The laws, court forms, and additional information related to the Oneida Family Court may be found on the Oneida Judiciary's website and any general questions should be directed to the Oneida Family Court clerks.

## When civil disputes arise concerning overlapping state and tribal court jurisdiction, the courts should convene a jurisdictional allocation conference.

tribal court jurisdiction sometimes need to be resolved by the courts. When civil disputes arise concerning overlapping state and tribal court jurisdiction, the courts should convene a jurisdictional allocation conference.<sup>11</sup>

The jurisdictional allocation conference, which reflects a spirit of

in state court and the other spouse files a similar petition in tribal court, the courts should schedule a hearing where both judges preside, allow the parties to present their arguments, and then deliberate and issue a decision. Generally, when an issue arises that requires a jurisdictional allocation conference,

### The Peacemaking Process

The peacemaking process, a free service offered by the court, is available to litigants in the Oneida Judiciary as an alternative form of resolving conflict. Living a more peaceful life is derived from teachings among the Oneida Nation, a member of the Haudenosaunee Confederacy, also known as the Iroquois Confederacy, meaning "people of the long house." The Haudenosaunee Confederacy was originally made up of five tribal nations: the Mohawk, Oneida,

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## Contact Information for Tribal Courts in Wisconsin

The Wisconsin Tribal Judges Association website contains up-to-date information on tribal court bar admission and subject-matter jurisdiction for each tribe in Wisconsin. Wisconsin Tribal Judges Association, <http://wtja.org>.

Listed below are the websites and additional contact information for each of Wisconsin's 11 tribal courts. The manner of gaining admission to each tribal court is also noted.

### **Bad River Band of Lake Superior Chippewa Indians**

<https://www.badriver-nsn.gov/>  
Bad River Tribal Court - Tribal bar exam.  
P.O. Box 39  
Odanah, WI 54861  
Phone: (715) 682-7107 (Ext. 1544)  
Fax: (715) 685-2600

### **Forest County Potawatomi**

<https://www.fcpotawatomi.com/>  
Forest County Potawatomi Tribal Court - Tribal bar exam.  
P.O. Box 340  
Crandon, WI 54520  
Phone: (715) 478-7255  
Fax: (715) 478-5805

### **Ho-Chunk Nation**

<https://ho-chunknation.com/>  
Ho-Chunk Nation Judiciary - Admission on motion with payment of fee.  
P.O. Box 70  
Black River Falls, WI 54615  
Phone: (715) 284-2722  
Toll Free: (800) 434-4070  
Fax: (715) 284-3136

### **Lac Courte Oreilles Band of Lake Superior Chippewa Indians**

<https://lco-nsn.gov/>  
Lac Courte Oreilles Tribal Court - Admission on motion with payment of fee.  
13394 W. Trepania Rd.  
Hayward, WI 54843  
Phone: (715) 558-7430 or (715) 634-8934  
Fax: (715) 634-0160

### **Lac du Flambeau Band of Lake Superior Chippewa Indians**

<https://www.ldftribe.com/>  
Lac du Flambeau Tribal Court - Admission on motion with payment of fee.  
P.O. Box 217  
Lac du Flambeau, WI 54538-0217  
Phone: (715) 588-4200 or (715) 528-4239  
Fax: (715) 588-9240

### **Menominee Indian Tribe of Wisconsin**

<https://www.menominee-nsn.gov/>  
Menominee Tribal Court - Admission on motion with payment of fee.  
P.O. Box 429  
Keshena, WI 54135  
Phone: (715) 799-3348  
Fax: (715) 799-4061

### **Oneida Nation**

<https://oneida-nsn.gov/>  
Oneida Judiciary - Admission on motion with payment of a fee.  
P.O. Box 19  
Oneida, WI 54155  
Phone: (920) 496-7200  
Fax: (920) 496-7229

### **Red Cliff Band of Lake Superior Chippewa Indians**

<https://www.redcliff-nsn.gov/>  
Red Cliff Band Tribal Court - Written and oral bar exam.  
88455 Pike Rd., Hwy 13  
Bayfield, WI 54814  
Phone: (715) 779-3725  
Fax: (715) 799-3724

### **St. Croix Chippewa Indians of Wisconsin**

<https://stcroixojibwe-nsn.gov/>  
St. Croix Tribal Court - Admission on motion with payment of a fee.  
24663 Angeline Ave.  
Webster, WI 54893  
Phone: (715) 349-2195  
Fax: (715) 349-5784

### **Sokaogon Chippewa Community**

<https://sokaogonchippewa.com/>  
Sokaogon Chippewa Tribal Court - Admission on motion with payment of fee.  
3051 Sand Lake Rd.  
Crandon, WI 54520  
Phone: (715) 478-7608  
Fax: (715) 478-7631

### **Stockbridge-Munsee Community Band of Mohican Indians**

<https://mohican.com/>  
Stockbridge-Munsee Tribal Court - Tribal bar exam.  
N8476 MohHeConNuck Rd.  
Bowler, WI 54416  
Phone: (715) 793-4397  
Fax: (715) 793-4880 **WL**

Onondaga, Cayuga, and Seneca. Later, in the 1700s, the Tuscarora joined.

In tribal history, it is said that the original five nations were warring, and that a young man known as the Peacemaker sought to restore peace, righteousness, and power to the warring nations with the help of a Mohawk Chief named Hiawatha.<sup>14</sup> It was from

this work that the Haudenosaunee Confederacy was born, which created a democracy and led to years of peace and cooperation between the tribal nations.

