

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
David P. Jordan, Councilmember
Jennifer Webster, Councilmember

LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room-2nd Floor Norbert Hill Center
December 2, 2015 9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be approved**
 - 1. November 18, 2015 LOC Meeting Minutes
- III. Current Business**
 - 1. Administrative Court
 - 2. Employment Law
 - 3. Garnishment Amendments
 - 4. Audit Committee Bylaw Amendments
 - 5. Administrative Procedures Act Amendments
- IV. New Submissions**
- V. Additions**
- VI. Administrative Updates**
 - 1. Vendors Licensing Law
- VII. Executive Session**
- VIII. Recess/Adjourn**

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LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room-2nd Floor Norbert Hill Center
November 18, 2015 9:00 a.m.

PRESENT: Brandon Stevens, Tehassi Hill, Fawn Billie, David P. Jordan

EXCUSED: Jennifer Webster

OTHERS PRESENT: Taniquelle Thurner, Candice Skenandore, Krystal John, Bonnie Pigman, Nancy Barton, Mike Debraska, Lisa Liggins, Rae Skenandore, Danelle Wilson, Nicolas Reynolds, Cathy Metoxen, Leyne Orosco, Marlene Garvey.

I. Call To Order and Approval of the Agenda

Brandon Stevens called the November 18, 2015 Legislative Operating Committee meeting to order at 9:02 a.m.

Motion by David P. Jordan to adopt the agenda; seconded by Fawn Billie. Motion carried unanimously.

II. Minutes to be approved

1. November 4, 2015 LOC Meeting Minutes

Motion by Fawn Billie to approve the November 4, 2015 LOC meeting minutes; seconded by David P. Jordan. Motion carried with David P. Jordan abstaining.

III. Current Business

1. Administrative Procedures Act Amendments (2:22-3:33)

Motion by David P. Jordan to defer the Administrative Procedures Act Amendments to the Finance Department for a fiscal impact statement and to forward the Administrative Procedures Act Amendments to a public meeting date of January 7, 2016; seconded by Fawn Billie. Motion carried unanimously.

2. GTC Meetings Law (3:38-1:45:43)

Motion by Fawn Billie to defer the GTC Meetings Law with the noted changes for a legislative analysis and fiscal impact statement; seconded by David P. Jordan. Motion carried unanimously.

Noted changes include the following:

- *Require the Tribal Secretary to provide a petition form with instructions;*
- *Require one subject matter per petition (does not limit the number of resolutions so long as they apply to the topic);*

Legislative Operating Committee Meeting Agenda of November 18, 2015

- *Limit the number of resolutions that can be heard at a GTC meeting;*
- *Defer the discussion regarding denying a vote on matters deemed illegal or unconstitutional;*
- *Expand the 60-day timeframe under 11.5-5 (a);*
- *Add specific deadlines for each required analysis (legal, legislative & fiscal);*
- *If a petition is denied, notice must be provided to the petitioner and those that signed the petition stating the reason(s) why the petition was denied;*
- *Amend the list under 11.5-8 to be more common sense;*
- *Include when an alternate may be assigned for representing a petition;*
- *Identify the forums, media that can be used at GTC and specify who can utilize them for presentations;*
- *Remove the 2-minute time limit under 11.8-5 (c) and allow GTC, at the start of the GTC meeting, to determine if a time limit is necessary, and if so, identify the time limit;*
- *Require the OBC to adopt a GTC security plan; and*
- *Identify who can grant permission to videotape*

3. **Legislative Procedures Act Amendments (1:45:45-1:46:27)**

Motion by David P. Jordan to accept the memorandum regarding the status of the Legislative Procedures Act Amendments; seconded by Tehassi Hill. Motion carried unanimously.

4. **Oneida Higher Education Scholarship (1:46:30-1:58:10)**

Motion by David P. Jordan to accept the public meeting comments regarding the Oneida Higher Education Scholarship and defer to a LOC work meeting to be held on November 23, 2015; seconded by Tehassi Hill. Motion carried unanimously.

Note: LOC work meeting will be held on November 23, 2015 at 10 a.m. in the B.C.C.R.

5. **Public Use of Tribal Land Amendments (1:58:11-2:05:54)**

Motion by Tehassi Hill to accept the public meeting comments regarding the Public Use of Tribal Land Amendments and defer to a LOC work meeting to be held on November 23, 2015; seconded by Fawn Billie. Motion carried unanimously.

Note: LOC work meeting will be held on November 23, 2015 at 3:30 p.m. in the E.C.R.

6. **Severance Law (2:05:55-2:24:42)**

Motion by Tehassi Hill to remove the emergency status of the Severance Law; seconded by David P. Jordan. Motion carried unanimously.

Note: The sponsor will work with the Finance Department and Treasurer's Office and bring back this item in 60 days.

7. **Community Support Fund Policy Amendments (2:24:43-2:45:55)**

Motion by David P. Jordan to accept the public meeting comments regarding the Community Support Fund Policy Amendments and defer to a LOC work meeting to be held tentatively on December 4, 2015; seconded by Fawn Billie. Motion carried unanimously.

8. Removal Law Amendments (2:45:57-2:52:27)

Motion by Tehassi Hill to accept the public meeting comments regarding the Removal Law Amendments and defer to a LOC work meeting to be held tentatively on December 4, 2015; seconded by Fawn Billie. Motion carried unanimously.

IV. New Submissions

1. Vendor Licensing Law Amendments (2:52:30-3:01:24)

Motion by Fawn Billie to add the Vendor Licensing Law Amendments to active files list with either Jennifer Webster or Brandon Stevens as the sponsor; seconded by David P. Jordan. Motion carried unanimously.

Note: The sponsor of this item will be determined at the next LOC meeting.

V. Additions

VI. Administrative Updates

1. Annual Report (3:01:25-3:02:09)

Motion by Tehassi Hill to accept the Annual Report as FYI; seconded by Fawn Billie. Motion carried unanimously.

2. Sponsor List (3:02:11-3:02:51)

Note: Included for information only; no action required.

VII. Executive Session

VIII. Recess/Adjourn

Motion by Tehassi Hill to adjourn the November 18, 2015 Legislative Operating Committee meeting at 12:05 p.m.; seconded by Fawn Billie. Motion carried unanimously.



Legislative Operating Committee

December 2, 2015

Administrative Court (formerly Tribal Hearing Bodies)

Submission Date: 9/17/14

Public Meeting:
Emergency Enacted:
Expires:

LOC Sponsor: Brandon Stevens

Summary: *This item was originally submitted to the LOC on November 15, 2013 under the title "Tribal Hearing Bodies"; and was carried over into the current term by the LOC. This was a request for the LRO to conduct research on Tribal Boards, Committees and Commissions to find out which are also hearing bodies and where the hearing body authority comes from. After that research was completed, it was proposed that an Administrative Court be developed which would assume the hearing body authority of each of those entities; so that all disputed administrative matters would be heard in the same forum.*

9/17/14 LOC: Motion by Jennifer Webster to add Tribal Hearing Bodies to the Active Files List; seconded by Tehassi Hill. Motion carried unanimously.

10/15/14 LOC: Motion by Jennifer Webster to accept the verbal update on the Personnel Commission Legislation; seconded by Fawn Billie. Motion carried unanimously

6/3/14 LOC: Motion by Jennifer Webster for the Legislative Operating Committee to send a memorandum to the Oneida Business Committee, to be on their agenda, for the recommendation from the Legislative Operating Committee requesting authority to develop legislation for an administrative court, also drafting a letter to be sent to elected and appointed boards, committees and commissions requesting full cooperation in submitting the data that is asked for; seconded by Fawn Billie. Motion carried unanimously.

6/10/15 OBC: Motion by David Jordan to approve the creation of an administrative court and endorse a letter of co-operation to be created that directs the Tribe's boards, committees and commissions to assist the LOC in the creation of the administrative court, seconded by Fawn Billie. Motion carried unanimously.

Motion by Lisa Summers that the LOC create an action plan to be brought back to the Business Committee in 60 days, seconded by Melinda J. Danforth. Motion carried unanimously.

6/17/15 LOC: Motion by David P. Jordan to forward the Tribal Hearings Bodies/Administrative Court to an LOC work meeting(s) to discuss the 60-day action plan; seconded by Fawn Billie. Motion carried unanimously.

7/27/15: Work meeting held. Attendees include: Brandon Stevens, Tehassi Hill, David P. Jordan, Jennifer Webster, Rhiannon Metoxen, Candice Skenandore, Taniquelle Thurner, Krystal John, Douglass McIntyre.

8/5/15 LOC: Motion by Tehassi Hill to accept the Tribal Hearing Bodies/Administrative Court Action Plan and forward it to the Oneida Business Committee for its consideration; seconded by David P. Jordan. Motion carried unanimously.

Motion by Fawn Billie to direct the Oneida Child Protective Board, the Oneida Election Board, the Oneida Environmental Resource Board, the Oneida Land Commission, the Oneida Personnel

Commission, the Oneida License Commission and the Oneida Trust/Enrollment Committee to retrieve their financial expenses for the last three (3) years (including, but not limited to, the amount of stipends received, training costs and other expenses) and turn the information over to the Oneida Business Committee to help in evaluating which entities should retain their hearing body authority; seconded by Tehassi Hill. Motion carried unanimously.

8/12/15 OBC: Motion by Jennifer Webster to accept the action plan for the Tribal Hearing Bodies/Administrative Court and to direct the Oneida Child Protective Board, the Oneida Election Board, the Oneida Environmental Resource Board, the Oneida Land Commission, the Oneida Personnel Commission, the Oneida License Commission and the Oneida Trust/Enrollment Committee to retrieve their financial expenses for the last three (3) years (including, but not limited to, the amount of stipends received, training costs and other expenses) and turn the information over to OBC to help in evaluating which entities should retain their hearing body authority, seconded by David Jordan. Motion carried unanimously.

Amendment to the main motion by Lisa Summers that the information be provided by Friday, September 4, 2015, seconded by Fawn Billie. Motion carried unanimously.

9/9/15 OBC: Motion by Lisa Summers to accept verbal update regarding the Tribal Hearing Bodies/Administrative Courts, seconded by Jennifer Webster. Motion carried unanimously.

9/16/15 LOC: Motion by David P. Jordan to accept the update on Tribal Hearing Bodies as information, and forward to the Oneida Business Committee with an updated chart; seconded by Tehassi Hill. Motion carried unanimously.

9/23/15 OBC: Motion by Melinda J. Danforth to accept the update from the Legislative Reference Office regarding the status of the Tribal Hearing Bodies/Administrative Courts and to direct the Personnel Commission Liaison to request from the Personnel Commission their number of hearings from the last three (3) years to the Legislative Operating Committee, no later than September 30, 2015, seconded by Lisa Summers. Motion carried unanimously.

Amendment to the main motion by Lisa Summers that the Business Committee suspend Personnel Commission stipends if the requested information is not provided by the September 30, 2015 deadline, seconded by Brandon Stevens. Motion carried unanimously.

Next Steps:

- Defer the draft to the LRO for a legislative analysis and to the finance department for a fiscal impact statement;

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Chapter 154 JUDICIAL ADMINISTRATIVE DIVISION

154.1. Purpose and Policy

154.2. Adoption, Amendment, Repeal

154.3. Definitions

154.4. General Provisions

154.5. Judges

154.6. Jurisdiction

154.1. Purpose and Policy

154.1-1. *Purpose.* The purpose of this law is to establish an Administrative Division of the Oneida Judiciary to provide for the administration of law, justice, judicial procedures and practices by the Oneida Tribe as a sovereign nation by exercising the inherent power to make, execute, apply and enforce its own law, and to apply its own customs and traditions in matters affecting the Oneida people.

154.1-2. *Policy.* It is the policy of the Tribe to provide a knowledgeable, fair, and impartial forum for the resolution of all administrative matters that come before it pursuant to a grant of authorization by law.

154.2. Adoption, Amendment, Repeal

154.2-1. This law is adopted by the Oneida Business Committee by resolution _____.

154.2-2. This law may only be amended by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

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. Provided that, this law repeals the following:

154.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe.

154.3. Definitions

154.3-1. The definitions below shall govern the words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense:

(a) “Agency” means a Tribal agency, department, board, committee or commission whose action is the subject of a contested hearing or an appeal heard by the Administrative Division.

(b) “Attorney” means a person who is admitted to practice law before the Oneida Judiciary.

(c) “Contested case” means a challenge to an Agency decision that has a specific right to a hearing before the Administrative Division.

(d) “Judge” means a Judge who sits on the Trial Court within the Judiciary.

