

COPY

ONEIDA TRIBAL JUDICIAL SYSTEM

OnAyote'a'ka Tsi' Shakotiya' Toléhte

TRIAL COURT

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

Petitioners,

v.

Docket No. 13-TC-129

Oneida Business Committee,

Date: November 14, 2013

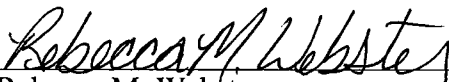
Respondents.

MOTION TO DISMISS

The undersigned attorney, on behalf of Respondent, Oneida Business Committee, hereby files this Motion to Dismiss this action pursuant to Rule 14(B) of the Oneida Tribal Judicial System Rules of Civil Procedure on the following grounds: Failure of the Petitioners to prove a claim, for which dismissal is the proper relief afforded to the Respondent.

The Respondent's Motion is based on the accompanying Brief in Support of Motion to Dismiss.

By:



Rebecca M. Webster

Wisconsin State Bar No. 1046199

Attorney for Respondents

Y9105

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Respondent.

BRIEF IN SUPPORT OF MOTION TO DISMISS

PROCEDURAL HISTORY

On October 7, 2013, based on an e-poll, the Respondent, Oneida Business Committee, entered into an Emergency Temporary Attorney Contract with Layatalati "Lati" Hill. A redacted copy of the contract is included as Respondent's Exhibit #1. On October 8, 2013, the Respondent, Oneida Business Committee, voted to retro-approve the attorney contract with Mr. Hill. On October 22, 2013, the Petitioners filed for an injunction with the Oneida Tribal Judicial System seeking to overturn the Respondent's decision to hire Lati Hill and to terminate the Emergency Temporary Attorney Contract with Lati Hill. The Oneida Tribal Judicial System did not grant the Petitioners' request, but allowed the Petitioners' request to proceed as an original complaint against the Respondent.

FACTS

Lati Hill is a recent graduate of Kansas School of Law and is actively seeking admission to the State Bar of Wisconsin. The attorney contract between the Respondent and Lati Hill specifies a requirement that Lati Hill continue to pursue admittance to the Wisconsin State Bar. Article I, Section 3 of the contract states: "As a continuing condition of employment, the Attorney shall work toward obtaining his license to practice law in the State of Wisconsin and the status of good standing in the Wisconsin State Bar Association and the Wisconsin Supreme

Court.” Article II of the Contract states: “The Attorney warrants and represents: . . . B. That he is an attorney in good standing and is licensed to practice law in the State of Wisconsin or is making progress to become an attorney in good standing licensed to practice law in the State of Wisconsin.” Article III, Section 1 states: “Time may be made available to the Attorney so he may pursue licensing with the Wisconsin State Bar.” Article VII states: “The Chief Counsel may terminate this Agreement at any time for the following reasons: A. The Attorney is unable to become a member in good standing of the State Bar of Wisconsin.”

The Attorney Job Description with Mr. Hill also recognizes the need to pursue admittance to the Wisconsin State Bar. A copy of Mr. Hill’s Job Description is attached as Respondent’s Exhibit #2. The minimum qualifications state: “Juris Doctorate from an accredited law school and licensed to practice law in the State of Wisconsin or able to obtain Wisconsin State Bar license within one (1) year of employment.”

The Job Description and Attorney Contract set forth Lati Hill’s job duties. Article I, Section 4 of the contract specifies:

- A. Provide, as directed, analysis and recommendation on all legislation contemplated or pending in the United States Congress, the Wisconsin State Legislature, or any other legislative or regulatory body, and provide, as directed, analysis and recommendations on proposed regulations, rules, and policies of the Tribe.
- B. As directed by the Legislative Operating Committee provide draft or amending language for regulations, laws, and other legislative documents of the Tribe.
- C. Consult with the Legislative Operating Committee and provide legal analysis and opinions as the Legislative Operating Committee may require.
- D. Review and analyze proposed tribal legislation and interpret the impact on the Tribe and provide policy alternatives and recommendations.
- E. Draft written opinions to the Legislative Operating Committee on specified topics and within specified times as required and consistent with any established policies of the Legislative Operating Committee and other tribal law.

ARGUMENT

The Petitioners Failed to Demonstrate That Any Tribal Law Has Been Violated.

Rule 14(B)(4) of the Rules of Civil Procedure provides that dismissal is the proper relief afforded the Respondent where the Petitioners fail to prove a claim. In this case, neither state nor tribal law requires an attorney to be licensed at the time of being hired as an attorney.

Therefore, the Petitioners' allegations of wrongdoing are false, and their Complaint should be dismissed.

A. A State Bar License is only required to practice before State courts.

Wisconsin law requiring a State license to practice law only applies to practice before State courts. Section 757.30 of the Wisconsin Statutes sets forth penalties for individuals practicing law without a state license. This law appears in the chapter of state law regulating practice before State courts. The Wisconsin Court of Appeals recognized the license referenced in Section 757.30 "is the license granted by the Wisconsin Supreme Court to practice before Wisconsin state courts." *State v. Worth*, 1995 Wisc. App. LEXIS 529, 10 (unpublished decision). In addition, the Seventh Circuit Court of Appeals also held that Section 757.30 does not apply to practice before federal courts. *United States v. Peterson*, 550 F.2d 379 (7th Cir. 1977). Lati Hill's job duties do not involve the practice of law before Wisconsin Courts. As such, a state law license is not required.