The Oneida Judiciary applies these principles today. If both parties agree to participate in the peacemaking process and there is no reason to believe that participation will cause undue hardship

or endanger the health or safety of a party, the court will refer the parties to a peacemaker. If an agreement is reached in peacemaking, a written copy is forwarded to the Oneida Family Court judge for review and approval. If an agreement is not reached, then the matter will go back to court for further proceedings.

Peacemaking is a tremendous opportunity for parties to discuss concerns and develop their own court order. The process is confidential; what occurs in peacemaking is not admissible in court.<sup>15</sup> Peacemaking, which shares similarities with state court mediation and incorporates cultural components, has been a success, as it allows for parties to share feelings that might not have been expressed before, allows for the improvement of communication skills and problem-solving, reduces contested issues, and allows the parties to begin repairing their relationship.

### Guardians ad Litem

When the Oneida Family Court has reason for special concern for the welfare of a child or in certain contested legal matters, the court must appoint a guardian ad litem (GAL) for the child. Many of the court's GALs are dedicated and trained community members, as the law permits both attorneys and trained advocates to serve in the role. Before being appointed as a GAL, the individual must establish an understanding of the role, which may be demonstrated by completing a three-day training provided by the Oneida Family Court, receiving training from another Indian tribe or state, or by being recognized as a certified GAL by another jurisdiction.

The Oneida Family Court has trained and utilized both tribal and non-tribal

GALs, including but not limited to attorneys, paralegals, tribal employees, and retired state court judges. The court's training program incorporates lecture, role playing, tests and quizzes, videos, and case studies. Using a mock case scenario, the training addresses the role of the GAL, due process, the Oneida Code of Laws, domestic abuse, investigation and interviewing, writing a court report, and presenting the report in court. Once training has been completed, an interested candidate must apply and consent to a background check to ensure that the individual minimum standards of character and suitability as established by the court based on the Indian Child Protection and Family Violence Prevention Act have been met. The court then conducts an interview with qualifying applicants.

Once appointed, a GAL becomes an officer of the court and is required to maintain independence, objectivity, and the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom. The GAL is required to make reasonable efforts to become informed about the facts of the case and to interview all parties, including the child.

Unless otherwise approved by the court, the law requires the GAL to file a written report with the court summarizing their findings and recommendations prior to the contested hearing on

the matter. The GAL, who may not be called as a witness, may file motions, respond to motions, and call witnesses at the contested hearing. Upon completion of the case, the GAL submits an invoice to the court and that invoice is processed by the Oneida Nation for payment. The court may then provide a performance evaluation to the GAL and respond to any questions or concerns.<sup>16</sup>

### Closing Thoughts

The Oneida Family Court offers an invitation for practitioners who are looking to expand their practice and who have a desire to counsel members of the tribal community to apply for admission to practice. Like any other court, the tribal court is going to allow parties to present their cases. If parties would like to explore a harmonious resolution of the case, they may request a stay to participate in the peacemaking process.

The Oneida Family Court also extends an invitation to anyone who meets the qualifications to serve as a GAL and is interested in advocating for the best interest of Indian children to reach out to their local tribal court.<sup>17</sup> The Oneida Family Court and the members of the Wisconsin Tribal Judges Association thank you in advance for referring possible GAL candidates. **WL**

### ENDNOTES

<sup>1</sup>Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 87 Fed. Reg. 4,636 (Jan. 28, 2022).

<sup>2</sup>GTC Resolution 8-19-91-A.

<sup>3</sup>GTC Resolution 1-07-13-B.

<sup>4</sup>BC Resolution 5-08-13-A.

<sup>5</sup><https://oneida-nsn.gov/government/register/laws/>.

<sup>6</sup>7 O.C. 704.9-9(b)(1)-(8).

<sup>7</sup>7 O.C. 704.9-2.

<sup>8</sup>8 O.C. 803.37-1(a).

<sup>9</sup>7 O.C. 708.41-2 and 708.41-3. The purpose of customary adoption is not to permanently deprive the adopted child of connections to, or knowledge of, the adopted child's biological family, but to provide the adopted child a permanent home.

<sup>10</sup>7 O.C. 708.5-1(a). There is an exception that allows the court to exercise jurisdiction over a child who is not enrolled or eligible for enrollment in the Oneida Nation if that child is present or resides within the boundaries of the Oneida Reservation; is a sibling of a child that is enrolled or eligible for enrollment in the Oneida Nation;

and the child's parents, guardian, or legal custodian consents to the jurisdiction of the Oneida Judiciary.

<sup>11</sup>*Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians*, 2003 WI 118, 265 Wis. 2d 64, 655 N.W.2d 899.

<sup>12</sup><https://oneida-nsn.gov/government/judiciary/>.

<sup>13</sup>In accordance with 8 O.C. 801.2-6, where precedent for a matter has not been established by the Oneida Judiciary, the court may refer to established Wisconsin or federal case law precedent or laws for guidance.

<sup>14</sup>Powless III, J. (2022), *Peacemaking in the Oneida Judiciary* [PowerPoint slides], National American Indian Court Judges Association Conference.

<sup>15</sup>8 O.C. 804.7-8(a)(1)-(2).

<sup>16</sup>Section 1.20-13(a) of the Family Court Rules.

<sup>17</sup>Each individual tribal court has its own requirements for guardian ad litem certification, so interested individuals should contact their local tribal court to determine what the requirements are for training, education, and cultural competency. For more information, please see [www.wtja.org](http://www.wtja.org). **WL**