

Oneida Tribe of Indians of Wisconsin

Legislative Reference Office

P.O. Box 365
Oneida, WI 54155
(920) 869-4376
(800) 236-2214
<http://oneida-nsn.gov/LOC>



Committee Members

Brandon Stevens, Chairperson
Tehassi Hill, Vice Chairperson
Fawn Billie, Councilmember
Jennifer Webster, Councilmember

LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA-REVISED

Business Committee Conference Room-2nd Floor Norbert Hill Center

January 15, 2015 9:00 a.m.

- I. Call To Order and Approval of the Agenda**
- II. Minutes to be approved**
 - 1. December 17, 2014 LOC Meeting Minutes
- III. Current Business**
 - 1. Furlough Policy
 - 2. Rules of Appellate Procedure Amendments
- IV. New Submissions**
- V. Additions**
- VI. Administrative Updates**
 - 1. Quarterly Report
 - 2. Sponsor List
- VII. Executive Session**
- VIII. Recess/Adjourn**

Oneida Tribe of Indians of Wisconsin

Legislative Reference Office
 P.O. Box 365
 Oneida, WI 54155
 (920) 869-4376
 (800) 236-2214
<http://oneida-nsn.gov/LOC>



Committee Members
 Brandon Stevens, Chairperson
 Tehassi Hill, Vice Chairperson
 Fawn Billie, Councilmember
 Jennifer Webster, Councilmember

LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2nd Floor Norbert Hill Center

December 17, 2014 9:00 a.m.

PRESENT: Jennifer Webster, Fawn Billie, Tehassi Hill, Brandon Stevens

OTHERS PRESENT: Lynn Franzmeier, Candice Skenandore, Danelle Wilson, Rae Skenandore, Taniquelle Thurner, Matt Denny, Norbert Hill Jr., Cheryl Vandenberg, Michelle Mays, Layatalati Hill, Jeff Mears

I. Call To Order and Approval of the Agenda

Tehassi Hill called the December 17, 2014 Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster to approve the agenda; seconded by Fawn Billie. Motion carried unanimously.

II. Minutes to be approved

1. December 3, 2014 LOC Meeting Minutes

Motion by Jennifer Webster to approve the December 3, 2014 LOC Meeting Minutes; seconded by Fawn Billie. Motion carried unanimously.

III. Current Business

1. Higher Education (0:33-1:52)

Motion by Jennifer Webster to accept the memorandum regarding the status of the Higher Education Law as FYI; seconded by Fawn Billie. Motion carried unanimously.

Brandon Stevens arrived at 9:05 a.m.

2. Rules of Appellate Procedure Amendments (1:53-4:50)

Motion by Jennifer Webster to ratify the Rules of Appellate Procedure Amendments E-poll results from December 12, 2014, and direct the Legislative Reference Office to prepare the Rules of Appellate Procedure Amendments for public meeting; seconded by Tehassi Hill. Motion carried unanimously.

3. Pow-wow Committee Bylaws (4:59-9:34)

Motion by Jennifer Webster to send a memorandum to the Pow-wow Committee asking for clarification on the noted issues and approval of the amended Pow-wow Committee Bylaws; seconded by Fawn Billie. Motion carried unanimously.

4. Children's Code (9:36-20:00)

Motion by Jennifer Webster to move forward with requesting a fiscal analysis; seconded by Tehassi Hill.

Secunder withdraws the second, Motioner withdraws the motion; motion withdrawn.

Motion by Tehassi Hill to direct the Legislative Operating Committee Chair to work with the appropriate staff to develop a memorandum directing the Governmental Services Division Director to fulfill the Finance Department's request for information regarding the Children's Code in order to prepare the fiscal analysis; seconded by Fawn Billie. Motion carried unanimously.

5. Leasing Law (20:02-21:51)

Motion by Jennifer Webster to direct that a legislative analysis and a fiscal impact statement be completed on the Leasing Law; seconded by Tehassi Hill. Motion carried unanimously.

IV. New Submissions**1. Investigative Leave Policy Amendments (21:55-23:16)**

Motion by Jennifer Webster to add the Investigative Leave Policy Amendments to the active files list with herself as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

2. Environmental, Health and Safety Law(23:17-24:12)

Motion by Tehassi Hill to add the Environmental, Health and Safety Law to the active files list with himself as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

3. Removal Law Amendments (24:14-27:51)

Motion by Fawn Billie to add the Removal Law Amendments to the active files list with herself as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

V. Additions**VI. Administrative Updates****VII. Executive Session****VIII. Recess/Adjourn**

Motion by Tehassi Hill to adjourn the December 17, 2014 Legislative Operating Committee meeting at 9:28 a.m.; seconded by Fawn Billie. Motion carried unanimously.



Legislative Operating Committee

January 7, 2015

Furlough Policy

Submission Date: October 15, 2014

Public Meeting:
 Emergency Enacted:

LOC Sponsor: Fawn Billie

Summary: *During the prior term, the OBC adopted a policy on an emergency basis that set out a process allowing tribal employees to be furloughed as a cost-containment measure. The emergency adoption/extension expired on October 15, 2014, however on October 8, 2014, the OBC directed the LOC to continue developing a permanent policy that allowed for furloughs.*

09/17/14 LOC: Motion by Jennifer Webster to not add the Furlough Policy Emergency Adoption to the Active Files List and to provide the Oneida Business Committee a memo stating that it is the intent of the Legislative Operating Committee to let the emergency adoption expire; seconded by Tehassi Hill. Motion carried unanimously.

10/8/14 OBC: Motion by Lisa Summers to accept the Legislative Operating Committee update with the following answers:
 3) With regard to the Furlough Policy, the Business Committee agrees that the LOC should move forward with the development of a permanent policy.
 seconded by Trish King. Motion carried unanimously.

10/15/14 LOC: Motion by Jennifer Webster to add the Furlough Policy to the Active Files List; seconded by Fawn Billie. Motion carried unanimously.

Note: Fawn Billie will be the sponsor for this item.

12/03/14 LOC: Motion by Jennifer Webster to direct that a fiscal impact statement and a legislative analysis be conducted on the Furlough Policy; seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

- Review the draft and analysis and consider making changes and/or forwarding to a January 29, 2015 public meeting.



Notice of

Public Meeting

to be held

January 29, 2015 at 12:15 p.m.

OBC Conference Room - 2nd Floor, Norbert Hill Center



Topic: Furlough Policy

The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal that would adopt a Furlough Policy to enable the Tribe to implement furloughs to correct an operating budget deficit by:

- ◆ Granting the Oneida Business Committee the ability to authorize a furlough period through resolution.
- ◆ Require General Manager-level positions to develop furlough plans for their areas.
- ◆ Prohibit furloughs from being used for disciplinary reasons.

All community members are invited to attend this meeting to learn more about this proposal and/or to submit comments concerning this proposal.

Public Comment Period—Open until February 5, 2015

During the Public Comment Period, all interested persons may submit written comments regarding this legislative proposal; and/or a transcript of any testimony/spoken comments made during the Public Meeting. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person or by U.S. mail, interoffice mail, e-mail or fax.

For more information about the public meeting process, or to obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings or contact the Legislative Reference Office (LRO), which is located on the second floor of the Norbert Hill Center, Oneida WI.

Mail: **Legislative Reference Office**
PO Box 365
Oneida, WI 54155

Phone: **(920) 869-4376 or (800) 236-2214**
 E-Mail: **LOC@oneidanation.org**
 Fax: **(920) 869-4040**

Furlough Policy

Article I. Purpose and Policy
 Article II. Adoption, Amendment, Repeal
 Article III. Definitions
 Article IV. Furlough

Article V. Furlough Plans
 Article VI. Supervisor Responsibilities
 Article VII. Appeal

<i>Analysis by the Legislative Reference Office</i>					
Title	The Furlough Policy ("The Policy")				
Requester	Oneida Business Committee (OBC)	Drafter	Lynn Franzmeier	Analyst	Tani Thurner
Reason for Request	On October 15, 2013, the OBC adopted a Furlough Policy on an emergency basis, which was extended for six months on April 9, 2014; expiring on October 9, 2014. The item had remained on last term's Active Files List as the LOC processed the policy for permanent adoption but did not complete it by the end of the term. This term, the LOC initially determined not to proceed with this item, and notified the OBC of this decision; however the OBC then directed that the LOC continue processing the Policy for permanent adoption.				
Purpose	This Policy sets out a process for the Tribe to furlough employees (temporarily reducing or stopping their work hours) as a cost-saving measure.				
Authorized/ Affected Entities	General Manager Level Positions, Supervisors, HRD and the OBC all have roles in the process; all employees could be affected.				
Due Process	The Policy expressly states that employees have no right to appeal a furlough decision under any Tribal law, policy or the personnel grievance process.				
Related Legislation	There is already a Tribal Layoff Policy which is very similar, enabling the Tribe to lay off employees as part of a cost-saving effort. The Personnel Policies and Procedures (Blue Book) address leaves of absence - this Policy addresses benefits by treating a furlough as a leave of absence.				
Policy Mechanism	Resolution adopted by OBC; Furlough Plans adopted by each division and kept on file with HRD.				
Enforcement	None, but the Blue Book would govern any violations by Tribal employees.				

Overview

This is a new Policy that enables the Tribe to implement furloughs as a tool to fix an operating budget deficit. A furlough is a temporary unpaid leave from work for a specified period of time. In order to furlough employees, a decrease/lapse of revenue/funding or other budget situation warranting an unpaid leave must be identified. [1-1, 1-2 and 3-1(b)]

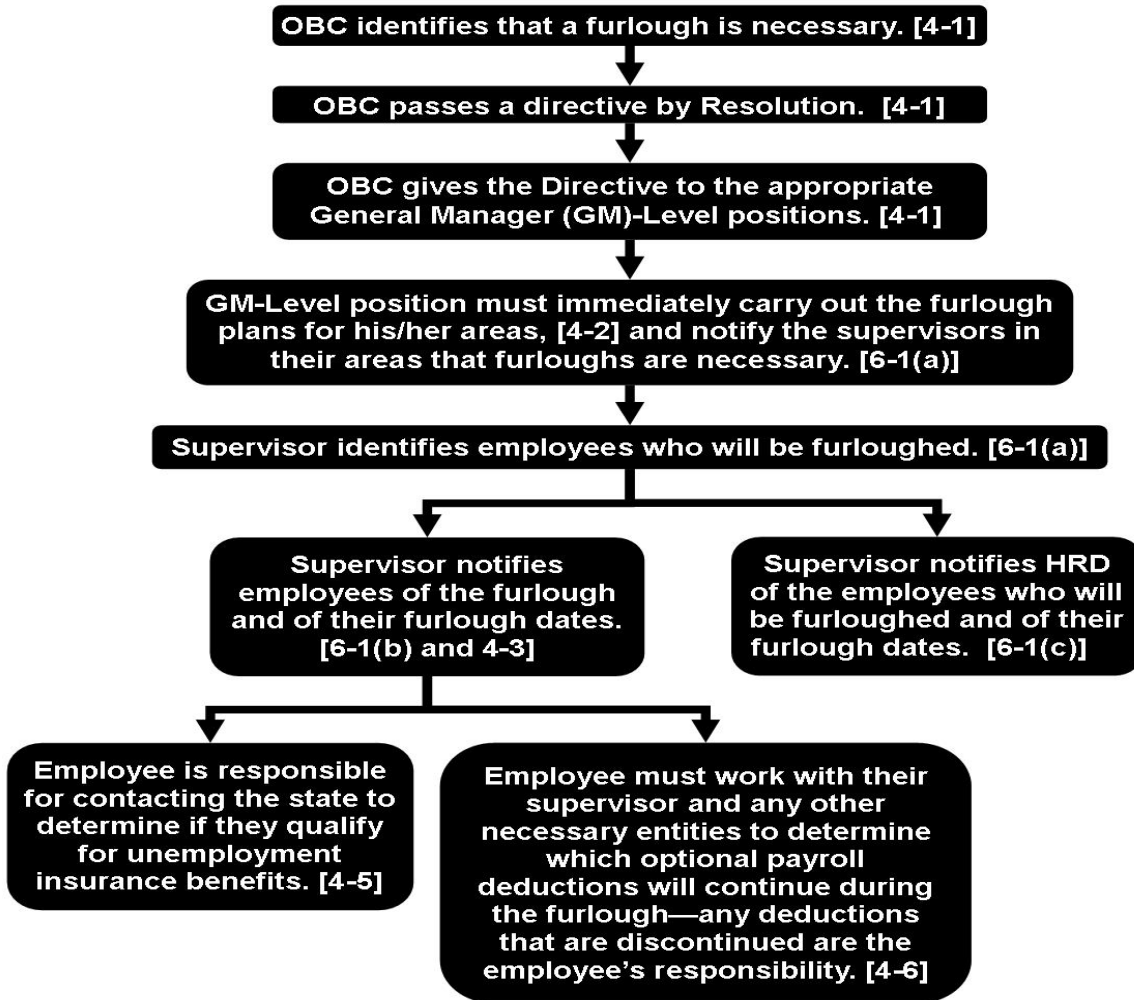
This policy applies to all employees of the Tribe, defined to specifically include employees of Tribal programs and enterprises, political appointees and individuals under an employment contract as a limited term employee. Specifically excluded from the definition (so not subject to furlough) are elected and appointed officials, consultants, and employees of Tribally- chartered corporations. [1-2 and 3-1(a)]

Employees must be furloughed on days that the employee is normally scheduled to work, or on "holidays recognized by the Tribe", regardless of whether the employee is normally scheduled to work or not. [4-2(b)] While on furlough, employees cannot perform any work, including responding to work-related e-mail or voicemail. [4-2(a)] Employees may not use personal or vacation time while on furlough [4-7] and are not eligible for back pay when they return to work [4-10].