B. State law does not require a State Bar License to practice law exclusively for tribal governments.

As a general rule, state civil regulatory laws do not apply to tribal members and their activities occurring on Indian reservations. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). As it relates to the practice of law, the Wisconsin Supreme Court also recognizes that Wisconsin regulations concerning unauthorized practice of law do not reach to tribal governments or their employees practicing entirely within the tribal government organization. For example, footnote 18 of the Supreme Court Rule 20 governing Rules of Professional Conduct for Attorneys states, in relevant part: "there are federally recognized Indian tribes with tribal governments in the State of Wisconsin and these tribes have rights of self-government and self-determination. It is not the intent of these rules to abrogate any such authority of tribal governments."

Supreme Court Rule 23 governing the Regulation of Unauthorized Practice of Law provides a listing of those individuals and activities that are exempt from the requirement to hold a State Bar license when practicing law in Wisconsin. A copy of Supreme Court Rule 23 is attached as Respondent's Exhibit #3. In this regard, Subsection 2 states: "A license to practice law and active membership in the State Bar of Wisconsin are not required for a person engaged in any of the following activities in Wisconsin, regardless of whether these activities constitute

the practice of law: . . . (n) Governmental agencies, Indian tribes and their employees carrying out responsibilities provided by law.”

Prior Wisconsin Supreme Court case law also addresses the bar admission requirement for practice as inapplicable to individuals working for Indian tribes. In *Helgemo v. Board of Bar Examiners*, the Court discussed the history of an individual’s application to the Wisconsin Bar. 253 Wis.2d 82, 644 N.W.2d 912. The Court stated: “Ms. Helgemo left Minnesota and commenced employment as a tribal attorney for the Ho Chunk Nation, centered within the State of Wisconsin. This position did not require that Ms. Helgemo gain admission to the Wisconsin bar.” *Id.* at 87, 914. When considering whether her prior practice counted toward Wisconsin bar admission, the Court considered whether her practice counted as practice before the federal courts. The Court concluded: “The applicant’s practice as a tribal attorney by the Ho-Chunk Nation in Wisconsin, a state where she was not admitted, is not practice in the court of the United States or another state or territory of the District of Columbia.” *Id.* at 90, 915. “Rather, it was conducted before the courts of the Ho-Chunk Nation, which are the courts of a separate sovereign nation.” *Id.* at 92, 916. Similarly, Lati Hill’s job duties involve practice only within the tribal government organization. Therefore, a state law license is not required under state law.

C. Tribal law does not require a State Bar License.

The Attorney Contract Policy sets forth the regulations for hiring attorneys to work for the Tribe. This Policy contemplates that an individual can be hired as an attorney while working toward obtaining Wisconsin State Bar membership. When describing the contents of the attorney contracts, the Policy requires the contract to include a provision requiring “Documentation required annually regarding *acquisition* and maintenance of bar status – good standing.” § 5-2(a) (emphasis added). Where an attorney is already a member of the State Bar, the Policy requires the Chief Counsel to obtain confirmation that the attorney is in good standing with the State Bar. § 6-4. Nowhere in the Policy does it require that an individual have a State Bar license at all. Rather, the requirement to obtain a license is found in the Job Description and in the Attorney Contract.

D. The Code of Federal Regulations does not require a State Bar License.

The Petitioners cite the entire text of 25 C.F.R. §88.2 and immediately assert: “By not terminating the illegal employment contract of Mr. Hill, the Oneida Business Committee and Chief Counsel Jo Anne House are both in violation of Federal Code governing the employment

of attorneys by Tribes.” Petitioners’ Motion for Injunction, p. 6. However, the Petitioners fail to explain what part of 25 C.F.R. §88.2 requires an individual to have a state bar license to practice law for Indian tribes. It appears that admission to practice as used in 25 C.F.R. §88.2 refers to practice before the Indian Bureau. Neither Lati Hill’s Job Description nor Attorney Contract require him to practice before the Indian Bureau.

CONCLUSION

Despite the Petitioners’ repeated assertion that holding a Wisconsin Bar license is essential to practice law for an Indian tribe, this assertion is not supported in tribal, state, or federal law. The Respondent did not violate any laws when it hired Lati Hill as an attorney for the Oneida Tribe. For the foregoing reasons, the Respondent respectfully requests the Oneida Tribal Judicial System dismiss the Petitioners’ Complaint.

By: Rebecca M. Webster
Rebecca M. Webster
Wisconsin State Bar No. 1046199
Attorney for Respondents

ONEIDA LAW OFFICE
N7210 Seminary Road
Post Office Box 109
Oneida, WI 54155

Phone: 920-869-4327
Fax: 920-869-4065
E-mail: bwebster@oneidanation.org

**Emergency Temporary Attorney Contract
STAFF ATTORNEY**

Layatalati Hill

Beginning on or after September 30, 2013 to Ending on or before February 28, 2014

Article I	Duties and Responsibilities
Article II	Warranties
Article III	Additional Considerations
Article IV	Period of Employment
Article V	Holidays, Vacations, Personal Time and Leaves
Article VI	Compensation
Article VII	Termination
Article VIII	Miscellaneous
Article IX	Amendments

ATTORNEY CONTRACT

The ONEIDA TRIBE OF INDIANS OF WISCONSIN (the "Tribe") and ATTORNEY Layatalati Hill (the "Attorney") (collectively, the "parties") hereby enter into this emergency temporary employment agreement beginning on or after September 30, 2013, and ending on or before February 28, 2014, for the provision of services by ATTORNEY as Staff Attorney for the Legislative Reference Office as hereinafter set forth. This agreement supersedes all other agreements between the parties.

