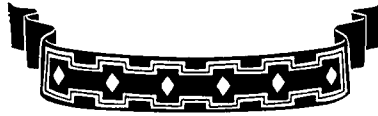


# Oneida Appeals Commission

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## Trial Court

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Rick Cornelius,  
Tim Huff-Interim Security Director,  
Petitioners

Docket No. 05-TC-149

vs

Oneida Police Commission-Mark King,  
HRD-Geraldine Danforth,  
Respondents

Date: December 27 , 2005

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### Motion for an Injunction Motion to Dismiss

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This petition has come before the Oneida Tribal Judicial System, Tribal Court for review. Judicial Officers, Mary Adams, Lois Powless and Jennifer Webster, presiding.

#### I Background

On November 16, 2005, Petitioners, Rick Cornelius and Tim Huff, filed their request for an Injunction to stay the hiring of a Police Officer claiming the Oneida Police Department's Hiring Process will be violated. On December 12, 2005, Respondent, Oneida Police Commission, by way of Attorney Sweeney, filed their opposition to the Motion for an Injunction by arguing the Standard of Review. On December 13, 2005, Respondent, Human Resources Department - Attorney Schneider, filed a Motion to Dismiss, asserting Petitioner lacks standing.

An Injunction Hearing was held on December 15, 2005. At the December 15, 2005 hearing, the Gaming Commission and Oneida Personnel Commission, were dismissed from this case.

## **II Issues**

Does Petitioners lack standing?

Will the Oneida Police Department be in violation of the Oneida Personnel Policies and Procedures, the Oneida Law Enforcement Ordinance, and the Oneida Police Department Hiring S.O.P.?

## **III Analysis**

### **Motion to Dismiss.**

The first issue the court will address is Respondent HRD's Motion to Dismiss. Respondent claims Petitioners action is barred by the Tribe's Sovereign Immunity Ordinance BC#5-04-04-D and lists sections 14.3-1(e) and 14.4-1. Respondent asserts that this ordinance includes all departments, divisions, business units and other subdivisions of the Tribe. Respondent contends that a number of other tribal court cases support the right of tribes to remain immune from suit unless the tribe expressly waives its sovereign immunity. Respondent argues the following: 1. the Oneida Tribe has not waived its immunity for purposes of this action, 2. Congress has not authorized this action against Respondent, 3. Respondent has not acted outside the scope of its authority, and; 4. nor have Petitioners made any allegations or arguments to show why HRD should not receive the protections of the Tribe's sovereignty immunity. Respondent claims the doctrine of tribal sovereign immunity bars this action against Respondent, and the Appeals Commission is precluded from exercising jurisdiction over Respondent.

Furthermore, Respondent HRD contends Petitioners lack standing to request a stay on all current police officer and security officer hiring. Respondent claims according to Rules of Civil Procedure, Rule 31(E)(1), Petitioners failed to show that they suffered any harm from hiring either police officer or security officer. Respondent argues that Petitioners are not applicants for the position, they have not shown harm, and Petitioners cannot meet the requirements to establish standing.

In addition, Respondent HRD maintains that Petitioners have failed to state a claim against Respondent upon which relief can be granted. Respondent claims according to Rules of Civil

Procedure, Rule 14, Petitioners have not made any allegations of wrongdoing by Respondent or otherwise alleged that HRD is responsible for the actions that they seek to enjoin. Respondent argues Petitioners failed to show any right to relief against Respondent. Respondent claims Petitioners provided no evidence to support an injunction against HRD. Respondent alleges Petitioners claim is in response to a complaint filed by a job applicant and the appropriate party to file the claim may be the applicant who may have suffered personal harm.

### **Petitioners' arguments**

Petitioners contend that the Oneida Police Commission have violated the Oneida Police Department's SOP - Hiring Procedures and the Oneida Law Enforcement Ordinance. Petitioners argue according to the SOP #03-05-01.005, Section 2.7<sup>1</sup> defines that the sub-committee will consist of OPD supervisors who are selected by the Chief of Police and not the Oneida Police Commission. Petitioners maintain that the Oneida Police Commission violated the Oneida Law Enforcement Ordinance, Section 37.6-1(b)<sup>2</sup>, by participating in the hiring of police officer(s). Petitioners are requesting an Injunction be placed on the hiring of all police officers until this issue is adjudicated.

### **Court's Opinion**

The basis of this suit is the assertion by the Petitioners that the Oneida Police Commission wilfully ignored the Police Department's SOP and the Law Enforcement Ordinance. In order for this case to proceed on its merits, in accordance with Rules of Civil Procedure, Rule 31(E)(1-4), Petitioners must establish that he or she has standing to bring this cause of action. Petitioners need to show with clarity how the alleged action of the Respondents will result in immediate and or irreparable harm to the Petitioners. The rationale is, in order for this injunction to be granted, one must consider, "if Respondents violated these laws who will suffer immediate and or irreparable harm"? Furthermore, by issuing an injunction this may impede the rights of the applicant who applied for the police officer

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<sup>1</sup> Definitions: Supervisory Sub-Committee: A group of OPD Supervisors selected by the Chief of Police to conduct initial oral interviews with applicants.

<sup>2</sup> (b) Approve all law enforcement officer appointments made by the Police Chief including the promotion of subordinates.

position.

When an alleged violation occurs most concerned citizens seek intervention. Laws and rules are not generally written in the most comprehensive text. The most appropriate remedy to determine the scope of the Police Commission's authority may be challenged by filing a Declaratory Judgement.

Petitioners failed to prove they have standing to bring this cause of action. Harms vs. Oneida MIS Department, Oneida General Manager, Oneida Human Resources Department, 9 O.N.R., 2-88, 03-TC-330. In Harms, petitioner lacked standing to initiate a claim because Mr. Harms' claim needed to establish a relief that could be granted. In this case, Mr. Cornelius and Mr. Huff filed an injunction to stay the hiring of an applicant. Petitioners failed to convince this court that by hiring police officer(s) Mr. Cornelius or Mr. Huff will suffer immediate and or irreparable harm. Furthermore, Petitioners failed to establish a relief that could be granted. All other issues are moot because Petitioners lack standing to bring this cause of action.

#### **IV Decision**

This case is dismissed. Petitioners lack standing to bring this cause of action. The Oneida Gaming Commission and Oneida Personnel Commission are dismissed from this case and are hereby removed as named Respondents.