Employees have no right to appeal a furlough under Tribal law, policy, or the personnel grievance process. [7-1]

19

The Furlough Process



20

Changes from the previous version of the Furlough Policy

21

22

This proposed Furlough Policy is substantially similar to the policy that was emergency-adopted last term (hereinafter called the “Expired Policy”); but there are a few changes:

23

New Provisions

24

The following provisions are added to this Policy but were not in the Expired Policy:

25

26

27

28

29

30

31

32

33

34

- Furloughs shall not be used for disciplinary reasons. [4-9]
- Supervisors must give employees at least five business days’ notice before implementing a furlough for that employee’s position. [4-3] This appears to mean the employee must be notified at least five 5 business days before the first day of his/her furloughed time off.
- The OBC resolution must include furlough start and end dates. [4-1]
- Once the OBC adopts a resolution directing a furlough, all GM-Level positions must immediately carry out the furlough plans for their departments/agencies. [4-2]
- Employees cannot travel on behalf of the Tribe while on furlough. [4-4]
- GM-Level Positions must develop furlough plans, setting forth how their respective

Public Meeting Draft
01/29/15

35 departments and agencies intend to implement a furlough. Furloughs must be scheduled
36 in a way that allows the departments to continue to provide a basic level of service. These
37 plans must be kept on file with HRD. A furlough plan must include:

- 38 ○ An explanation of how employees will be selected.
- 39 ○ A tentative schedule for a furlough.
- 40 ○ The estimated number of employees affected.
- 41 ○ A summary of how the furlough will relieve budget shortfalls. [4-2(a), 5-1 to 5-3]
- 42 ● While furloughed, employees do not accrue vacation or personal time, but otherwise
43 continue to receive benefits as if they were on an unpaid leave of absence. [4-7] The
44 following chart demonstrates how a furlough could affect personal/vacation (P/V) time
45 accrual:

Years of Service	P/V days normally accrued each year	P/V that would not accrue for each furlough day	P/V lost if furloughed 1 day/week for 6 months
0-3	18	.554 hours	14.399 hours
4-7	23	.708 hours	18.408 hours
8-14	30	.923 hours	23.998 hours
15+	37	1.138 hours	29.588 hours

46
47 *Expanded or Changed Provisions*

48 The following changes were made to provisions found in the Expired Policy:

- 49 ● The Expired Policy specifically stated that the Tribe shall not deny a request for
50 unemployment compensation due to furloughs, [5-6] but the proposed Policy does not.
- 51 ● Instead of requiring all miscellaneous payroll deductions to stop during a furlough, the
52 new Policy requires employees to work with their supervisor and any necessary entities
53 to determine which payroll deductions will continue during the furlough - any
54 discontinued payroll deductions are the employee’s responsibility. [4-6]
- 55 ● Unlike the Expired Policy, this proposal does not require that Indian Preference be used,
56 if available, to determine which employees would be furloughed. [4-2]
- 57 ● Instead of stating that furloughed employees “shall not be separated from the Tribe”, the
58 proposal states that a furlough shall not constitute a break in continuous service. [4-4]
- 59 ● The Expired Policy stated that no overtime and/or additional duty pay can be approved as
60 a result of a furlough. The proposed Policy instead provides that:
 - 61 ○ Employees are ineligible for overtime during any pay period where another
62 employee from the same department/agency is furloughed [4-8(a)]
 - 63 ○ Employees cannot receive additional duty pay for performing duties for
64 furloughed employees from the same department/agency. [4-8(b)]

65
66 **Miscellaneous**

67 A Public Meeting has not been held.

68
69 **Considerations**

70 **The following are issues the LOC may want to consider:**

- 71 ● While furloughed, employees continue to receive benefits as if they were on an unpaid
72 leave of absence. [4-7] The Leave of Absence Tribal Work Standard identifies different

Public Meeting Draft
01/29/15

73 types of unpaid leaves of absence - generally speaking, medical insurance coverage for
74 maternity, paternity and military leave continues for a limited amount of the leave, but a
75 furlough would not count as any of those. For a “personal” or “educational” unpaid leave
76 of absence, insurance is cancelled on the employee’s last working day, and reinstated on
77 the day the employee returns to work. So if this provision is enforced, it could mean that
78 an employee would not have medical insurance coverage on full days of furlough. At a
79 minimum, the Work Standard may need revision to address furloughs, and it may be
80 beneficial to require training for all persons involved in creating furlough plans, so that
81 they can understand how employees stand to be affected by the way they structure
82 furloughs.

- 83 • The Layoff Policy is very similar to this Policy, but there are a few provisions in the
84 Layoff Policy that are not included in this Policy, and which should be noted:
 - 85 ○ The Layoff Policy permits managers to identify critical positions that are exempt
86 from Indian Preference (which is used as a criteria to determine who is laid off) –
87 critical positions are “those requiring a Professional or Technical License,
88 Certification, and/or Degree and which require skills which cannot be reassigned
89 to another employee” – this Policy does not allow for any exceptions for any sort
90 of critical position that would be exempt from furloughs. This is a policy call.
 - 91 ○ The Layoff Policy requires strategic layoff plans (similar to the plans created
92 under this Policy) to be developed with the HRD Manager, and approved by the
93 OBC before they are implemented. This Policy only requires the GM level
94 positions to develop furlough plans, which must be kept on file with HRD, with
95 no requirement for OBC approval or HRD involvement. This is a policy call.
 - 96 ○ The Layoff Policy requires individual business units to develop Layoff SOPs “to
97 meet their unique needs” provided that such SOPs must be at least as restrictive as
98 Blue Book requirements. This Policy does not mention SOPs for individual
99 business units. This is a policy call.
 - 100 ○ This Policy prohibits overtime and additional duty pay for employees from the
101 same department/agency while another employee of that department/agency is
102 furloughed. By comparison, the Layoff Policy prohibits departments with laid-off
103 employees from hiring ET or LTE employees to replace them. This Policy is
104 silent about hiring/using ET or LTE employees during a furlough – it states that
105 temporary employees must be furloughed first, but does not address what happens
106 after employees are furloughed.
 - 107 ○ Like this Policy, the Layoff Policy applies to all employees. However, the Layoff
108 Policy also states that employees whose salary is funded through external
109 programs are subject to their respective program guidelines. This Policy does not
110 address employees whose salary is funded through outside grants/funding; or
111 whether/how they might be affected differently during a furlough. This is a policy
112 call.
- 113 • 7-1 provides that employees do not have the right to appeal a furlough decision under any
114 Tribal law/policy or the personnel grievance process. However, 4-9 says furloughs shall
115 not be used for disciplinary reasons. As written, it may be difficult to enforce 4-9,
116 because an employee could not appeal a furlough decision that the employee feels was

Public Meeting Draft
01/29/15

- 117 used for disciplinary reasons.
- 118 • The definition of employee includes “political appointees” however that term is not
- 119 defined. If this is intended to only refer to OBC assistants, it may help to clarify this,
- 120 otherwise to identify what qualifies as a political appointee.
- 121 • This Policy states that temporary employees will be furloughed first. The term
- 122 “temporary employee” is not defined in any Tribal law or policy. The Blue Book defines
- 123 “Limited Term Employee¹” and “Emergency Temp²” but it is not clear here which is
- 124 intended by “temporary employee.”
- 125 ○ By comparison – the Layoff Policy provides that Emergency Temporary
- 126 employees (which it defines to include employees contracted for 90 days or less,
- 127 interns, seasonal, and substitute relief workers) will be laid off first, then Limited
- 128 Term Employees, then regular employees.
- 129 • 4-2 requires all GM-Level positions to “immediately carry out the furlough plans” for
- 130 their departments/agencies, but the Policy does not state exactly what they are
- 131 responsible for doing. 6-1 says that “upon notification from the appropriate [GM-Level]
- 132 position that furloughs are necessary, a supervisor shall” identify those employees to be
- 133 furloughed, notify them, and notify HRD. As such, it appears that the supervisors are the
- 134 ones actually carrying out the furlough plans, so it may be more accurate to revise this
- 135 provision to either state that the GM-Level positions will notify the supervisor, or to state
- 136 that the Supervisors will immediately carry out the furlough plans.
- 137 • Under 4-8, employees are only ineligible for overtime during the same pay period that
- 138 another employee from their area is furloughed; and for additional duty pay while an
- 139 employee is furloughed. This would not prevent the furloughed employee from receiving
- 140 overtime before or after the furlough period, and would not prevent other employees from
- 141 receiving overtime or additional duty pay for doing the furloughed employee’s work
- 142 before or after the furlough. This is a policy call.
- 143 • It is not known if or how a full-time employee’s status would be affected if the employee
- 144 is furloughed for enough time to drop the employee down below the minimum required
- 145 hours needed to maintain full-time employee status. For example, under new insurance
- 146 plan changes, part-time and half-time employees working an average of 30+ hours a
- 147 week in a “designated six-month timeframe” in 2015 will be eligible for medical, dental
- 148 and vision insurance the following year. It is not clear what would happen if full-time
- 149 employees are furloughed to the point where they drop below that 30+ hours a week. It
- 150 may be beneficial to receive an analysis from HRD addressing how furlough affects full-
- 151 time status and whether any benefits or eligibilities could or would be impacted in such a
- 152 situation.
- 153
- 154

1 PPP Addendum: “Limited Term: An employee who will be utilized for long term assignments over ninety (90) days, but no longer than two (2) years. A performance contract may be utilized in this position. A performance contract is used to establish specific goals and objectives that the employer wants accomplished in a specific time frame. The contract can be canceled according to the contract terms.”

2 PPP Addendum: “Emergency Temp: An employee who will be utilized for short term assignments; and the length of employment will not exceed (90) days.”

Furlough Policy

Article I. Purpose and Policy

1-1. *Purpose.* The purpose of this Policy is to enable the Tribe to implement a furlough as a tool to remedy an operating budget deficit.

1-2. *Policy.* This Policy shall apply to all employees of the Tribe. To utilize a furlough, a decrease or lapse of revenue or funding and/or any other budget situation warranting an unpaid leave shall be identified.

Article II. Adoption, Amendment, Repeal

2-1. This Policy was adopted by the Oneida Business Committee by resolution BC _____.

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

2-3. Should a provision of this Policy or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this policy which are considered to have legal force without the invalid portions.

2-4. In the event of a conflict between a provision of this Policy and a provision of another policy, the provisions of this Policy shall control.

2-5. This Policy is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

Article III. Definitions

3-1. This Article shall govern the definitions of words or phrases as used within this Policy. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Employee" shall mean any individual who is employed by the Tribe and is subject to the direction and control of the Tribe with respect to the material details of the work performed, or who has the status of an employee under the usual common law rules applicable to determining the employer-employee relationship. "Employee" includes, but is not limited to, an individual employed by any program or enterprise of the Tribe and political appointees, but does not include elected or appointed officials, or individuals employed by a Tribally Chartered Corporation. For purposes of this Law, individuals employed under an employment contract as a limited term employee are employees of the Tribe, not consultants.

(b) "Furlough" shall mean a temporary, unpaid leave from work for a specified period of time.

(c) "General Manager Level position" shall mean the highest level in the chain of command under the Oneida Business Committee and who is responsible for a Tribal Department and/or Division.

(d) "Supervisor" shall mean a person who directly oversees the work and performance of an employee on a daily basis.

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

Public Meeting Draft
01/29/15

199

200 Article IV. Furlough

201 4-1. *Furlough Resolution.* If the Oneida Business Committee has identified the necessity for a
202 furlough, a directive by resolution shall be given to the appropriate General Manager Level
203 positions. The resolution shall direct the beginning and ending dates of the furlough.

204 4-2. *Implementation of Furlough Plans.* Upon the passage of a resolution directing that a
205 furlough be implemented, all General Manager Level positions shall immediately carry out the
206 furlough plans for his or her respective departments or agencies. An employee shall be
207 furloughed on days that the employee is normally scheduled to work or on holidays recognized
208 by the Tribe, whether the employee is normally scheduled to work or not.

209 4-3. *Notice.* A supervisor shall give an employee notice at least five (5) business days prior to a
210 furlough being implemented for his or her position.

211 4-4. *Continuous Service.* A furlough shall not constitute a break in continuous service.
212 Employees shall not perform any work for the Tribe while furloughed. This includes responding
213 to work-related e-mail and voice mail, as well as traveling on behalf of the Tribe.

214 4-5. *Unemployment.* Eligibility for unemployment insurance benefits is determined by the State
215 of Wisconsin. Furloughed employees shall be responsible for contacting the State of Wisconsin
216 Department of Workforce Development to determine if they qualify for unemployment insurance
217 benefits.

218 4-6. *Payroll Deductions.* An employee on furlough shall work with his or her supervisor, the
219 Accounting Department and any other necessary departments and agencies to determine which
220 previously authorized optional payroll deductions will continue to be deducted during the
221 furlough period. Any deductions discontinued during a furlough shall be the responsibility of the
222 employee.

223 4-7. *Benefits.* Employees shall not use or accrue personal or vacation time when on furlough.
224 Employees shall continue to receive other benefits during a furlough in the same manner as an
225 employee on an unpaid leave of absence receives benefits.

226 4-8. *Overtime and Additional Duty Pay.* When a furlough is implemented in a department or
227 agency, no employee in that department or agency shall be eligible for:

228 (a) overtime during the same pay period that another employee from the same
229 department or agency is on furlough; or

230 (b) additional duty pay for performing duties for other employees in his or her
231 department or agency who are on furlough.

232 4-9. *Discipline.* Furloughs shall not be used for disciplinary reasons.

233 4-10. *Back Pay.* Employees on furlough shall not be eligible for back pay awards upon return to
234 work.

235

236 Article V. Furlough Plans

237 5-1. *Furlough Plans.* The General Manager Level positions shall develop furlough plans for
238 their respective departments and agencies.

239 5-2. The furlough plans shall set forth how each department or agency intends to implement a
240 furlough. The plan shall include, but not be limited to, the following:

241 (a) an explanation of how employees will be selected;

242 (1) Temporary employees shall be furloughed first, followed by employees who

Public Meeting Draft
01/29/15

243 volunteer to be furloughed. All other employees shall then be eligible to be
244 furloughed.

245 (b) a tentative schedule for a furlough;

246 (1) Furloughs shall be scheduled in a way that allows the departments to continue
247 to provide a basic level of service.

248 (c) the estimated number of employees affected; and

249 (d) a summary of how the furlough will relieve budgetary shortfalls.

250 5-3. All furlough plans shall be kept on file with the Human Resources Department.
251

252 **Article VI. Supervisor Responsibilities**

253 6-1. Upon notification from the appropriate General Manager Level position that furloughs are
254 necessary, a supervisor shall:

255 (a) Identify those employees who will be furloughed.