(e) “Pro Tem Judge” means a decision maker that is not currently seated on the Judiciary, but that is appointed on a temporary (*pro tempore*), case-by-case basis to hear and decide matters in the Administrative Division.

(f) “Tribe” or “Tribal” means the Oneida Tribe of Indians of Wisconsin.

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(g) “Tribal law” means a code, act, statute, rule, regulation, policy or ordinance enacted by the Oneida General Tribal Council or Oneida Business Committee.

(h) “Yonik&hlihsa>aht&” translated as “a decision is made” means the legal principle establishing that Judges and other hearing body officers are bound to recognize the precedent set by previous decisions, and should generally maintain that precedent and apply such precedent in later matters.

154.4. General Provisions

154.4-1. *Establishment.* Pursuant to the authority found in section 150-4-2(a)(3) of the Judiciary, there is hereby established an Administrative Division, under the jurisdiction of the Trial Court, to provide a forum for the resolution of all civil actions and proceedings falling under this Law. The Administrative Division shall abide by same internal operating procedures governing the operation of the Trial Court and established rules of pleading, practice and procedure.

154.4-2. *Judges.* Any Judge within the Trial Court may serve as a Judge for a contested case within the Administrative Division. When necessary, a Pro Tem Judge may be appointed to serve as a Judge within the Administrative Division as long as such an appointment is made pursuant to the Judiciary Law.

154.4-3. *Jurisdiction.* The Administrative Division shall have jurisdiction over cases and controversies which specifically authorize the Administrative Division to exercise jurisdiction.

154.4-4. *Seals of the Courts.* The Administrative Division shall adopt a seal to be used to authenticate its respective judgments and other documents.

154.4-5. *Court Open to the Public.* The proceedings of the Administrative Division shall be public and members of the general public may freely attend the same, except if expressly prohibited by law, policy or rule; provided that, in any case where the presiding Judge determines that there are safety or confidentiality concerns the Judge may exclude from the proceedings all individuals not necessarily present as parties or witnesses.

154.4-6. *Precedent.* The principles of Yonik&hlihsa>aht& (a decision is made) shall apply to all matters before the Administrative Division. Case law precedent that has been established through a prior written decision of the Judiciary, Appellate Court, Oneida Appeals Commission, or written decisions of previous Boards, Committees and Commission that held hearing authority shall remain precedent unless overturned or otherwise modified by a decision of the Administrative Division, or by a law adopted by the Oneida Business Committee or Oneida General Tribal Council. Where precedent for a particular matter has not been established, the Judges may refer to established Wisconsin or Federal case law precedent or laws for guidance.

154.5. Agency Responsibilities

154.5-1. *Notice of Right to Hearing.* A decision made by an Agency with a right to a hearing before the Administrative Division shall provide a written notice that an appeal of the Agency’s determination must be made by filing a request with the Administrative Division and shall include the time in which an appeal of the Agency’s determination must be filed.

154.5-2. *Rulemaking Authority.* This Law does not confer rulemaking authority upon or augment the rulemaking authority of any Agency.

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154.6-1. *Time to File.* Unless otherwise provided elsewhere, a request for a hearing before the Administrative Division must be filed and served within thirty (30) days after the Party has received actual notice of the Agency's determination.

154.6-2. *Content of the Request.* The request for a hearing before the Administrative Division may be submitted to the Clerk of the Court on a form prescribed by the Court, if any, and must contain the following information:

- (a) The name, telephone number and address of the party requesting the hearing;
- (b) The issue for which the hearing is requested;
- (c) The caption or other information sufficient to identify the decision, order, letter, determination, action or inaction which is the subject of the hearing;
- (d) A copy of the written agency decision, order, letter or determination, if any, which gave rise to the request.

154.6-3. *Filing Fee.* Unless expressly provided elsewhere, no filing fee may be charged for filing a request for a hearing within the Administrative Division. Provided, this shall not prevent the Administrative Division from issuing fines or other sanctions pursuant to Laws or Rules or assessing fines or other sanctions for contempt of court.

154.7. Hearing

154.7-1. *Notice.* The Administrative Division shall issue a notice of a contested case hearing. If not provided elsewhere, the Court shall provide notice at least ten (10) days before the hearing date that sets forth the date, time, place, and purpose of the hearing, the judge who will conduct the hearing, and any other matters necessary for the prompt resolution of the matter.

154.7-2. *Representation.* A Party shall have the right, at his or her expense, to be represented by Counsel of his or her choice.

154.7-3. *Burden of Proof.* The Burden of Proof rests with the Party that filed the request for a hearing.

154.7-4. *Simplification of Procedures.* The Administrative Division, upon being assigned a contested case, shall review the request for a hearing and determine the procedure appropriate to the complexity of the issues presented and the types of proof likely to be introduced so that the matter may be fully and fairly presented without unnecessary burden on Parties involved in the hearing.

154.7-5. *Decision.* The Administrative Division shall render a written decision in a contested case which shall be served on all parties and filed with the Court. The Judge may affirm any ruling, order or judgment upon any ground(s) appearing in the record and need not address a point which is clearly without merit. The decision shall:

- (a) Be based upon witness testimony, evidence presented, the record of the proceeding, and the matters officially noticed.
- (b) Include the findings of fact, conclusions of Oneida law, the reason(s) for the final decision, and any action to be taken as a result of the final decision. The findings of fact shall consist of a concise statement of each fact found upon each contested issue of fact.
- (c) be completed within ten (10) business days of the completion of the hearing.

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(d) Be delivered or mailed to the Parties, or their attorneys or advocates within ten (10) business days of said decision.

154.7-6. *Fines and Penalties*. As part of its decision in a contested case, an original hearing body may issue fines and/or penalties that comply with the Indian Civil Rights Act and that may include, but not be limited to, the following:

(a) An order directing a violator or person in non-compliance with Tribal law to pay for actual damages as well as punitive damages.

(b) In the case of damages caused by minors, an order requiring the parent, custodian, or guardian to pay for damages and/or including a plan for restitution by the minor in lieu of monetary compensation.

(c) An order directing the violator or non-complying person to cease and desist from further violation or non-compliance and to cure said violation or non-compliance within a specified period.

(d) An order specifying a monetary fine for violation or non-compliance with Tribal law.

(e) An order requiring appropriate exclusion and/or mandated community service and/or denial of specific Oneida benefits.

(f) Unless precluded by Oneida law, informal disposition, signed by both parties, may also be made of any contested case by stipulation, agreed settlement, consent order or default.

(g) An order placing a lien upon property owned by a person within jurisdiction of the Tribe. Said lien shall be filed in a county court and/or the appropriate Oneida registry.

154.8 Motion for Rehearing and Appeals.

154.8-1. *Motion for Rehearing*. A motion for a rehearing may be allowed in the discretion of the judge presiding over the hearing. Any motion for rehearing must be filed within ten (10) days of receipt of the decision.

154.8-2. *Appellate Review*. Unless specifically stated elsewhere, any person aggrieved by a final decision in a contested case may appeal to the Court of Appeals.

End.



Legislative Operating Committee

December 2, 2015

Employment Law

Submission Date: 9/17/14

☐ Public Meeting:
☐ Emergency Enacted:
 Expires:

LOC Sponsor: Brandon Stevens

Summary: *This item was carried over into the current term by the LOC. The original proposal is for the development of an employment law to replace the current Personnel Policies and Procedures (Previously titled "Personnel Policies and Procedures-Revisions").*

- 9/17/14 LOC:** Motion by Jennifer Webster to add the Employment Law to the Active Files List, with Brandon Stevens as the sponsor; 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: 4) With regard to the Personnel Commission legislation, the Business Committee agrees that the Employment Law should continue forward and shall include consideration regarding how the Personnel Commission and/or their processes are incorporated into the Employment Law legislation; seconded by Trish King. Motion carried unanimously.
- 5/6/15 LOC:** Motion by Jennifer Webster to defer the Employment Law to a Legislative Operating Committee work meeting; seconded by Fawn Billie. Motion carried unanimously.
- 6/15/15:** Work meeting held. Attendees include Brandon Stevens, David Jordan, Matthew Denny, Gina Buenrostro, Don White, Yvonne Jordan, Lynn Franzmeier, Candice Skenandore, Douglass McIntyre, Krystal John.
- 10/5/15 LOC:** Work meeting held. Attendees include Brandon Stevens, David Jordan, Jennifer Webster, Danelle Wilson, Rhiannon Metoxen, Nick Reynolds, Krystal John, and Candice Skenandore.
- 10/8/15 OBC:** Work meeting held. Attendees include Brandon Stevens, David Jordan, Jennifer Webster, Melinda Danforth, Trish King, Tehassi Hill, Jessica Wallenfang, Mitzi Kopetsky, Nathan King, Apache Danforth, Rhiannon Metoxen, Danelle Wilson, Leyne Orosco, and Krystal John.
- 11/18/15:** Gaming Supervisory Advisor Panel held. Attendees include Brandon Stevens, Krystal John, Frank Cornelius, Robert Sundquist, Louise Cornelius, Lisa Duff, Georgianna Mielke, Donna Smith, Luke Schwab, Donald Solecki, Gabrielle Metoxen, Michelle Schneider, Martin Prevost and Laura Laitinen-Warren.
- 11/19/15:** Gaming Management Advisory Panel held. Attendees include Brandon Stevens, Krystal John, Frank Cornelius, Andrew Doxtator, Cherice Santiago, Fawn Teller, Julie Clark, Larae Gower, Shelly Stevens, Jacqueline Smith, Jay Rasmussen, Laura Laitinen-Warren, Michelle Schneider, Travis Cottrell, Louise Cornelius, Jessalyn Marvath, Brenda Mendolla-Buckley, Lucy Neville, David Emerson, Gabrielle Metoxen and Lambert Metoxen.

- **Next Steps:** Review and discuss the memo; direct the LRO to make any needed revisions to the Law.

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David P. Jordan, Councilmember

Jennifer Webster, Councilmember

Memorandum

TO: Legislative Operating Committee
FROM: Brandon Yellowbird-Stevens, LOC Chairperson
DATE: December 2, 2015
RE: Employment Law – Revisions Based on Public Meetings

On September 17, 2014 the Employment Law was added to the LOC's Active Files List and has been named as a priority item for the LOC. My office brought a draft of the Employment Law to the LOC for the analyses required by the Legislative Procedures Act on October 21, 2015. Since I brought that draft to the LOC, I have been meeting with various parties that would be directly affected by the development of Employment to provide information and seek feedback.

During a panel discussion with gaming's directors and supervisors, we discussed the development of a separate HRD internal to gaming at length. Gaming leadership feels strongly that they would be best represented by an internal HRD. They also noted that they already do provide some of those services for themselves, so completely separating those services would not be an unnatural extension of their current practices.

Because gaming already offers from HRD-related services and because gaming has the highest employment rates throughout the Tribe, meaning that our current HRD could be re-organized to shift some employees to the separate HRD internal to gaming, it is not anticipated that moving in this direction would carry many costs.

If we were to proceed with developing a separate HRD for gaming, they would be subject to the same Employment Law as all other Tribal entities, however, they would be able to develop their own Employee Handbook (Rules) tailored to gaming. Allowing gaming to create their own Employee Handbook would give them the flexibility to focus on revenue generation and employee retention as related to the gaming industry. The presumption is that they would start with the Handbook that is currently being developed and deviate from that Handbook only when in the best interest of the Tribe, as a gaming operator.

I think the creation of a separate HRD internal to gaming is feasible and makes sense. Further, I know that gaming's support of the Employment Law is closely tied to how we will work to provide them the flexibility to continue increasing revenue and to address issues that arise in gaming that are unique in comparison to those faced by all of the Tribe's other operations.

I would like to discuss the creation of a separate HRD internal to gaming today and hope that you will support me in moving forward in this direction.

CHAPTER 300 EMPLOYMENT LAW

300.1. Purpose and Policy	300.7. General
300.2. Adoption, Amendment, Repeal	300.8. Employee Responsibilities
300.3. Definitions	300.9. Layoffs
300.4. Human Resources Department	300.10. Employee Discipline and Grievances
300.5. Hiring	300.11. Violations
300.6. Compensation and Benefits	

300.1. Purpose and Policy

300.1-1. It is the purpose of this Law to provide a fair, consistent and efficient structure to govern all employment matters.

300.1-2. It is the policy of the Tribe to provide Tribal Entities latitude to create human resource practices to fit their individual industry standards, while creating a strong and healthy work environment. In addition, although certain federal laws, specifically Title VII, do not apply to the Tribe, the Tribe's employment policy affords applicants and Employees Equal Employment Opportunities.

300.2. Adoption, Amendment, Repeal

300.2-1. This Law was adopted by the Oneida General Tribal Council by resolution _____ and is effective six (6) months from the date of adoption.

