

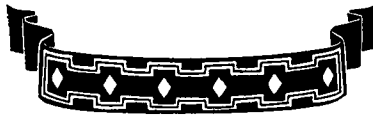
# Oneida Appeals Commission

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## Trial Court

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Docket No. 03-TC-285

*In re* the Removal of Linda Dallas and Rochelle Powless

Date: July 23, 2003

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### Decision

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This case has come before the Oneida Appeals Commission Trial Court. Judicial Officers Stephan Tourtillott-Grochowski, Kirby Metoxen and Kim Vele presiding.

### Background

On July 10, 2003, a pre-trial hearing was held during which an order was issued directing each party to file a brief stating the standard of review and burden of proof that should be used in this case.

### Order

1. The burden of proof in this case rests with the Oneida Gaming Commission. The Commission will have to prove their case for removal by clear and convincing evidence rather than by a preponderance of the evidence. This is the standard which this Judicial body will use in a case for removing an appointed or elected official. Using any other standard undermines the election process that put the Oneida Gaming Commissioners in their positions. Clear and convincing evidence is evidence showing a high probability of truth of the factual matters at issue.

2. The standard of review in this case will be *de novo*. This case will be tried anew, as if it had not been heard before and as if no decision had been previously rendered. Although the Oneida Gaming Commission have made its findings and factual conclusions, as required by the Removal Law, Ms. Dallas and Ms. Powless have not had an opportunity to be heard. This Judicial body will conduct the evidentiary hearing, in which the Oneida Gaming Commission must meet their burden of proof. The Oneida Gaming Commission will need to present their case again to this Judicial body.
  
3. From this point forward, the caption of this case will be: *In re* the Removal of Linda Dallas and Rochelle Powless. The parties will stay the same; Oneida Gaming Commission as the Petitioner (for they are the party seeking to remove two Commissioners) and Linda Dallas and Rochelle Powless as the Respondents (for they are the parties refuting their removal).
  
4. On July 22, 2003, Linda Dallas and Rochelle Powless filed a document with the Oneida Appeals Commission notifying the Trial Court that Dorothy A. Skenandore was retained as co-counsel. On its face, this document is not acceptable to this Judicial body. We require that a document of this magnitude be signed by all parties concerned: Linda Dallas, Rochelle Powless, Dorothy A. Skenandore, and Timothy T. Blank. Respondents will have until 4:30 pm on Wednesday, July 30, 2003, to resubmit this document with all required signatures.

Due to the geographical constraints of Pro tem Judges Stephan Tourtillott-Grochowski and Kim Vele, both were unavailable for signature; Judicial Officer Kirby Metoxen is authorized to be the sole signer of this decision.

So ordered on this 23<sup>rd</sup> day of July, 2003.