ARTICLE I. Duties and Responsibilities

- 1.1 The Attorney will be under the direct supervision of the supervising attorney of the Legislative Reference Office.
- 1.2 As a continuing condition of employment, the Attorney shall be required to maintain eligibility for coverage under the Tribe's Fidelity Bond.
- 1.3 As a continuing condition of employment, the Attorney shall work toward obtaining his license to practice law in the State of Wisconsin and status of good standing in the Wisconsin State Bar Association and the Wisconsin Supreme Court.
- 1.4 The Attorney will provide the following legal services to the Tribe relation to the position identified in Job Description #09075:
 - A. Provide, as directed, analysis and recommendations on all legislation contemplated or pending in the United States Congress, the Wisconsin State Legislature, or any other legislative or regulatory body, and provide, as directed, analysis and recommendations on proposed regulations, rules, and policies of agencies of the federal or state governments and ordinances, rules, regulations and policies of the Tribe.
 - B. As directed by the Legislative Operating Committee provide draft or amending language for regulations, laws, and other legislative documents of the Tribe.
 - C. Consult with the Legislative Operating Committee and provide legal analysis and opinions as the Legislative Operating Committee may require.
 - D. Review and analyze proposed tribal legislation and interpret the impact on the Tribe and provide policy alternatives and recommendations.
 - E. Draft written opinions to the Legislative Operating Committee on specified topics and within specified times as required and consistent with any established policies of the Legislative Operating Committee and other tribal law.
- 1.5 The Attorney, as a professional employee, is obligated to adhere to all conditions of employment set forth herein in addition to the Tribe's Personnel Policies and Procedures, as they may from time to time be amended. The Tribe's Personnel Policies and Procedures and internal rules and regulations are incorporated herein by reference; provided, however, that in the event of any conflict between any policies, procedures,

rules, or regulations of the Legislative Reference Office or the Tribe and any specific provision of this Agreement, this Agreement shall control.

- 1.6 The Attorney shall at all times uphold the Tribe's Constitution, and comply with all other laws and regulations of the Tribe.
- 1.7 The Attorney shall provide, as directed, written reports to the supervising attorney of the Legislative Reference Office on all cases, projects and assignments, including travel and other reports. All reports with respect to any representation of individuals shall not disclose any attorney client confidentiality.
- 1.9 The Attorney shall work cooperatively with all other attorneys employed by the Tribe as may be directed or necessary.
- 1.10 Upon termination or completion of this agreement, the Attorney shall provide an exit interview and cooperate in a transition of her files and cases.

ARTICLE II. Warranties

- 2.1 The Attorney warrants and represents:
 - A. That he is a graduate from an accredited law school;
 - B. That he is an attorney in good standing and is licensed to practice law in the State of Wisconsin or is making progress to become an attorney in good standing licensed to practice law in the State of Wisconsin;
 - C. That he has never been disciplined by the State of Wisconsin Board of Attorney's Professional Responsibility or Office of Lawyer Regulation or any similar body in any jurisdiction;
 - D. That to his knowledge there are currently no disciplinary actions filed or pending against him with the State of Wisconsin Office of Lawyer Regulation or any similar body in any jurisdiction; and
 - E. That he has no conflicts of interest which would prevent him from performing under the terms of this agreement. (See attached Conflict of Interest form which is incorporated herein by reference.)

ARTICLE III. Additional Considerations

- 3.1 Time may be made available to the Attorney so he may pursue licensing with the Wisconsin State Bar. The Attorney shall attend training seminars as part of his employment duties.
- 3.2 With prior approval from the Chief Counsel, the Attorney will be provided time to participate in State Bar and other professional activities that promote Indian awareness.
- 3.3 All travel expenses, including but not limited to mileage shall be processed pursuant to the Tribe's Travel Policy.

- 3.4 The Attorney shall be eligible to participate in Tribal benefits in accordance with the Oneida Tribal Personnel Policies and Procedures. In addition, the Tribe agrees to provide the Attorney with premium coverage for professional liability insurance. In no event shall the Tribe be obligated to provide this coverage beyond the contract dates as specified herein.

ARTICLE IV. Period of Employment

- 4.1 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. The Attorney agrees to provide exclusive legal services to the Tribe or as otherwise approved by the Chief Counsel.
- 4.2 The Attorney will devote his entire work and professional time, attention and energies to the Tribe's business, and will not, during the term of this Agreement, be engaged in any other profession or business activity that may impede the Attorney's ability to perform such duties on behalf of the Tribe or competes with the Tribe's interests without prior written consent from the Chief Counsel and the Legislative Operating Committee. The Attorney shall not, during the term of this Agreement, be interested directly or indirectly, in any manner, as partner, officer, director, advisor, employee or in any other capacity in any other business similar to the Tribe's businesses; provided, however, that nothing herein contained shall be deemed to prevent or limit the Attorney's right to invest in the capital stock or other securities of any corporation whose securities are publicly owned or are regularly traded on any securities exchange or in the over-the counter market.

ARTICLE V. Holidays, Vacations, Personal Time, and Leaves

- 5.1 Holidays, vacation, and personal time benefits shall be adhered to in accordance with the Tribe's Personnel Policies and Procedures as may be applicable to emergency temporary employees.

ARTICLE VI. Compensation

- 6.1 The Attorney shall be entitled to compensation in the amount of [REDACTED] annually, to be paid pro rata weekly, unless the Tribe, in its discretion, determines to change the pay period of all employees. This position shall be exempt from the Fair Labor Standards Act provisions regarding overtime compensation. Employee shall be eligible for COLA, bonus, merit, and incentive increases pursuant to Tribal Policies and Procedures.
- 6.2 This Agreement may be renewed by mutual consent of both parties but is not subject to automatic renewal.
- 6.3 The Tribe shall withhold from the Attorney's compensation all applicable Oneida, federal and state taxes as required by law.