256 (b) Notify those employees that they will be furloughed and their furlough dates;

257 (c) Notify the Human Resources Department of the chosen employees and their furlough
258 dates.
259

260 **Article VII. Appeal**

261 7-1. *Right to Appeal.* An employee who has been furloughed does not have the right to appeal
262 such a decision under any Tribal law, policy or the personnel grievance process.
263

264 *End.*
265

266 Emergency Adoption – BC-10-15-13-A

267 Emergency Adoption Extension BC-04-09-14-D



Legislative Operating Committee

January 7, 2015

Rules of Appellate Procedure Amendments

Submission Date: September 17, 2014

Public Meeting:
 Emergency Enacted: 12/19/14
 Expires: 06/19/14

LOC Sponsor: Jennifer Webster

Summary: *A review of the Rules led to a request that the LOC make amendments to the Rules to improve the process. On July 30, 2014, the LOC accepted these items as FYI and requested the LRO to bring this proposal to the next LOC. This item was carried over into the current term by the LOC.*

9/17/14 LOC: Motion by Jennifer Webster to add the Rules of Appellate Procedure to the Active Files List with Jennifer Webster as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

10/15/14 LOC: Motion by Fawn Billie to defer this item to the Legislative Reference Office for additional changes based on comments received from the Court yesterday; seconded by Tehassi Hill. Motion carried unanimously.

12/17/14 LOC: Motion by Jennifer Webster to ratify the Rules of Appellate Procedure Amendments E-poll results from December 12, 2014, and direct the Legislative Reference Office to prepare the Rules of Appellate Procedure Amendments for public meeting; seconded by Tehassi Hill. Motion carried unanimously.

12/19/14 OBC: Motion by Brandon Stevens to adopt resolution 12-19-14-A Rules of Appellate Procedure Emergency Amendments, seconded by Jenny Webster. Motion carried unanimously.

Next Steps:

- Consider forwarding the Rules of Appellate Procedure Amendments to a January 29, 2015 public meeting.



Notice of
Public Meeting

to be held

January 29, 2015 at 12:15 p.m.

OBC Conference Room - 2nd Floor, Norbert Hill Center



Topic: Rules of Appellate Procedure Amendments

The Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal that would:

- ◆ Allow parties to file by private mail, as long as there is delivery tracking and provide proof of delivery to the Clerk upon demand.
- ◆ Require the Clerk to notify the Trial Court Clerk when an appeal is filed.
- ◆ Increase the amount of time the Court has to hear a case from 120 days to 180 days.
- ◆ Require an initial review to be performed by 3 Appellate Judges.
- ◆ Require the Court to state reasons for denying an appeal or request for stay within 30 days of receiving the Notice of Appeal
- ◆ Allow the Court to permit parties to cite or discuss cases at oral argument that were not cited in a brief.
- ◆ Allow audio recordings to be considered a record of the case.
- ◆ Give an Appellant 20 days from the Certification of the Record, instead of from when the Notice of Appeal is filed, to serve a brief on the Respondent and file the brief with the Court.
- ◆ Expand the definition section.

All community members are invited to attend this meeting to learn more about this proposal and/or to submit comments concerning this proposal.

Public Comment Period—Open until February 5, 2015

During the Public Comment Period, all interested persons may submit written comments regarding this legislative proposal; and/or a transcript of any testimony/spoken comments made during the Public Meeting. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person or by U.S. mail, interoffice mail, e-mail or fax.

For more information about the public meeting process, or to obtain copies of the Public Meeting documents for this proposal, please visit www.oneida-nsn.gov/Register/PublicMeetings or contact the Legislative Reference Office (LRO), which is located on the second floor of the Norbert Hill Center, Oneida WI.

Mail: **Legislative Reference Office**
PO Box 365
Oneida, WI 54155

Phone: **(920) 869-4376 or (800) 236-2214**
 E-Mail: **LOC@oneidanation.org**
 Fax: **(920) 869-4040**

Chapter 154 Rules of Appellate Procedure

- 154.1. Purpose and Policy
- 154.2. Adoption, Amendment, Repeal
- 154.3. Definitions
- 154.4. General Provisions
- 154.5. Initiating the Appeal
- 154.6. Appeal by Permission
- 154.7. Joint, Consolidated and Cross Appeals
- 154.8. Service, Filing and Certification
- 154.9. Time Computation

- 154.10. Motions
- 154.11. Briefs
- 154.12. Oral Argument
- 154.13. Entry and Form of Judgment
- 154.14. Interest of Judgments
- 154.15. Penalties
- 154.16. Substitution of Parties
- 154.17. Costs

<i>Analysis by the Legislative Reference Office</i>					
Title	Rules of Appellate Procedures (Law)				
Requester	Chief Appellate Judge	Drafter	Lynn Franzmeier	Analyst	Candice Skenandore
Reason for Request	The Chief Appellate Judge has requested the Law be amended for clarification				
Purpose	The purpose of this Law is to govern the procedures in all actions and proceedings in the Tribe's Court of Appeals				
Authorized/ Affected Entities	Court of Appeals, Court Staff, persons utilizing the Court of Appeals				
Due Process	Court of Appeals				
Related Legislation	Rules of Civil Procedure and the Federal Rules of Appellate Procedure can be used as a guide when this Law does not address an issue; however, those rules must be consistent with existing Oneida Rules of Procedure, Tribal laws or customs of the Tribe				
Policy Mechanism	The Court of Appeals can issue penalties for frivolous appeals, delays and non-compliance with the rules				
Enforcement	The Court of Appeals can issue penalties which may include, among other things, court costs, attorney fees, double costs, interest on the award amount, damages, dismissal of the appeal, summary reversal of the original hearing body decision and/or other actions as the Court of Appeals considers appropriate				

Overview

This Law governs the procedures in all actions and proceedings of the Court of Appeals (Court) and can be used in conjunction with the Rules of Civil Procedure [See 154.1-1 and 154.4-1]. The Oneida Business Committee approved emergency amendments to this Law on December 19, 2014, and will now be considering these amendments on a permanent basis. If these amendments are not permanently adopted or are not extended, these emergency amendments will expire on June 19, 2015.

Proposed Amendments

The proposed amendments include the following:

- The definition section has been expanded to include definitions for “initial review”, “original hearing body” and “record” as well as separates the definitions of “advocate” and “attorney” [See 154.3-1 (a), (o), (s) and (v)].
- The current Law does not address what happens when the Court denies a request for stay; therefore, language was added that requires the Court to state the reasons for denying an appeal or request for stay within 30 days of the receipt of Notice of Appeal. [See 154.4-1 (b)].

- 19 ▪ The Law will now require three Appellate Judges be assigned to perform an initial review
- 20 of the Notice of Appeal within ten days of filing the Notice of Appeal or the Perfected
- 21 Notice of Appeal [*See 154.5-2 (b)*]. The current Law does not require an initial review.
- 22 ▪ A party can now file required papers to the Court by using private mail so long as it has a
- 23 delivery tracking feature. In accordance with the current Law, a party filing by mail must
- 24 do so by using certified mail with a return receipt [*See 154.8-1 (c)*].
- 25 ▪ If a party or Clerk demands, the party filing documents must provide, among other
- 26 things, proof of delivery of the filing in question. Proof of delivery is not specifically
- 27 required in the current Law [*See 154.8-2 (a)*].
- 28 ▪ When accepting an appeal, the Clerk must now notify the Trial Court clerk or original
- 29 hearing body that an appeal has been filed and request that the Trial Court clerk or
- 30 original hearing body prepare and file with the Court all papers comprising the record of
- 31 the appealed case within 30 days. When the Clerk certifies the record, it must be served
- 32 to all parties. The Chief Judge can extend this 30 day timeline for filing and certifying
- 33 the record for good cause upon a written request from the Trial Court clerk. Currently
- 34 the Law requires the Appellate Court Clerk, not the Trial Court Clerk, to prepare, to
- 35 certify and file all the papers comprising the record of appealed cases with the Court. In
- 36 addition, the current Law does not address extending the filing and certifying the record
- 37 30 day timeline [*See 154.8-4*].
- 38 ▪ Audio recordings will be considered a record of the case [*See 154.8-4 (a)*].
- 39 ▪ The Court will have 180 days to complete a case, instead of 120 days which is currently
- 40 required, not including extensions [*See 154.9-3*].
- 41 ▪ The Appellant has 20 days from when the Certification of the Record is accepted to serve
- 42 a brief to the Respondent and file the brief with the Clerk. Currently the Appellant has 20
- 43 days from when the Notice of Appeal is filed to serve and file the brief [*See 154.11-1*
- 44 (*d*)].
- 45 ▪ The Court can now permit parties to cite or discuss a case at an oral argument that was
- 46 not cited in one of the briefs [*See 154.12-3*]. The current Law only allows parties to cite
- 47 or discuss a case if the case has been cited in one of the briefs.

Considerations

50 This Law will require three Appellate Judges be assigned to perform an initial review of
 51 the Notice of Appeal within ten days of the Notice of Appeal or the Perfected Notice of Appeal
 52 are filed [*See 154.5-2 (b)*]. There may be times when three Appellate Judges are not available to
 53 perform an initial review. In order to avoid burdening the Court, the Legislative Operating
 54 Committee may want to consider eliminating the number of Appellate Judges required to
 55 perform the initial review which would allow the Law to have more flexibility.

Miscellaneous

56
 57 A public meeting is scheduled for January 29, 2015. Additional, minor revisions were
 58 made that do not affect the content of this Law.

154.1. Purpose and Policy

61
 62 154.1-1. *Purpose.* The purpose of this Law is to govern the procedure in all actions and
 63 proceedings in the divisions that make up the Court of Appeals within the Judiciary that fall
 64 under the jurisdiction of the Tribe.

65 154.1-2. *Policy.* It is the policy of the Tribe that these rules are to be liberally construed to
66 ensure a speedy, fair, and inexpensive determination of every appeal.

67

68 **154.2. Adoption, Amendment, Repeal**

69 154.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-04-25-14-
70 B.

71 154.2-2. This Law may be amended or repealed pursuant to the procedures set out in the Oneida
72 Legislative Procedures Act by the Oneida Business Committee or the Oneida General Tribal
73 Council.

74 154.2-3. Should a provision of this Law or the application thereof to any person or
75 circumstances be held as invalid, such invalidity shall not affect other provisions of this Law
76 which are considered to have legal force without the invalid portions.

77 154.2-4. In the event of a conflict between a provision of this Law and a provision of another
78 law, the provisions of this Law shall control.

79 154.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians
80 of Wisconsin.

81

82 **154.3. Definitions**

83 154.3-1. This section shall govern the definitions of words and phrases used within this Law.
84 All words not defined herein shall be used in their ordinary and everyday sense:

85 (a) “Advocate” shall mean an Oneida non-attorney advocate as provided by law or other
86 advocate who is presented to the court as the representative or advisor to a party.

87 ~~(a)~~(b) “Agent” shall mean a person authorized to act on behalf of another.

88 ~~(b)~~(c) “Amicus Curiae” shall mean (literally, friend of the court) a person who is not a
89 party to a case, nor solicited by any of the parties, who files a brief to assist the Court by
90 furnishing information or advice regarding questions of law or fact.

91 ~~(c)~~(d) “Answer” shall mean a written response in opposition to a brief or petition.

92 ~~(d)~~(e) “Appeal” shall mean a review in the Court of Appeals by appeal or writ of error
93 authorized by law of a judgment or order of the Trial Court or original hearing body.

94 ~~(e)~~(f) “Appellant” shall mean a person who files a notice of appeal.

95 ~~(f)~~(g) “Attorney” shall mean ~~an Oneida non-attorney advocate as provided by law and~~
96 ~~other advocate~~ a person who is admitted to practice law ~~and is presented to the court as~~
97 ~~the representative or advisor to a party.~~

98 ~~(g)~~(h) “Brief” shall mean a written legal document which aids in the Court’s decision by
99 reciting the facts of the case, the arguments being raised on appeal, and the applicable
100 law.

101 ~~(h)~~(i) “Clerk” shall mean the Clerk of the Court of Appeals.

102 ~~(i)~~(j) “Court” shall mean the Court of Appeals of the Tribe.

103 ~~(j)~~(k) “Cross-Appeal” shall mean an appeal brought by the Respondent against the
104 Appellant after the Appellant has already filed an appeal.

105 ~~(k)~~(l) “Days” shall mean calendar days, unless otherwise specifically stated.

106 ~~(l)~~(m) “Docketed” shall mean an appeal that has been filed and assigned a docket
107 number.

108 ~~(m)~~(n) “Electronic” shall mean an electronic communication system, including, but is not
109 limited to E-mail, used for filing papers with the Court or serving papers on any other
110 party.

111 (o) “Initial Review” shall mean review of the Notice of Appeal to determine if the case is
112 acceptable for appellate review.

113 ~~(n)~~(p) “Interlocutory” shall mean an order or appeal that occurs before the Trial Court or
114 original hearing body issues a final ruling on a case.

115 ~~(o)~~(q) “Joinder” shall mean the joining together of several claims or several parties all in
116 one (1) hearing, provided that the legal issues and the factual situation are the same for all
117 Appellants and Respondents.

118 ~~(p)~~(r) “Judiciary” shall mean the Oneida Tribal Judicial System.

119 (s) “Original hearing body” shall mean the administrative agency decision-making panel
120 which heard a contested case under the Administrative Procedures Act (or similar law)
121 and from which appeal is permitted by law.

122 ~~(q)~~(t) “Petitioner” shall mean a person filing a petition.

123 ~~(r)~~(u) “Pro se” shall mean advocating on one’s own behalf before the Court, rather than
124 being represented by an attorney or advocate.

125 (v) “Record” shall mean all materials identified in 154.8-4(a) of these Rules.

126 ~~(s)~~(w) “Reply Brief” shall mean a brief of a party to a legal action in answer to points of
127 law raised in an opponent’s brief but not in his or her own.

128 ~~(t)~~(x) “Respondent” shall mean a person adverse to the Appellant.

129 ~~(u)~~(y) “Rules” shall mean ~~the Court of Appeals~~these Rules of Appellate Procedure.

130 ~~(v)~~(z) “Stay” shall mean a suspension of a case or a suspension of a particular
131 proceeding, including orders, within a case that prevents enforcement pending appeal or
132 other circumstances.

133 ~~(w)~~(aa) “Trial Court” shall mean the Trial Court of the Tribe.

134 ~~(x)~~(bb) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.

135 ~~(y)~~(cc) “Tribal law” shall mean a code, act, statute, rule, regulation, policy or ordinance
136 enacted by the Oneida General Tribal Council or the Oneida Business Committee.

138 **154.4. General Provisions**

139 154.4-1. These Rules may be used in conjunction with the Rules of Civil Procedure. Matters
140 and proceedings not specifically set forth herein shall be handled in accordance with reasonable
141 justice, as determined by the Court. Where these Rules fail to address an issue, the Federal Rules
142 of Appellate Procedure may be used as a guide, so long as those rules are not inconsistent with
143 existing Oneida Rules of Procedure, Tribal laws, or the customs of the Tribe.

