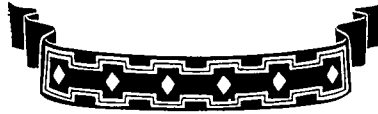


# Oneida Appeals Commission

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## TRIAL COURT

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Case No. 06-TC-032

Date: May 16, 2006

In re the Removal of Nancy Cook

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## DISMISSAL

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This case has come before the Oneida Tribal Judicial System Trial Court, Judicial Officers Leland Wigg-Ninham, Gerald Cornelius and Anita Barber presiding.

### I. Background

This case involves a resolution filed by the Oneida Personnel Commission concerning one of its members, Nancy Cook. Ms. Cook's qualifications to sit as a Personnel Commissioner were called into question by one of the litigants in a case before the Personnel Commission. As a result, on December 30, 2005, the Personnel Commission passed a Resolution attempting to invoke the Oneida Removal Law found at Chapter (four) 4 of the Oneida Tribal Ordinances. We dismiss the matter because the Resolution does not contain the requirements needed for further proceedings under Chapter 4.

On or about December 8, 2005, the Oneida Personnel Commission received a written allegation that questioned certain aspects of Ms. Cook's past and her fitness for service as a Personnel Commissioner. The Personnel Commission held a meeting on December 30, 2005 and passed a resolution which made several statements, but did not call for Ms. Cook's removal. The Resolution language "invokes" the OPC's "responsibility under the Oneida Removal Law," but does not call for removal of Ms. Cook nor does it contain other required elements.

The OPC forwarded its Resolution to the Oneida Appeals Commission shortly after it was passed (but before Chapter 4 was amended in January, 2006).<sup>1</sup> After some administrative confusion at the Oneida Appeals Commission over the nature of the OPC's resolution, the matter was scheduled for a pre-trial status conference on May 5, 2006. A representative of the OPC appeared as did Ms. Cook.

## II. Issues

Have the requirements of the Oneida Removal Law, Chapter 4, been met?

## III. Analysis

The Oneida Removal Law, Chapter 4, contains the provisions for removal of an appointed or elected member of an agency of the Oneida Tribe. In order to remove an appointed member, such as Ms. Cook, the agency must pass a resolution by a 2/3 vote of its full membership. The resolution must contain sufficient facts describing the reason for removal and the legal basis upon which removal is requested (Sec. 4.4-2). After the resolution is filed, the member who is the subject of the removal is given certain due process rights under the ordinance, including the possibility of a hearing before the Oneida Appeals Commission. We reviewed the OPC's Resolution in light of the requirement of Chapter 4.

The Resolution filed with the Appeals Commission contains none of the required elements. First and foremost, the Resolution does not contain a request for removal. In fact, the Resolution takes almost the opposite stance, noting Ms. Cook's qualification for appointment stating that the "OPC has determined that Commissioner Nancy Cook has been found qualified to sit on the OPC by the OBC." The Resolution continues "nevertheless, ... [a] hearing will protect public confidence in Oneida Tribal officials until a final judgment is rendered." However, neither removal nor a hearing are requested.

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<sup>1</sup>All references hereafter are to the version of the Oneida Removal Ordinance prior to the amendments of January 2006.

Rather the Resolution states that the Oneida Removal law is "hereby invoked." The OPC's invocation lacks any detail or specific request for action. Furthermore, the Resolution contains neither sufficient facts nor the proposed legal basis upon which a removal would be based, both requirements under the ordinance. Although the Oneida Personnel Commission seems to want a hearing for Ms. Cook to clear her name, the requirements of the Ordinance must be followed. We find it very difficult to see how these proceedings can go forward when the minimum requirements under Chapter 4 have not been met by the OPC's Resolution.

#### **IV. Decision**

The Resolution filed by the OPC is dismissed. It does not meet the requirements of Chapter 4, Section 4.4-1.