- 6.4 All other expenses in addition to salary, including travel and mileage expenses, will be expended pursuant to an annual fiscal year budget appropriated by the Oneida Business Committee and approved by the Oneida General Tribal Council.
- 6.5 Fringe benefits are to be in accordance with the Tribe's programs and as otherwise specified herein.
- 6.6 The Attorney will be reimbursed for mileage at the Tribe's rate of business travel. Any other reimbursable expenses shall be reimbursed pursuant to the Tribe's Travel and reimbursement policies.
- 6.7 All expenses of the Legislative Reference Office, including but not limited to the salary and expenses provided for herein, are appropriated from the general funds of the Tribe's Treasury and expended and accounted for by the Tribal Treasurer, as required by the Oneida Constitution, pursuant to the approval of the annual Tribal budget and, therefore, any and all payments provided for herein are subject to the availability of such funds within the Tribal Treasury.
- 6.8 No other expenditures other than those approved in the annual budget for the Legislative Reference Office for its operation are authorized.

ARTICLE VII. Termination

- 7.1 The Chief Counsel may terminate this Agreement at any time for the following reasons:
- A. The Attorney is unable to become a member in good standing of the State Bar of Wisconsin;
 - B. The Attorney's license to practice law in the State of Wisconsin has been revoked, suspended, or limited in any way;
 - C. The Attorney has been disciplined by the Office of Lawyer Regulation during the term of this Agreement, unless the actions taken by the Attorney were in conformance with and in furtherance of a directive of the Tribe;
 - D. The Attorney's failure immediately to inform the Chief Counsel of the occurrence of any event or the existence of any circumstance described in subsections (A) through (C) above; or
 - E. The Attorney's (1) inability or unwillingness to provide adequate documentation of the Attorney's right to work in the United States, (2) death or continued incapacity to perform her duties, (3) willful breach of duty or gross negligence, (4) violation of the Oneida Personnel Policies and Procedures that mandate termination of employment, and (5) material breach of the conditions of this Agreement.
- 7.2 Either party may terminate this Agreement at any time upon fourteen (14) calendar days prior written notice to the Chief Counsel or the Attorney of his intent to do so. In the event either party provides such notice, the Attorney agrees to cooperate in an orderly

transition of his files and work projects. Failure to do so shall be deemed a breach of this Agreement unless otherwise agreed to in writing by the Attorney and the Chief Counsel.

- 7.3 All notices of either party to terminate this Agreement will be given in writing and sent certified mail to the other party or hand-delivered to the other party.
- 7.4 Termination of this Agreement shall be in procedural accordance with the Tribe's Personnel Policies and Procedures, except as otherwise provided for within this Agreement.
- 7.5 This Agreement may not be sold, assigned or conveyed in any way, in whole or in part, to any other attorney or law firm for any purpose at any time. This Agreement is not intended for the benefit of any third party.

ARTICLE VIII. Miscellaneous

- 8.1 This Agreement is the entire agreement and all negotiations and understandings are merged hereunder. A waiver of a breach by either party in any one instance shall not constitute a waiver of any subsequent breach, whether or not similar. Should any provision hereof be held invalid or unenforceable, the provision shall be severed from this Agreement and shall not affect the validity of any other provision. The paragraph headings herein are for convenience only and are not to be utilized in construction or interpretation of this Agreement.
- 8.2 The Attorney may speak, educate or otherwise participate in any conference, presentation, seminar or class, with the permission of the Chief Counsel. In the event the Attorney is compensated for the service, the Attorney shall take vacation or personal time from the Tribe.
- 8.3 The Attorney shall not prepare for publication or publish any legal article without prior approval of the topic by the Chief Counsel.
- 8.4 The Attorney agrees not to participate or sit on any boards, committees or commissions or other bodies established by the Tribe. The Attorney agrees not to participate in or represent any individual, organization or entity which is not a part of the Tribe which may limit her ability to provide services or which may create a conflict so as to interfere with his duties as specified herein.
- 8.5 The Attorney shall provide a copy of his Wisconsin State Bar membership card to the Chief Counsel.
- 8.6 Nothing in this Agreement shall be deemed or construed to be a waiver of the sovereign immunity of the Tribe.

ARTICLE IX. Amendments

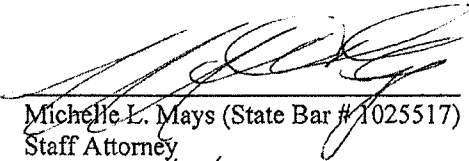
9.1 This Agreement may only be amended by a written instrument executed by the parties.

IN WITNESS WHEREOF, the parties have signed this Agreement on the dates set forth below.



Layatalati Hill

Date: 10/3/13




Michelle L. Mays (State Bar #1025517)
Staff Attorney

Date: 10/7/13



Jo Anne House
Chief Counsel

Date: 10/7/13



Edward Delgado, Chairman
Oneida Tribe of Indians of Wisconsin

Date:



Greg Matson, Vice-Chairman
Oneida Tribe of Indians of Wisconsin

Date:

ONEIDA TRIBE OF INDIANS OF WISCONSIN

Human Resources Department

JOB DESCRIPTION

APPLY IN PERSON AT:

Human Resource Department
909 Packerland Drive
Green Bay, WI 54303



OR MAIL TO:

Human Resource Department
P.O. Box 365
Oneida, WI 54155-0365

Phone: (920) 496-7900

Fax: (920) 496-7490

Job Line: 1-800-236-7050

APPLY ONLINE AT:

<http://oneida-nsn.gov>

POSITION TITLE: Staff Attorney

POSITION NUMBER: 09086

DEPARTMENT: Law

LOCATION: N7210 Seminary Rd Oneida WI

DIVISION: Non-Divisional

RESPONSIBLE TO: Chief Counsel

SALARY: E08 \$66,572/Annually (NEGOTIABLE DEPENDING ON EDUCATION & EXPERIENCE)

Applicants without a license shall be paid between 60% and 70% of salary until such time as the license is obtained.