144 154.4-2. On its own or by a party’s motion; the Court may, to expedite its decision or for other
145 good cause, suspend any provision of these Rules in a particular case and order proceedings as it
146 directs.

147 154.4-3. The Chief ~~Justice~~Judge of the Court shall, when hearing a case, have the authority to
148 compel the production of documents where such is deemed necessary to rendition of the Court’s
149 opinion. There shall not be a new trial in the Court. The Court may review both the factual
150 findings and conclusions of law of the Trial Court or original hearing body.

152 **154.5. Initiating the Appeal**

153 154.5-1. *Right of Appeal.* Any party to a civil action, who is aggrieved by a final judgment or
154 order of the Trial Court or original hearing body, may appeal to the Court of Appeals.

155 (a) In any case brought on appeal, the Appellant may petition the Court for an order
156 staying the judgment or order. A stay shall be granted in all cases in which it is requested
157 unless plain and obvious injustice would result from granting the stay. The Court may

158 render a stay conditioned upon execution of a bond to guarantee performance of the
159 judgment or order when deemed necessary.

160 (b) In the event the appeal or request for stay is denied, the Court shall state the reasons
161 for the refusal within thirty (30) days of the receipt of the Notice of Appeal.

162 154.5-2. *Notice of Appeal.* Any party who is appealing shall appeal in the manner prescribed by
163 this Rule.

164 (a) Such party shall file with the Clerk a Notice of Appeal from such judgment or order,
165 together with a filing fee, as set by the Court, within thirty (30) days after the day such
166 judgment or order was rendered. A Notice of Appeal shall not be filed by electronic
167 means.

168 (b) Within ten (10) days of the filing of the Notice of Appeal or the Perfected Notice of
169 Appeal as provided under 154.5-3, three (3) Appellate Judges shall be assigned to
170 perform an Initial Review of the Notice of Appeal.

171 (1) Waiver of Fee. The Chief Judge of the Court may waive the filing fee upon
172 motion for a fee waiver by the Appellant where the Chief Judge of the Court is
173 satisfied the Appellant lacks the means to pay the filing fee. The motion shall
174 include an affidavit demonstrating inability to pay and shall accompany the
175 Notice of Appeal.

176 ~~(b)~~(c) In addition to the Notice of Appeal and filing fee, the following information shall
177 be provided upon the filing of the notice:

- 178 (1) A copy of the written decision of the Trial Court or original hearing body;
179 (2) A short statement explaining what relief is sought by the Appellant;
180 (3) A short statement explaining the legal grounds for seeking the appeal and
181 justification for the relief requested;
182 (4) Name, address and phone numbers of all parties, including respondent; and
183 (5) Name, address and phone numbers of all party attorneys or advocates, if
184 known.

185 ~~(c)~~(d) A cash deposit or bond in an amount equal to the amount of any judgment, plus
186 costs assessed by the Trial Court or original hearing body, or a motion for waiver of this
187 requirement, shall accompany the Notice of Appeal. The deposit/bond requirement may
188 be waived only when, in the judgment of the Court, such deposit/bond is not in the
189 interest of justice and such waiver does not unnecessarily harm the judgment holder. The
190 motion for waiver of the deposit/bond requirement shall be requested with notice to all
191 parties. If the motion for waiver is denied, the deposit/bond shall be submitted within ten
192 (10) days of the denial. The appeal shall be dismissed if the deposit/bond is not paid or
193 waived.

194 (1) *Exception.* The Tribe, or an officer or agency of the Tribe shall be exempt
195 from the requirement of providing any cash deposit or bond. The exemption
196 under this section shall be automatic and shall not require a motion or waiver.

197 ~~(d)~~(e) An appeal shall not be dismissed for informality of form or title of the notice of
198 appeal, or for failure to name a party whose intent to appeal is otherwise clear from the
199 notice.

200 154.5-3. *Perfection of Notice.* If the appellant fails to provide a completed Notice of Appeal
201 Form, the filing fee or waiver form, or any required documents or materials, the Appellant shall
202 be notified of any filing deficiencies by the Clerk within five (5) business days and shall have
203 five (5) business days from receipt of this notice to perfect the filing. Failure to perfect the filing
204 within five (5) business days may result in the non-acceptance of the appeal.

205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250

154.6. Appeal by Permission

154.6-1. *Appeal by Permission.* An appeal from an interlocutory order may be sought by filing a Petition for Permission to Appeal with the Clerk within ten (10) business days after the entry of such order with proof of service on all other parties to the action. Within ten (10) business days after service of the petition, an adverse party may file an Answer in opposition. A decision shall be issued in a reasonable time, but no longer than thirty (30) days from the first deliberation unless good cause to extend the deadline is found by the Court. This extension shall be in writing. The petition shall contain:

- (a) a statement of the facts necessary to develop an understanding of the question of law determined by the order of the Trial Court or original hearing body; and
- (b) a statement of the question itself; and
- (c) a statement of the reasons why substantial basis exists for a difference of opinion on the question; and
- (d) the relief sought; and
- (e) why an immediate appeal may:
 - (1) materially advance the termination of the litigation;
 - (2) protect the petitioner from substantial or irreparable injury; or
 - (3) clarify an issue of general importance in the administration of justice; and
- (f) The petition shall include or have a copy of the order of the Trial Court or original hearing body attached thereto.

154.7. Joint, Consolidated, and Cross Appeals

154.7-1. *Joint or Consolidated Appeals.* When two (2) or more parties are entitled to appeal from a Trial Court or original hearing body judgment or order, and their interests make joinder practicable, the parties may file a joint notice of appeal. The parties may then proceed on appeal as a single Appellant.

- (a) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the Court.
- (b) If the persons do not file a joint appeal or elect to proceed as a single Appellant, or if their interests are such as to make joinder impractical, the person shall proceed as Appellant and co-Appellant, with each co-Appellant to have the same procedural rights and obligations as the Appellant. The Appellant shall be the person who filed first.

154.7-2. *Cross Appeal.* A Respondent who seeks modification of the judgment or order appealed from or of another judgment or order entered in the same action or proceeding shall file a notice of cross-appeal within the time established for the filing of a notice of appeal or ten (10) business days after the receipt of the notice of appeal, whichever is later. The Respondent shall be listed as the cross-Appellant. A cross-Appellant has the same rights and obligations as an Appellant under these Rules.

154.8. Service, Filing and Certification

154.8-1. A paper required or permitted to be filed in the Court shall be filed with the Clerk. The filing party shall supply the Clerk with the original papers and three (3) copies. The filing party shall also provide one (1) copy of the papers for each opposing party or party's attorney or advocate. Filing shall be complete by the close of business on the day which the filing is due. The following methods of filing shall be used, in order of preference:

251 | (a) *In Person*: A party to a pending case, or the party's attorney, advocate or authorized
252 | Agent may file papers in person before the Clerk.

253 | (b) *Electronic*: A party to a pending case may file papers electronically to the electronic
254 | address, designated for such filings, of the Clerk. A paper filed by electronic means shall
255 | constitute a written paper for the purpose of applying these Rules. Upon receipt by the
256 | Clerk, any paper filed electronically shall be deemed filed, signed and verified by the
257 | filing party.

258 | (c) *By Mail*: A party to a pending case may file papers by certified U.S. or private mail
259 | with ~~return receipt~~the ability to track the delivery, with cover documents to be addressed
260 | to the Clerk. Filing shall not be completed upon mailing, but only upon receipt.

261 | (1) ~~Certified mail shall include the filing~~ Filing of papers is also permitted
262 | through the Tribal certified interoffice mail system.

263 | 154.8-2. *Proof of Service*. Upon demand by a party or the Appellate Clerk, a party filing
264 | documents shall provide one (1) of the following:

265 | ~~(a) A paper presented for filing shall contain either of the following:~~

266 | (a) Proof of delivery of the filing in question;

267 | ~~(a)~~(b) an acknowledgment of service by the person served; or

268 | ~~(b)~~(c) proof of service consisting of a statement by the person who made service
269 | certifying:

270 | (1) the date and manner of service;

271 | (2) the names of the persons served;

272 | (3) the mail or electronic addresses, facsimile numbers of the persons served, or
273 | the addresses of the places of delivery, as appropriate for the manner of service;
274 | and

275 | (4) if served electronically, a writing by the person being served consenting to
276 | service by electronic means.

277 | 154.8-3. *Service of All Papers Required*. A party shall, at or before the time of filing a paper,
278 | serve a copy on all other parties to the appeal. Any party may be served by electronic means, if
279 | such party consents in writing to service by electronic means. Service on a party represented by
280 | an attorney or advocate shall be made on the party's attorney or advocate.

281 | 154.8-4. *Certification of the Record*. Upon ~~receipt~~acceptance of the ~~Notice of Appeal and Proof~~
282 | ~~of Service~~, the Clerk shall, notify the Trial Court clerk or original hearing body that an appeal
283 | has been filed and request, the Trial Court clerk or original hearing body to prepare, ~~certify~~ and
284 | file with the Appellate Court all papers comprising the record of the case appealed. ~~The~~ within
285 | thirty (30) days. Upon Certification of the Record by the Clerk it shall be served on all parties as
286 | provided for in 154.8-3. The time for filing and certifying the record may be extended for good
287 | cause by the Chief Judge of the Court upon a written request from the Trial Court clerk or
288 | original hearing body.

289 | (a) The record of the case shall consist of all papers filed with the Trial Court or original
290 | hearing body, exhibits, ~~the~~a transcript / or audio recording of the proceedings, and the
291 | final decision of the Trial Court or original hearing body.

292 | **154.9. Time Computation**

294 | 154.9-1. *Deadline Computation*. Time lines are determined by designating the day after notice
295 | is received as day one. Computation involving calendar days shall include intermediate Tribally
296 | observed holidays and weekend days, provided that if the last day of the period falls on a
297 | Saturday, Sunday or Tribally observed holiday, then the next business day shall be the due date.

298 Computation involving business days shall not include intermediate weekend days or Tribally
299 observed holidays. All papers due to be filed with the Clerk are due prior to the close of business
300 on the last day of the time period.

301 (a) If notice is mailed, then three (3) days shall be added to the time line in order to
302 determine the due date.

303 154.9-2. *Extension of Time.* For good cause, the Court may extend the time prescribed by these
304 Rules or by its order to perform any act, or may permit an act to be done after that time expires.
305 But the Court shall not extend the time to file:

306 (a) a notice of appeal; or

307 (b) a petition for permission to appeal.

308 154.9-3. *Time to Complete.* Unless time is extended by the Court with the knowledge of the
309 parties, the time from the filing of the Notice of Appeal to the completion and entry of the final
310 written decision shall not exceed one hundred and ~~twenty (120)~~eighty (180) days.

311

312 **154.10. Motions**

313 154.10-1. *Application for Relief.* An application for an order or other relief in a docketed case
314 shall be made by motion unless these Rules prescribe another form. A motion shall be in writing
315 unless the Court permits otherwise. The moving party shall file all motions with the Clerk and
316 serve opposing parties as provided in 154.8.

317 154.10-2. *Contents of a Motion.* A motion shall state with particularity the grounds for the
318 motion, the relief sought, and the legal argument necessary to support it.

319 (a) Any affidavit or other paper necessary to support a motion shall be served and filed
320 with the motion. An affidavit shall contain only factual information, not legal argument.

321 A motion seeking substantive relief shall include a copy of the Trial Court's or original
322 hearing body's opinion as a separate exhibit.

323 154.10-3. *Response to a Motion.* Any party may file a response to a motion, in accordance with
324 154.11-2. The response shall be filed within ten (10) days after service of the motion unless the
325 Court shortens or extends the time.

326 154.10-4. *Motion for a Procedural Order.* The Court may act on a motion for a procedural
327 order at any time without awaiting a response. A party adversely affected by the Court's action
328 may file a motion to reconsider, vacate, or modify that action within five (5) days of receipt of
329 notice of the decision.

330 154.10-5. *Motion for Voluntary Dismissal.* An appellant may dismiss an appeal by filing a
331 motion to dismiss. If not yet docketed in the Court, then the motion shall be filed in the Trial
332 Court or original hearing body. The dismissal of an appeal shall not affect the status of a cross-
333 appeal or the right of a respondent to file a cross appeal.

334 154.10-6. *Form.* Motions shall be typed, legible and include the case caption. Every motion
335 shall:

336 (a) Contain a caption heading, the name Judiciary- Court of Appeals, the title of the
337 action, the docket number (if known) and a designation as to the purpose or type of
338 motion.

339 (b) Contain the names of all parties to the action.

340 (c) Be organized in sections containing a clear designation, which shall include, but is
341 not limited to:

342 (1) The facts, events or occurrences which make a specific motion for relief
343 necessary;

344 (2) The specific relief requested by the moving party;

345 | (3) The applicable law or laws to the motion at hand, including citations; and

346 | (4) The legal reasons the relief should be granted.

347 | (d) Be on 8 ½ by 11 inch paper. The text shall be double-spaced, but quotations more
348 | than two (2) lines may be indented and single-spaced. Headings and footings may be
349 | single-spaced. Margins must be at least one (1) inch on all four (4) sides. Page numbers
350 | may be placed in the margins, but no other text shall appear there.

351 | (e) Be typed in a plain, roman style, although italics or boldface may be used for
352 | emphasis. Case names shall be italicized or underlined.

353 | (f) Not exceed twenty (20) pages, unless the Court permits or directs otherwise.
354 |

355 | **154.11. Briefs**

356 | 154.11-1. *Briefs Generally.* Briefs shall be used by the Court to aid the Court in its
357 | consideration of the issues presented.

358 | (a) *Form.* The brief shall be 1.5 line spaced, typed, 1 inch margins, and on 8.5 x 11 inch
359 | paper, and shall be signed by the party or the party's attorney or advocate, if represented.

360 | The front cover of a brief shall contain:

361 | (1) the number of the case centered at the top;

362 | (2) the name of the court;

363 | (3) the title of the case;

364 | (4) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name
365 | of the court below;

366 | (5) the title of the brief, identifying the party or parties for whom the brief is filed;
367 | and

368 | (6) the name, office address, and telephone number of the attorney or advocate
369 | representing the party for whom the brief is filed, if represented.

370 | (b) *Length.* The brief shall be no more than twenty (20) pages, one (1) sided, in length,
371 | not including any addendums, appendices, attachments, or the tables of contents and
372 | authorities.

373 | (c) *Filing.* When a party is represented by an attorney or advocate, only the attorney or
374 | advocate shall file briefs and pleadings. The individual shall not file on his or her own
375 | unless he or she is pro se. Three (3) copies of each brief shall be filed with the Clerk and
376 | one (1) copy to all parties to the appeal.

