

State of Wisconsin

Oneida Appeals Commission
Oneida, Wisconsin

Brown County

Leah Sue Dodge,
Michael T. Debraska,
Cathy L. Metoxen,
Petitioners

ANSWER TO MOTION TO DISMISS

-vs.-

Case No.: 13-TC-129

Oneida Business Committee,
Respondent

Answer to Motion to Dismiss by Respondent's Attorney

The Petitioners maintain that the Oneida Business Committee acted wrongfully in approving the ET Attorney Contract for Layatalati Hill, an individual who does not currently possess a Wisconsin State Bar License allowing him to practice law in the State of Wisconsin. The Exhibits provided by the Respondent's Attorney in her brief for her Motion to Dismiss in fact further support the contention that the Oneida Business Committee violated law by approving this contract.

Facts

Exhibit 1 of the Brief supporting the Respondent's Motion to Dismiss is a copy of the document entitled "Emergency Temporary Attorney Contract, Staff Attorney, Layatalati Hill, Beginning on or after September 30, 2013 to Ending on or before February 28, 2014."

Exhibit 2 of the Respondent's Brief is a copy of the Oneida Tribe of Indians of Wisconsin Job Description of Staff Attorney, Position # 09086, signed by Layatalati Hill dated 10/5/2013.

Petitioners were unaware of the following until the submission of these documents by the Respondent's counsel to the record:

1. Exhibit 1's Article I, Duties and Responsibilities section 1.4 states, "The Attorney will provide the following legal services to the Tribe relation [sic] to the position identified in Job Description #09075,

2. Exhibit 1, Article IV, Period of Employment section 4.1 indicates that “The period of employment under this Agreement shall begin on or after September 30 2013, following completion of all hiring related actions, and shall end at midnight on or before February 28, 2014, depending upon the return of permanent Staff Attorney Franzmeier from maternity leave.”

Note that Exhibit 2 is actually a job description for the Staff Attorney position #09086, and not Staff Attorney #09075 as indicated in Exhibit 1.

Petitioners were able to find the Oneida Tribe of Indians of Wisconsin’s actual position description for Staff Attorney #09075 from the Tribe’s website posted here and attached as Exhibit A: http://www.oneidationation.org/uploadedFiles/Departments/Human_Resource/Employment_Opportunities/01062012StaffAttorney09075.pdf.

There are many substantial differences between the two staff attorney job descriptions, but because Mr. Hill’s ET Contract was to fill in for the regular full time permanent Legislative Reference Office Staff Attorney Lynn Franzmeier while she is on maternity leave and because the job position description cited in the Attorney Contract was job #09075, which position is specifically for the Legislative Reference Office, the Oneida Law Office substantially erred in hiring Mr. Hill as position #09086 and not #09075 and therefore misrepresented the actual position for which Mr. Hill was to be hired in its request to the Oneida Business Committee for approval.

Position #09075, the Staff Attorney for the Legislative Reference Office which Mr. Hill was hired to fill in for, requires as Minimum Qualifications the following, which applicants must clearly state how they meet these qualifications on the application/resume:

1. Must be an enrolled member of the Oneida Tribe of Indians of Wisconsin.
2. Juris Doctor or L.L.B. from an accredited law school and licensed to practice law in the State of Wisconsin.
3. Two (2) years of previous successful experience practicing law.

Obviously, Mr. Hill does not possess a license to practice law in the State of Wisconsin, and based on his graduation date of 2012 as listed on his LinkedIn page would not have had two years of previous successful experience practicing law even if he were to have had a license to

practice in another jurisdiction. The Respondent's brief does not mention Mr. Hill as having any license to practice anywhere else, so it must be presumed that he has no license to practice law anywhere.

For the sake of the Respondent's argument alone, even if #09086 were the correct job description for the position he was hired to fill, which it is clearly not, even that position description indicates responsibilities for which he is unqualified to perform. The position summary for #09086 states:

“Under direct supervision of Chief Counsel, responsible for tribal representation in Tribal, State and Federal forums. Assist and represent the Oneida Tribe in all areas as needed.” Representation in the State forum requires a WI State Bar License, and representation in the Federal forum requires a license from the District of Columbia, neither of which Mr. Hill apparently has.

The assertion that representation in a Tribal forum does not require a bar license is not germane because the issue at hand is whether the Tribe should employ an individual as an attorney when he is not licensed to practice law anywhere. While it may be true that non-State bar licensed individuals may practice or represent in Tribal forums, they are not recognized as or somehow considered as Attorneys, nor are their official job titles “Attorney.” They may be paralegals, lay advocates, pro se, etc but are not recognized as attorneys because without a State Bar License, they are NOT attorneys and as the Oneida Tribe does not have a Tribal Bar License process, cannot even be qualified as Tribal bar licensed.