CLASSIFICATION: Exempt

POSTING DATE:

CLOSING DATE:

Transfer Deadline:

Proposed Start Date: As Soon As Possible

EQUAL EMPLOYMENT OPPORTUNITY STATEMENT

The Oneida Tribe of Indians of Wisconsin does not discriminate on the basis of race, color, national origin, sex, religion, age or disability status in employment or the provision of services. However, individuals of Indian ancestry and Veterans will be given preference by law in initial employment or re-employment.

POSITION SUMMARY

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. Continuation of this position is contingent upon funding allocations.

DUTIES AND RESPONSIBILITIES:

1. Follow through on all work assigned by Chief Counsel, Oneida Business Committee and Oneida General Tribal Council.
2. Maintain responsibility for all work assigned.
3. Provide weekly reports to the Chief Counsel and as requested to the Oneida Business Committee.
4. Meet all requirements to maintain licensing with the Wisconsin State Bar.
5. Research legal questions, analyze problems and prepare memorandums and correspondence for review and/or signature of Chief Counsel.
6. Travel as needed and/or required.
7. Works with other counsel as needed/required.
8. Contribute to a team effort and accomplishes related results as required
9. Adhere to all Tribal Personnel Policies and Procedures, Tribal Standard Operating Procedures, and Area and Program Strategic Plans and Policies.
10. Maintain strict department security, confidentiality, and quality to meet professional standards of the department.
11. The above duties and responsibilities are not an all inclusive list but rather a general representation of the duties and responsibilities associated with this position. The duties and responsibilities will be subject to change based on organizational needs and/or deemed necessary by the supervisor.

JOB DESCRIPTION

Staff Attorney

Page 2

PHYSICAL REQUIREMENTS/WORK ENVIRONMENT:

1. Frequently sit, walk; use hands to finger, handle, or feel; reach with hands and arms; and talk and hear.
2. Occasionally stand, stoop, kneel, crouch, crawl, and lift and/or move up to twenty-five (25) pounds.
3. Work is generally performed in an office setting with a moderate noise level.
4. A Tuberculosis (TB) Screening and/or TB Skin Test is required within thirty (30) days of employment and annually thereafter as required.

STANDARD QUALIFICATIONS:

1. Knowledge and/or training in Indian Law, conflict resolution, mediation and negotiations.
2. Knowledge and experience working in the area of Indian law. Knowledge of its ramifications on practice within local, state and federal courts and agencies.
3. Knowledge and experience in general practice and litigation.
4. Knowledge of current commerce issues in Indian country.
5. Skill in operating various word-processing, spreadsheets, and database software programs in a Windows environment.
6. Ability to present a professional appearance and demeanor as a representative of the Oneida Nation.
7. Ability to communicate effectively with others both orally and in writing.
8. Ability to develop and maintain professional relationships with a variety of individuals and groups in a complex, multi-cultural environment.
9. Must adhere to strict confidentiality in all matters. **(Must sign a confidentiality statement prior to employment.)**
10. Must be willing and able to obtain additional education and training.
11. Must pass a pre-employment drug screening. Must adhere to the Tribe's Drug and Alcohol Free Workplace Policy during the course of employment.
12. Must pass a background security check with the Oneida Tribe in order to meet the Employment Eligibility Requirements, Tribal/State Compact and/or Oneida Nation Gaming Ordinance as they pertain to the position. A temporary license or Gaming License issued by the Oneida Gaming Commission is required as a condition of employment and continuing employment within the Oneida Tribe's Gaming Division.

PREFERRED QUALIFICATIONS:

Applicants please clearly state on the application/resume if you meet these qualifications.

1. Knowledge of the Oneida Community, its history, culture and government.
2. Knowledge of gaming law and/or health care law.
3. Knowledge of legislative and administrative processes.

MINIMUM QUALIFICATIONS:

Applicants please clearly state how you meet these qualifications on the application/resume.

1. Juris Doctorate from an accredited law school and licensed to practice law in the State of Wisconsin or able to obtain Wisconsin State Bar license within one (1) year of employment.

ITEMS TO BE SUBMITTED:

1. Must provide a copy of diploma, license, degree or certification upon employment.

Layatala, Hill 10208
Printed EE Name EE #

 10/3/17
Employee Signature Date

SCR CHAPTER 23

REGULATION OF UNAUTHORIZED PRACTICE OF LAW

PREAMBLE

Every jurisdiction in the United States recognizes the inherent right of individuals to represent themselves in legal matters. In contrast, the privilege of representing others in our system is regulated by law for the protection of the public, to ensure that those who provide legal services to others are qualified to do so by education, training, and experience and that they are held accountable for errors, misrepresentations, and unethical practices.

The following rules are promulgated by the Wisconsin Supreme Court pursuant to its inherent authority to define and regulate the practice of law in this state. The purpose of the rules is to protect the public from potential harm caused by the actions of nonlawyers engaging in the unauthorized practice of law.

SCR 23.01 Definition of practice of law.

The practice of law in Wisconsin is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) where there is a client relationship of trust or reliance and which require the knowledge, judgment, and skill of a person trained as a lawyer. The practice of law includes but is not limited to:

(1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.

(2) Selection, drafting, or completion for another entity or person of legal documents or agreements which affect the legal rights of the other entity or person(s).

