

Addon - N.B #2

## Oneida Business Committee Meeting Agenda Request Form

Deadlines

Instructions

1. Meeting Date Requested: 03 / 26 / 14

2. Nature of request

Session: ☒ Open ☐ Executive - justification required (see instructions.) Choose one:

Choose one:

Agenda header

(choose one): New Business/Request

Agenda item title (see instructions):

Judiciary Transition Modification - Decrease the Number of Judges from 4 to 3 for 2014 General Election

Action requested (choose one)

☐ Information only

☒ Action - please describe:

BC support the decision to decrease the number of trial judges elected from 4 to 3 and utilize the funds to hire an additional Family Court Judge. Also, direct a report be provided to GTC at the Semi-Annual meeting in July on this modification.

3. Justification

Why BC action is required (see instructions):

BC has authority to make modifications to the Judiciary Transition plan.

4. Supporting Materials

Instructions

☒ Memo of explanation with required information (see instructions)

☐ Resolution ☐ Contract ☐ Report ☐ Other (please list):

1. 3-21-14 Memo to BC

3. Family Court - 6 month Report

2. 1-07-13-B GTC Resolution

4.

☐ Business Committee signature required

5. Submission Authorization

Authorized sponsor (choose one): Melinda Danforth, Council Member

Requestor (if different from above): Lisa Summers, Legislative Assistant

Name, Title / Dept. or Tribal Member

Additional signature (as needed):

Name, Title / Dept.

Additional signature (as needed):

Name, Title / Dept.

A copy of this document can be saved in a pdf format. Please e:mail this form and all supporting materials to [BC\\_Agenda\\_Requests@oneidanation.org](mailto:BC_Agenda_Requests@oneidanation.org).

Save and e:mail

To: Councilwoman Melinda Danforth  
From: Judge Robert J. Collins II  
RE: Family Court Report (6 month)  
Date: March 20, 2014

The purpose of this report is to give you and the Business Committee an update on how things have been going during the first six months of the Family Court.

## **I. Training:**

- E-Learning:
  - Compensation 101
  - Compensation 102
  - Compensation 103
  - Tribal Disciplinary Process
- Oneida Tribe Child Support Agency Orientation (September 17, 2013)
- Cultural Orientation (September 16, 2013)
- Oneida Tribe Child Support Agency Training (September 24, 2013)
- Webinar on Multi-Jurisdictional Coordination (September 24, 2013)
- Kronos Training (October 18, 2013)
- Through the Eyes of a Child CLE (November 20-22, 2013)
- Brown County Family Court CLE (December 2, 2013)
- Interview Certification (December 4, 2013)
- Managing Problem Behavior in the Workplace (December 5, 2013)
- Leading at the Speed of Trust (December 10-12, 2013)
- Managing Employee Performance (December 19, 2013)
- Sexual Harassment Training (January 17, 2014)
- DAFWP Training (March 10, 2014)
- Divorce Training (March 21, 2014)

## **II. Meetings:**

- State/Tribal Relations Meeting on Retrocession (September 26, 2013)
- Meeting with reporter from Kalihwisaks (September 27, 2013)
- Wisconsin Tribal Judges Association (October 2-4, 2013)
- Meeting with domestic violence advocates (November 8, 2013)
- Meeting with existing Guardians ad Litem (November 14, 2013)
- Meeting with Oneida Domestic Violence CCR program (November 20, 2013)
- Meeting with Family Access Solutions program (December 27, 2013)
- Wisconsin Tribal Judges Association (January 9-10, 2014)
- Meeting with Chief Vanboxtel (January 24, 2014)

A concern that I have is that the new Judiciary will have four full-time Trial Court judges pursuant to OCL 151.5-1. Unless the number of filings significantly increases, the four full-time trial court judges may not have much of a workload.

Looking at the Family Court workload, especially if a Children's Code is going to be adopted, it may make sense to increase the Family Court's staff (especially since I have no back-up if I am ever sick, on vacation, or out of the office). If a Children's Code is adopted, I would anticipate that an additional clerk and judge would have to be added.

## **VI. Hearings:**

- September 2013 = 2
- October 2013 = 55
- November 2013 = 31
- December 2013 = 42
- January 2014 = 54
- February 2014 = 29

One hearing worth noting was a jurisdictional allocation conference with Brown County in January 2014. Due to the fact that a paternity petition was filed in both state and tribal court, the issue of where the matter would proceed needed to be resolved. Over the course of two hearings and a deliberation between the judges, it was decided that the matter would remain in tribal court.