300.2-2. The Oneida Tribal Management System and amendments to the Tribal Management System, including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985, are hereby repealed.

300.2-3. This Law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

300.2-4. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity does not affect other provisions of this Law which are considered to have legal force without the invalid portions.

300.2-5. In the event of a conflict between a provision of this Law and a provision of another Law, the provisions of this Law control, provided that this Law repeals the following:

- (a) The Oneida Tribal Management System and amendments to the Tribal Management System, including the Personnel Policies and Procedures adopted by the Oneida Business Committee on May 7, 1985;
- (b) BC Resolution BC-05-11-11-A entitled Establish Tuberculosis Control Program;
- (c) The Employee Protection Policy adopted by emergency pursuant to BC-4-20-95-B, permanently adopted pursuant to BC-12-6-95-B and subsequently amended pursuant to BC-1-20-99-B and BC-6-30-04-J;
- (d) The GED Policy approved by the Oneida Business Committee on October 21, 1992;
- (e) BC Resolution BC-07-22-09-B entitled Oneida Nation Veterans Affairs Committee, Paid Time Off for Selected Color Guard Members Who Are Employees; and
- (f) The Parent Leave Policy adopted pursuant to BC-03-02-94-A.

300.2-6. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

300.3 Definitions

300.3-1. This section governs the definitions of words and phrases used within this Law. All words not defined herein are to be used in their ordinary and everyday sense.

(a) "At-Will Employee" means employees of the Tribe that are not hired through the standard hiring procedures, including, but not limited to, Political Appointees, part-time, seasonal, and volunteer workers, and Employees that have not yet completed their probationary period pursuant to the Rules developed by HRD.

(b) "Corrective Action" means any initiative taken by an Employee Supervisor with the goal correcting an Employee's prohibited behavior as identified in the Rules created by HRD.

(c) "Cost of Living Adjustments" means wage or salary modifications which allow Employees to sustain a certain level of living, including basic expenses such as housing, food, taxes and healthcare.

(d) "Employee" means any individual who is hired by the Tribe through the normal hiring process, works full-time (30 or more hours per week) or part-time (less than 30 hours per week) and is subject to the direction and control of the Tribe with respect to the material details of the work performed. "Employee" includes, but is not limited to, individuals employed by any Entity and individuals employed through an employment contract as a limited term employee, but does not include elected or appointed officials, At-Will Employees or individuals employed by a Tribally chartered corporation. Throughout this law all references to Employee include both Employees and At-Will Employees, unless the term At-Will Employee is used, in which case only At-Will Employees are intended.

(e) "Employee Supervisor" means the party responsible for directly overseeing the Employee and who is responsible for taking Corrective Actions when Employees fail to meet their responsibilities..

(f) "Entity" means any division of the Tribe having Employees and may include, but is not limited to, departments, areas, programs, enterprises, board, committees, commissions and the like

(g) "Equal Employment Opportunity" or "EEO" means the Tribe's consideration for hiring selection and position retention that is free from discrimination against any person on the basis of race (although Oneida and Indian Preference are allowable and are not considered a deprivation of an EEO), color, religion, sex (including pregnancy), national origin, age, disability or genetic information.

(h) "HRD" means the Oneida Human Resources Department.

(i) "Immediate Family Member" means an individual's husband, wife, mother, father, son, daughter, brother, sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law or sister-in-law.

(j) "Involuntarily Separated" means an Employee is removed from employment.

(k) "Political Appointee" means an individual appointed as an executive assistant by an individual Oneida Business Committee member or as an assistant by a board, committee or commission.

(l) "Reviewing Supervisor" means the party responsible for overseeing the Employee Supervisor and who may hear an appeal of a Corrective Action taken by an Employee Supervisor.

(m) "Rule" means any exercise of authority delegated to HRD and by HRD pursuant to this Law in the form of a rule, regulation, policy or any other tool designed to exercise HRD's delegated authority in order to implement, interpret and/or enforce this Law. A

Rule does not include any statements, interpretations, decisions, rules, regulations, policies, procedures or other matters concerning internal management of an Entity, or, which do not affect the private rights or interests of individuals outside of the said Entity.

(n) "Sexual Harassment" means unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature where:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or

(2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

(o) "Standard Operating Procedure" means an internal procedure that is created to govern how an Entity operates and performs its designated functions; a standard operating procedure does not affect parties outside of the Entity to which the procedure belongs.

(p) "Tribal" or "Tribe" means the Oneida Tribal of Indians of Wisconsin.

(q) "Tribal Member" means an individual who is an enrolled member of the Oneida Tribe of Indians of Wisconsin.

300.4. Human Resources Department

300.4-1. General Responsibilities. The HRD shall:

(a) Develop, amend, implement, interpret and enforce Rules necessary to carry out the intent of this Law. The Rules developed by HRD pursuant to this Section are effective upon HRD final approval. HRD shall provide notice of approval of said Rules to the Oneida Business Committee at the next available regularly scheduled Oneida Business Committee meeting following approval. If the Oneida Business Committee has any concerns and/or requested revisions upon review of the Rules, HRD shall work with the Oneida Business Committee to address such concerns and/or requested revisions.

(1) Unless the Oneida Business Committee repeals the Rules approved by HRD, the Rules remain in effect while HRD and the Oneida Business Committee jointly work to amend the Rules approved by HRD.

(A) Should the Oneida Business Committee repeal the Rules approved by HRD, the Rules that were in effect immediately previous to those repealed are automatically reinstated and effective immediately upon the repeal of the Rules approved by HRD.

(B) If HRD does not receive written notice from the Oneida Business Committee of intent to repeal or amend the Rules within thirty (30) days of the date the Oneida Business Committee is provided notice of the Rules approved by HRD, they will remain in effect as approved by HRD.

(2) Should the Oneida Business Committee pursue amendments to the Rules approved by the HRD, the amendments must be completed through one (1) of the following actions within six (6) months from the date the amendments are initiated by the Oneida Business Committee:

(A) if HRD and the Oneida Business Committee reach an agreement as to the content of the amendments, the HRD must approve the revised Rules that have been discussed with and agreed upon by the Oneida Business Committee; or

(B) if HRD and the Oneida Business Committee do not reach an

agreement as to the content of the amendments, the Oneida Business Committee may adopt revised Rules that incorporate the amendments it deems necessary.

(3) If revised Rules are not approved or adopted by either HRD or the Oneida Business Committee respectively within six (6) months from the date the amendments are initiated by the Oneida Business Committee, the Rules originally approved by HRD will remain in effect.

(b) Provide all Employees a copy of all employment Rules and all Tribal laws and policies specifically pertaining to Employment matters, and shall further notify Employees of how such Rules, laws and policies may be electronically accessed.

(c) Review and approve employment related Standard Operating Procedures for all Entities.

(d) Issue guidance opinions regarding the application of this Law, Rules promulgated pursuant to this Law, and Standard Operating Procedures created to implement this Law and the Rules promulgated hereunder.

(e) Keep a record of all employment related decisions made by the Employee Supervisors, Reviewing Supervisors and the Oneida Judiciary.

(f) Collect and maintain data on human resource related information including, but not limited to, information on hiring, appointments, firing, transfers, Employee development, grievances, policy issues and insurances.

(1) HRD shall provide quarterly reports to the Oneida Business Committee in accordance with the schedule provided by the Tribal Secretary's office.

(2) The Oneida Business Committee may not have direct access to Employee information and/or personnel files, especially information relating to individual compensation or Corrective Actions; provided that, Oneida Business Committee members that are also Employee Supervisors may access the Employee records of any of his or her direct Employees pursuant to Section 300.4-1(f)(3)(B).

(3) HRD shall store these Employee records in a manner that maintains the records' private and confidential nature. Information contained in Employee records may only be released in the following situations:

(A) A current or past Employee may have access to his or her own Employee record.

(B) An Employee Supervisor may review any of his or her current direct Employees' records.

(C) If required by law, the Tribe shall release the information required to be released to the party the law designates as entitled to receive said information.

(D) A third party may access an Employee's record if the Employee provides written consent to release his or her record to a designated third party.

300.4-2. HRD shall uphold the Tribe's sovereignty, laws and policies in its hiring and employment practices.

300.4-3. *Memorandum of Understanding.* The Oneida Business Committee and HRD shall negotiate and enter into a memorandum of understanding which governs the relationship between the two parties by establishing the responsibilities and expectations of each party with regard to the management of HRD.

300.5. Hiring

300.5-1. *Hiring Philosophy.* The Tribe shall recruit, hire, retain and develop individuals who are culturally respectful, professionally competent and civically responsible.

300.5-2. *Equal Employment Opportunities.* The Tribe and HRD shall afford all applicants and Employees Equal Employment Opportunities; however, the Tribe shall follow the preferences outlined in Section 300.5-3 and such preferences may not be considered a violation of this Law.

300.5-3. *Oneida and Indian Preference.* The Tribe shall provide preference to Tribal Members first and members of other federally recognized tribes secondly.

(a) Unless otherwise prohibited by law or grant funding requirements, the Tribe shall apply the following order of Oneida and Indian Preference in staffing decisions:

(1) Persons who are Tribal Members.

(2) Persons who meet the blood quantum requirements contained in the Membership Ordinance, but are not currently Tribal Members, and/or persons who are documented first generation descendants of a Tribal Member.

(3) Persons enrolled in any federally recognized tribe other than this Tribe.

(4) All other non-Indian persons.

(b) If a law or grant funding requirement prohibits the application of Oneida and Indian Preference in accordance with 300.5-3(a), the Tribe shall make staffing decisions in accordance with the Indian Preference requirements of the said law or grant.

(c) Oneida and Indian Preference applies only when an applicant meets all the minimum requirements of the position applied for.

(d) *Oneida-Only Positions.* To the extent possible, all top administrative and political appointee positions must be held by Tribal Members.¹ If a position requires specific skills and/or licensing by the state or federal government and there are no available Tribal Members who possess the necessary skills or licensing to assume the vacancy, only then may a non-Tribal Member be selected to fill the vacancy.

300.5-4. *Education.* Employees under the age of fifty (50) who do not have a high school diploma or its equivalent at the time of hire, shall obtain a high school diploma, a high school equivalency diploma or a general equivalency diploma within one (1) year of being hired. Employees that do not meet this deadline and have not been granted an extension from HRD may be suspended until the employee provides documentation to HRD that he or she is in compliance with this Section.

300.5-5. *Workplace Safety* The Tribe develop Rules and procedures as necessary to protect the safety, health and well-being of all Employees and other individuals in the workplace.

(a) The Employee Health Nursing Department shall establish, maintain, implement, evaluate and periodically update a Tuberculosis Control Program, which applies to all Employees as well as elected and appointed officials of the Tribe. The Employee Health Nursing Department shall make the approved program available to all persons to which it applies.

300.5-6. *Conflicts.* An applicant is ineligible for positions for which he or she has a conflict of interest, as defined by the Conflict of Interest Policy, and/or if he or she would be directly supervised by an Immediate Family Member.

300.5-7. *Right to Work.* No person may be required to do any of the following in order to become or remain an Employee of the Tribe:

¹ January 8, 1990 GTC: Debbie Powless moved that the General Manager's and all top administrative positions be held by enrolled tribal members, motion seconded. ... Main motion carried.

- (a) resign or refrain from being a member of a labor organization;
- (b) become or remain a member of a labor organization; or
- (c) pay dues or other charges to a labor organization.

300.6. Compensation and Benefits

300.6-1. *Compensation Plan.* HRD shall develop and institute an Employee Compensation Plan to assure equitable salary and wage levels and shall consider data from the Bureau of Labor Statistics for average earnings in the Green Bay area; the said plan must be approved by the Oneida Business Committee prior to becoming effective.

- (a) Wage and salary adjustments and benefits available to Employees are dependent upon available funding allocations, provided that, the Compensation Plan must require HRD to make reasonable efforts to regularly implement Cost of Living Adjustments based on the United States Department of Labor – Bureau of Labor Statistics’ Consumer Price Index for the Midwest Region.

300.6-2. *Designation of Employees.* The Tribe shall use the standards created under the Fair Labor Standards Act to designate its Employees as either nonexempt or exempt and to set minimum wage and maximum hour restrictions for employees receiving an hourly wage.

300.6-3. *Insurance and Retirement.* The Tribe may provide insurances and/or a retirement plan as a benefit to full-time Employees. Emergency and temporary Employees are not eligible for these benefits.

300.6-4. *Time Off.* The Tribe shall afford Employees paid time off to the extent that paid time off is accumulated based on continuous service to the Tribe. HRD shall establish rates of accrual and the process for requesting paid time off in the Rules it is charged with developing under Section 300.4-1(a).

