

APPELLATE DIVISION

LEAH S. DODGE,
Appellant

v.

ONEIDA LAND COMMISSION,
Respondent

Case No. 14-AC-002
DATE: August 13, 2014

**DECISION ON APPELLANT'S
MOTION FOR RECUSAL OF HEARING OFFICERS**

Pro Tem Judicial Officers Carole Liggins, Robert Miller, Jr. and Richard Ackley, presiding.

I. Background

This case arises out of a variance granted by the Oneida Land Commission to Oneida tribal member Brian Doxtator to, among other things, build a garage at his property. Appellant, Ms. Leah Dodge, lives within 1200 feet of Mr. Doxtator and objected to the variance. After the Oneida Land Commission granted the variance, Ms. Dodge filed an action in the Trial Court for a preliminary injunction. On December 27, 2013, the Trial Court denied her request for a preliminary injunction and dismissed the law suit based on mootness and a failure to exhaust administrative remedies. Ms. Dodge timely appealed. The Initial Review Panel refused to permit the Appeal to go forward. Ms. Dodge filed a Motion for Recusal of Hearing Officers which requests recusal and also that the Initial Review decision be vacated. We deny the Motion.

II. Issues

Is there sufficient cause for the Judicial Officers to recuse themselves?

Has Appellant met the criteria for acceptance of this case for appeal under Oneida Appellate Rule 9?

III. Discussion

A. Is there sufficient cause for the Judicial Officers to recuse themselves?

We start by noting that Ms. Dodge does not cite to the applicable law when arguing for the recusals. Ms. Dodge cites to Chapter 152, the Oneida Tribal Judiciary Canons of Judicial Conduct. Our reading is that Chapter 152 applies to the new Judiciary which is scheduled to open for business on November 1, 2014. Chapter 152 refers to the Judiciary and Judges. The current Oneida Tribal Judicial System refers to the Oneida Appeals Commission and Judicial Officers. See Resolution 8-19-91A, Addendum. Therefore Chapter 152 will apply to judges and the Judiciary; it does not apply to the Oneida Tribal Judicial System and Judicial Officers. The ethics rules currently applicable to Judicial Officers are found in Chapter 5 of the Judicial Code of Conduct. While the two rules are similar, they are not identical. In any case, our review shows that under either set of laws, the Judicial Officers are not required to recuse themselves.

Article 6 in Chapter 5 of the Judicial Code is analogous to the section cited by Ms. Dodge:

6-1 Judicial Officers shall disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including instances where:

- a. A Judicial Officer has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts.
- b. A Judicial Officer has served as a lawyer, advocate or personal representative in the matter before the Appeals Commission.
- c. A Judicial Officer's spouse, and any reasonably close family member in the Judicial Officer or spouse's family:
 1. Is a party to the proceeding or officer, director, or trustee of a party; or
 2. Is acting as a lawyer or advocate in the proceeding; or
 3. Is known by the Judicial Officer to have an interest that could be substantially affected by the outcome of the proceeding; or
 4. Is to the Judicial Officers' ⁴⁷ knowledge likely to be a material witness in a proceeding before the Oneida Tribal Judicial System.

6-2 Judicial Officers shall recuse themselves in cases where some conflict of interest exists, potentially exists, or may be perceived to exist.

There are three judicial officers sitting on the Initial Review Panel. We review each officer.

Robert Miller, Jr.

Judicial Officer Robert Miller, Jr. does not have any personal, family or fiduciary connection to any of the parties to this action (or Mr. Doxtator) nor does he have any reason to be biased for or against a party. Ms. Dodge has not offered any specific concerns with respect to Judicial Officer Miller.

Richard Ackley

Judicial Officer Richard Ackley does not have any personal, family or fiduciary connection to any of the parties to this action (or Mr. Doxtator) nor does he have any reason to be biased for or against a party. Ms. Dodge has not offered any specific concerns with respect to Judicial Officer Ackley.¹

Carole Liggins

Judicial Officer Carole Liggins' friendship with Mr. Doxtator does not rise to the level of close personal friend. Ms. Liggins and Mr. Doxtator have worked together along with many others to support Tribal Community events such as the annual Thanksgiving Feast. Ms. Liggins has no reason to be biased for or against either party.

B. Has Appellant met the criteria for acceptance of this case for appeal under Oneida Rules of Appellate Procedure, Rule 9?

No. The purpose of Initial Review is to answer threshold questions regarding the jurisdiction of a case and the procedural and material sufficiency of the Notice of Appeal. The Initial Review Body, after answering the threshold questions, must consider if the appellant has sufficiently alleged whether one or more of the six criteria elements exist for acceptance of an appeal. See Rule 9(D). Furthermore, Rule 9(E) states:

Failure of Allegations: If the appellant fails to sufficiently allege one of the criteria of Rule 9(D) above such that the Initial Review body cannot determine the basis for the allegation or the issue within the original hearing body decision, the appeal may be denied.

¹ Ms. Dodge asks in her motion whether Mr. Miller or Mr. Ackley or any of their immediately family members live on Oneida trust land. This type of connection, if it exists, is too tenuous and distant to be considered a concrete conflict of interest. Furthermore, living on trust land is a well-established opportunity available to thousands of people. Absent a showing of specific influence related to this case, Ms. Dodge's concern is not justified.

Ms. Dodge did not sufficiently allege any of the criteria in Rule 9(D) such that the Initial Review body could determine the basis for the allegation. Ms. Dodge alleges five grounds for her appeal. However, they all rest largely on Ms. Dodge's allegation that she was denied a hearing. This is not true. Ms. Dodge was given a hearing. Ms. Dodge was given a hearing in front of three pro tem judicial officers, all from outside tribal courts (at her request). The Court convened on November 8, 2013 at 1:30 PM. There was nothing preventing Ms. Dodge from presenting evidence, testimony, witnesses and argument. Ms. Dodge was asked what concrete harm she would suffer if the injunction was not issued. The Trial Court decision states that rather than respond with evidence and argument, Ms. Dodge "gesticulated," meaning she made a gesture with her hands or arms. Legal issues are decided on facts and laws; not gestures. Ms. Dodge was given a hearing but she apparently did not take full advantage of it. It is not sufficient, for purposes of Rule 9, to allege that she did not receive a hearing when in fact she did.

None of the allegations of Trial Court error by Ms. Dodge are sufficient to determine the basis for her allegation or the issue with the Trial Court decision. She does not cite to any ordinances or cases which support a finding of error. For example, Ms. Dodge simply declares (incorrectly) that her lack of hearing was arbitrary and capricious. She does not offer any examples of why the Trial Court decision is arbitrary or capricious. Ms. Dodge did receive a hearing. Furthermore, the Trial Court's decision was not arbitrary or capricious: it contains nine pages explaining its decision and applying the five-part test under Rule 31. There is simply no reasonable basis to claim the decision was arbitrary or capricious. Ms. Dodge's other assertions are similarly unsupported.

IV. Conclusion

Ms. Dodge's Motion for Recusal is denied.