377 | (d) *Time to Serve and File a Brief.* The Appellant shall serve on the Respondent and file
378 | with the Clerk a brief within twenty (20) days after ~~the Notice of Appeal is~~
379 | ~~filed.~~acceptance of the Certification of the Record. The Respondent's brief shall be filed
380 | with the Clerk within twenty (20) days of receipt of the Appellant's brief. A reply brief,
381 | if necessary, shall be filed within fourteen (14) days of receipt of Respondent's brief.
382 | The Court may, on its own, order different time lines for any party's time to file a brief.

383 | (e) *Consequence of Failure to File.* If an Appellant fails to file a brief within the time
384 | provided by this Rule, or within an extended time, a Respondent may move to dismiss the
385 | appeal. A Respondent who fails to file a brief shall not be heard at oral argument unless
386 | the Court grants permission.

387 | 154.11-2. *Appellant's Brief.* The Appellant's brief shall contain, under appropriate headings and
388 | in the order indicated:

389 | (a) *Content:*

390 | (1) a table of contents, with page references;

- 391 (2) a table of authorities-cases (alphabetically arranged), statutes, and other
392 authorities-with references to the pages of the brief where they are cited;
393 (3) a jurisdictional statement, including:
394 | (A) the basis for the Trial Court's or original hearing body's subject-matter
395 jurisdiction;
396 (B) the basis for the Court of Appeals' jurisdiction;
397 (C) the filing dates establishing the timeliness of the appeal; and
398 (D) an assertion that the appeal is from a final order or judgment that
399 disposes of all parties' claims, or information establishing the Court of
400 | Appeals' jurisdiction on some other basis;
401 (4) a statement of the issues presented for review;
402 (5) a statement of the case briefly indicating the nature of the case, the course of
403 proceedings, and the disposition below;
404 (6) a statement of facts relevant to the issues submitted for review with
405 appropriate references to the record;
406 (7) a summary of the argument, which shall contain a succinct, clear, and accurate
407 statement of the arguments made in the body of the brief, and which shall not
408 merely repeat the argument headings;
409 (8) the argument, which shall contain:
410 (A) Appellant's contentions and the reasons for them, with citations to the
411 authorities and parts of the record on which the Appellant relies; and
412 (B) for each issue, a concise statement of the applicable standard of review
413 (which may appear in the discussion of the issue or under a separate
414 heading placed before the discussion of the issues);
415 (9) a short conclusion stating the precise relief sought;
416 (10) a short appendix to include:
417 | (A) relevant docket entries in the Trial Court or original hearing body;
418 (B) limited portions of the record essential to an understanding of the
419 issues raised;
420 (C) the judgment, order, or decision in question; and
421 (D) other parts of the record to which the parties wish to direct the Court's
422 attention; and
423 (11) where the record is required by law to be confidential, reference to
424 individuals shall be by initials rather than by names.

425 154.11-3. *Respondent's Brief*. The Respondent's brief shall conform to the same requirements
426 as 154.11-2 (Appellant's Brief).

427 (a) The Respondent's brief shall address each issue and argument presented by the
428 Appellant's brief.

429 (b) The Respondent's brief may present additional issues, with the Respondent's
430 positions and arguments on such issues.

431 154.11-4. *Reply Brief*. The Appellant may file a brief in reply to the Respondent's brief. Unless
432 the Court permits, no further briefs may be filed. A reply brief shall conform to the requirements
433 of 154.11-3 (Respondent's Brief), except that a reply brief shall be no more than fifteen (15)
434 pages, one (1) sided, in length.

435 154.11-5. *Amicus Curiae Brief*. A person who is not a party to a case but has some interest in
436 the outcome of the case may, upon timely motion and with permission of the Court, submit an

437 amicus curiae brief in support of a party to the action. The Court may, on its own motion,
438 request amicus participation from appropriate individuals or organizations.

439 (a) Amicus curiae briefs shall conform to the requirements of 154.11-2 (Appellant's
440 Brief), except as provided in the following:

441 (1) Amicus curiae shall file his or her brief no later than seven (7) days after the
442 brief of the party being supported is filed. Amicus curiae that do not support
443 either party shall file his or her brief no later than seven (7) days after the
444 Appellant's or Respondent's brief is filed. The Court may grant leave for later
445 filing, specifying the time within which an opposing party shall answer.

446 154.11-6. *Briefs in a Case Involving Multiple Appellants or Respondent.* In a case involving
447 more than one (1) Appellant or Respondent, including consolidated cases, any number of
448 Appellants or Respondents may join in a brief, and any party may adopt, by reference, a part of
449 another's brief. Parties may also join in reply briefs.

450

451 **154.12. Oral Argument**

452 154.12-1. *Oral Arguments.* The Court may order oral argument when issues of fact or law
453 remain unclear and/or the positions of the parties on an issue are unclear or otherwise not fully
454 developed. The Court shall direct that an appeal be submitted on briefs only, if:

- 455 (a) The appeal is frivolous;
456 (b) The dispositive issue or issues have been authoritatively decided; or
457 (c) The facts and legal arguments are adequately presented in the briefs and record, and
458 the decisional process would not be significantly aided by oral argument.

459 154.12-2. *Notice.* The Clerk shall provide notice, of at least ten (10) business days, to all parties
460 when oral arguments are scheduled. The notice shall list the location of the oral argument and
461 the time allowed for each side. The Court shall determine the amount of time for oral arguments.
462 A motion to postpone the argument or to extend the argument timeframe shall be filed at least
463 five (5) business days before the hearing date.

464 154.12-3. *Citation of Authorities at Oral Argument.* Parties Unless permitted by the Court,
465 parties may not cite or discuss a case at an oral argument unless the case has been cited in one (1)
466 of the briefs.

467

468 **154.13. Entry and Form of Judgment**

469 154.13-1. *Entry.* A judgment is entered when it is noted on the docket. The Clerk shall prepare,
470 sign, and enter the judgment after receiving the Court's opinion.

471 (a) The decision and opinion of the Court shall be by a majority vote.

472 (b) The Court may:

- 473 (1) Reverse, affirm, or modify the judgment or order as to any or all parties;
474 (2) Remand the matter to the Trial Court or original hearing body and order a new
475 trial on any or all issues presented; the order remanding a case shall contain
476 specific instructions for the Trial Court or original hearing body;
477 (3) If the appeal is from a part of a judgment or order, the Court may reverse,
478 affirm or modify as to the part which is appealed;
479 (4) Direct the entry of an appropriate judgment or order; or
480 (5) Require such other action or further proceeding as may be appropriate to each
481 individual action.

482 (c) On the date when judgment is entered, the Clerk shall serve all parties with a copy of
483 the decision and opinion as entered.

484 154.13-2. *Form*. All decisions of the Court shall be in writing and accompanied by an opinion
485 stating the legal issues and the basis for the decision. Decisions of the Court shall be issued no
486 later than sixty (60) days after the conclusion of oral argument or after the expiration of time to
487 file a *Reply Brief* or *Response Brief* if no oral argument is held.

488 (a) The time for issuing a decision and opinion may be extended provided all parties are
489 notified of the extension in writing. The notice of extension shall include the cause for
490 and length of such extension.

491

492 **154.14. Interest of Judgments**

493 154.14-1. Unless the law provides otherwise, if a money judgment in a civil case is affirmed,
494 whatever interest is allowed by law is payable from the date when the Trial Court's or original
495 hearing body's judgment was entered. If the Court modifies or reverses a judgment with a
496 direction that a money judgment be entered in the Trial Court or by the original hearing body, the
497 mandate shall contain instructions about the allowance of interest.

498

499 **154.15. Penalties**

500 154.15-1. *Frivolous Appeals*. If an appeal or cross-appeal is found by the Court to be frivolous,
501 the Court may award to the successful party costs and attorney's or advocate's fees.

502 (a) Costs may be assessed against the Appellant or cross-Appellant, the (cross)-
503 Appellant's attorney or advocate, or both the (cross)-Appellant and his/her attorney or
504 advocate jointly.

505 (1) Court costs shall be based on actual cost or defined by the Court.

506 (b) A finding of a frivolous appeal or cross-appeal shall be made if one (1) or more of the
507 following elements are found by the Court:

508 (1) The appeal or cross appeal was filed, used, or continued in bad faith, solely
509 for purposes of delay, harassment or injuring the opposing party; or

510 (2) The party or party's attorney or advocate knew, or should have known, that
511 the appeal or cross-appeal was without any reasonable basis in law or equity and
512 could not be supported by a good faith argument for an extension, modification or
513 reversal of existing law.

514 154.15-2. *Delay*. If the Court finds that an appeal or cross-appeal was taken for the purpose of
515 delay, it may award one (1) or more of the following to the opposing party:

516 (a) Double costs;

517 (b) A penalty of additional interest not exceeding ten percent (10%) on the award amount
518 affirmed;

519 (c) Damages caused by the delay; and/or

520 (d) Attorney's or advocate's fees.

521 154.15-3. *Non-Compliance with Rules*. Failure of a party to comply with a requirement of these
522 Rules or an order of the Court, does not affect the jurisdiction of the Court over the appeal but
523 may be grounds for one (1) or more of the following:

524 (a) Dismissal of the appeal;

525 (b) Summary reversal of the Trial Court or original hearing body;

526 (c) Striking of a paper, document or memorandum submitted by a party;

527 (d) Imposition of a penalty or costs on a party or party's attorney or advocate; and/or

528 (e) Other action as the Court considers appropriate.

529

530 **154.16. Substitution of Parties**

531 154.16-1. *Death of a Party.* Death of a party does not automatically end a party's right to
532 appeal.

533 (a) *After Notice of Appeal Is Filed.* If a party dies after a notice of appeal has been filed
534 or while a proceeding is pending in the Court, the decedent's personal representative may
535 be substituted as a party on motion filed with the Clerk by the representative or by any
536 party. A party's motion shall be served on the representative. If the Decedent has no
537 representative, any party may suggest the death on the record, and the Court may then
538 direct appropriate proceedings.

539 (b) *Before Notice of Appeal Is Filed-Potential Appellant.* If a party entitled to appeal
540 dies before filing a notice of appeal, the decedent's personal representative, or if there is
541 no personal representative, the decedent's attorney or advocate of record, may file a
542 notice of appeal within the time prescribed by these Rules. After the notice of appeal is
543 filed, substitution shall be in accordance with 154.16-1(a).

544 (c) *Before Notice of Appeal Is Filed-Potential Respondent.* If a party against whom an
545 appeal may be taken dies after entry of a judgment or order in the Trial Court or original
546 hearing body, but before a notice of appeal is filed, an Appellant may proceed as if the
547 death had not occurred. After the notice of appeal is filed, substitution shall be in
548 accordance with 154.16-1(a).

549 154.16-2. *Substitution for a Reason Other Than Death.* If a party needs to be substituted for any
550 reason other than death, the procedure set in 154.16-1(a) applies.

551
552 **154.17. Costs**

553 154.17-1. *Costs.* Costs in an appeal shall be as follows unless otherwise ordered by the Court:

- 554 (a) Against the appellant when the appeal is dismissed or the judgment or order affirmed;
555 (b) Against the respondent when the judgment or order is reversed.

556 154.17-2. *Allowable Costs.* Allowable costs shall include:

- 557 (a) Cost of printing and assembling the number of copies and briefs and appendices
558 required by the Rules;
559 (b) Fees charged by the Court and/or Clerk;
560 (c) Cost of the preparation of the transcript of testimony of the record of appeal; and
561 (d) Other costs as ordered by the Court.

562 154.17-3. *Recovery of Costs.* A party seeking to recover costs in the Court shall file a statement
563 of the costs within fourteen (14) days of the filing of the decision of the Court. An
564 opposing party may file, within eleven (11) days after service of the statement, a motion
565 objection to the statement of costs.

566
567 *End.*

568 Adopted BC-04-25-14-B

Chapter 154 Rules of Appellate Procedure

154.1. Purpose and Policy	154.10. Motions
154.2. Adoption, Amendment, Repeal	154.11. Briefs
154.3. Definitions	154.12. Oral Argument
154.4. General Provisions	154.13. Entry and Form of Judgment
154.5. Initiating the Appeal	154.14. Interest of Judgments
154.6. Appeal by Permission	154.15. Penalties
154.7. Joint, Consolidated and Cross Appeals	154.16. Substitution of Parties
154.8. Service, Filing and Certification	154.17. Costs
154.9. Time Computation	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

154.1. Purpose and Policy

154.1-1. *Purpose.* The purpose of this Law is to govern the procedure in all actions and proceedings in the divisions that make up the Court of Appeals within the Judiciary that fall under the jurisdiction of the Tribe.

154.1-2. *Policy.* It is the policy of the Tribe that these rules are to be liberally construed to ensure a speedy, fair, and inexpensive determination of every appeal.

154.2. Adoption, Amendment, Repeal

154.2-1. This Law was adopted by the Oneida Business Committee by resolution BC-04-25-14-B.

154.2-2. This Law may be amended or repealed pursuant to the procedures set out in the Oneida Legislative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council.

154.2-3. 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.

154.2-4. 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.

154.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

154.3. Definitions

154.3-1. 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) “Advocate” shall mean an Oneida non-attorney advocate as provided by law or other advocate who is presented to the court as the representative or advisor to a party.
- (b) “Agent” shall mean a person authorized to act on behalf of another.
- (c) “Amicus Curiae” shall mean (literally, friend of the court) a person who is not a party to a case, nor solicited by any of the parties, who files a brief to assist the Court by furnishing information or advice regarding questions of law or fact.
- (d) “Answer” shall mean a written response in opposition to a brief or petition.
- (e) “Appeal” shall mean a review in the Court of Appeals by appeal or writ of error authorized by law of a judgment or order of the Trial Court or original hearing body.
- (f) “Appellant” shall mean a person who files a notice of appeal.
- (g) “Attorney” shall mean a person who is admitted to practice law.
- (h) “Brief” shall mean a written legal document which aids in the Court’s decision by reciting the facts of the case, the arguments being raised on appeal, and the applicable law.