300.6-5. *Leaves.* Employees of the Tribe may be allowed leave under circumstances provided in the Rules developed under Section 300.4-1(a) and any other applicable Tribal laws and policies.

300.7. General

300.7-1. *Employee Development.* The Tribe encourages the advancement and transfer of Employees in order to make the best possible use of human resources. Employees who wish to advance in the organization may work with the Human Resources Department to develop a personal development plan.

300.7-2. *Tribal Entities.* Individual Entities shall comply with this Law and the Rules promulgated under Section 300.4-1(a) and, if necessary, shall develop internal rules and Standard Operating Procedures for the implementation of said Rules.

300.7-3. *Safety and Fitness-for-Duty.* In order to create a safe and healthy work environment for Employees and to keep the number of job-related illnesses and/or injuries to a minimum, the Tribe shall maintain safety standards in accordance with the Tribe’s applicable laws and policies. The Tribe shall also maintain standards requiring Employees to perform their job duties in a safe, secure, productive and effective manner.

300.7-4. *Unemployment Insurance.* The Tribe shall comply with the State of Wisconsin’s unemployment insurance program; Employees of the Tribe may be eligible for unemployment benefits in accordance with the provisions of the laws of the State of Wisconsin.

300.8. Employee Responsibilities

300.8-1. *Harassment and Discrimination Prohibited.* All Employees are expressly prohibited from committing Sexual Harassment of another individual or engaging in any conduct that harasses or discriminates against another based on sex, race, religion, national origin, pregnancy,

age, marital status, sexual orientation, or disability, provided that Employees must comply with the Oneida Preferences identified in Section 300.5-3 and such compliance is not a violation of this provision.

300.8-2. *Anonymous Information.* Employees who receive anonymous information of any type shall maintain the confidentiality of the said information and forward a summary of the information to the Chief of the Oneida Police Department expressly noting that the information was provided anonymously.

300.8-3. *Employee Protection.* The Tribe may not retaliate against any Employee who reports an Employee's, Political Appointee's and/or Tribal official's violation(s) of Tribal laws, policies or rules and shall protect any Employees who report such violations from retaliatory actions.

(a) HRD shall develop Rules and procedures designed to protect Employees reporting others' violations of Tribal laws, policies or rules from any and all forms of retaliation.

300.9. Layoffs and Furloughs

300.9-1. Employees may be laid off and/or furloughed to the extent necessary for the Tribe to operate effectively and efficiently in varying economic conditions pursuant to the Tribe's laws, policies and rules.

300.9-2. Layoffs and furloughs may not be used for disciplinary reasons and may not under any circumstances be considered adverse employment actions.

300.9-3. The Tribe's decision to layoff and/or furlough an Employee is not subject to appeal.

300.10. Employee Discipline and Grievances

300.10-1. Corrective Action Rules and procedures may be used by Employee Supervisors to correct Employees' unacceptable work performance and/or behavior.

300.10-2. Employees, excluding At-Will Employees, who disagree with a Corrective Action may contest the Corrective Action using the Rules and procedures developed by HRD, and based on the following available levels of review:

(a) *First Level of Review.* Any Employee, excluding At-Will Employees, contesting the validity of a Suspension or Termination may appeal the said Corrective Action to the Oneida Administrative Court. Unless the Employee asserts that the contested Suspension or Termination amounts to a deprivation of an Equal Employment Opportunity, the decision of the Oneida Administrative Court is final.

(b) *Second Level of Review.* An Employee, excluding At-Will Employees, that is unhappy with the Oneida Administrative Court's decision regarding a contested Suspension or Termination, and, is able to demonstrate that the contested Corrective Action amounts to a deprivation of an Equal Employment Opportunity, may appeal the Oneida Administrative Court's decision to the Oneida Court of Appeals.

(c) *Compensatory Damages.* Should the Oneida Judiciary determine that there was an intentional deprivation of an Equal Employment Opportunity, the Oneida Judiciary may award compensatory damages, including, but not limited to, attorney's or advocate's fees and court costs, as against the individual(s) found to have engaged in the intentional deprivation of an Equal Employment Opportunity. Said compensatory damages may not be awarded against the Tribe.

300.11. Applicability to Elected Officials

300.11-1. The provisions of Sections 300.6-8 apply to Elected Officials of the Tribe that work full-time (30 hours or more per week) and receive salaries for their service.

320 **300.12. Violations**

321 300.12-1. Unless expressly stated otherwise in this Law, claims of alleged violations of this Law
322 may be filed with the Oneida Judiciary.

323

324 End.

325



Legislative Operating Committee

December 2, 2015

Garnishment Amendments

Submission Date: 8/5/15

☐ Public Meeting:
☐ Emergency Enacted:
 Expires:

LOC Sponsor: David P. Jordan

Summary: *This item was brought to the LOC by the Judiciary to request an amendment to the ordinance which would allow the Judiciary to include interest when a garnishment is ordered as some creditors have been requesting interest, and the Judiciary has been denying it because the ordinance is silent.*

8/5/15 LOC: Motion by David P. Jordan to add the Garnishment Ordinance Amendments to the active files list with himself as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

9/16/15 LOC: Motion by David P. Jordan to defer Garnishment Ordinance Amendments to the sponsor's office to work with the Chief Financial Officer for recommendations, and bring back with the required analysis within 60 days; seconded by Tehassi Hill. Motion carried unanimously.

- **Next Steps:** Review and accept the analysis; consider directing the LOC to prepare the Garnishment Amendments for a public meeting to be held on January 21, 2015.

Chapter 58
Garnishment Ordinance
Lotihwist@hkwa Olihw@ke
the matter of taking money out

58.1. Purpose and Policy
58.2. Adoption, Amendment, Repeal
58.3. Definitions

58.4. Garnishment Action Procedure
58.5. Recognition of Order
58.6. Discharge from Employment

<i>Analysis by the Legislative Reference Office</i>					
Title	Garnishment (Law)				
Requester	Judiciary	Drafter	Krystal L. John	Analyst	Candice E. Skenandore
Reason for Request	To state whether or not the Judiciary can include interest when a garnishment is ordered.				
Purpose	The purpose of this Law to utilize the authority of the Tribe to provide an effective mechanism for creditors to access an employee's income for reduction of personal debt [See 58.1-1].				
Authorized/ Affected Entities	Tribal employees that incur personal debt, the Accounting Department, the Judiciary (excluding the Family Court), creditors (can include Tribal entities), and a court of competent jurisdiction				
Due Process	A party can appeal the decision regarding a garnishment order to the Court of Appeals within ten business days from the date of the notice of the Judge's determination [See 58.5-9].				
Related Legislation	Related Tribal legislation includes the Judiciary Law and Rules of Appellate Procedure. The Child Support Law and Per Capita Law have similar concepts.				
Enforcement	The Judiciary can issue a garnishment order against the debtor [See 58.5-4].				

Overview

This Law and the Child Support both deal with wage withholdings; however, this Law sets the hearing process for withholdings of Tribal employees that have personal debt. This personal debt can include to, but is not limited to child support orders from a court of competent jurisdiction. Child Support sets the process for child support orders made by the Family Court; those orders will not follow this Law [See 58.6 and Child Support 78.9-2].

This Law explains how a creditor can seek a garnishment order against a debtor. The creditor must file a petition with the Judiciary and once the petition is received, the Judiciary must hold a garnishment hearing within 60 days. Within five business days of the garnishment hearing, the Judge will make a final decision and notify the parties. If the Judge issues a garnishment order, he/she will calculate a percentage of the debtor's disposable income that will be garnished, starting with a presumption that 20 percent of the debtor's disposable income can be garnished. However, the debtor can request a lesser percentage be garnished from his/her disposable income if the debtor meets certain criteria. On the other hand, the debtor can also request a greater percentage be garnished. Once the garnishment order is issued, the Accounting Department will begin deducting the appropriate amount from the debtor's paycheck within ten business days of receiving a copy of the garnishment order. If the debtor owes \$50 or less, the Judge can hold a summary proceeding which does not require a formal hearing. A party can appeal the Judge's decision regarding the garnishment. An employee cannot be discharged, disciplined or an applicant cannot be turned away solely because he/she is subject to a garnishment action.

Proposed Amendments

Although there are a number of proposed amendments made to this Law, the following amendments have the greatest impact:

- The current Law sets the garnishment action fee at \$25.00 and the administrative fee at \$5.00. These amounts have been removed from the Law and instead the Judiciary is authorized to determine the garnishment action fee amount, while the Accounting Department determines administrative fee amount *[See 58.5-2 (a) (1) and 58.5-5 (a) (1)]*.
- The current Law allows the parties to be represented by someone to speak on their behalf. The proposed amendments limit representation to an attorney or advocate *[See 58.5-3 (d)]*.
- A post judgment interest must be applied to the amount received beginning on the date of the judgment and ending on the date the garnishment order was satisfied *[See 58.5-3 (d)]*. The post judgment interest rate is a fixed rate and will be determined by 1) an agreement by both parties or 2) an annual post judgment rate equal to one percent plus the prime rate that was in effect on the date of the judgment *[See 58.5-5 (d) (1) & (2)]*.

Considerations

The LOC may want to consider the following:

- These amendments do not require Tribal entities to pay the garnishment action fee *[See 58.5-2 (a) (2)]*. The purpose of the garnishment action fee is to cover the administrative costs incurred by the Judiciary in a garnishment proceeding *[See 58.3-1 (i)]*. The Judiciary will still incur these costs even if the creditor is a Tribal entity. In hearings where the creditor is a Tribal entity, the Judiciary will collect the garnishment action fee only if a garnishment order is issued. If the Judge finds that a garnishment order is not warranted in a hearing that was brought by a Tribal entity, the Judiciary, not the Tribal entity, absorbs the costs. Requiring the Tribal entity to pay the garnishment action fee may deter unjustified claims.
- The Law allows the debtor to request the Judiciary to lower the percentage deducted from his or her disposable earnings if he or she can show, among other things, that 1) the debtor receives, is eligible for or within six months from when the petition was filed, received public assistance or 2) the debtor's household income is below the federal poverty level *[See 58.5-5 (c) (1) (A) (ii & iii)]*. The Law does not address what happens if one of the above instances occurs after a garnishment order has been issued. The LOC may want to consider clarifying if a debtor can request a modification to the garnishment order.
- This Law defines Judiciary as “the judicial system that was established by . . . GTC Resolution 01-07-13-B to administer the judicial authorities and responsibilities of the Tribe” *[See 58.3-1 (n)]*. Because the Family Court was adopted pursuant to BC Resolution 05-08-13-A, it not included in the definition for “Judiciary” and cannot hold garnishment hearings in accordance with this Law.
- Because the Law does not define “court of competent jurisdiction”, the LOC may want to specify if Tribal entities are considered courts of competent jurisdiction. In other words, if a Tribal entity issues a judgment, would that judgment satisfy the requirement set forth 58.5-1?
- The LOC may want to expand the definition for “earnings” to specifically exclude per capita payments. The Per Capita Law addresses how attachments are made to per capita

payments [See 58.3-1 (c) and Per Capita 9.4-6].

Miscellaneous

A public meeting has not been held. Additional changes have been made throughout the Law to ensure compliance with Tribal drafting style. In addition, revisions have been made to improve the flow and sequence of the Law without changing the intended content. Please refer to the fiscal impact statement for any financial impacts.

58.1-1. Purpose and Policy

58.1-1. The purpose of this ~~Ordinance~~ Law is to utilize the authority of the Oneida Tribe of Indians to provide an effective mechanism for creditors to access an employee's income for reduction of personal debt.

58.1-2. It is the policy of the Oneida Tribe of Indians of Wisconsin to afford all individuals due process.
~~process.~~

58.2-1. Adoption, Amendment, Repeal

58.2-1. This ~~law~~ Law is adopted by the Oneida Business Committee by resolution # BC-4-2-97-G and amended by resolution BC-06-25-14-B and _____.

58.2-2. This ~~law~~ Law may be amended or repealed by the Oneida Business Committee or General Tribal Council pursuant to the procedures set out in the Oneida ~~Administrative~~ Legislative Procedures Act ~~by the Oneida Business Committee or Oneida General Tribal Council.~~

58.2-3. Should a provision of this ~~law~~ Law or the application thereof to any person or circumstances be held as invalid, such invalidity ~~shall~~ does not affect other provisions of this ~~law~~ Law which are considered to have legal force without the invalid portions.

~~58.2-4. All other Oneida laws, policies, regulations, rules, resolutions, motions and all other similar actions which are inconsistent with this law are hereby repealed unless specifically re-enacted after adoption of this policy.~~

58.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provision of this Law controls.

