

Oneida Tribal Judicial System

Onʌyote ʔ aka Tsiʔ Shakotiyaʔ Tolé hte

Appellate Court

Tonya Boucher,
Appellant

v.

Docket No. 13-AC-015

Date: December 10, 2013

Michelle Mays,
Oneida Law Office
Respondents

Interlocutory Appeal Decision

This case has come before the Oneida Tribal Judicial System, Appellate Court. Judicial Officers, Winnifred L. Thomas, Janice McLester, Lois Powless, presiding.

I Background

This case was accepted for Initial Review under Rule 9(D)(5) and Rule 17(B) of Rules of Appellate Procedures.

Appellant has alleged there is exhibited a procedural irregularity and requested a Stay of enforcement of the lower hearing body's order or judgment pending the final adjudication of the appeal.

Upon review of the Oneida Personnel Commission's decision and documentation submitted, the Appellate Court finds, the Oneida Personnel Commission is required to base the decision in the case solely on sworn testimony and documents presented at the time and place of hearing. Verbal accounts of the facts are permitted by eyewitnesses or other persons having direct knowledge. This document, (Personnel Commission Hearing Information) also states "If your

witnesses will not come forward, you can make a Motion to Subpoena. In order to do this you must provide the following documentation: 1) proof that he/she will not come forward voluntarily; 2) witness relevance documentation that states what they will testify to and why their testimony is necessary for presentation in your case.”

How can the Oneida Personnel Commission determine if evidence is relevant until the evidence is presented?

II Issues

Was the decision of the Oneida Personnel Commission to deny subpoenas and witnesses requested by the Appellant a procedural irregularity?

III Analysis

Was the decision of the Oneida Personnel Commission, to deny subpoenas and witnesses requested by the Appellant, a procedural irregularity?

Yes, the Oneida Personnel Commission erred when they denied Appellant the right to subpoena the witnesses needed to present their case.

The Appellant alleges a violation of due process because this matter meets the criteria of the Rules of Appellate Procedure 9(D) 5.1.

There is exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision which, if the error had not occurred, would have altered the final decision?

The Oneida Personnel Commission, on November 12, 2013, issued an order denying to subpoena and witnesses requested on the grounds that witnesses did not provide written refusal or that there lacked specific relevance to their attendance.

The Court agrees the Appellant has no control over the response time of potential witnesses, or if

they will answer the request at all.

Appellant had submitted a list of witnesses to be subpoenaed with statements of relevance on October 29, 2013.

IV Decision

This Body finds in favor of the Appellant and reverses the Oneida Personnel Commission's decision dated 11/12/13. (Rule 19 (A)(1) of the Rules of Appellate Procedures).

The Appellate Court orders this case to proceed to a hearing before the Oneida Personnel Commission also honoring the witness list presented on October 29, 2013 by the Appellant.

IT IS SO ORDERED.