## **VII. Guardian ad Litem (GAL)**

The established GALs do an excellent job on the cases they are assigned to. Shortly after beginning the Family Court Judge position, I scheduled a meeting with the current GALs to introduce myself and review the existing laws with them. The GALs were then given an opportunity to discuss case specific questions with Attorney Paul Stenzel (Attorney Stenzel is the "go to" for the GALs regarding specific issues which avoids ex parte communication with the judge).

A few months into the Family Court Judge position, the court started experiencing a shortage of GALs. One potential reason that I identified for this issue was an increasing caseload (especially contested cases). Another potential reason for the increase in need for GALs was how I was handling paternity cases. In the past, the Commission opted not to address legal custody and physical placement when those issues were contested at the paternity hearings. Instead, the Commission would give one parent (typically the mother) primary physical placement of the child and the other parent was awarded secondary physical placement as agreed between the parties upon reasonable terms and conditions. The parties were then directed to file a Chapter 79 action where they had to pay a filing fee, serve the other party, and come back for a contested hearing on legal custody and physical placement. This process did not make sense to me as it puts additional responsibility and cost on the parties to initiate a new action when OCL 77.6-9(a) clearly allows the court to address legal custody and physical placement as a part of the

order handed down” as prescribed by the ordinance. The court resolved these issues by offering Peacemaking or by stipulation of the parties.

Another difficulty was the length of time that had passed between the “last order handed down” and the request for the de novo review. Based on the best interest of the child standard, the court allowed the parties to present evidence between the time the last order was entered and the date of the hearing.

## **X. Family Access Solutions**

The Family Access Solutions program operates out of Green Bay, Wisconsin. Their mission is to eliminate domestic violence. The program currently offers 20 hours a week of supervised visits and exchanges for families that have domestic violence, stalking, and/or sexual assault in their relationships. The program is free of charge, eliminates contact between the parents during exchanges, and has a short turnaround from orientation to first visit.

Some of the benefits for children are that they are able to enjoy visits in a safe, comfortable environment without having to be put in the middle of the parental conflict and/or adult problems. Some of the benefits for adults are that they are able to drop off the children without more conflict and harassment and restraining orders are easier to follow.

The program is interested in cultural competency and has indicated that they would be interested in expanding to the Oneida Reservation in the future. The program currently has monthly meetings and I am going to try to attend them. The program is currently looking to raise money so that it can expand. The program is also looking for interns to work with the families. If the Tribe is able to assist in either need, Tami Walls can be contacted at (920) 743-8819.

## **XI. Children’s Code**

I have a meeting tonight with the Child Protection Board. I assume that the issue of a Children’s Code will come up. The following are some issues that I have identified in regard to the adoption of such a code:

- Family Court staff.
- ICW Staff (both intake and ongoing workers).
- Tribal foster homes.
- Will there be a 161 Agreement with the counties (Brown and Outagamie)?
- Will we have enough GAL’s to take on the code?
- Who will prosecute the cases?
- Will the code include both termination of parental rights and adoption?
- Will the code include minor guardianships and will this be different than the third party custody pursuant to OCL 79.6-2?
- Is everything set up to address IV-E funding?

# ***Oneida Tribe of Indians of Wisconsin***



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.



UGWA DEMOLUM YATEHE  
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

## **GTC Resolution 01-07-13-B Adoption of the Judiciary Law**

- WHEREAS,** the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America, and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin, and
- WHEREAS,** Oneida Business Committee Resolution 5-02-90 established the Administrative Procedures Act, Oneida Tribal Judicial System and the authority to establish regulations to enhance the Oneida judicial decision making process, and
- WHEREAS,** on August 19, 1991, the Oneida General Tribal Council adopted Resolution 8-19-91-A and an addendum to the Resolution, which reauthorized the adoption of the Administrative Procedures Act and the creation of the Oneida Tribal Judicial System, and
- WHEREAS,** the Oneida Tribal Judicial System has, through Tribal law, been given additional authority to hear and adjudicate additional civil and regulatory matters, and
- WHEREAS,** a restructure of the Oneida Tribal Judicial System, with an Oneida Judiciary comprised of a Trial Court and a Court of Appeals would better serve the needs of the Oneida people and expand the exercise of the Tribe's sovereign authority, and
- WHEREAS,** the proposed Judiciary would grant the Trial Court and Court of Appeals expanded subject matter jurisdiction and create a greater role for the use of mediation and/or peacemaking when appropriate, and
- WHEREAS,** public hearings were held for the proposed Judiciary on May 12, 2009 and July 29, 2010 in accordance with the Administrative Procedures Act, and
- WHEREAS,** informational materials on the proposed Judiciary were posted on the Tribal website, mailed to Oneida households and printed in the Kalihwisaks; and nine (9) community meetings were held on the proposed Judiciary in 2010 and 2011, and
- WHEREAS,** a work group established by the Oneida General Tribal Council created additional amendments to the proposed Judiciary, and
- WHEREAS,** on January 2, 2012, the Oneida General Tribal Council deferred the proposed Judiciary for revision to include law school training as a qualification for all Judges.