58.2-5. This ~~law may be cited as the~~ "Garnishment Ordinance."

~~58.2-6. This law may be interpreted to allow the fullest protections available to respondents available by Law is adopted under the federal Consumer Protection Act, 16 U.S.C. §1671, et seq., state laws protecting respondents in Child Support Orders, and other federal laws~~ authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

58.3-1. Definitions

58.3-1. This Article ~~shall govern~~ governs the definitions of words or phrases as used herein. All words not defined herein ~~shall are to~~ be used in their ordinary and everyday sense.

58.3-2. "Compensation" shall mean remuneration paid or (a) "Accounting Department" means that department of the Tribe charged with managing the finances of the Tribe, specifically, the office charged with responsibility for the payroll of the Tribe.

(b) "Administrative Fee" is the fee to cover the Accounting Department's costs associated with enforcing Garnishment Orders, payable for personal services and travel, denominated as wages, bonuses, salary, expenses, and/or mileage. Compensation shall

include any trade-back-for-cash benefit or final paycheck involving pay-out of benefits for a discharged employee.

~~58.3.3. “Creditor” shall refer to one who seeks payment from the respondent through the process of garnishment, pursuant to a Final Judgment through a garnishment action. The Oneida Tribe is not excluded from being the creditor. This includes all departments, programs, enterprises, authorities, or other bodies created pursuant to~~ (c)

“Creditor” refers to anyone who is awarded a money Judgment which may include a Tribal law or a non-Tribal entity. Should the ~~Oneida~~ Tribe be the creditor, a designee ~~of the department, program or enterprise from the Tribal Entity~~ shall represent the claim of indebtedness.

~~58.3.4. “(d) “Debtor” means the Employee” shall mean any employee whom the Judgment has been awarded against.~~

(e) “Disposable Earnings” means the part of the ~~Oneida~~ Debtor’s gross Earnings for a pay period remaining after deductions required by state and federal law.

(f) “Earnings” means compensation payable in exchange for personal services and includes, but is not limited to, wages, salaries, bonuses, commissions, expense reimbursements, trade-back-for-cash benefits and/or final paychecks involving pay-out of benefits.

(g) “Employee” means any individual hired by the Tribe and on the Tribe’s payroll and encompasses all forms of employment, including but not limited to, full-time, part-time, at-will, elected/appointed officials, political appointees and contracted persons.

~~58.3.5. “Oneida Tribe” shall mean the Oneida Tribe of Indians of Wisconsin.~~

~~58.3.6. (h) “Garnishment” shall mean~~means the legal process in which ~~money in the hands~~Earnings of the ~~Oneida Tribe of Indians of Wisconsin as employer, due~~Debtor is required to be withheld by the respondent and are being claimed by Tribe for a creditor payment of a money judgement.

~~58.3.7. (i) “Garnishment Action Fee” means the fee paid to the Judiciary to cover the administrative costs incurred during the Garnishment proceedings.~~

(j) “Garnishment Hearing” means the time and location where the Judiciary hears relevant evidence, determines the validity of the Petition for Garnishment and identifies the amount of the Garnishment Order, if applicable.

(k) “Garnishment Order” means the order issued by the Judiciary which requires the Tribe to withhold an Employee’s Earnings in order to satisfy a Creditor’s unpaid money Judgment and must include any fees assessed against the Debtor.

(l) “Judge” means the member of the Judiciary assigned to hear the Petition for Garnishment.

(m) “Judgment” means any judgment, decree, or order from a court of competent jurisdiction, including, but not limited to, the Judiciary, which awards money to one or more parties.

(n) “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Tribe.

~~58.3.8. (o) “Petition” means a formal written request to the Judiciary to issue a Garnishment Order.~~

(p) “Reservation” shall meanmeans all lands within the ~~Oneida Indian~~ exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as ~~established~~

by created pursuant to the 1838 Treaty with the Oneida, 1838 Stat. 566, and any lands added thereto pursuant to federal law.

58.3-9. “Respondent” shall mean the employee (q) “Judge” means the member of the Oneida Tribe who is subject to a garnishment action within the Oneida Tribe or person subject to a repayment action.

58.3-10. “Hearing Officer” shall mean the Judiciary and the representative designated assigned to hear the garnishment action Petition for Garnishment.

(r) “Tribal” or “Tribe” means the Oneida Tribe of Indians of Wisconsin.

(s) “Tribal Entity” means a department, program, enterprise, authority or other body of the Tribe that is created pursuant to Tribal law.

58.4. General

58.4-1. **Jurisdiction.** By filing a Petition, Creditors are submitting to the jurisdiction of the Tribe for the subject action.

58.4-2. **Consumer Protection Act.** This Law may be interpreted to allow the fullest protections available to Debtors by the federal Consumer Protection Act, 16 U.S.C. §1671, et seq., state laws protecting Debtors in Child Support Orders, and other federal laws.

58.5. Garnishment Action Procedure

58.5-1. **Judgment Required.** A Creditor must obtain a Judgment before filing a Petition.

58.5-2. **Filing Action.** 58.3-11. “Accounting Department” means that department of the Oneida Tribe charged with managing the finances of the Oneida Tribe, specifically, the office charged with responsibility for the payroll of the Oneida Tribe. That office shall designate a representative for receiving garnishment orders, irrevocable voluntary payroll deduction agreements, and child support orders, which shall be forwarded to the Hearing Body.

~~58.4-1. **Garnishment Action Procedure.** Judgement Required. A creditor shall begin a garnishment action against an employee of the Oneida Tribe by first obtaining a final judgment from an appropriate court. A garnishment action under this section shall not begin unless the creditor has already obtained a valid final judgment and can show proof of judgment to the Hearing Officer.~~

~~58.4-2. **Filing Action.** The creditor shall be responsible for notifying the Hearing Officer of its intent to begin the garnishment action.~~

~~(a) A written notice shall be mailed or given to the Hearing Officer indicating the creditor, the intended respondent, the reason for the claim and the amount of the claim.~~

~~(b) The Hearing Officer shall, within ten days, set a date and time for a garnishment hearing. The date for the hearing shall be within sixty days of receipt of the first notification to the Hearing Officer.~~

~~(c) It is the responsibility of the Hearing Officer to notify the creditor, respondent, and any other parties in interest as to the date, time and place of the garnishment hearing.~~

58.4-3. **Hearing.** The Hearing Officer shall establish a designated date, time, and place to hear evidence in In order to render a determination as to the validity of a claim by the creditor in a garnishment action and the amount of the garnishment order to be entered. Hearings shall not be utilized to initiate a Garnishment, the Creditor must file a petition with the Judiciary. The Petition must identify the Creditor, the intended Debtor, any other interested parties, the reason

for the claim, the name of the court that issued the Judgment and the amount awarded. The Creditor must include a copy of the Judgment when filing the Petition.

(a) The Creditor shall pay the Garnishment Action Fee before the Judiciary may consider the Petition complete.

(1) The Judiciary shall determine the amount of the Garnishment Action Fee and post notice of the fee amount at the Judiciary and on the Judiciary's webpage.

(2) Tribal Entities are not required to pay the Garnishment Action Fee; however, should the Judiciary issue a Garnishment Order, the Garnishment Action Fee must be included in the said order and is payable to the Judiciary.

58.5-3. Garnishment Hearing. The Judiciary shall hold a Garnishment Hearing within sixty (60) days of receiving the completed Petition.

(a) The Judiciary shall provide written notice of the garnishment hearing to the Creditor, Debtor and any other interested parties within ten (10) business days of receiving the completed petition.

(b) The Debtor may challenge the authenticity of the Judgment document at the Garnishment Hearing but he or she may not challenge the validity of the final judgement other than the authenticity of the document. The time may be Judgment.

(c) A Garnishment Hearing may be used to resolve one (1) or more deduction claims of Petitions for one (1) or more employees. However Debtors; however, each claim shallPetition must be heard and determined separately. This hearing will be known as the Garnishment Hearing.

~~58.4-4. (d) Throughout the Garnishment proceedings, the parties may choose to Final Decision. The Hearing Officer will make the final decision as to the garnishment action within five days of the garnishment hearing and notify by formal order all parties within ten days of the decision.~~

~~58.4-5. Representation. The respondent and creditor may represent themselves or may be represented by someone to speak on their behalf, if they so choose. Both an attorney or advocate. All parties shall have an equal opportunity to present evidence as to the action to be taken before a Hearing Officer at the garnishment hearing at the Garnishment Hearing.~~

~~58.4-6. Notice of Garnishment. 58.5-4. Final Decision. The Hearing Officer will notify the Accounting Department should a decision to garnish an employee's compensation be made. Such notice shall be forwarded after the deadline for an appeal has passed. Provided that, no garnishments shall be allowed where an appeal has been filed by an employee within the appeal deadline. The notice shall contain the amount to be garnished, how long the garnishment will take place or the number of garnishment and any related fees authorized under this Ordinance.~~

58.4-7. The Judge shall make the final decision regarding a Garnishment Order within five (5) business days of the Garnishment Hearing. The Judge shall provide written notice of the final decision to all parties within ten (10) business days of his or her decision. If a Garnishment Order is issued, the written notice must include a copy of the Garnishment Order.

58.5-5. Garnishment Orders. Should the Judiciary issue a Garnishment Order, it must include the following:

(a) An Administrative Fee which must be assessed against the Debtor each pay period until the Garnishment Order is paid in full.

~~(1) Garnishment Implementation. The Accounting Department shall begin garnishments within ten days of notification of the judgment. The Accounting Department shall then:~~

~~(a) Send to the creditor the allowable determine the amount garnished from the employee's paycheck following each payroll period of the Administrative Fee and~~

provide notice of the fee amount to the Judiciary. The Judiciary shall post notice of the Administrative Fee amount in the Judiciary and on the Judiciary's webpage.

(b) The Garnishment Action Fee which must be awarded to the Creditor, unless the Creditor is a Tribal Entity, in which case, the Garnishment Action Fee must be paid to the Judiciary.

(c) The Garnishment amount. The Judge must begin with a presumption that a total of twenty percent (20%) of a Debtor's Disposable Earnings per pay period may be subject to Garnishment(s) at any one time

(1) In calculating the amount of the Garnishment per pay period, the Judge may not include amounts garnished pursuant to child support orders when calculating twenty percent (20%) of the Debtor's Disposable Earnings.

(A) The Debtor may request the Judiciary to lower the percentage deducted from his or her disposable earnings if the he or she can show that requiring a deduction of the maximum twenty percent (20%) would cause him or her undue harm by demonstrating that one (1) or more of the following apply:

(i) The Debtor is subject to child support orders that would leave him or her with less than fifty percent (50%) of his or her Earnings;

(ii) The Debtor receives, is eligible for or, within six (6) months of the date the Judiciary received the completed Petition, received public assistance;

(iii) The Debtor's household income is below the current federal poverty level;

(iv) The Garnishment of twenty percent (20%) of the Debtor's disposable earnings would cause the Debtor's household income to drop below the current federal poverty level; or

(v) The Garnishment of twenty percent (20%) of the Debtor's disposable earnings would cause the Debtor undue harm for reasons not identified in this section.

(2) The Debtor may request a higher percentage be deducted from his or her disposable earnings. Such requests must be made directly to the Judiciary.

(3) Nothing in this Law prohibits the Debtor from making additional payments to satisfy the Garnishment Order, provided that, if a Creditor receives payments from the Debtor outside of the Garnishment process, he or she must provide notice of said payment to the Accounting Department with a copy to the Debtor.

(d) Post Judgment Interest. Post Judgment interest must be applied to the amount recovered from the date of the Judgment until the Garnishment Order is satisfied. The post Judgment interest rate must be fixed for the duration of the Garnishment Order and is determined by one (1) of the following:

(1) An agreement by the parties to the Garnishment as to a fair annual post Judgment interest rate; or

(2) An annual post Judgment interest rate equal to one percent (1%) plus the prime rate in effect on the date in which the Judgment was awarded, as reported by the Federal Reserve Board in federal reserve statistical release H. 15.

58.5-6. Notice of Garnishment to Accounting Department. The Judiciary shall provide the Accounting Department with a copy of the Garnishment Order after the timeframe for all appeals has been exhausted.

58.5-7. Garnishment Implementation. Within ten (10) business days of receiving a copy of the Garnishment Order the Accounting Department shall implement the Garnishment by:

(a) Deducting the appropriate amount from the Debtor's paycheck(s) and forward that amount to the Creditor; and

(b) Notify the employeeDebtor and creditorCreditor when the garnishments are terminatedGarnishment Order has been fulfilled.