(3) Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative

proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

(5) Any other activity determined to be the practice of law by the Wisconsin Supreme Court.

SCR 23.02 License required to practice law; use of titles.

(1) **RIGHT OF A PERSON TO PRACTICE LAW IN WISCONSIN.** A person who is duly licensed to practice law in this state by the Wisconsin Supreme Court and who is an active member of the State Bar of Wisconsin may practice law in Wisconsin. No person may engage in the practice of law in Wisconsin, or attempt to do so, or make a representation that he or she is authorized to do so, unless the person is currently licensed to practice law in Wisconsin by the Wisconsin Supreme Court and is an active member of the State Bar of Wisconsin.

(2) **EXCEPTIONS AND EXCLUSIONS.** A license to practice law and active membership in the State Bar of Wisconsin are not required for a person engaged in any of the following activities in Wisconsin, regardless of whether these activities constitute the practice of law:

(a) Practicing law pursuant to SCR 10.03(4) by a non-resident counsel or registered in-house counsel.

(b) Serving as a courthouse facilitator pursuant to court rule.

(c) Appearing in a representative capacity before an administrative tribunal or agency to the extent permitted by such tribunal or agency.

COMMENT

A nonlawyer who is an employee, member, or officer of an entity or organization may represent such entity, organization or any corporate affiliate before an administrative tribunal or agency of the State of Wisconsin.

(d) Serving in a neutral capacity as a mediator, arbitrator, conciliator, or facilitator.

(e) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

- (f) Acting as a lobbyist.
- (g) Sale of legal forms in any format.
- (h) Activities which are preempted by federal law.
- (i) Selection or completion of a legal document, including a legal document created pursuant to statute, administrative rule, or Supreme Court Order, where the document may contain various blanks and provisions to be filled in or completed and selection or completion of the legal document requires only common or transaction-specific knowledge regarding the required information and general knowledge of the legal consequences.
- (j) Serving in a neutral capacity as a clerk or court employee providing information to the public pursuant to Supreme Court Order.
- (k) Any other activities that the Supreme Court has determined by rule or by published opinion do not constitute the unlicensed or unauthorized practice of law or which are permitted under a regulatory system established by the Supreme Court, Wisconsin Statutes, Administrative Code or common law.
- (l) Acting as a nonlawyer advocate under the direction or supervision of a lawyer.
- (m) Acting as a nonlawyer assistant under the supervision of a lawyer in compliance with SCR 20:5.3 of the Wisconsin Rules of Professional Conduct for Attorneys.

COMMENT

This provision encompasses practical training of law students authorized by SCR Ch. 50.

- (n) Governmental agencies, Indian tribes and their employees carrying out responsibilities provided by law.
- (o) Practicing within the scope of practice allowed by a current credential issued or authorized under chs. 440 to 480, stats., or performing services under the supervision of a professional holding a current credential issued under chs. 440 to 480, stats., provided that the Supreme Court has not determined by rule or by published opinion that the activity constitutes the unlicensed or unauthorized practice of law.

(p) A victim service representative acting within the scope of s. 895.45, stats., or a Court Appointed Special Advocate (CASA) volunteer or staff member acting within the scope of s. 48.236, stats.

(q) A nonlawyer entity or organization acting through lawyer employees to the extent such lawyers perform pro bono legal services for nonprofit organizations, low-income clients, or otherwise in the public interest.

(r) An entity or organization in the business of insurance guarantee or indemnity, or the provision, sale or marketing of insurance or financial products or services permitted to be offered by insurance companies under s. Ins 6.75, Wis. Admin. Code, or a self-insured entity or organization, or any employee licensed under ch. 628, stats., or contractor of any of the foregoing entities or organizations when conducting their insurance business, which includes but is not limited to: (1) investigating or adjusting claims against it or its insured; (2) negotiating with other persons or entities; (3) conducting loss control functions; (4) underwriting business; (5) selling insurance or financial products or services permitted to be offered by insurance companies under s. Ins 6.75, Wis. Admin. Code, or providing advice and counsel with respect to such insurance or financial products or services; (6) the preparation of releases or settlement agreements; (7) using a lawyer employee or captive lawyer admitted to the bar in Wisconsin or otherwise permitted to practice law in Wisconsin to represent its principal or corporate affiliate, or an insured or noninsured for whom a defense is provided; and (8) any act required of an insurer by law, provided that the Supreme Court has not determined by rule or by published opinion that the activity constitutes the unlicensed or unauthorized practice of law.

(s) Professional activities performed by a certified public accountant or by a person working under the direction of a certified public accountant.

(t) Any state or federally chartered financial institution or affiliate of such an institution when engaging in an activity that is within its authority under applicable state or federal law, including any person providing services for it in connection with that activity; provided that the Supreme Court has not determined by rule or by

published opinion that the activity constitutes the unlicensed or unauthorized practice of law.

(u) A benefits specialist acting in the scope of s. 46.81(4), stats., or in the scope of s. 46.283, stats., and s. DHS 10.23 (2) (d), Wis. Adm. Code.

(v) Nonlawyers making any disclosure or advisement which is required by state or federal law.

(w) Teaching about the law or providing information about the law including the legal rights or responsibilities of persons under the law, in a manner that is not directed at providing specific legal advice to a specific individual in the context of a specific matter.

