

COURT OF APPEALS

Elizabeth Somers,
Appellant,

Case Nos. 17-AC-012 & 17-AC-013

v.

Consolidated as: 17-AC-012

Oneida Business Committee,
Oneida Personnel Commission, and
Oneida Police Commission,
Respondents.

September 22, 2017

INITIAL REVIEW DECISION AND CONSOLIDATION ORDER

This matter has come before Appellate Judges Diane House, Chad Hendricks, Sharon House, and Chief Judge Gerald L. Hill.

BACKGROUND

On August 24, 2017, Appellant Elizabeth Somers (hereinafter “Somers”) filed a Notice of Appeal of Oneida Trial Court Case No. 17-TC-040 with the Oneida Court of Appeals. Somers, in part, is appealing the August 9, 2017 Trial Court’s denial of jurisdiction to hear her grievance on her employment termination and its remand back to the Oneida Personnel Commission (hereinafter “OPC”). This case has been designated as 17-AC-013. On August 29, Somers filed a Motion for Preliminary Injunctive Relief to Stay/Suspend the Trial Court’s Remand Order of August 9, 2017.

In a separate but related filing, Somers filed a Notice of Appeal of Oneida Trial Court Case No. 17-TC-041 with the Oneida Court of Appeals. Somers, in part, appeals the July 25, 2017 Trial Court’s dismissal of her employee protection request. This case was designated as 17-AC-012. On September 15, 2017, this Court on its own motion pursuant §805.4-2 of the Oneida Rules of Appellate Procedure and §803.22-1 of the Oneida Rules of Civil Procedure, ordered that Case No. 17-AC-006 be consolidated with Case No. 17-AC-012. The consolidated cases are now designated as Case No. 17-AC-012.

ORDER

This Court hereby Orders the following:

A) After review of the information contained in the Notice of Appeal, the August 9, 2017 decision of the Trial Court, and the May 5, 2017 recusal decision of the OPC, it is determined that per the Oneida Rules of Appellate Procedure §805.5-2(c)(3), Somers has sufficiently alleged these decisions:

- 1) Violate applicable provisions of the Oneida Constitution;
- 2) Violate provisions, substantive or procedural, of applicable Tribal law or applicable federal law; and/or
- 3) Is an administrative decision that is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with applicable law;

As a result, Somers' August 24, 2017 appeal, which has been designated as Case No. 17-AC-013, is hereby **ACCEPTED** for review;

B) Takes judicial notice that both 17-AC-012 and 17-AC-013 are appealing a common question of law or fact, and the impact of Somers' May 2, 2017 Motion to recuse the OPC in its entirety. Even if there are some questions that are not common, consolidation offers efficiency and convenience in hearing these related and common matters before the Court. The Court, on its own motion pursuant §805.4-2 of the Oneida Rules of Appellate Procedure and §803.22-1 of the Oneida Rules of Civil Procedure, hereby orders that Case No. 17-AC-012, presently pending before the Court of Appeals, is hereby **CONSOLIDATED** with Case No. 17-AC-013. The consolidated cases will now be designated as Case No. 17-AC-012; and

C) **EXTENDS** the time for the Court to respond to Somers' Motion for Preliminary Injunctive Relief to Stay/Suspend the Trial Court's Remand Order of August 9, 2017 filed on August 29, 2017, pursuant to §805.10-3, §805.9-2, and §805.9-1 of the Oneida Rules of Appellate Procedure, not to exceed twenty (20) days.

TO THE ONEIDA PERSONNEL COMMISSION AND ONEIDA TRIAL COURT: As an original hearing body in the above appealed case, Notice is hereby given that the Oneida Judiciary, Court of Appeals has taken jurisdiction of this case and requires the hearing record as set forth in §805.8-4(a), “The record of the case shall consist of all papers filed with the Trial Court or original hearing body, exhibits, a transcript or audio recording of the proceedings, and the final decision of the Trial Court or original hearing body.” The record shall be filed with the Court of Appeals within thirty (30) calendar days upon receipt of this notice.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolutions 01-07-13-B and 3-19-17-A, dated this 22nd day of September 2017, in the matter of Case No. 17-AC-013, now consolidated with 17-AC-12, *Elizabeth Somers v. Oneida Business Committee, Oneida Personnel Commission, and Oneida Police Commission.*

It is so ordered.