The Respondent's brief cited the case *Helgemo V. Board of Bar Examiners* as support for the assertion that because a Wisconsin State Bar license was not required for employment as an Attorney within the Ho-Chunk Nation, therefore the Oneida Tribe is correct to employ a non-licensed individual as an Attorney within its organization. Upon review of this decision at [http://statecasefiles.justia.com/documents/wisconsin/supreme-court/2001AP002611-BA-\(2002-05-31\).pdf?ts=1370456913](http://statecasefiles.justia.com/documents/wisconsin/supreme-court/2001AP002611-BA-(2002-05-31).pdf?ts=1370456913), it is clear that this citation is not germane to the case at hand because of the following facts:

1. The non-Wisconsin State Bar licensed individual, Wendy Lynn Helgemo, had actually previously held a Minnesota State Bar License but the requirement of her

employment as an Attorney with the Ho-Chunk Nation required her admission to the Supreme Court of the Ho-Chunk Nation.

2. Mr. Hill does not appear to have any license anywhere, nor does the Oneida Tribe have its own Bar licensing or admission process to its own Supreme Court. In fact, the Oneida Tribe doesn't even have a supreme court.

If Mr. Hill's duties do only involve "practice only within the tribal government organization," then the position #09086 contradicts this assertion in its own summary which, again, states that this position is "responsible for tribal representation in Tribal, State and Federal forums."

Again, Mr. Hill's Attorney Contract itself does not reference the position description #09086 so therefore the signed position #09086 by Mr. Hill is erroneous.

Another point to be raised with regard to Position #09086 would be that the term in which Mr. Hill was to be allowed to acquire a Wisconsin State Bar license was within one year of the date of hire. However, the ET Attorney Contract itself is for a period of 5 months or less, depending on the term of Ms. Franzmeier's maternity leave. Additionally, there is no opportunity to take the Wisconsin State Bar exam until February 25-26, 2014, with no results from the exam available until the tentative date of April 2, 2014, well after the term of the contract. To make an allowance of a year to obtain a mandatory requirement for an emergency temporary position which will only last 5 months or less is absurd. Even IF Mr. Hill did actually pass the bar exam, it would be more than a month after the term of the ET Attorney Contract must end before his success or failure would be made known. This raises another important line of questioning which the Court and the Tribe deserve answers to:

1. Has Layatalati Hill already taken a State Bar Exam in Wisconsin or anywhere else?
2. Did he fail in any or all of these attempts, whether in Kansas, Wisconsin or anywhere else?

The Respondent's Brief maintains that Mr. Hill's duties would fall within the exceptions as noted in the Exhibit 3, SCR Chapter 23, "Regulation of Unauthorized Practice of Law." However, nowhere in this Chapter does it condone the act of employing individuals as Attorneys at Law who do not possess a Wisconsin State Bar License. This section applies to situations in

which individuals perform certain functions which are in the realm of the practice of law, but who are not considered nor called nor employed as Attorneys, not the situation where non-licensed individuals are employed as Attorneys performing legal work.

It must be again noted that the position #09075 that was to be filled in the absence due to maternity leave requires not only a Wisconsin State Bar License but also two years of previous successful experience practicing law. Theoretically, Mr. Hill could have been employed as a law clerk or paralegal without the need for a State Bar license, but there are no open positions of that nature in the Tribal organization, especially due to the fact that the most recent Paralegal, Ms. Tonya Boucher, was notified of her termination from that position due to the discontinuation of that position, and is currently in the appeals process for job reinstatement. Hence, for Mr. Hill to be brought on as a Paralegal would thereby require the reestablishment of this position but the reestablishment of that position would require the former employee Ms. Boucher to be reinstated to her position, as her termination did not appear to be based on any performance issues on her part but a permanent layoff due to the discontinuation.

Finally, the Respondent's brief while pointing out that 25 CFR 88.2 does not directly state the requirement for an individual to have a State Bar License in order to practice law for Indian tribes, it incorrectly states that Mr. Hill's job description does not require him to practice before the Indian Bureau. While this Petitioner's Answer contends that position #09086 is not the correct job description for the position that the ET Attorney Contract cites; were it to be the correct position description, again, its summary states that it is responsible for Tribal representation in Federal forums, of which the Indian Bureau is a part. 25 CFR 88 does indicate the cross-reference of 43 CFR part 1 regarding who may practice, and with certain exceptions, does require individuals who are "Attorneys at law who are admitted to practice before the courts of any State, the District of Columbia..."

It is very strange that this particular individual should have been selected to fill in for an actual licensed attorney for such a short term when he does not apparently possess any license in any jurisdiction, Tribal, State or Federal, to practice law, and would not have the ability to achieve any licensure until well after the maximum term of his temporary employment. Why this individual should have been granted not only the pass for licensure but the extraordinary

provisions of paid time and other expenses to pursue a licensure which could not possibly be achieved until well after the term of employment is worthy of note and questioning.

When other Bar licensed candidates were and are readily available, and why a temporary redistribution of the work load within the Oneida Law Office of Ms. Franzmeier's duties could not suffice during her absence especially given the fact that there was only one actual Legislative Operating Committee meeting in October 2013, should also have been points considered by the Oneida Business Committee. The lack of the will to do so distinctly raises the possibility that this was actually a politically-driven approval for an otherwise unqualified individual for no true justification other than his political connections, and not on the merits of his qualifications especially when individuals with far greater experience and existing Bar licensure could have been recruited.

Signed this 26th day of November, 2013

Leah Sue Dodge, Petitioner

Michael T. Debraska, Petitioner

Cathy L. Metoxen, Petitioner