58.45-8. Summary Process. ~~Where the claim of indebtedness is \$50.00 or less, it shall be processed~~The Judiciary shall summarily ~~by the Hearing Officer~~process Petitions when the Debtor owes fifty dollars (\$50) or less, unless the debtorDebtor formally requests a ~~hearing~~Garnishment Hearing.

(a) For the purposes of this section, to summarily process a Petition means a Judge may make a determination regarding the Garnishment Order without holding a Garnishment Hearing.

58.45-9. Appeals. ~~A respondent has~~party may appeal the decision regarding a Garnishment Order, provided that the appeal must be submitted within ten (10) business days from the date of receipt of the notice to file an appeal of a garnishment orderthe Judge's determination. The appeal shall be filed with the Judiciary's Court of Appeals in accordance with the Judiciary Law and any applicable rules and procedures.

58.45-10. Records. The ~~Hearing Officer~~Judiciary shall keep ~~complete~~records of all ~~garnishment~~Garnishment actions ~~that are started and/or completed.~~ The records ~~shall~~must contain, at minimum:

(a) Correspondence and notices to all parties involved;

(b) Bookkeeping records;

(c) Garnishment evidence presented by all parties; and

(d) Decisions made by the Hearing OfficerJudge.

~~58.5-1. Garnishment Action Fee.~~ At the time of creditor's first notice to the Hearing Officer, the creditor shall pay a fee of \$25.00 which shall be known as the Garnishment Action Fee. The Hearing Officer is not required to begin any action on the claim until the fee is paid. The fee shall be charged to the respondent should a decision be made to garnish. The fee will be applicable in each case, except that in cases where indebtedness is with a department, program or enterprise of the Oneida Tribe.

~~58.5-2. Administrative Fee.~~ An administrative fee of \$5.00 shall be deducted monthly along with the ordered garnishment until the amount claimed is paid in full. This fee is to cover the cost of garnishing as expended by the Accounting Department.

~~58.5-3. Amount of Garnishment.~~ The Hearing Officer may order the employee's compensation to be subject to a garnishment of up to twenty percent of the employee's disposable weekly wage, the remainder to be identified as a protected subsistence allowance. Provided that, in calculating twenty percent, the Hearing Officer shall not include amounts garnished regarding child support orders. The employee may voluntarily request more to be deducted. The request shall be made directly to the Accounting Department.

~~58.5-4. Exceptions to 20 % Presumption.~~ It is presumed that the beginning amount to be deducted in any garnishment hearing shall begin at twenty percent of the employee's weekly wages. The respondent is responsible for presenting evidence that it is unreasonable to require

the full twenty percent to be deducted. Examples of exceptions shall include, but not be limited to, pre-existing garnishment orders, child support orders that would leave less than 50% of the debtor's wages, other evidence presented which would cause garnishments such that additional garnishment orders would cause undue harm.

58.6-1. Irrevocable Voluntary Payroll Deduction. An employee may request an irrevocable voluntary payroll deduction negotiated with a creditor for legal debts. The request must be signed by the employee and submitted to the Accounting Department.

58.6-2. Preemption of Garnishment Action. If the request is made prior to a garnishment action decision or during a garnishment action:

(a) The irrevocable voluntary payroll deduction request must be made to the Hearing Officer.

(b) The Hearing Officer shall notify the creditor of the request.

(c) If the parties agree, the Hearing Officer may then cancel the hearing, notify all parties and forward the executed agreement to the Accounting Department.

58.6-3. Administrative Fee. An administrative fee of \$5.00 shall be assessed monthly so long as the irrevocable voluntary payroll deduction is in effect.

58.7-1. Recognition of Order Child Support Orders

58.6-1. Orders for child support against any ~~employee shall~~ Employee must be recognized and enforced, provided that the order has been issued from a court of competent jurisdiction.

58.7-2. Authenticity of Order. The ~~Hearing Officer shall~~ Judiciary must receive such child support orders; and shall verify the authenticity of ~~the orders~~ such orders. Upon verification of the child support order, the ~~Hearing Officer~~ Judge shall forward such order to the Accounting Department for action.

58.7-3. Administrative Fee. An ~~administrative fee of \$5.00 shall~~ Administrative Fee must be assessed monthly so long as the child support deduction is in effect.

58.8-17. Discharge from Employment

58.7-1. The ~~Oneida Tribe~~ shall not discharge ~~an employee because an employee is being subjected from employment, refuse to garnishment actions~~ employ or otherwise take disciplinary action against an Employee solely because the Employee is subject to a Garnishment action.

58.8-2. ~~Jurisdiction.~~ All creditor filing a garnishment action must sign a Jurisdiction Submission Statement. The statement will indicate that the creditor is submitting to the jurisdiction of the Oneida Tribe in that particular action.

End.

Adopted - BC-6-2-92

Adopted - BC-6-10-92

Adopted - BC-4-2-97-G

Amended - BC-06-25-14-B



Legislative Operating Committee

December 2, 2015

Audit Committee Bylaws Amendments

Submission Date: September 17, 2014

☐ Public Meeting:
☐ Emergency Enacted:

LOC Sponsor: Fawn Billie

Summary: *This item was deferred to the LOC by the OBC on April 27, 2011 and it was carried over into the current term by the LOC. Originally, the OBC deferred the Audit Committee Charter to the LOC for review of authority and review under the context as bylaws. The Audit Committee is a standing committee of the OBC currently operating under a charter adopted by the Audit Committee. The previous LOC deferred a draft of the Bylaws to the Audit Committee for review and was awaiting a response from the Audit Committee when the term ended. The Audit Committee's last action on this item occurred on May 3, 2013 and was to "defer until after the GTC Meeting regarding enforcement authority," which refers to amendments to the Audit Law that were anticipated would be sent to GTC for review.*

9/17/14 LOC: Motion by Fawn Billie to add the Audit Committee Bylaws Amendments to the Active Files List with Fawn Billie as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

6/3/15 LOC: Motion by Jennifer Webster to forward the draft to the Audit Committee; seconded by David P. Jordan. Motion carried unanimously.

6/11/15: Audit Committee Meeting: Bylaws included on agenda.

8/13/15: Audit Committee Meeting: Bylaws draft approved at meeting.

11/12/15: Audit Committee Meeting: Bylaws draft approved at meeting.

Next Steps:

- Forward the draft to the Legislative Reference Office for a legislative analysis.

AUDIT COMMITTEE BYLAWS

Article I. Authority

- 1-1. *Name.* The name of this committee shall be the Audit Committee, hereinafter referred to as "Committee."
- 1-2. *Authority.* By the authority of the Oneida Business Committee, the Committee was created by adoption of the Audit Law Resolution BC-07-15-98-C. Through the Audit Law, the Committee has been delegated the authority to ensure the integrity of the Tribe's financial reporting and audit systems. Definitions for the words used throughout these bylaws shall be taken from the Audit Law. All words not defined in the Audit Law shall be used in their ordinary and everyday sense.
- 1-3. *Office.* The office of the Committee shall be located within the exterior boundaries of the Oneida Reservation and its mailing address shall be P.O. Box 365, Oneida, WI 54155.
- 1-4. *Membership.*
 - a. Number of members. The Committee shall consist of five (5) members.
 - b. How elected or appointed.
 1. Four (4) Committee members shall be Oneida Business Committee members, excluding the Treasurer, selected by a majority of the Oneida Business Committee.
 - A. Any member of the Business Committee, with the exception of the Treasurer, may serve as Ad Hoc when needed.
 2. One (1) Committee member shall be a member of the community who meets the qualifications of 1-4(d). This member shall be appointed in accordance with the Comprehensive Policy Governing Boards, Committees and Commissions.
 - c. How vacancies are filled. Vacancies on the Committee shall be filled in accordance with section 1-4(b) for the remainder of the outstanding term.
 - d. Qualifications of members.
 1. The appointed Committee member shall be at least twenty-one (21) years of age and be an enrolled member of the Oneida Tribe of Indians of Wisconsin.
 2. Committee members shall be both independent and financially literate or have access to financial expertise, whether in the form of the Chief Financial Officer, a single individual serving on the Committee, or collectively among Committee members. Components of financial expertise include:
 - A. The ability to assess the general application of the principles and standards in connection with the accounting for estimates, accruals, and reserves.
 - B. An understanding of internal controls.
 - C. An understanding of the procedures for financial reporting.
 - D. An understanding of Audit Committee functions and responsibilities.
 - e. Term of office.
 1. The terms of the Oneida Business Committee members shall coincide with the term of the Oneida Business Committee.
 2. The term of the appointed community member shall expire midway through the term of the Oneida Business Committee.
 3. Defining independence of each Committee member is important for the Tribe and no Committee member may:
 - A. Be employed by any Tribal entity.
 - B. Provide contract services to the Tribe.
 - C. Be a member of any other Tribal Board, Committee or Commission, other than the Oneida Business Committee members.

D. Represent any interests other than the Tribe's while acting as a member of the Committee.

4. Committee members shall strictly adhere to the Tribe's laws and policies establishing ethical standards and/or conflicts of interest, and any code of conduct. Failure to do so may result in the removal from the Committee or termination of an appointment.

Article II. Officers

- 2-1. The Committee shall have two (2) officers: Chairperson and Vice-Chairperson. The terms of office for the officers shall coincide with the terms of the Oneida Business Committee members.
- 2-2. *Chairperson Duties.* The Chairperson shall preside over all meetings and may not vote except in the case of a tie. The Chairperson shall be responsible for calling meetings and notifying members with the assistance of the Internal Audit Department.
- 2-3. *Vice-Chairperson Duties.* The Vice-Chairperson shall assist the Chairperson with his or her duties, at the request of the Chairperson, and shall preside over all meetings in the Chairperson's absence.
- 2-4. *How Officers are Chosen.* The Chairperson and Vice-Chairperson shall be chosen from the Oneida Business Committee representatives by all Committee members present at the first meeting held after the Committee is appointed.
- 2-5. *Personnel.* The Committee shall recruit and hire a qualified Internal Audit Director to lead the internal audit function and to assure unbiased audit and investigative processes and reporting.

Article III. Meetings

- 3-1. The Committee shall meet on a monthly basis within the Reservation boundaries.
- All Committee members are expected to attend each meeting.
 - The Committee may invite entity representatives, auditors or others to attend meetings and provide pertinent information, as necessary in open session.
 - The Committee may hold meetings in executive session with auditors, legal counsel, and entity representatives as required.
- 3-2. *Emergency and Special Meetings.* Emergency or special meetings of the Committee may be called by the Chairperson or upon written request of any two (2) members. The Chairperson shall designate a time and place for holding an emergency or special meeting.
- 3-3. *Notice of Emergency or Special Meeting.* Notice of an emergency or special meeting shall be
- Members.* The Committee shall provide notice to members at least forty-eight (48) hours prior to the date set for any such meeting. Notice may be communicated in person, by facsimile or other wire or wireless communication, or by mail.
 - Public.* The Committee shall provide public notice of special meetings by submitting the date, time and location of the special meeting to the Intergovernmental Affairs and Communications Department to be included on the community calendar on the Tribe's website no later than twenty-four (24) hours prior to the time of the special meeting.
- 3-4. *Quorum.* A quorum shall consist of a majority of current members of the Committee and shall include the Chairperson or Vice-Chairperson.
- 3-5. *Order of Business.* The regular meetings of the Committee shall follow the order of business as set out herein:
- Call to Order.

- b. Approval of Agenda
- c. Approval of Minutes
- d. Old Business
- e. New Business
- f. Executive Session
- g. Adjourn

- 3-6. *Voting.* Decisions of the Committee shall be based on a majority of a quorum of members present at a meeting. The officer presiding at a meeting shall vote only in case of a tie.
- 3-7. *Stipends.* The appointed Committee member shall be paid a meeting stipend in accordance with Section 11-3 of the Comprehensive Policy Governing Boards, Committees and Commissions, provided that the meeting has established a quorum for a minimum of one (1) hour and the Committee member collecting the stipend was present for at least one (1) hour of the established quorum.

Article IV. Reporting

- 4-1. Agenda items shall be in an identified format.
- 4-2. Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the Committee.
- 4-3. Handouts, reports, memoranda and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented.
- 4-4. The Committee shall report to the Oneida Business Committee and to the General Tribal Council, when appropriate, relative to audits, financial reports, management reports and recommended corrective measures.
- 4-5. The Committee shall report to the Oneida Business Committee, as often as deemed appropriate, the approved Committee minutes, audit reports and appropriate supporting information.
- a. Minutes and audit reports require Oneida Business Committee approval in order to finalize the audit records.

Article V. Amendments

- 5-1. The Bylaws of the Committee shall be amended with the approval of a quorum of the Committee and upon subsequent approval by the Oneida Business Committee.