**NOW THEREFORE BE IT RESOLVED,** that the attached Judiciary law is hereby adopted and shall be effective January 2, 2014.

**BE IT FURTHER RESOLVED,** that there shall be no further elections for Judicial Officers of the Oneida Tribal Judicial System.

**BE IT FURTHER RESOLVED,** that the Oneida Business Committee is hereby directed to implement a Transition Plan to include the following:

- (1) *Elections.* The elections for Judges shall be held during the 2014 general election. The election

- (a) The Oneida Tribal Judicial System shall make a good faith effort to conclude the cases that remain on its docket prior to its dissolution.
- (b) Any cases not concluded by the Oneida Tribal Judicial System on or before March 1, 2015 shall be dismissed without prejudice and may be re-filed in the Trial Court or Court of Appeals, as is appropriate and if the Court is authorized to hear the case. Individuals who re-file a case in accordance with this Resolution shall not be subject to any filing fees.
- (7) *Oneida Tribal Judicial System Personnel.* Oneida Tribal Judicial System personnel who are not Judicial Officers shall carry over into the Judiciary and shall simultaneously work for both entities during the Transition Period and then for the Judiciary after the Transition Period has concluded.

**BE IT FURTHER RESOLVED**, that the following canons, procedures, codes and amendments shall be adopted in accordance with the time lines set out below:

- (1) By July 2013, adoption of Judicial Canons of Ethics by the Oneida Business Committee.
- (2) By January 2014, adoption by the Oneida Business Committee or the General Tribal Council of the following:
  - (a) Rules of Civil Procedure;
  - (b) Rules of Appellate Procedure;
  - (c) Small Claims Procedure;
  - (d) Evidence Code; and
  - (e) Administrative procedures for the Judiciary. After the initial adoption of these administrative procedures, the Judiciary shall be responsible for maintaining and amending them.
- (3) By January 2014, adoption by the Oneida Business Committee of amendments to Tribal laws, except for the Removal Law and Oneida Election Law, to substitute references to the Oneida Appeals Commission or Oneida Tribal Judicial System with terms consistent with the Judiciary. This may be accomplished in one resolution which identifies all the necessary amendments.
- (4) By July 2014, adoption by the General Tribal Council of amendments to the following laws to substitute references to the Oneida Appeals Commission or Oneida Tribal Judicial System with terms consistent with the Judiciary:
  - (a) Removal Law; and
  - (b) Oneida Election Law.


**BE IT FURTHER RESOLVED**, that sections 1.9-1 through 1.1-17 of the Administrative Procedures Act and the addendum to the Administrative Procedures Act adopted August 19, 1991 are hereby repealed, effective March 1, 2015.

**BE IT FURTHER RESOLVED**, that beginning with the Fiscal Year 2014 budget, the expenses associated with the implementation and maintenance of the Judiciary shall be included in the Tribe's annual budget.

**BE IT FINALLY RESOLVED**, that the Oneida Business Committee is authorized to make such modifications and additions to the above Transition Plan as it deems necessary to implement the Judiciary in accordance with the proposed timelines, and shall subsequently file a report at the annual or semi-annual meeting of the General Tribal Council that occurs after the modifications or additions are made.

#### CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida General Tribal Council, in session with a quorum of 2,032 members present, at a meeting duly called, noticed and held on the 7<sup>th</sup> day of January, 2013; that the forgoing resolution was duly adopted at such meeting by a two-thirds vote of those present and that said resolution has not been rescinded or amended in any way.

  
Patricia Hoeft, Tribal Secretary  
Oneida Business Committee