- 40 (i) “Clerk” shall mean the Clerk of the Court of Appeals.
41 (j) “Court” shall mean the Court of Appeals of the Tribe.
42 (k) “Cross-Appeal” shall mean an appeal brought by the Respondent against the
43 Appellant after the Appellant has already filed an appeal.
44 (l) “Days” shall mean calendar days, unless otherwise specifically stated.
45 (m) “Docketed” shall mean an appeal that has been filed and assigned a docket number.
46 (n) “Electronic” shall mean an electronic communication system, including, but is not
47 limited to E-mail, used for filing papers with the Court or serving papers on any other
48 party.
49 (o) “Initial Review” shall mean review of the Notice of Appeal to determine if the case is
50 acceptable for appellate review.
51 (p) “Interlocutory” shall mean an order or appeal that occurs before the Trial Court or
52 original hearing body issues a final ruling on a case.
53 (q) “Joinder” shall mean the joining together of several claims or several parties all in one
54 (1) hearing, provided that the legal issues and the factual situation are the same for all
55 Appellants and Respondents.
56 (r) “Judiciary” shall mean the Oneida Tribal Judicial System.
57 (s) “Original hearing body” shall mean the administrative agency decision-making panel
58 which heard a contested case under the Administrative Procedures Act (or similar law)
59 and from which appeal is permitted by law.
60 (t) “Petitioner” shall mean a person filing a petition.
61 (u) “Pro se” shall mean advocating on one’s own behalf before the Court, rather than
62 being represented by an attorney or advocate.
63 (v) “Record” shall mean all materials identified in 154.8-4(a) of these Rules.
64 (w) “Reply Brief” shall mean a brief of a party to a legal action in answer to points of law
65 raised in an opponent’s brief but not in his or her own.
66 (x) “Respondent” shall mean a person adverse to the Appellant.
67 (y) “Rules” shall mean these Rules of Appellate Procedure.
68 (z) “Stay” shall mean a suspension of a case or a suspension of a particular proceeding,
69 including orders, within a case that prevents enforcement pending appeal or other
70 circumstances.
71 (aa) “Trial Court” shall mean the Trial Court of the Tribe.
72 (bb) “Tribal” or “Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.
73 (cc) “Tribal law” shall mean a code, act, statute, rule, regulation, policy or ordinance
74 enacted by the Oneida General Tribal Council or the Oneida Business Committee.
75

76 **154.4. General Provisions**

77 154.4-1. These Rules may be used in conjunction with the Rules of Civil Procedure. Matters
78 and proceedings not specifically set forth herein shall be handled in accordance with reasonable
79 justice, as determined by the Court. Where these Rules fail to address an issue, the Federal Rules
80 of Appellate Procedure may be used as a guide, so long as those rules are not inconsistent with
81 existing Oneida Rules of Procedure, Tribal laws, or the customs of the Tribe.

82 154.4-2. On its own or by a party’s motion; the Court may, to expedite its decision or for other
83 good cause, suspend any provision of these Rules in a particular case and order proceedings as it
84 directs.

85 154.4-3. The Chief Judge of the Court shall, when hearing a case, have the authority to compel
86 the production of documents where such is deemed necessary to rendition of the Court’s opinion.

87 There shall not be a new trial in the Court. The Court may review both the factual findings and
88 conclusions of law of the Trial Court or original hearing body.
89

90 **154.5. Initiating the Appeal**

91 154.5-1. *Right of Appeal.* Any party to a civil action, who is aggrieved by a final judgment or
92 order of the Trial Court or original hearing body, may appeal to the Court of Appeals.

93 (a) In any case brought on appeal, the Appellant may petition the Court for an order
94 staying the judgment or order. A stay shall be granted in all cases in which it is requested
95 unless plain and obvious injustice would result from granting the stay. The Court may
96 render a stay conditioned upon execution of a bond to guarantee performance of the
97 judgment or order when deemed necessary.

98 (b) In the event the appeal or request for stay is denied, the Court shall state the reasons
99 for the refusal within thirty (30) days of the receipt of the Notice of Appeal.

100 154.5-2. *Notice of Appeal.* Any party who is appealing shall appeal in the manner prescribed by
101 this Rule.

102 (a) Such party shall file with the Clerk a Notice of Appeal from such judgment or order,
103 together with a filing fee, as set by the Court, within thirty (30) days after the day such
104 judgment or order was rendered. A Notice of Appeal shall not be filed by electronic
105 means.

106 (b) Within ten (10) days of the filing of the Notice of Appeal or the Perfected Notice of
107 Appeal as provided under 154.5-3, three (3) Appellate Judges shall be assigned to
108 perform an Initial Review of the Notice of Appeal.

109 (1) *Waiver of Fee.* The Chief Judge of the Court may waive the filing fee upon
110 motion for a fee waiver by the Appellant where the Chief Judge of the Court is
111 satisfied the Appellant lacks the means to pay the filing fee. The motion shall
112 include an affidavit demonstrating inability to pay and shall accompany the
113 Notice of Appeal.

114 (c) In addition to the Notice of Appeal and filing fee, the following information shall be
115 provided upon the filing of the notice:

- 116 (1) A copy of the written decision of the Trial Court or original hearing body;
117 (2) A short statement explaining what relief is sought by the Appellant;
118 (3) A short statement explaining the legal grounds for seeking the appeal and
119 justification for the relief requested;
120 (4) Name, address and phone numbers of all parties, including respondent; and
121 (5) Name, address and phone numbers of all party attorneys or advocates, if
122 known.

123 (d) A cash deposit or bond in an amount equal to the amount of any judgment, plus costs
124 assessed by the Trial Court or original hearing body, or a motion for waiver of this
125 requirement, shall accompany the Notice of Appeal. The deposit/bond requirement may
126 be waived only when, in the judgment of the Court, such deposit/bond is not in the
127 interest of justice and such waiver does not unnecessarily harm the judgment holder. The
128 motion for waiver of the deposit/bond requirement shall be requested with notice to all
129 parties. If the motion for waiver is denied, the deposit/bond shall be submitted within ten
130 (10) days of the denial. The appeal shall be dismissed if the deposit/bond is not paid or
131 waived.

132 (1) *Exception.* The Tribe, or an officer or agency of the Tribe shall be exempt
133 from the requirement of providing any cash deposit or bond. The exemption
134 under this section shall be automatic and shall not require a motion or waiver.

135 (e) An appeal shall not be dismissed for informality of form or title of the notice of
136 appeal, or for failure to name a party whose intent to appeal is otherwise clear from the
137 notice.

138 154.5-3. *Perfection of Notice.* If the appellant fails to provide a completed Notice of Appeal
139 Form, the filing fee or waiver form, or any required documents or materials, the Appellant shall
140 be notified of any filing deficiencies by the Clerk within five (5) business days and shall have
141 five (5) business days from receipt of this notice to perfect the filing. Failure to perfect the filing
142 within five (5) business days may result in the non-acceptance of the appeal.

143
144 **154.6. Appeal by Permission**

145 154.6-1. *Appeal by Permission.* An appeal from an interlocutory order may be sought by filing
146 a Petition for Permission to Appeal with the Clerk within ten (10) business days after the entry of
147 such order with proof of service on all other parties to the action. Within ten (10) business days
148 after service of the petition, an adverse party may file an Answer in opposition. A decision shall
149 be issued in a reasonable time, but no longer than thirty (30) days from the first deliberation
150 unless good cause to extend the deadline is found by the Court. This extension shall be in
151 writing. The petition shall contain:

- 152 (a) a statement of the facts necessary to develop an understanding of the question of law
153 determined by the order of the Trial Court or original hearing body; and
154 (b) a statement of the question itself; and
155 (c) a statement of the reasons why substantial basis exists for a difference of opinion on
156 the question; and
157 (d) the relief sought; and
158 (e) why an immediate appeal may:
159 (1) materially advance the termination of the litigation;
160 (2) protect the petitioner from substantial or irreparable injury; or
161 (3) clarify an issue of general importance in the administration of justice; and
162 (f) The petition shall include or have a copy of the order of the Trial Court or original
163 hearing body attached thereto.

164
165 **154.7. Joint, Consolidated and Cross Appeals**

166 154.7-1. *Joint or Consolidated Appeals.* When two (2) or more parties are entitled to appeal
167 from a Trial Court or original hearing body judgment or order, and their interests make joinder
168 practicable, the parties may file a joint notice of appeal. The parties may then proceed on appeal
169 as a single Appellant.

- 170 (a) When the parties have filed separate timely notices of appeal, the appeals may be
171 joined or consolidated by the Court.
172 (b) If the persons do not file a joint appeal or elect to proceed as a single Appellant, or if
173 their interests are such as to make joinder impractical, the person shall proceed as
174 Appellant and co-Appellant, with each co-Appellant to have the same procedural rights
175 and obligations as the Appellant. The Appellant shall be the person who filed first.

176 154.7-2. *Cross Appeal.* A Respondent who seeks modification of the judgment or order
177 appealed from or of another judgment or order entered in the same action or proceeding shall file
178 a notice of cross-appeal within the time established for the filing of a notice of appeal or ten (10)
179 business days after the receipt of the notice of appeal, whichever is later. The Respondent shall
180 be listed as the cross-Appellant. A cross-Appellant has the same rights and obligations as an
181 Appellant under these Rules.

182

183 **154.8. Service, Filing and Certification**

184 154.8-1. A paper required or permitted to be filed in the Court shall be filed with the Clerk. The
185 filing party shall supply the Clerk with the original papers and three (3) copies. The filing party
186 shall also provide one (1) copy of the papers for each opposing party or party's attorney or
187 advocate. Filing shall be complete by the close of business on the day which the filing is due.
188 The following methods of filing shall be used, in order of preference:

189 (a) *In Person*: A party to a pending case, or the party's attorney, advocate or authorized
190 Agent may file papers in person before the Clerk.

191 (b) *Electronic*: A party to a pending case may file papers electronically to the electronic
192 address, designated for such filings, of the Clerk. A paper filed by electronic means shall
193 constitute a written paper for the purpose of applying these Rules. Upon receipt by the
194 Clerk, any paper filed electronically shall be deemed filed, signed and verified by the
195 filing party.

196 (c) *By Mail*: A party to a pending case may file papers by U.S. or private mail with the
197 ability to track the delivery, with cover documents to be addressed to the Clerk. Filing
198 shall not be completed upon mailing, but only upon receipt.

199 (1) Filing of papers is also permitted through the Tribal certified interoffice mail
200 system.

201 154.8-2. *Proof of Service*. Upon demand by a party or the Appellate Clerk, a party filing
202 documents shall provide one (1) of the following:

203 (a) Proof of delivery of the filing in question;

204 (b) an acknowledgment of service by the person served; or

205 (c) proof of service consisting of a statement by the person who made service certifying:

206 (1) the date and manner of service;

207 (2) the names of the persons served;

208 (3) the mail or electronic addresses, facsimile numbers of the persons served, or
209 the addresses of the places of delivery, as appropriate for the manner of service;
210 and

211 (4) if served electronically, a writing by the person being served consenting to
212 service by electronic means.

213 154.8-3. *Service of All Papers Required*. A party shall, at or before the time of filing a paper,
214 serve a copy on all other parties to the appeal. Any party may be served by electronic means, if
215 such party consents in writing to service by electronic means. Service on a party represented by
216 an attorney or advocate shall be made on the party's attorney or advocate.

217 154.8-4. *Certification of the Record*. Upon acceptance of the Appeal, the Clerk shall, notify the
218 Trial Court clerk or original hearing body that an appeal has been filed and request, the Trial
219 Court clerk or original hearing body to prepare, and file with the Appellate Court all papers
220 comprising the record of the case appealed within thirty (30) days. Upon Certification of the
221 Record by the Clerk it shall be served on all parties as provided for in 154.8-3. The time for
222 filing and certifying the record may be extended for good cause by the Chief Judge of the Court
223 upon a written request from the Trial Court clerk or original hearing body.

224 (a) The record of the case shall consist of all papers filed with the Trial Court or original
225 hearing body, exhibits, a transcript or audio recording of the proceedings, and the final
226 decision of the Trial Court or original hearing body.

227

228 **154.9. Time Computation**

229 154.9-1. *Deadline Computation*. Time lines are determined by designating the day after notice
230 is received as day one. Computation involving calendar days shall include intermediate Tribally

231 observed holidays and weekend days, provided that if the last day of the period falls on a
232 Saturday, Sunday or Tribally observed holiday, then the next business day shall be the due date.
233 Computation involving business days shall not include intermediate weekend days or Tribally
234 observed holidays. All papers due to be filed with the Clerk are due prior to the close of business
235 on the last day of the time period.

236 (a) If notice is mailed, then three (3) days shall be added to the time line in order to
237 determine the due date.

238 154.9-2. *Extension of Time.* For good cause, the Court may extend the time prescribed by these
239 Rules or by its order to perform any act, or may permit an act to be done after that time expires.
240 But the Court shall not extend the time to file:

241 (a) a notice of appeal; or

242 (b) a petition for permission to appeal.

243 154.9-3. *Time to Complete.* Unless time is extended by the Court with the knowledge of the
244 parties, the time from the filing of the Notice of Appeal to the completion and entry of the final
245 written decision shall not exceed one hundred and eighty (180) days.

246

247 **154.10. Motions**

248 154.10-1. *Application for Relief.* An application for an order or other relief in a docketed case
249 shall be made by motion unless these Rules prescribe another form. A motion shall be in writing
250 unless the Court permits otherwise. The moving party shall file all motions with the Clerk and
251 serve opposing parties as provided in 154.8.

252 154.10-2. *Contents of a Motion.* A motion shall state with particularity the grounds for the
253 motion, the relief sought, and the legal argument necessary to support it.

254 (a) Any affidavit or other paper necessary to support a motion shall be served and filed
255 with the motion. An affidavit shall contain only factual information, not legal argument.

256 A motion seeking substantive relief shall include a copy of the Trial Court's or original
257 hearing body's opinion as a separate exhibit.

258 154.10-3. *Response to a Motion.* Any party may file a response to a motion, in accordance with
259 154.11-2. The response shall be filed within ten (10) days after service of the motion unless the
260 Court shortens or extends the time.

261 154.10-4. *Motion for a Procedural Order.* The Court may act on a motion for a procedural
262 order at any time without awaiting a response. A party adversely affected by the Court's action
263 may file a motion to reconsider, vacate, or modify that action within five (5) days of receipt of
264 notice of the decision.

265 154.10-5. *Motion for Voluntary Dismissal.* An appellant may dismiss an appeal by filing a
266 motion to dismiss. If not yet docketed in the Court, then the motion shall be filed in the Trial
267 Court or original hearing body. The dismissal of an appeal shall not affect the status of a cross-
268 appeal or the right of a respondent to file a cross appeal.

269 154.10-6. *Form.* Motions shall be typed, legible and include the case caption. Every motion
270 shall:

271 (a) Contain a caption heading, the name Judiciary- Court of Appeals, the title of the
272 action, the docket number (if known) and a designation as to the purpose or type of
273 motion.

