

Title 1. Government and Finances - Chapter 101
ADMINISTRATIVE PROCEDURES ACT

101.1. Purpose and Policy

101.2. Adoption, Amendment, Repeal

101.3. Definitions

101.4. Complaints and Notice

101.5. Procedures

101.6. Judgments and Appeals

101.1. Purpose and Policy

101.1-1. *Purpose.* The purpose of this Law is to provide procedures for boards, committees and commissions that conduct hearings for disputes arising under Tribal law and have no procedures in place under other Tribal law. This Law shall not apply to hearings held before the Family Court or any court of the Tribe's Judiciary. This Law shall not be construed to create hearing rights where no hearing rights exist under Tribal law

101.1-2. *Policy.* It is the policy of the Tribe that the hearing procedures of boards, committees and commissions shall be noticed to ensure all individuals are presented with a fair opportunity to file any claim that may arise under Tribal law.

101.2. Adoption, Amendment, Repeal

101.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-02-24-16-B.

101.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

101.2-3. 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.

101.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control.

101.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

101.3. Definitions

101.3-1. 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) "Decision" shall mean the written conclusion of the hearing body concerning the facts, alleged violations of Tribal law and penalties.

(b) "Deliberations" shall mean the confidential process during which the hearing officers discuss the issues presented before the hearing body.

(c) "Dispositive motion" shall mean a request to the hearing body to entirely dispose of one (1) or more claims in favor of the party making the request without need for a further hearing.

(d) "Evidence" shall mean documentation or testimony presented to the hearing body which supports a party's claim.

(e) "Ex parte communication" shall mean oral or written, off-the-record communication made to or by the hearing officers without notice to the parties that is directed to the merits or outcome of the hearing.

(f) "Hearing body" shall mean the member or members of a board, committee or commission that hear and decide the case or motions presented as part of a case. "Hearing body" shall not include the Family Court or any court of the Tribe's Judiciary.

(g) “Scheduling order” shall mean the hearing body’s order establishing the dates of the hearing and the deadlines for discovery and submitting witness lists.

(h) “Summons” shall mean an order to appear before a hearing body because a petitioner has filed a complaint.

101.4. Complaints and Notice

101.4-1. Whenever a claim arises under Tribal law, a hearing body shall hear the complaint in accordance with the procedures established under this Law, unless another Tribal law has established hearing procedures for that specific hearing body. Nothing in this Law shall be construed to prevent a hearing body from establishing additional hearing body procedures, as long as those procedures do not conflict with this Law and are noticed to the public by the hearing body.

101.4-2. A petitioner(s) may file a complaint with the hearing body, the complaint shall include:

- (a) The name and contact information of each petitioner;
- (b) The name and contact information, if known, of the respondent(s)
- (c) The alleged violation that resulted in the complaint and the Tribal law that has been violated;
- (d) The date, time, place and description of the alleged violation;
- (e) The nature of the relief requested.

101.4-3. *Notice.* The complaint, along with a summons, shall be served upon the respondent(s) within thirty (30) days after the complaint is filed with the hearing body.

(a) The summons shall contain the date, time and place the respondent(s) is required to appear, along with a notice that failure to appear may result in a default judgment against him or her.

(b) Anyone who is not a party to the action and is at least eighteen (18) years of age may serve the notice. Notice shall be served in the following order of progression, unless personal service is more practical than by mail:

- (1) Mail with delivery confirmation, using U.S. mail or a private carrier.
- (2) Personal service, by hand delivering a copy of the complaint and summons to the party named in the complaint.
- (3) Publication, in the Kalihwisaks and another paper located in an area where the subject was last known to have resided. The publication shall be designated as a legal notice, stating the name and last-known address of the subject being located.

101.5. Procedures

101.5-1. *Designated Hearing Dates.* The hearing body may establish a regular time to hold pre-hearings and hearings. The hearing body shall designate officers and may designate alternates to serve on a hearing body.

101.5-2. *Ex Parte Communications.* Hearing officers and parties shall not engage in ex parte communications.

101.5-3. *Evidence.* A party shall include evidence as part of his/her original filings or obtain the evidence through discovery. A party may attempt to present the hearing body with evidence later in the proceedings if the opposing party does not object.

- (a) Copies. If a party submits documentation as evidence, the party shall present an original for the record and copies to each of the hearing officers and the opposing party.
- (b) Objections. The opposing party may object to any evidence submitted.
- (c) Acceptance into the record. The hearing body makes the final determination whether

to accept evidence into the record. The hearing body may admit and consider evidence that is commonly accepted and has a direct connection to the case.

