

Oneida Tribe of Indians of Wisconsin



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



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

BC Resolution 02-25-15-B

Administrative Procedures Act Amendments Emergency Adoption

- WHEREAS,** the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** GTC Resolution 01-07-13-A adopted amendments to the Administrative Procedures Act (APA) and adopted the Legislative Procedures Act (LPA); and
- WHEREAS,** GTC Resolution 01-17-13-B adopted the Judiciary Law and repealed the hearing procedures found in the APA, effective March 1, 2015; and
- WHEREAS,** although the Judiciary Law was adopted, certain boards, committees and commissions of the Tribe continue to have hearing body authority through various Tribal laws; and
- WHEREAS,** some of these hearing bodies, including the Gaming Commission, Environmental Resource Board and Land Commission are required to hold their hearings in accordance with the APA; and
- WHEREAS,** after March 1, 2015, the APA will no longer contain hearing body procedures; and
- WHEREAS,** the attached emergency amendments would repeal the outstanding sections of the APA and put a hearing process in place for those hearing bodies that are required to hold hearings but do not have other hearing rules in place; and
- WHEREAS,** the LPA authorizes the Oneida Business Committee to enact legislation on an emergency basis, to be in effect for a period of six (6) months, renewable for an additional six (6) months; and
- WHEREAS,** emergency adoption of the amendments is necessary for the immediate preservation of the public health, safety, or general welfare of the reservation population, and amendment of the Law is required sooner than would be possible under the LPA.

NOW THEREFORE BE IT RESOLVED, that effective March 1, 2015, the attached amendments to the Administrative Procedures Act are adopted on an emergency basis

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; 8 members

were present at a meeting duly called, noticed and held on the 25th day of February, 2015; that the forgoing resolution was duly adopted at such meeting by a vote of 5 members for, 0 members against, and 2 members not voting; and that said resolution has not been rescinded or amended in any way.



Lisa Summers, Tribal Secretary
Oneida Business Committee

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

Chapter 1

Administrative Procedures Act

1.1. Purpose and Policy
1.2. Adoption, Amendment, Repeal
1.3. Definitions

1.4. Complaints and Notice
1.5. Procedures
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1.1. Purpose and Policy

1.1-1. *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

1.1-2. *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.

1.2. Adoption, Amendment, Repeal

1.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-02-25-15-B and shall be effective March 1, 2015.

1.2-2. This Law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

1.2-3. 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.

1.2-4. 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.

1.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

1.3. Definitions

1.3-1. 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.

1.4. Complaints and Notice

1.4-1. 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.

1.4-2. 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.

1.4-3. *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.

1.5. Procedures

1.5-1. *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.

1.5-2. *Ex Parte Communications.* Hearing officers and parties shall not engage in ex parte communications.

1.5-3. *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.

1.5-4. *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.

1.5-5. *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.

1.5-6. *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.

1.6. Judgments and Appeals

1.6-1. *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.

1.6-2. *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 Adopted – BC-02-25-15-B (effective 03/01/15)