274 (b) Contain the names of all parties to the action.

275 (c) Be organized in sections containing a clear designation, which shall include, but is
276 not limited to:

277 (1) The facts, events or occurrences which make a specific motion for relief
278 necessary;

- 279 (2) The specific relief requested by the moving party;
280 (3) The applicable law or laws to the motion at hand, including citations; and
281 (4) The legal reasons the relief should be granted.
282 (d) Be on 8 ½ by 11 inch paper. The text shall be double-spaced, but quotations more
283 than two (2) lines may be indented and single-spaced. Headings and footings may be
284 single-spaced. Margins must be at least one (1) inch on all four (4) sides. Page numbers
285 may be placed in the margins, but no other text shall appear there.
286 (e) Be typed in a plain, roman style, although italics or boldface may be used for
287 emphasis. Case names shall be italicized or underlined.
288 (f) Not exceed twenty (20) pages, unless the Court permits or directs otherwise.
289

290 **154.11. Briefs**

291 154.11-1. *Briefs Generally.* Briefs shall be used by the Court to aid the Court in its
292 consideration of the issues presented.

293 (a) *Form.* The brief shall be 1.5 line spaced, typed, 1 inch margins, and on 8.5 x 11 inch
294 paper, and shall be signed by the party or the party's attorney or advocate, if represented.
295 The front cover of a brief shall contain:

- 296 (1) the number of the case centered at the top;
297 (2) the name of the court;
298 (3) the title of the case;
299 (4) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name
300 of the court below;
301 (5) the title of the brief, identifying the party or parties for whom the brief is filed;
302 and
303 (6) the name, office address, and telephone number of the attorney or advocate
304 representing the party for whom the brief is filed, if represented.

305 (b) *Length.* The brief shall be no more than twenty (20) pages, one (1) sided, in length,
306 not including any addendums, appendices, attachments, or the tables of contents and
307 authorities.

308 (c) *Filing.* When a party is represented by an attorney or advocate, only the attorney or
309 advocate shall file briefs and pleadings. The individual shall not file on his or her own
310 unless he or she is pro se. Three (3) copies of each brief shall be filed with the Clerk and
311 one (1) copy to all parties to the appeal.

312 (d) *Time to Serve and File a Brief.* The Appellant shall serve on the Respondent and file
313 with the Clerk a brief within twenty (20) days after acceptance of the Certification of the
314 Record. The Respondent's brief shall be filed with the Clerk within twenty (20) days of
315 receipt of the Appellant's brief. A reply brief, if necessary, shall be filed within fourteen
316 (14) days of receipt of Respondent's brief. The Court may, on its own, order different
317 time lines for any party's time to file a brief.

318 (e) *Consequence of Failure to File.* If an Appellant fails to file a brief within the time
319 provided by this Rule, or within an extended time, a Respondent may move to dismiss the
320 appeal. A Respondent who fails to file a brief shall not be heard at oral argument unless
321 the Court grants permission.

322 154.11-2. *Appellant's Brief.* The Appellant's brief shall contain, under appropriate headings and
323 in the order indicated:

- 324 (a) *Content:*
325 (1) a table of contents, with page references;

- 326 (2) a table of authorities-cases (alphabetically arranged), statutes, and other
327 authorities-with references to the pages of the brief where they are cited;
328 (3) a jurisdictional statement, including:
329 (A) the basis for the Trial Court's or original hearing body's subject-matter
330 jurisdiction;
331 (B) the basis for the Court of Appeals' jurisdiction;
332 (C) the filing dates establishing the timeliness of the appeal; and
333 (D) an assertion that the appeal is from a final order or judgment that
334 disposes of all parties' claims, or information establishing the Court of
335 Appeals' jurisdiction on some other basis.
336 (4) a statement of the issues presented for review;
337 (5) a statement of the case briefly indicating the nature of the case, the course of
338 proceedings, and the disposition below;
339 (6) a statement of facts relevant to the issues submitted for review with
340 appropriate references to the record;
341 (7) a summary of the argument, which shall contain a succinct, clear, and accurate
342 statement of the arguments made in the body of the brief, and which shall not
343 merely repeat the argument headings;
344 (8) the argument, which shall contain:
345 (A) Appellant's contentions and the reasons for them, with citations to the
346 authorities and parts of the record on which the Appellant relies; and
347 (B) for each issue, a concise statement of the applicable standard of review
348 (which may appear in the discussion of the issue or under a separate
349 heading placed before the discussion of the issues);
350 (9) a short conclusion stating the precise relief sought;
351 (10) a short appendix to include:
352 (A) relevant docket entries in the Trial Court or original hearing body;
353 (B) limited portions of the record essential to an understanding of the
354 issues raised;
355 (C) the judgment, order, or decision in question; and
356 (D) other parts of the record to which the parties wish to direct the Court's
357 attention; and
358 (11) where the record is required by law to be confidential, reference to
359 individuals shall be by initials rather than by names.

360 154.11-3. *Respondent's Brief*. The Respondent's brief shall conform to the same requirements
361 as 154.11-2 (Appellant's Brief).

362 (a) The Respondent's brief shall address each issue and argument presented by the
363 Appellant's brief.

364 (b) The Respondent's brief may present additional issues, with the Respondent's
365 positions and arguments on such issues.

366 154.11-4. *Reply Brief*. The Appellant may file a brief in reply to the Respondent's brief. Unless
367 the Court permits, no further briefs may be filed. A reply brief shall conform to the requirements
368 of 154.11-3 (Respondent's Brief), except that a reply brief shall be no more than fifteen (15)
369 pages, one (1) sided, in length.

370 154.11-5. *Amicus Curiae Brief*. A person who is not a party to a case but has some interest in
371 the outcome of the case may, upon timely motion and with permission of the Court, submit an
372 amicus curiae brief in support of a party to the action. The Court may, on its own motion,
373 request amicus participation from appropriate individuals or organizations.

374 (a) Amicus curiae briefs shall conform to the requirements of 154.11-2 (Appellant's
375 Brief), except as provided in the following:

376 (1) Amicus curiae shall file his or her brief no later than seven (7) days after the
377 brief of the party being supported is filed. Amicus curiae that do not support
378 either party shall file his or her brief no later than seven (7) days after the
379 Appellant's or Respondent's brief is filed. The Court may grant leave for later
380 filing, specifying the time within which an opposing party shall answer.

381 154.11-6. *Briefs in a Case Involving Multiple Appellants or Respondent.* In a case involving
382 more than one (1) Appellant or Respondent, including consolidated cases, any number of
383 Appellants or Respondents may join in a brief, and any party may adopt, by reference, a part of
384 another's brief. Parties may also join in reply briefs.

385

386 **154.12. Oral Argument**

387 154.12-1. *Oral Arguments.* The Court may order oral argument when issues of fact or law
388 remain unclear and/or the positions of the parties on an issue are unclear or otherwise not fully
389 developed. The Court shall direct that an appeal be submitted on briefs only, if:

390 (a) The appeal is frivolous;

391 (b) The dispositive issue or issues have been authoritatively decided; or

392 (c) The facts and legal arguments are adequately presented in the briefs and record, and
393 the decisional process would not be significantly aided by oral argument.

394 154.12-2. *Notice.* The Clerk shall provide notice, of at least ten (10) business days, to all parties
395 when oral arguments are scheduled. The notice shall list the location of the oral argument and
396 the time allowed for each side. The Court shall determine the amount of time for oral arguments.
397 A motion to postpone the argument or to extend the argument timeframe shall be filed at least
398 five (5) business days before the hearing date.

399 154.12-3. *Citation of Authorities at Oral Argument.* Unless permitted by the Court, parties may
400 not cite or discuss a case at an oral argument unless the case has been cited in one (1) of the
401 briefs.

402

403 **154.13. Entry and Form of Judgment**

404 154.13-1. *Entry.* A judgment is entered when it is noted on the docket. The Clerk shall prepare,
405 sign, and enter the judgment after receiving the Court's opinion.

406 (a) The decision and opinion of the Court shall be by a majority vote.

407 (b) The Court may:

408 (1) Reverse, affirm, or modify the judgment or order as to any or all parties;

409 (2) Remand the matter to the Trial Court or original hearing body and order a new
410 trial on any or all issues presented; the order remanding a case shall contain
411 specific instructions for the Trial Court or original hearing body;

412 (3) If the appeal is from a part of a judgment or order, the Court may reverse,
413 affirm or modify as to the part which is appealed;

414 (4) Direct the entry of an appropriate judgment or order; or

415 (5) Require such other action or further proceeding as may be appropriate to each
416 individual action.

417 (c) On the date when judgment is entered, the Clerk shall serve all parties with a copy of
418 the decision and opinion as entered.

419 154.13-2. *Form.* All decisions of the Court shall be in writing and accompanied by an opinion
420 stating the legal issues and the basis for the decision. Decisions of the Court shall be issued no

421 later than sixty (60) days after the conclusion of oral argument or after the expiration of time to
422 file a *Reply Brief* or *Response Brief* if no oral argument is held.

423 (a) The time for issuing a decision and opinion may be extended provided all parties are
424 notified of the extension in writing. The notice of extension shall include the cause for
425 and length of such extension.

426

427 **154.14. Interest of Judgments**

428 154.14-1. Unless the law provides otherwise, if a money judgment in a civil case is affirmed,
429 whatever interest is allowed by law is payable from the date when the Trial Court's or original
430 hearing body's judgment was entered. If the Court modifies or reverses a judgment with a
431 direction that a money judgment be entered in the Trial Court or by the original hearing body, the
432 mandate shall contain instructions about the allowance of interest.

433

434 **154.15. Penalties**

435 154.15-1. *Frivolous Appeals*. If an appeal or cross-appeal is found by the Court to be frivolous,
436 the Court may award to the successful party costs and attorney's or advocate's fees.

437 (a) Costs may be assessed against the Appellant or cross-Appellant, the (cross)-
438 Appellant's attorney or advocate, or both the (cross)-Appellant and his/her attorney or
439 advocate jointly.

440 (1) Court costs shall be based on actual cost or defined by the Court.

441 (b) A finding of a frivolous appeal or cross-appeal shall be made if one (1) or more of the
442 following elements are found by the Court:

443 (1) The appeal or cross appeal was filed, used, or continued in bad faith, solely
444 for purposes of delay, harassment or injuring the opposing party; or

445 (2) The party or party's attorney or advocate knew, or should have known, that
446 the appeal or cross-appeal was without any reasonable basis in law or equity and
447 could not be supported by a good faith argument for an extension, modification or
448 reversal of existing law.

449 154.15-2. *Delay*. If the Court finds that an appeal or cross-appeal was taken for the purpose of
450 delay, it may award one (1) or more of the following to the opposing party:

451 (a) Double costs;

452 (b) A penalty of additional interest not exceeding ten percent (10%) on the award amount
453 affirmed;

454 (c) Damages caused by the delay; and/or

455 (d) Attorney's or advocate's fees.

456 154.15-3. *Non-Compliance with Rules*. Failure of a party to comply with a requirement of these
457 Rules or an order of the Court, does not affect the jurisdiction of the Court over the appeal but
458 may be grounds for one (1) or more of the following:

459 (a) Dismissal of the appeal;

460 (b) Summary reversal of the Trial Court or original hearing body;

461 (c) Striking of a paper, document or memorandum submitted by a party;

462 (d) Imposition of a penalty or costs on a party or party's attorney or advocate; and/or

463 (e) Other action as the Court considers appropriate.

464

465 **154.16. Substitution of Parties**

466 154.16-1. *Death of a Party*. Death of a party does not automatically end a party's right to
467 appeal.

468 (a) *After Notice of Appeal Is Filed.* If a party dies after a notice of appeal has been filed
469 or while a proceeding is pending in the Court, the decedent's personal representative may
470 be substituted as a party on motion filed with the Clerk by the representative or by any
471 party. A party's motion shall be served on the representative. If the Decedent has no
472 representative, any party may suggest the death on the record, and the Court may then
473 direct appropriate proceedings.

474 (b) *Before Notice of Appeal Is Filed-Potential Appellant.* If a party entitled to appeal
475 dies before filing a notice of appeal, the decedent's personal representative, or if there is
476 no personal representative, the decedent's attorney or advocate of record, may file a
477 notice of appeal within the time prescribed by these Rules. After the notice of appeal is
478 filed, substitution shall be in accordance with 154.16-1(a).

479 (c) *Before Notice of Appeal Is Filed-Potential Respondent.* If a party against whom an
480 appeal may be taken dies after entry of a judgment or order in the Trial Court or original
481 hearing body, but before a notice of appeal is filed, an Appellant may proceed as if the
482 death had not occurred. After the notice of appeal is filed, substitution shall be in
483 accordance with 154.16-1(a).

484 154.16-2. *Substitution for a Reason Other Than Death.* If a party needs to be substituted for any
485 reason other than death, the procedure set in 154.16-1(a) applies.

486

487 **154.17. Costs**

488 154.17-1. *Costs.* Costs in an appeal shall be as follows unless otherwise ordered by the Court:

489 (a) Against the appellant when the appeal is dismissed or the judgment or order affirmed;

490 (b) Against the respondent when the judgment or order is reversed.

491 154.17-2. *Allowable Costs.* Allowable costs shall include:

492 (a) Cost of printing and assembling the number of copies and briefs and appendices
493 required by the Rules;

494 (b) Fees charged by the Court and/or Clerk;

495 (c) Cost of the preparation of the transcript of testimony of the record of appeal; and

496 (d) Other costs as ordered by the Court.

497 154.17-3. *Recovery of Costs.* A party seeking to recover costs in the Court shall file a statement
498 of the costs within fourteen (14) days of the filing of the decision of the Court. An opposing
499 party may file, within eleven (11) days after service of the statement, a motion objection to the
500 statement of costs.

501

502 *End.*

503

Adopted BC-04-25-14-B

Oneida Tribe of Indians of Wisconsin

Legislative Reference Office

P.O. Box 365

Oneida, WI 54155

(920) 869-4376

(800) 236-2214

<http://oneida-nsn.gov/LOC>



Committee Members

Brandon Stevens, Chairperson

Tehassi Hill, Vice Chairperson

Fawn Billie, Councilmember

Jennifer Webster, Councilmember

Quarterly Report Legislative Operating Committee January 2015

1. Purpose and Mission

The purpose and mission of the Legislative Operating Committee (LOC) is to enhance the policymaking capability of the Oneida Business Committee (OBC) and the General Tribal Council (GTC) by drafting laws and policies and reviewing past and current laws, policies and regulations of the Oneida Tribe.