COMMENT

The exceptions may also encompass:

Nonlawyer employees of an entity or organization that engage in giving advice or counsel to another entity or person as to the legal rights of that entity or person; selection, drafting, or completion, for another entity or person, of legal documents; or negotiation of legal rights or responsibilities on behalf of another entity or person, where the activities are undertaken for the sole benefit of the entity or organization or any corporate affiliate;

Nonlawyer employees of an entity or organization preparing legal documents that are incidental to the entity's or organization's business and connected with any transaction in which the entity has a direct, primary, and nonfiduciary interest, or a fiduciary interest required by federal law;

Nonlawyer entities or organizations which employ lawyer employees to perform the activities described in 23.01(1) for such entity, other entities within the organization, or in the case of privately held entities or organizations, for owners and their families, officers, directors, or employees of the entity or organization;

A nonlawyer entity or organization acting through lawyer employees providing legal services, without direct payment therefor, to a party other than a party described in (j), in a manner consistent with the Wisconsin Rules of Professional Conduct for Attorneys (including, without limitation, the rules relating to conflicts of interest and fee sharing), so long as the entity or organization has a financial interest in the outcome of the legal services, there is a commonality of purpose between the entity or organization and the third party, and the entity or organization is not otherwise in the business of providing legal services except as provided in these rules.

(3) USE OF TITLES. Except as permitted by SCR 10.03(4), only a person who is currently licensed to practice law in Wisconsin and who is an active member of the State Bar of Wisconsin may represent himself or herself to the public using the words attorney at law, lawyer, solicitor, counselor, attorney and counselor, proctor, law, law office, or other equivalent words in connection with his or her name or any sign, advertisement, business card, letterhead,

circular, notice, or other writing, document or design, the evident purpose of which is to induce others to believe or understand the person to be authorized to practice law in this state or otherwise qualified to provide professional legal services or advice.

COMMENT

The practice of law requires a skillful practitioner with training in how to find, interpret and apply the law in various circumstances which involve the legal rights and interests of the person(s) being served. Licensure and regulation of the practice of law are necessary to protect the public interest from harm which can result from incompetency, dishonesty, and unethical behavior. The regulation of the practice of law in Wisconsin is a judicial power vested in the Wisconsin Supreme Court. Seitzinger v. Community Health Network, 2004 WI 28, ¶31, 270 Wis. 2d 1, 19.

A license to practice law in Wisconsin is a privilege bestowed upon someone who has completed legal training through an accredited law school and who has met the standards prescribed by the Wisconsin Board of Bar Examiners. Once admitted to practice law in Wisconsin, a lawyer must comply with requirements designed to reduce the likelihood of harm to the public. For example, a lawyer must complete a minimum number of hours of continuing legal education every two years and is required to follow a code of professional and ethical conduct. The failure of a lawyer to abide by the required standards may result in discipline, including but not limited to suspension and/or revocation of a lawyer's license to practice law as well as other remedies.

SCR 23.03 Provision of legal services following determination of major disaster.

(1) DETERMINATION OF EXISTENCE OF MAJOR DISASTER. Solely for purposes of this rule, the Wisconsin Supreme Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred in:

(a) the State of Wisconsin and whether the emergency caused by the major disaster affects the entirety or only a part of this jurisdiction, or

(b) another jurisdiction but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in the State of Wisconsin pursuant to sub. (3) shall extend only to lawyers who principally practice in the area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

(2) TEMPORARY PRACTICE IN THE STATE OF WISCONSIN FOLLOWING MAJOR DISASTER. Following the determination of an

emergency affecting the justice system in Wisconsin pursuant to sub. (1) of this rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in Wisconsin are in need of pro bono services and the assistance of lawyers from outside of this jurisdiction is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in the State of Wisconsin on a temporary basis. Such legal services must be provided on a pro bono basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and supervised through an established not-for-profit bar association, pro bono program or legal services program or through such organization(s) specifically designated by this Court.

(3) TEMPORARY PRACTICE IN THE STATE OF WISCONSIN FOLLOWING MAJOR DISASTER IN ANOTHER JURISDICTION. Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in the State of Wisconsin on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

(4) DURATION OF AUTHORITY FOR TEMPORARY PRACTICE. The authority to practice law in the State of Wisconsin granted by sub. (2) of this rule shall end when this Court determines that the conditions caused by the major disaster in the State of Wisconsin have ended except that a lawyer then representing clients in the State of Wisconsin pursuant to sub. (2) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients. The authority to practice law in the State of Wisconsin granted by sub. (3) of this rule shall end 60 days after this Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

(5) COURT APPEARANCES. The authority granted by this rule does not include appearances in court except:

(a) pursuant to that court's pro hac vice admission rule (SCR 10.03(4)) and, if such authority is granted, any fees for such admission shall be waived; or

(b) if this Court, in any determination made under sub. (1), grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to sub. (2).

If such an authorization is included, any pro hac vice admission fees shall be waived.

(6) DISCIPLINARY AUTHORITY AND REGISTRATION REQUIREMENT. Lawyers providing legal services in the State of Wisconsin pursuant to sub. (2) or (3) are subject to the Wisconsin Supreme Court's disciplinary authority and the Rules of Professional Conduct for Attorneys of this jurisdiction as provided in SCR 20:8.5 of the Rules of Professional Conduct. Lawyers providing legal services in the State of Wisconsin under sub. (2) or (3) shall, within 30 days from the commencement of the provision of legal services, file a registration statement with the Clerk of Supreme Court. The registration statement shall be in a form prescribed by this Court. Any lawyer who provides legal services pursuant to this Rule shall not be considered to be engaged in the unlawful practice of law in the State of Wisconsin.

(7) NOTIFICATION TO CLIENTS. Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this Rule shall inform clients in Wisconsin of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in the State of Wisconsin except as permitted by this Rule. They shall not state or imply to any person that they are otherwise authorized to practice law in the State of Wisconsin.