101.5-4. *Pre-Hearings.* Pre-hearings shall be conducted within forty-five (45) days after notice has been served. The purpose of a pre-hearing is for the hearing body or a hearing officer to:

(a) Hear and determine dispositive motions. The parties may present any dispositive motions and raise any issues that may affect the conduct of the hearing, including, but not limited to excluding evidence. If either party makes a dispositive motion:

(1) The party making the motion shall reference the applicable law and state with clarity why the hearing body should grant the motion. The party making the motion may present a proposed written decision for the hearing body to consider.

(2) The opposing party shall respond and state with clarity why the hearing body should not grant the motion. The opposing party may request an adjournment to prepare a written response to oral dispositive motions.

(3) The hearing body may ask any questions of the parties in order to clarify the issues.

(b) Identify the need for any witnesses and/or evidence.

(c) Implement a scheduling order.

(d) Address any matters which will assist in the clarification, simplification or settlement of the case or that may facilitate the just, speedy and inexpensive disposition of the matter.

101.5-5. *Hearing Procedures.* Within sixty (60) days after a pre-hearing is conducted, or within sixty (60) days after it has been determined that a pre-hearing will not be conducted, the hearing body shall conduct a hearing, if necessary. If a hearing is conducted, it shall substantially comply with the following:

(a) Opening Statements. Each party shall state with clarity why the hearing body should decide in his/her favor based on the facts and the laws presented.

(b) Witnesses. Each party may call any witness to testify.

(1) Each party shall be responsible for ensuring his or her witness(es) appears at the hearing.

(2) A witness(es) may rely only on evidence on record.

(3) A witness(es) is subject to cross examination by the opposing party.

(4) The hearing body may ask questions of any witness or request clarification of any documents during the proceeding.

(c) Rebuttal. Parties may present a witness(es) or introduce evidence that has not been previously presented in order to refute or rebut the opposing party's evidence or a witness statement.

(d) Closing Statements. Each party summarizes the evidence and the testimony he or she presented in order to rebut evidence or witness testimony presented by the opposing party.

(e) Deliberations. After the hearing, the hearing body shall schedule a time for deliberations. Deliberations are confidential and shall not be subject to reproduction and shall not be part of the case record. During deliberations, the hearing body shall place an emphasis on logic and reasoning in order to make sound decisions. The hearing body may adopt a proposed written decision and issue the decision during the hearing.

101.5-6. *Decisions.* The hearing body may issue an oral decision on a matter, but the decision shall not be final until the hearing body issues a written decision. The hearing body shall issue a written decision within ten (10) business days after a pre-hearing or hearing. Should any party fail to appear at any scheduled pre-hearing or hearing or contest a complaint, the hearing body

may issue a default judgment in favor of the opposing party.

(a) The decision shall include:

- (1) Findings of fact and conclusions of law;
- (2) Reference to specific provision of Tribal law violated;
- (3) Disposition of any dispositive motions;
- (4) In the case of a decision issued after a pre-hearing, a scheduling order if the hearing body does not grant a dispositive motion; and
- (5) Reference to the parties' appeal rights.

(b) If the hearing body does not reach a unanimous decision, hearing officers may draft concurring and/or dissenting opinions.

(c) Notification to Parties. The hearing body shall ensure the final decision is sent to the parties via mail with delivery confirmation, using U.S. mail or a private carrier, within one (1) business day following the issuance of the decision. Time lines for an appeal are calculated based on receipt of the written decision.

101.6. Judgments and Appeals

101.6-1. *Judgments* A hearing body, subsequent to a hearing, may issue fines, orders and/or penalties that comply with the Indian Civil Rights Act and may include, but not be limited to, the following:

- (a) An order directing a violator or person in non-compliance of/with a Tribal law or regulation to pay a monetary fine for the violation, and/or actual damages and/or punitive damages.
- (b) In the case of damages caused by minors, an order requiring the parent, custodian, or guardian to pay for damages and/or plan designed for restitution in lieu of monetary compensation to be fulfilled by the minor.
- (c) An order directing the violator or non-complying person to cease and desist from further violation or non-compliance and to cure said violation within a specified period.
- (d) An order requiring appropriate exclusion and/or mandated community service and/or denial of specific Tribal benefits.
- (e) Unless precluded by law, informal disposition, signed by both parties, may also be made of any contested case by stipulation, agreed settlement, consent order, or default.
- (f) An order placing a lien upon property owned by a person within jurisdiction of the Tribe.

101.6-2. *Appeals* A party may appeal a decision of a hearing body to the Court of Appeals in accordance with the Judiciary law and any applicable rules of procedure.

End.

Emergency Adoption BC-02-25-15-B
Emergency Adoption BC-08-26-15-C
Adopted BC-02-24-16-B.