

**ONEIDA JUDICIARY - COURT OF APPEALS
INITIAL REVIEW**

Case #/Parties: 16-AC-006, Liane Melchert v. Oneida Division of Land Management

Date Filed: May 20, 2016

Date of Initial Review: June 1, 2016

The purpose of Initial Review (IR) is to answer threshold questions regarding the jurisdiction of a case and the procedural and material sufficiency of the Notice of Appeal. IR will determine if a case is ripe for appellate review and if not ripe, will determine whether the Trial Court or which Original Hearing Body (OHB) has jurisdiction. IR may affirm or overturn a single issue decision of an OHB where that similar issue has been settled as a matter of law by previous appellate court decisions. Pursuant to Oneida General Tribal Council Resolution 01-07-13-B adopting Chapter 150, the JUDICIARY law, Chapter 153, ONEIDA JUDICIARY RULES OF CIVIL PROCEDURE and Chapter 154, ONEIDA JUDICIARY RULES OF APPELLATE PROCEDURE, The Appellate Court shall accept an Appeal from the Decision of the Trial Court or Original Hearing Body, as specifically set forth in 154.3-1.(o), Initial Review, addressing the existence of any of following elements:

1. ___ A violation of constitutional provisions.
2. ___ The decision is outside the scope of the authority or otherwise unlawful.
3. ___ The decision is clearly erroneous and is against the weight of the evidence presented at the hearing level.
4. X The decision is arbitrary and/or capricious
5. ___ 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.
6. ___ There is presentation or introduction of new evidence that was not available at the hearing level, which, if available, may have altered the final decision.

INITIAL REVIEW DECISION

Reviewing Oneida Judiciary Appellate Judges: Chad Hendricks, Diane House, and Jennifer Hill-Kelley.

In the Notice of Appeal, Appellant Melchert filed a Motion to Stay the eviction that was ordered in the Oneida Land Commission's Final Decision that was entered on May 3, 2016. In accordance with Chapter 154 of the Oneida Rules of Appellate Procedure §154.5-1(a), a stay shall be granted in all cases in which it is requested unless plain and obvious injustice would result from granting the stay. Based upon the foregoing, a Stay on the eviction ordered on May 3, 2016 is hereby granted pending the disposition of this appeal with the Oneida Judiciary.

Oneida Rules of Appellate Procedure §154.5-2(d) requires a cash deposit or bond in an amount equal to the amount of any judgment assessed by an original hearing body to accompany the Notice of Appeal. On May 3, 2016, The Oneida Land Commission assessed a monetary judgment against Appellant Melchert for the amount of \$10,133.50. This would require the Appellant to provide a cash deposit or bond in the amount of \$10,133.50. On May 20, 2016, Appellant filed a Motion for Waiver of the Deposit/Bond. However, Appellant has not provided sufficient justification for the waiver within this Motion. This Court hereby finds Appellant has not met the requirements for waiver of the cash deposit or bond at this time, and as a result, the Motion for Waiver of the Deposit/Bond is denied without prejudice.

This case is accepted for appellate review in accordance with #4 above.

The Motion for the Stay of the Eviction is granted.

The Motion for Waiver of Deposit/Bond is denied without prejudice.

It is so Ordered.

TO THE ONEIDA LAND COMMISSION: Notice is hereby given that the Oneida Judiciary, Appellate Court, has taken jurisdiction of this case and requests the Record as set forth in 154.8-4(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 within thirty (30) calendar days upon receipt of this notice to:

**Mailing Address: Oneida Judiciary
P.O. Box 19
Oneida, WI 54155**

**Physical Address: Oneida Judiciary Building
2630 W. Mason
Green Bay, WI 54303**