ABA COMMENT

[1] A major disaster in this or another jurisdiction may cause an emergency affecting the justice system with respect to the provision of legal services for a sustained period of time interfering with the ability of lawyers admitted and practicing in the affected jurisdiction to continue to represent clients until the disaster has ended. When this happens, lawyers from the affected jurisdiction may need to provide legal services to their clients, on a temporary basis, from an office outside their home jurisdiction. In addition, lawyers in an unaffected jurisdiction may be willing to serve residents of the affected jurisdiction who have unmet legal needs as a

result of the disaster or, though independent of the disaster, whose legal needs temporarily are unmet because of disruption to the practices of local lawyers. Lawyers from unaffected jurisdictions may offer to provide these legal services either by traveling to the affected jurisdiction or from their own offices or both, provided the legal services are provided on a pro bono basis through an authorized not-for-profit entity or such other organization(s) specifically designated by this Court. A major disaster includes, for example, a hurricane, earthquake, flood, wildfire, tornado, public health emergency or an event caused by terrorists or acts of war.

[2] Under paragraph [(1)(a),] this Court shall determine whether a major disaster causing an emergency affecting the justice system has occurred in this jurisdiction, or in a part of this jurisdiction, for purposes of triggering paragraph [(2)] of this Rule. This Court may, for example, determine that the entirety of this jurisdiction has suffered a disruption in the provision of legal services or that only certain areas have suffered such an event. The authority granted by paragraph [(2)] shall extend only to lawyers authorized to practice law and not disbarred, suspended from practice or otherwise restricted from practice in any other manner in any other jurisdiction.

[3] Paragraph [(2)] permits lawyers authorized to practice law in an unaffected jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide pro bono legal services to residents of the affected jurisdiction following determination of an emergency caused by a major disaster; notwithstanding that they are not otherwise authorized to practice law in the affected jurisdiction.

Other restrictions on a lawyer's license to practice law that would prohibit that lawyer from providing legal services pursuant to this Rule include, but are not limited to, probation, inactive status, disability inactive status or a non-disciplinary administrative suspension for failure to complete continuing legal education or other requirements. Lawyers on probation may be subject to monitoring and specific limitations on their practices. Lawyers on inactive status, despite being characterized in many jurisdictions as being "in good standing," and lawyers on disability inactive status are not permitted to practice law. Public protection warrants exclusion of these lawyers from the authority to provide legal services as defined in this Rule. Lawyers permitted to provide legal services pursuant to this Rule must do so without fee or other compensation, or expectation thereof. Their service must be provided through an established not-for-profit organization that is authorized to provide legal services either in its own name or that provides representation of clients through employed or cooperating lawyers. Alternatively, this court may instead designate other specific organization(s) through which these legal services may be rendered. Under paragraph [(2),] an emeritus lawyer from another United States jurisdiction may provide pro bono legal services on a temporary basis in this jurisdiction provided that the emeritus lawyer is authorized to provide pro bono legal services in that jurisdiction pursuant to that jurisdiction's emeritus or pro bono practice rule. Lawyers may also be authorized to provide legal services in this jurisdiction on a temporary basis under Rule 5.5(c) of the Rules of Professional Conduct.

[4] Lawyers authorized to practice law in another jurisdiction, who principally practice in the area of such other jurisdiction determined by this Court to have suffered a major disaster, and whose practices are disrupted by a major disaster there, and who are not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, are authorized under paragraph [(3)] to provide legal services on a temporary basis in this jurisdiction. Those legal services must arise out of and be reasonably related to the lawyer's practice of law in the affected jurisdiction. For purposes of this Rule, the determination of a major disaster in another jurisdiction should first be made by the highest court of appellate jurisdiction in that jurisdiction. For the meaning of "arise out of and reasonably related to," see Rule 5.5 Comment [14], Rules of Professional Conduct.

[5] Emergency conditions created by major disasters end, and when they do, the authority created by paragraphs [(2)] and [(3)] also ends with appropriate notice to enable lawyers to plan and to complete pending legal matters. Under paragraph [(4),] this Court

determines when those conditions end only for purposes of this Rule. The authority granted under paragraph [(2)] shall end upon such determination except that lawyers assisting residents of this jurisdiction under paragraph [(2)] may continue to do so for such longer period as is reasonably necessary to complete the representation. The authority created by paragraph [(3)] will end [60] days after this Court makes such a determination with regard to an affected jurisdiction.

[6] Paragraphs [(2)] and [(3)] do not authorize lawyers to appear in the courts of this jurisdiction. Court appearances are subject to the pro hac vice admission rules of the particular court. This Court may, in a determination made under paragraph [(5)(b)], include authorization for lawyers who provide legal services in this jurisdiction under paragraph [(2)] to appear in all or designated courts of this jurisdiction without need for such pro hac vice admission. If such an authorization is included, any pro hac vice admission fees shall be waived. A lawyer who has appeared in the courts of this jurisdiction pursuant to paragraph [(5)] may continue to appear in any such matter notwithstanding a declaration under paragraph [(4)] that the conditions created by major disaster have ended. Furthermore, withdrawal from a court appearance is subject to Rule 1.16 of the Rules of Professional Conduct.

[7] Authorization to practice law as a foreign legal consultant or in-house counsel in a United States jurisdiction offers lawyers a limited scope of permitted practice and may therefore restrict that person's ability to provide legal services under this Rule.

[8] The ABA National Lawyer Regulatory Data Bank is available to help determine whether any lawyer seeking to practice in this jurisdiction pursuant to paragraphs [(2)] or [(3)] of this Rule is disbarred, suspended from practice or otherwise subject to a public disciplinary sanction that would restrict the lawyer's ability to practice law in any other jurisdiction.

Adopted July 27, 2010. Amended July 5, 2012.