A legislative analysis is completed for proposed laws, policies, regulations, bylaws and amendments. Public meetings are facilitated by the LOC in accordance with the Legislative Procedures Act (LPA). A Resolution and Statement of Effect are prepared for all legislation that is presented for final adoption which is submitted to the OBC and/or GTC for approval.

2. Members

The LOC is comprised of the five council members of the OBC: Brandon Stevens (Chair), Tehassi Hill (Vice-Chair), Jennifer Webster, Fawn Billie, and there is currently one vacant seat.

3. Contact Information

The LOC office is located on the second floor in the Norbert Hill Center. For more information, please contact Lynn Franzmeier, Staff Attorney for the Legislative Reference Office (LRO) at (920) 869-4417 or e-mail LOC@oneidanation.org.

4. Meetings

The LOC meets on the first and third Wednesday of every month. The LOC meetings are held in the Norbert Hill Center-2nd Floor, Business Committee Conference Room and begin at 9:00 a.m.

5. Prioritization

The LOC continuously reviews the proposals on our Active Files List (AFL). Priorities will be identified based on GTC Directive, OBC Directive and by LOC agreement/consensus.

6. Summary

During this reporting period (October, November, and December 2014), the LOC added ten legislative items to the Active Files List and completed 3 legislative items, bringing the total number of legislative items on the Active Files List to 33. The LOC also completed processing legislative analyses for two GTC petitions, and held one Public meeting.

Items Added to the Active Files List

New Legislation. The following items were added to the AFL during this reporting period:

- **Agricultural Law** - This is a proposal for the Tribe to consider legislation that would enable the Tribe to identify agricultural products that can be grown on the Reservation, including industrial hemp, in order to exercise the Tribe's sovereignty and pursue economic diversification.
- **OBC Sanctions Policy** - This item is a proposal for a consistent process that would provide for members of the OBC to face sanctions for misconduct. Currently, the only penalty that OBC members are subject to is removal from office.
- **Environmental, Health and Safety Law** - This is a new Law that will enable the Environmental, Health and Safety Department (EHSD) to protect land, water, air, people and safety on the Reservation. The proposal also authorizes EHSD to protect the Reservation, promote public health & safety and do business on the Reservation, and to perform duties such as creating rules in implementing this Law.
- **Furlough Policy** – Last term, the OBC adopted a Furlough Policy on an emergency basis, but that emergency adoption/extension expired on October 15, 2014. On October 8, 2014, the OBC directed the LOC to continue processing a furlough policy for permanent adoption.
- **Higher Education.** The OBC directed the LOC to look at codifying the rules created by the Higher Education Office, which currently govern how Higher Ed disburses higher education funding in accordance with GTC directives.

Amendments to Existing Legislation. The following items are proposals to amend existing legislation, which were formally added to the AFL during this reporting period:

- **Investigative Leave Policy Amendments.** Amendments to the Investigative Leave Policy were requested to delete a section of the Policy which prohibits the use of investigative leave when a complaint is filed. While the original intent of the section was to prohibit the use of investigative leave when one employee files a complaint against another, as defined under the Personnel Policies and Procedures, a decision by the Oneida Appeals Commission has interpreted the Policy to apply anytime the term “complaint” is used in an investigation. This could prohibit a supervisor from taking action to protect the Tribe in cases of misappropriation if inappropriate activities are identified based on a complaint arising out of a disciplinary or complaint process. The amendments would also reduce the time period of the investigation from 30 days to 15 days.
- **Marriage Law Amendments.** Amendments were proposed after the U.S. Supreme Court declined to overrule a Federal court's finding that Wisconsin's same-sex marriage ban is unconstitutional. Questions were raised since the Tribe's Marriage Law does not allow for same-sex marriage and would not recognize a marriage conducted legally in Wisconsin.
- **Motor Vehicle Law Amendments.** Amendments were proposed by the Licensing Department that would remove the registration prices from the Law so they could be changed without amending the Law. Additional changes are requested that would just generally update the Law, which has not been updated since 1999.
- **Removal Law Amendments.** These amendments would enable the OBC to remove elected members of boards, committees and commissions upon petition or request by the board, committee or commission. The proposed changes would not amend the process for removing an OBC member.

Bylaws. During this reporting period, the LOC added one request to amend bylaws to the Active Files List - The Pow-wow Committee has requested changes to their bylaws which add qualifications for serving on the committee. First preference would be given to enrolled Oneida members, with second preference to members of any official federally recognized Tribe. The qualifications would also be revised so that Committee members must have experience coordinating events. Additional amendments require Committee members to follow the Tribe's Code of Ethics and identify meeting attendance requirements and authorize the entity to recommend termination of appointment for any member who fails to follow the attendance requirements.

Completed Items

Completed Legislative Items. The following items were completed during the quarter and removed from the Active Files List:

- **Judiciary Law Emergency Amendments.** Emergency amendments to the Judiciary Law were requested in order to reduce the number of Trial Court Judges by one and add an additional Family Court Judge in order to reduce the current case load in the Family Court. On October 28, 2014 the OBC held a Special OBC Meeting, and adopted a Resolution amending GTC-01-07-13-B - Regarding Case Acceptance by the Oneida Appeals Commission as Authorized by the GTC, as well as three resolutions amending the implementation date set out in the adopting Resolutions for the Rules of Civil Procedure, Rules of Appellate Procedure, and Rules of Evidence.
- **Oneida Nation Gaming Ordinance Emergency Amendments.** After minor amendments were made to ONGO to replace references to the Oneida Appeals Commission with references to the Judiciary, the adopted amendments were submitted to National Indian Gaming Commission for approval. NIGC returned the proposed amendments with three additional amendments that need to be made, and set a deadline of October 21, 2014 for compliance. The OBC adopted emergency amendments incorporating those changes on October 8, 2014.
- **Public Use of Tribal Land Law Amendments.** The Public Use of Tribal Land Law was initially adopted by the OBC on May 15, 2014, but emergency amendments were adopted on July 23, 2014 in order to allow Tribal employees who are not Tribal members, and non-Tribal contractors to access some land that the Law designated as restricted to Tribal members only. The OBC adopted permanent amendments to the Law on December 10, 2014.

Completed Administrative Items. The following items were completed during the quarter:

- **Petition: Create a Support System for Tribal Members Engaged with Oneida Judiciary.** This is a request that the Tribe "Create a support system of paralegals, advocates, and attorneys to assist and advocate for Oneida Enrolled Tribal members that are engaged in any case with the Oneida Judiciary." The OBC accepted the legislative analysis on this item on November 26, 2014.
- **Petition: Constitution Amendments in regards to Membership.** This was a petition submitted by Michelle Danforth to change the Oneida Constitution and Bylaws in regards to membership. The OBC accepted the legislative analysis for this item on October 22, 2014.

Public Meetings

The LOC held one Public Meeting this quarter. The meeting was held on November 6, 2014, for the Public Use of Tribal Land amendments.

Emergency Resolutions

BC Resolution 09-24-14-P

Expires: 03-24-15

Extension of Emergency Amendments to the Judiciary Law/Transition Plan

Emergency amendments to the Law and Transition plan revise the number of judges, in order to meet the staffing needs of the new Family Court.

BC Resolution 09-24-14-Q

Expires: 03-24-15

Emergency Amendments to the Personnel Policies and Procedures regarding Job Duties and Reassignments

Amendments revise the current requirements relating to job duties for Tribal employees, enabling employees to be utilized to perform job duties outside of their regular assignments, with the intent that this be a short-term cost-saving measure.

BC Resolution 10-08-14-C

Expires: 04-08-15

Oneida Nation Gaming Ordinance Emergency Amendments

Emergency amendments were sought to amend the Law to ensure compliance with NIGC requirements. After minor amendments were made to ONGO to replace references to the Oneida Appeals Commission with references to the Judiciary, the adopted amendments were submitted to National Indian Gaming Commission for approval. NIGC returned the proposed amendments with three additional amendments that need to be made, and set a deadline of October 21, 2014 for compliance. The emergency amendments were adopted by the OBC on October 8, 2014.

BC Resolution 12-19-14-A

Expires: 06-19-14

Rules of Appellate Procedure Emergency Amendments

In accordance with a GTC directive, on April 25, 2014 the OBC adopted Rules of Appellate Procedure to be implemented for the new Judiciary. Following their adoption, the Chief Appellate Judge requested amendments to the Rules to clarify definitions and include provisions that were inadvertently omitted; and also requested that the amendments be implemented before the new Judiciary begins accepting cases on January 5, 2015 in order to allow the Judiciary to operate under consistent rules.

Person responsible for this report and contact information: Brandon Stevens, Legislative Operating Committee Chair. Phone: (920) 869-4378

LOC Active Files List – Sponsor Breakdown

	Brandon Stevens	Tehassi Hill	Jennifer Webster	Fawn Billie	No Sponsor	LOC Total
Total Active Items	10	9	12	9		40
New Laws/Policies	3	5	6	5		19
Amendments to Laws/Policies	2	4	4	2		12
Bylaws				2		2
Petitions	5		1			6
Other			1			1

Active Items

(Note: “Days on AFL is effective as of January 7, 2015)

Item	Type	Date Added to AFL	Days on AFL
Brandon Stevens			
Budget Management and Control Law	New	9/17/14	113
Employment Law	New	9/17/14	113
Family Court Amendments: Bench Warrants	Amendments	9/17/14	113
Membership Ordinance	Amendments	9/17/14	113
Petition: Develop a Dialysis Center	Petition	9/17/14	113
Petition: Directing a “Stall Mall” be Created	Petition	9/17/14	113
Petition: Publishing Names/Addresses of Petition Signers in GTC Mailouts	Petition	9/17/14	113
Petition: Real Estate Taxes for all Tribe Owned Property to be Paid by Tribe	Petition	9/17/14	113
Petition: Responding to Questions/Comments from the Floor at GTC	Petition	9/17/14	113
OBC Sanctions Policy	New	10/15/14	85
Tehassi Hill			
Leasing Law	New	9/17/14	113
Rulemaking Law	New	9/17/14	113
Workplace Violence Policy Amendments	New	9/17/14	113
Code of Ethics Law Amendments	Amendments	9/17/14	113
Election Law Amendments	Amendments	9/17/14	113
Law Enforcement Ord. Amendments – Conservation Officers	Amendments	9/17/14	113
Agricultural Law	New	10/1/14	99
Motor Vehicle Law Amendments	Amendments	11/5/14	64
Environmental, Health and Safety Law	New	12/17/14	22

Jennifer Webster			
Capping Damages and Awards from the Judicial System	New	9/17/14	113
Employee Advocacy Law	New	9/17/14	113
Fitness for Duty Policy	New	9/17/14	113
Tribally-Owned Business Organization Code	New	9/17/14	113
Vehicle Driver Certification and Fleet Management	New	9/17/14	113
Whistleblower Law	New	9/17/14	113
Audit Law Amendments	Amendments	9/17/14	113
Comprehensive Policy Governing BCCs Amendments	Amendments	9/17/14	113
Rules of Appellate Procedure	Amendments	9/17/14	113
Petition: Child Care Department Consumer Complaint Policy	Petition	9/17/14	113
Tribal Hearing Bodies	Other	9/17/14	113
Investigative Leave Policy Amendments	Amendments	12/17/14	22
Fawn Billie			
Children's Code	New	9/17/14	113
GTC Meetings Law	New	9/17/14	113
Guardianship Law	New	9/17/14	113
Audit Committee Bylaws	Bylaws	9/17/14	113
Pow-wow Committee Bylaws	Bylaws	10/1/14	99
Furlough Policy	New	10/15/14	85
Higher Education	New	10/15/14	85
Marriage Law Amendments	Amendments	11/5/14	65
Removal Law Amendments	Amendments	12/17/14	22

Completed Items - Overall

	Brandon Stevens	Tehassi Hill	Jennifer Webster	Fawn Billie	No Sponsor	LOC Total
Completed Items	3	4			1	8
New Laws/Policies						
<i>Average Time</i>						
Amendments	3	2				5
<i>Average Time</i>						
Bylaws						
<i>Average Time</i>						
Petitions		2			1	3
<i>Average Time</i>						
Other						
<i>Average Time</i>						
Overall Average Time						

Completed Items – By Sponsor

Item	Type	Date Added to AFL	Date Complete	Days
Brandon Stevens				
Administrative Procedures Act Repeal	Amendments	9/17/14	9/25/14	7
Judiciary Law/Transition Plan Emergency Amendments	Amendments	9/17/14	9/25/14	7
Amendments to the Oneida Nation Gaming Ordinance	Amendments	9/17/14	10/1/14	14
Tehassi Hill				
Personnel Policies: Job Duties/Work Assignments (Emergency Amendments)	Amendments	9/17/14	9/25/14	7
Petition: Hold GTC Meeting to Address Tribal Election Issues	Petition	9/17/14	10/15/14	29
Petition: Create a Support System for Tribal Members Engaged w/Judiciary	Petition	10/15/14	11/19/14	
Public Use of Tribal Land Emergency Amendments	Amendments	9/17/14	12/3/14	
Jennifer Webster				
Fawn Billie				
No Sponsor				
Petition: Constitution Amendments in regards to Membership	Petition	10/1/14	10/1/14	1

January 2015

January 2015						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

February 2015						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Dec 28	29	30	31	Jan 1, 15	2	3
Dec 28 - Jan 3					New Year's		
	4	5	6	7	8	9	10
Jan 4 - 10		6:00pm 9:00pm Annual GTC Meeting (Radisson)		9:00am 2:00pm LOC Meeting (BCCR) 10:00am 11:00am LOC Work Meeting to discuss BC Sanctions and Penalties (BCCR)			
	11	12	13	14	15	16	17
Jan 11 - 17				BC Meeting (BCCR)			
	18	19	20	21	22	23	24
Jan 18 - 24		6:00pm 9:00pm GTC Meeting-Budget (Radisson)		9:00am 2:00pm LOC Meeting (BCCR)			
	25	26	27	28	29	30	31
Jan 25 - 31				BC Meeting (BCCR)			

February 2015

February 2015

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

March 2015

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Feb 1 - 7	Feb 1	2	3	4 9:00am 2:00pm LOC Meeting (BCCR)	5	6	7
	8	9	10	11 BC Meeting (BCCR)	12	13	14
Feb 8 - 14	15	16	17	18 9:00am 2:00pm LOC Meeting (BCCR)	19	20	21
	22	23	24	25 BC Meeting (BCCR)	26	27	28
Feb 15 - 21							
Feb 22 - 28							