Article VI. Responsibilities

- 6-1. The Committee shall have oversight of the activities of the internal audit function in independent assignments related to auditing, evaluating, and special investigations related to detecting fraudulent financial reporting and conducting investigations into fraud and theft in the Tribe's entities.
- 6-2. *Enforcement.* The Committee shall have the ability to utilize all existing enforcement authorities to carry out their responsibilities to achieve their purpose, including:
- a. Request the Business Committee to compel entity representatives to attend meetings in order to represent issues.
 - b. Request the Business Committee to compel entity representatives to comply with audit requests and reply to audit reports.
 - c. Instruct the external auditor and the internal auditor that the Committee expects to be advised if there are any areas that require its special attention.

- d. Request the Business Committee to issue notices of noncompliance to entity employees in accordance with the disciplinary provisions relating to work performance and personal actions, as provided for in the Tribe's Personnel Policies and Procedures.
 - e. Request the Business Committee to issue notices of violation of Oath of Office, as appropriate, to entity members.
 - f. Seek improvements to assure the Tribe's laws and policies establishing ethical standards and/or conflicts of interest, as well as any code of conduct implemented are current and adequate to ensure fairness for all and equity by protecting the resources.
- 6-3. *Financial Statements.* The Committee shall review and discuss annual and quarterly statements and Managements Discussion & Analysis (MD&A) with entity representatives and auditors.
- 6-4. *Internal Control.* The Committee shall ensure that entities have developed and follow an adequate system of internal control, including:
- a. Compliance with legal and regulatory requirements.
 - b. Risk assessment and risk management.
 - c. Adopt a code of ethics which includes monitoring and enforcement.
 - d. Establish procedures for the receipt, retention, and treatment of complaints; establish a confidential anonymous submission by individuals for concerns regarding questionable matters.
 - e. Ensure open communication and information flow with entities, internal auditors and external auditors.
- 6-5. *External Audit.* The Committee shall be responsible for evaluating and recommending to the Oneida Business Committee, an independent public accounting firm for the annual or any special audit, unless there is a prior alternative written agreement in place delegating the responsibility for a given special audit. When an external auditor is hired, the Committee shall:
- a. Verify the qualifications of the external auditor.
 - b. Oversee the performance of the external audit.
 - c. Assure all reports from the external auditor go directly to the Committee.
- 6-6. *Compliance.* The Committee shall review the effectiveness of the system for monitoring compliance with laws and regulations and the results of an entity's investigation and follow-up of any instances of non-compliance. Special audits and/or investigations may be recommended by the Audit Committee.
- 6-7. *Other Responsibilities.* The Committee shall complete a self-evaluation annually to identify improvement opportunities. This includes comparing the Committee's performance to its bylaws, any formal guidelines and rules, and against best practices. Such review is confidential and may or may not include evaluations of particular members.

These Bylaws are hereby attested to as adopted by the Audit Committee at a duly called meeting held on the _____ of _____, 2015 by the Audit Committee Chairperson's signature.

Tehassi Hill, Chairperson
Audit Committee

These By-Laws are also approved by the Oneida Business Committee at a duly called meeting held on the _____ of _____, 2015 by the Secretary of the Oneida Business Committee's signature.

Lisa Summers, Tribal Secretary
Oneida Business Committee



Legislative Operating Committee

December 2, 2015

Administrative Procedures Act

Submission Date: 2/12/15

Public Meeting:
Emergency Enacted:

LOC Sponsor: Brandon Stevens

Summary: *With the adoption of the Judiciary Law, the APA was set to be repealed as of March 1, 2015. If repealed at that time, it would have left various Tribal hearing bodies without any rules to govern hearings. A revised APA was adopted on an emergency basis to address that issue.*

2/18/15 LOC: Motion by Tehassi Hill to approve the resolution and forward to the Oneida Business Committee for consideration of adoption; seconded by Fawn Billie. Motion carried unanimously.

2/25/15 OBC: Motion by Tehassi Hill to adopt resolution titled Administrative Procedures Act Amendments Emergency Adoption, seconded by Trish King. Motion carried unanimously.

8/19/15 LOC: Motion by Jennifer Webster to approve the resolution extending the Administrative Procedures Act Emergency Amendments and forward to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

8/26/15 OBC: Motion by Brandon Stevens to adopt resolution 08-26-15-C Administrative Procedures Act Amendments Emergency Adoption Extension, seconded by Jennifer Webster. Motion carried unanimously.

11/18/15 LOC: Motion by David P. Jordan to defer the Administrative Procedures Act Amendments to the Finance Department for a fiscal impact statement and to forward the Administrative Procedures Act Amendments to a public meeting date of January 7, 2016; seconded by Fawn Billie. Motion carried unanimously.

Next Steps:

- Approve the public meeting packet for the Administrative Procedures Act and forward to a public meeting date on January 7, 2015.



Notice of

Public Meeting

to be held

January 7, 2016 at 12:15 p.m.

OBC Conference Room—2nd Floor, Norbert Hill Center



Topic: Administrative Procedures Act

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

- ◆ Require hearing bodies to follow the Law when conducting hearings;
- ◆ Allow hearing bodies to develop additional hearing body procedures so long as those procedures do not conflict with the APA and are noticed to the public;
- ◆ Establishing procedural requirements for hearings, including:
 - ◆ Specifying requirements for a complaint;
 - ◆ Identifying how a complaint and summons can be served;
 - ◆ Authorizing hearing bodies to establish a regular time to hold pre-hearings and hearings;
 - ◆ Authorizing hearing bodies to designate officer and alternates to serve on the hearing body;
 - ◆ Restricting hearing officers and parties from engaging in ex parte communications;
 - ◆ Specifying when evidence is used and how it can be obtained and presented, or objected to;
 - ◆ Require a pre-hearing to be conducted, in part, to allow determine dispositive motions, identify the need for witnesses and/or evidence;
 - ◆ Implement a scheduling order and address matters that will clarify, simplify or settle the case or facilitate a just, speedy and inexpensive disposition;
 - ◆ Specifying time requirements for setting hearing dates.
- ◆ Authorize the hearing bodies to issue fines, orders and/or penalties; that comply with the Indian Civil Rights Act.
- ◆ Allow a party to appeal the hearing body's decision to the Tribe's Court of Appeals.

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 January 14, 2016

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, 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**

APA Emergency Amendments Extension

Analysis Draft 1 to Draft 3

<i>Analysis by the Legislative Reference Office</i>			
Title	Administrative Procedures Act (APA)		
Drafter	Lynn Franzmeier/Doug McIntyre	Analyst	Candice E. Skenandore
Reason for Request	Ensure that Tribal boards, committees and commissions have hearing procedures that are noticed so a person is presented with a fair opportunity to file a claim that arises under Tribal law [See 1.1-2].		
Purpose	The APA provides hearing procedures for boards, committees and commissions that do not have established hearing procedures in place [See 1.1-1].		
Authorized/ Affected Entities	Tribal boards, committees and commissions that are authorized, by Tribal law, to conduct hearings; anyone bringing or defending an action before such a Tribal hearing body; anyone identified as a respondent; witness; and the Court of Appeals [See 1.4-1, 1.1-1, 1.4-2, 1.4-3 (a), 1.5-5 (b) & 1.6-2]		
Due Process	A party can appeal a hearing body's decision to the Tribe's Court of Appeals [See 1.6-2]		
Related Legislation	The following are some Tribal laws and policies that reference the APA when describing how a hearing is conducted: All-Terrain Vehicle Law [49.6-2]; Building Code [66.24-1]; Condominium Ordinance [68.26-2]; Oneida Nation Gaming Ordinance [21.12-8 (g)]; Hunting, Fishing and Trapping Law [45.15-3]; On-Site Waste Disposal Ordinance [46.5-1 (a), (b)(2) & (c)(2)]; Protection and Management of Archeological & Historical Resources [12.5-3]; Real Property Law [67.16-3 (a) (3)]; Oneida Vendor Licensing [56.7-1]; Well-Abandonment Law [43.7-3] and Employee Protection Policy [4-7]		
Policy Mechanism	The hearing body can issue fines, orders and/or penalties so long as they comply with the Indian Civil Rights Act [See 1.6-1].		

Overview

The APA once housed the process for adopting Tribal legislation as well as the hearing procedures for Tribal boards, committees and commissions (hearing bodies) that have hearing authority, including the Oneida Appeals Commission. On January 7, 2013, the GTC 1) adopted the Legislative Procedures Act (LPA) which transferred the Tribal legislation process from the APA to the LPA and 2) adopted the Judiciary which repealed the hearing procedures for the Oneida Appeals Commission set forth in the APA effective March 1, 2015 [See GTC Resolutions 01-07-13-A & 01-07-13-B]. Because other Tribal laws reference the APA as a guide to be used for hearing procedures of various Tribal hearing bodies and because these Tribal hearing bodies continued to have hearing authority after the APA was set to expire, the Oneida Business Committee (OBC) adopted emergency amendments to the APA which provided a consistent process for these hearing bodies to conduct hearings. These emergency amendments became effective on March 1, 2015; were extended for six months and are set to expire on March 1, 2016.

The following amendments to the APA are currently in effect and are being considered for permanent adoption. These amendments:

- Require hearing bodies to follow the APA when conducting hearings unless another Tribal law establishes hearing procedures for the specific hearing body [See 1.4-1]. The APA will not pertain to the Oneida Personnel Commission, Oneida Police Commission or Oneida Election Board because Tribal law dictates how their hearings are conducted [See Oneida Judiciary Rules of Civil Procedure 153.4-6, Oneida Nation Law Enforcement Ordinance 37.9-1 and Oneida Election Law 2.5-6]. In addition, the APA

APA Emergency Amendments Extension

Analysis Draft 1 to Draft 3

specifically excludes the Tribe's Judiciary and Family Court *[See 1.3-1 (f)]*.

- Allow hearing bodies to develop additional hearing body procedures so long as those procedures do not conflict with the APA and are noticed to the public *[See 1.4-1]*.
- Establishing procedural requirements for hearings, including:
 - Specifying what information must be included in the complaint as well as identify how a complaint and summons can be served and that service must be made within 30 days of filing the complaint *[See 1.4-2 & 1.4-3]*.
 - Authorizing hearing bodies to establish a regular time to hold pre-hearings and hearings as well as designate officer and alternates to serve on the hearing body *[See 1.5-1]*.
 - Restricting hearing officers and parties from engaging in ex parte communications *[See 1.5-2]*.
 - Specifying when evidence is used and how it can be obtained and presented, or objected to. *[See 1.5-3]*.
 - Require a pre-hearing to be conducted within 45 days after notice is served *[See 1.5-4]*. The pre-hearing allows the hearing body or hearing officer to determine dispositive motions; identify the need for witnesses and/or evidence; implement a scheduling order and address matters that will clarify, simplify or settle the case or facilitate a just, speedy and inexpensive disposition *[See 1.5-4]*.
 - Require a hearing, if necessary, to be conducted within 60 days after the pre-hearing or within 60 days after it is decided to not hold a pre-hearing *[See 1.5-6]*.
- Authorize the hearing bodies to issue fines, orders and/or penalties that comply with the Indian Civil Rights Act *[See 1.6-1]*.
- Allow a party to appeal the hearing body's decision to the Tribe's Court of Appeals in accordance with the Judiciary law and any applicable rules of procedure *[See 1.6-2]*.

Considerations

The LOC may want to consider the following:

- Amendments require a pre-hearing to be conducted within 45 days after the notice is served as well as require a hearing be held, if necessary, within 60 days after the pre-hearing was conducted or the decision that a pre-hearing is not needed *[See 1.5-1 and 1.5-5]*. The amendments do not address allowing hearing bodies to extend these timelines. The LOC may want to consider whether or not to allow hearing bodies to extend the 45 day pre-hearing and/or 60 day hearing timelines if all parties agree, or in specific circumstances when additional time is necessary in the interests of justice.
- Amendments will allow the hearing body to issue fines, orders or penalties for those who violate the APA but there are no enforcement provisions for hearing bodies that violate this Law.
- The APA does not state whether or not a hearing body can issue subpoenas.

Miscellaneous

A public meeting has not been held. Please refer to the fiscal impact statement for any financial impacts.

