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**ONEIDA JUDICIARY  
TRIAL COURT**

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**Elizabeth J. Somers,  
Petitioner**

v.

**Case No: 17-TC-040**

**Oneida Business Committee,  
Oneida Personnel Commission and Staff,  
Oneida Human Resources, Manager,  
Equal Employment Opportunity Department,  
Respondents**

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**ORDER**

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This case has come before the Oneida Trial Court, Honorable John E. Powless III presiding. Appearing in person: Petitioner Elizabeth J. Somers and Respondent represented Attorney Patricia Stevens-Garvey and HRD Manager Geraldine Danforth.

**STATEMENT OF THE CASE**

On April 6, 2017, Petitioner filed an Appeal of her termination to the Oneida Personnel Commission, the Original Hearing Body. On May 2, 2017, Petitioner filed a request for Recusal of the Oneida Personnel Commission in its entirety. On May 5, 2017, the Oneida Personnel Commission grants Petitioner request for Recusal in its entirety as the Original Hearing Body.

On June 2, 2017, Petitioner filed a civil complaint at the Oneida Judiciary Trial Court. A hearing was held on July 10, 2017 at 10:00 a.m. The Petitioner and Respondent were provided an opportunity to be heard, specifically relating to which Hearing Body has Jurisdiction to hear Petitioners complaint.

## **ISSUE**

1. Does the Oneida Judiciary Trial Court have Jurisdiction to hear the Petitioner's direct report's appeal of termination from employment that was rendered by the Oneida Business Committee?

## **FINDING OF FACTS**

The Court finds as follows:

1. On June 2, 2017, the Petitioner filed a civil complaint in the Trial Court.
2. All those entitled to notice have been given proper notice.
3. On July 10, 2017, a Jurisdictional Hearing was held at 10 a.m. in the Trial Court.
4. This case is an employment case subject to the Oneida Nation Employee Manual.
5. The proper place for this case to be heard is the Oneida Personnel Commission.
6. The Trial Court lacks subject matter jurisdiction.

## **PRINCIPLES OF LAW**

1. **Oneida Nation Employee Manual. Employee Relations. 6. Grievance (b):**

The employee may appeal the Area Manager's decision to the Oneida Personnel Commission. The appeal must be filed with the Oneida Personnel Commission within ten (10) working days from employee's receipt of the Area Manager's decision. Upon receipt of the appeal the Commission shall, within one business day, notify the HRD Manager (or designee) that an appeal has been filed by the employee.

2. **BC Resolution 03-28-12-C "Division Directors and the Grievance Process":**

The Nations Policy and Procedure Manual describe the appeal process. Oneida Nation employees have a right to appeal the disciplinary decision of the Area Manager. In this specific case, the Petitioner who is also the "direct report" does not report to an Area Manager. Business Committee Resolution 03-28-12-C addresses "Division Directors and the Grievance Process."

**NOW THEREFORE BE IT RESOLVED**, upon expiration of Resolution BC-10-04-11-A, the Division Directors shall continue to be identified as the final point in any grievance appeal process and any further appeals shall go directly to the Personnel Commission as if all grievance appeals had been conducted.

### **3. Oneida Personnel Commission Conflicts of Interest Guidelines and Process**

One focus of the Oneida Personnel Commission Conflict of Interest Standard Operating Procedure is to provide as a guide and procedure in addressing when Commissioner(s) should proceed when the possibility of conflicts may arise.

#### **ANALYSIS**

The Nation's laws which govern the employee grievance process clearly identify the appellate process. Oneida Nation Employee Manual, Section 6. Grievance subsection (b) clearly identifies the appellate procedure following the Area Manager's decision. This section specifically identifies employees have the right to appeal the disciplinary decision of the Area Manager to the Oneida Personnel Commission. However, because the Petitioner is a "direct report," meaning she does not report to an area manager, she must appeal directly to the Oneida Personnel Commission, not the Oneida Judiciary Trial Court. (See Business Committee Resolution 03-28-12-C "*Division Directors and the Grievance Process*")

The Petitioner filed her employee grievance with the Oneida Personnel Commission in accordance with the Oneida Nation Employee Manual. Upon acceptance of the complaint, the Petitioner requested the Oneida Personnel Commission recuse itself in its entirety from further hearing grievances due to complaints filed to the Business Committee about the Petitioner by the Oneida Personnel Commission and/or employees. The Petitioner filed her grievance to the appropriate hearing body, the Oneida Personnel Commission. The Petitioner has since requested her grievance be heard at the Trial Court.

The Petitioner stated that the Oneida Personnel Commission is not an impartial hearing body, as well as further assuming the grievance process may be expedited in the Trial Court. This Court will not address whether the Oneida Personnel Commission's recusal is appropriate, but rather encourage the parties to follow the recusal process of the Oneida Personnel Commission. The *Oneida Personnel Commission Conflicts of Interest Guidelines and Process* is a limited guide for Commissioner(s) in navigating various aspects concerning conflict of interests. The Standard Operating Procedure serves as a guide, but does not clearly identify a process of how to proceed following a recusal of a Commissioner(s). A part of the recusal process is not substituting courts,

but substituting commissioners is a part of that process. Further, the assumption the grievance process will be expedited in the Trial Court is a moot point, it is vital to follow the current employee grievance processes. The Oneida Personnel Commission is the appropriate hearing body to hear this grievance.

### **CONCLUSION OF LAW**

1. The Oneida Personnel Commission has subject matter jurisdiction over this case, not the Oneida Judiciary Trial Court.

### **ORDER**

1. The Petitioner's request to have this case heard before the Trial Court is denied.
2. This case is remanded back to the Oneida Personnel Commission.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council and Order signed on August 9, 2017 in the matter of *Elizabeth J. Somers v Oneida Business Committee, Oneida Personnel Commission and Staff, Oneida Human Resources Manager, Equal Employment Opportunity Department.* Case #17-TC-040.

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John E. Powless III, Trial Court Judge