Chapter 1

Administrative Procedures Act

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

1.4. Complaints and Notice
1.5. Procedures
1.6. Judgments and Appeals

1.1-1. Authority. ~~The Oneida Tribe of Indians of Wisconsin has the authority and jurisdiction to enforce this act as well as the responsibility as a government to protect the health, safety, welfare, and economy of the Oneida Reservation lands and all persons who either reside on the reservation or who are visitors and/or are conducting business within the exterior boundaries of the reservation. The Oneida Tribe shall ensure due process of law for the designated citizens through adoption of this act, pursuant to Article VI of the Oneida Tribal Constitution, as amended.~~

1.2-1. Purpose. ~~The Oneida Business Committee, various committees, entities and administrative bodies of the Oneida Tribe shall act in a responsible and consistent manner when enacting, approving, revising, reviewing, interpreting, implementing, and administering the laws, directions, rules, programs, and policies of the Oneida Tribe as adopted. The following principles shall be the framework of this Act:~~

- ~~(a) Fundamental fairness, justice, and common sense.~~
- ~~(b) Record keeping that is responsible, organized, accessible, and understandable.~~
- ~~(c) Deliberative bodies and decision makers which are familiar with the evidence and facts of the cases presented to them as well as issuing clear and concise written opinions; and~~
- ~~(d) Provisions for appeals of administrative errors and contested issues.~~

1.3-1. Adoption, Amendment, Repeal

~~(a) This law was adopted by the Oneida General Tribal Council by resolution GTC 8-19-91-A and amended by GTC 1-07-13-A.~~

~~(b) This law may be amended by the Oneida General Tribal Council.~~

~~(c) 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.~~

~~(d) Any law, policy, regulation, rule, resolution or motion, or portion thereof, which directly conflicts with the provisions of this law is hereby repealed to the extent that it is inconsistent with or is contrary to this law. Specifically, the following are repealed:~~

~~(a) BC #7-5-95-K (Amendment to the Administrative Procedures Act to address public hearing process)~~

~~(b) BC# 2-2-88-A (Public hearing process for laws and policies)~~

~~(e) This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.~~

1.4-1. Definitions. ~~(a) "AGENCY": Any tribal entity, board, commission, committee, department, or officer authorized by the Oneida Tribe to propose ordinance/rules for adoption by the Oneida Business Committee or a decision maker for the contested cases. The term "Agency" shall not include the Oneida Business Committee or a tribal appeals body.~~

~~(b) "CONFIDENTIALITY": State or quality of being confidential; treated as private and not for publication.~~

(c) ~~"CONTESTED CASES": A proceeding before an "Agency" in which an opportunity for a hearing before said "Agency" is required by law prior or subsequent to the determination of the "Agency" of the legal rights, duties, or privileges or specific parties unless otherwise provided for by tribal law. This shall include the revocation, suspension, or modification of a license or permit when a grant of such application is contested by a person directly affected by said licensing or permitting.~~

(d) ~~"DECLARATORY RULING": A written ruling made by a tribal decision-making body which removes doubts or puts an end to conflicting decisions in regard to what law is in relation to a particular matter.~~

(e) ~~"DELIBERATIVE BODY": A body that weighs, examines, and consults the reasons for and against a contemplated act or course of conduct or a choice of acts or means in order to form an opinion.~~

(f) ~~"EMERGENCY": An unexpected or unforeseen occurrence or condition; a sudden or unexpected occasion for action; pressing necessity.~~

(g) ~~"LICENSE" or "PERMIT": The approval, permission, or allowance of an individual or group to engage in an activity that is lawfully adopted by the Oneida Tribe.~~

(h) ~~"LICENSING" or "PERMITTING": The process that refers to the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or modification of a license or permit.~~

(i) ~~"ONEIDA BUSINESS COMMITTEE" (OBC): The representative body of the Oneida Tribe elected by the Oneida General Tribal Council pursuant to Article III of the Oneida Tribal Constitution.~~

(j) ~~"ONEIDA GENERAL TRIBAL COUNCIL": The ultimate governing body of the Oneida Tribe composed of enrolled tribal members as described in Article III of the Oneida Tribal Constitution.~~

(k) ~~"ORDINANCE": A tribal law that applies to and governs persons, activities, and properties subject to tribal jurisdiction.~~

(l) ~~"RESERVATION": All land within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.~~

(m) ~~"RESERVATION ENVIRONMENT" or "RESERVATION RESOURCES": Land, surface water, ground water, fish, animals, flora, fauna, air, wildlife, and capital improvements on or near the reservation.~~

(n) ~~"RULE/REGULATION": Any order or directive, or regulation of general applicability enacted into law and approved by the Oneida Business Committee that exhibits the following:~~

(1) ~~The violation of which may result in a fine, penalty, or other civil administrative sanction;~~

(2) ~~May establish, change, or revoke a procedure, practice, or requirement of administration hearing;~~

(3) ~~May establish, change, or revoke requirements relating to benefits or privileges conferred by law;~~

(4) ~~May establish, change, or revoke standards for assistance, suspension, or revocation of licenses;~~

(5) ~~The amendment or repeal of a prior ordinance/rule;~~

(6) ~~Does not include the following:~~

(A) ~~statements concerning internal management of an area, nor.~~

(B) ~~Declaratory rulings issued pursuant to this Act as now or hereafter amended.~~

(o) ~~"SECRETARY": Secretary of the Oneida Business Committee.~~

~~(p) "SPONSORING AGENCIES": Any tribal agency that prepares an ordinance/rule or other matter under this Act for action by the Oneida Business Committee.~~

~~**1.5-1. Inspection of Agency Orders, Decisions, and Opinions** Each agency shall keep on file for public inspection all final orders, decisions, and opinions in contested cases as well as an index to said cases, decisions, orders, or opinions except that said public inspection shall be limited by applicable federal law or tribal laws of confidentiality. In addition, said agencies shall forward all agency orders, decisions, or opinions to the "Secretary" who shall keep said records in one centralized area.~~

1.1. Purpose and Policy

1.1-1. Purpose. The purpose of this Law is to provide procedures for boards, committees and commissions that conduct hearings for disputes arising under Tribal law and have no procedures in place under other Tribal law. This Law shall not apply to hearings held before the Family Court or any court of the Tribe's Judiciary. This Law shall not be construed to create hearing rights where no hearing rights exist under Tribal law

1.1-2. Policy. It is the policy of the Tribe that the hearing procedures of boards, committees and commissions shall be noticed to ensure all individuals are presented with a fair opportunity to file any claim that may arise under Tribal law.

1.2. Adoption, Amendment, Repeal

1.2-1. This Law was adopted by the Oneida Business Committee by resolution BC _____.

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

1.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control.

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

1.3. Definitions

1.3-1. This section shall govern the definitions of words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

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

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

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

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

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

(f) "Hearing body" shall mean the member or members of a board, committee or

commission that hear and decide the case or motions presented as part of a case.
“Hearing body” shall not include the Family Court or any court of the Tribe’s Judiciary.
(g) “Scheduling order” shall mean the hearing body’s order establishing the dates of the hearing and the deadlines for discovery and submitting witness lists.
(h) “Summons” shall mean an order to appear before a hearing body because a petitioner has filed a complaint.

1.4. Complaints and Notice

1.4-1. Whenever a claim arises under Tribal law, a hearing body shall hear the complaint in accordance with the procedures established under this Law, unless another Tribal law has established hearing procedures for that specific hearing body. Nothing in this Law shall be construed to prevent a hearing body from establishing additional hearing body procedures, as long as those procedures do not conflict with this Law and are noticed to the public by the hearing body.

1.4-2. A petitioner(s) may file a complaint with the hearing body, the complaint shall include:

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

1.4-3. Notice. The complaint, along with a summons, shall be served upon the respondent(s) within thirty (30) days after the complaint is filed with the hearing body.

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

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

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

1.5. Procedures

1.5-1. Designated Hearing Dates. The hearing body may establish a regular time to hold pre-hearings and hearings. The hearing body shall designate officers and may designate alternates to serve on a hearing body.

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

1.5-3. Evidence. A party shall include evidence as part of his/her original filings or obtain the evidence through discovery. A party may attempt to present the hearing body with evidence later in the proceedings if the opposing party does not object.

- (a) Copies. If a party submits documentation as evidence, the party shall present an original for the record and copies to each of the hearing officers and the opposing party.

187 (b) Objections. The opposing party may object to any evidence submitted.

188 (c) Acceptance into the record. The hearing body makes the final determination whether
189 to accept evidence into the record. The hearing body may admit and consider evidence
190 that is commonly accepted and has a direct connection to the case.

191 1.5-4. Pre-Hearings. Pre-hearings shall be conducted within forty-five (45) days after notice
192 has been served. The purpose of a pre-hearing is for the hearing body or a hearing officer to:

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

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

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

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

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

205 (c) Implement a scheduling order.

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

209 1.5-5. Hearing Procedures. Within sixty (60) days after a pre-hearing is conducted, or within
210 sixty (60) days after it has been determined that a pre-hearing will not be conducted, the hearing
211 body shall conduct a hearing, if necessary. If a hearing is conducted, it shall substantially
212 comply with the following:

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

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

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

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

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

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

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

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

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

233 1.5-6. Decisions. The hearing body may issue an oral decision on a matter, but the decision
234 shall not be final until the hearing body issues a written decision. The hearing body shall issue a

written decision within ten (10) business days after a pre-hearing or hearing. Should any party fail to appear at any scheduled pre-hearing or hearing or contest a complaint, the hearing body may issue a default judgment in favor of the opposing party.

(a) The decision shall include:

(1) Findings of fact and conclusions of law;

(2) Reference to specific provision of Tribal law violated;

(3) Disposition of any dispositive motions;

(4) In the case of a decision issued after a pre-hearing, a scheduling order if the hearing body does not grant a dispositive motion; and

(5) Reference to the parties' appeal rights.

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

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

1.6. Judgments and Appeals

1.6-1. *Judgments* A hearing body, subsequent to a hearing, may issue fines, orders and/or penalties that comply with the Indian Civil Rights Act and may include, but not be limited to, the following:

(a) An order directing a violator or person in non-compliance of/with a Tribal law or regulation to pay a monetary fine for the violation, and/or actual damages and/or punitive damages.

(b) In the case of damages caused by minors, an order requiring the parent, custodian, or guardian to pay for damages and/or plan designed for restitution in lieu of monetary compensation to be fulfilled by the minor.

(c) An order directing the violator or non-complying person to cease and desist from further violation or non-compliance and to cure said violation within a specified period.

(d) An order requiring appropriate exclusion and/or mandated community service and/or denial of specific Tribal benefits.

(e) Unless precluded by law, informal disposition, signed by both parties, may also be made of any contested case by stipulation, agreed settlement, consent order, or default.

(f) An order placing a lien upon property owned by a person within jurisdiction of the Tribe.

1.6-2. *Appeals* A party may appeal a decision of a hearing body to the Court of Appeals in accordance with the Judiciary law and any applicable rules of procedure.

End.

December 2015

December 2015							January 2016						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
6	7	1	2	3	4	5	3	4	5	6	7	1	2
13	14	8	9	10	11	12	10	11	12	13	14	15	16
20	21	15	16	17	18	19	17	18	19	20	21	22	23
27	28	22	23	24	25	26	24	25	26	27	28	29	30
		29	30	31			31						

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Nov 29 - Dec 5	Nov 29	30	Dec 1	2	3	4	5
			2:30pm 4:30pm LOC work meeting: Higher Ed PM Comment Review (BCCR)	9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar	12:00pm 4:00pm Public Meeting: Comprehensive Policy and Rulemaking (BC_Conf_Room)	10:00am 12:00pm LOC Work Meeting: Removal Law PM Co 3:00pm 4:30pm FW: LOC Work Meeting: Community Support	
Dec 6 - 12	6	7	8	9	10	11	12
				BC Meeting (BCCR)			
Dec 13 - 19	13	14	15	16	17	18	19
				9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar			
Dec 20 - 26	20	21	22	23	24	25	26
				BC Meeting (BCCR)	12:00pm 4:30pm Christmas Eve	Christmas	
Dec 27 - Jan 2	27	28	29	30	31	Jan 1, 16	2

January 2016

January 2016							February 2016						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
3	4	5	6	7	1	2	7	1	2	3	4	5	6
10	11	12	13	14	8	9	14	8	9	10	11	12	13
17	18	19	20	21	15	16	21	15	16	17	18	19	20
24	25	26	27	28	22	23	28	22	23	24	25	26	27
31					29	30		29					

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	Dec 27	28	29	30	31	Jan 1, 16	2
12/27 - 1/1						New Years Holiday	
	3	4	5	6	7	8	9
1/3 - 8				9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar			
	10	11	12	13	14	15	16
1/10 - 15				BC Meeting (BCCR)			
	17	18	19	20	21	22	23
1/17 - 22				9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC_Calendar			
	24	25	26	27	28	29	30
1/24 - 29				BC Meeting (BCCR)			
	31	Feb 1	2	3	4	5	6
1/31 - 2/5							