

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

**Members of the Oneida Personnel Commission,
PETITIONERS,**

v.

CASE NO: 18-TC-013

**Oneida Business Committee,
RESPONDENTS**

Denial for Temporary Restraining Order

STATEMENT OF THE CASE

The Petitioners requested a temporary restraining order to stop implementation of Oneida Business Committee resolutions, BC Resolution # 04-11-18-A and BC Resolution #04-11-18-B. Petitioners asserts resolutions prevent the Oneida Personnel Commission from carrying out its sworn duties and responsibilities on behalf of the Oneida General Tribal Council by whom it was formed and to whom it reports within the Oneida Tribal Personnel Policies and Procedures, as amended.

ISSUE

Did the Oneida Personnel Commission meet Temporary Restraining Order requirement of alleging specific facts in a verified complaint clearly showing immediate and irreparable harm before the Oneida Personnel Commission can be heard?

FINDING OF FACTS

1. On April 11, 2018, the Oneida Business Committee passed **BC Resolutions #04-11-18-A Dissolution of Personnel Commission, Tolling all Timelines in Personnel Related Matters, and Directing the Development of Emergency Amendments to Existing Laws and #04-11-18-B Creation of the Personnel Selection Committee.**
2. On April 17, 2018 the Petitioners filed complaint seeking a Temporary Restraining Order in the Trial Court of the Oneida Judiciary.
3. Not all members of the Personnel Commission signed complaint.

PRINCIPLES OF LAW

1. **803.35 Injunctions and Restraining Orders.**

803.35-2 Temporary Restraining Orders.

- (1) Specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition;

2. **803.35 Injunctions and Restraining Orders.**

803.35-1 (b) Consolidating the Hearing with the Trial on the Merits.

Before or after beginning the hearing on a motion for a preliminary injunction, the Court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.

3. **803.5 Commencement of Action; Summons; Service of Process; Filing**

(a) Contents. A complaint shall include the following:

- 1) The name of the Court;
- 2) The full name and address of each plaintiff;
- 3) The full name and address of each defendant;
- 4) Why each defendant is being sued;
- 5) Facts supporting each claim;
- 6) Why this Court has Jurisdiction;
- 7) Specifically what relief is sought from each defendant; and
- 8) A summons.

ANALYSIS

The Rules of Civil Procedure identify a process in which the Petitioners is required to identify specific facts in an affidavit or a verified complaint clearly showing that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition. The Petitioners asserts Oneida Business Committee resolutions will equate to, “the entire workforce for the Oneida Nation will be thrown into confusion as to the proper place to file employment related personnel actions”. The Petitioners further asserts “the hiring processes and procedures, approved by G.T.C. are not being adhered to which will allow Human Resources to hire positions without oversight, checks and balances and without following the Oneida Personnel Policies and Procedures Manual”. The language in 803.35 -2 clearly spells out the requirement the author of the complaint must meet in order for the Temporary Restraining Order to be granted. Instead, the Petitioners provided speculation as to what they believe may happen as a result of the Oneida Business Committee Resolutions. The Petitioners did not provide specific facts that would result in immediate and irreparable injury, loss or damage to the movant.

In the complaint, the Petitioners state “Pursuant to the Oneida Nation’s Rules of Civil Procedure, the Oneida Personnel Commission is moving the Oneida Judiciary Trial Court to issue a

Temporary Restraining Order and Permanent Injunction against the implementation of actions of the Oneida Business Committee”. Chapter 803.35 (b) in the Rules of Civil Procedure identify a process that allows for the Petitioner to motion the Court for a Preliminary Injunction. In order for the Petitioning party to proceed in motioning the Court for a Preliminary Injunction, the Court first would need to accept the Temporary Restraining Order. In essence, the ability of the Petitioners to motion this Court for a Preliminary Injunction rests on the preface that this Court first accepts the Petitioners Temporary Restraining Order. If the Temporary Restraining Order is dismissed, there is no case, without a case, parties do not have the ability to enter a motion.

The Petitioners asserts BC Resolutions # 04-11-18-A and BC Resolution #04-11-18-B violated the following: Code of Ethics, Oath of Office, Legislative Procedure Act, Oneida Nation Personnel Policies and Procedures Manual, and the Oneida Nation Constitution. One of the most important components to any alleged violation is Due Process. Both parties have a right to Due Process in the right forum. The Petitioners claim of Oneida Business Committee violations does not meet the criteria or scope of bringing an action forward for a Temporary Restraining Order.

The Petitioners presents Oneida Business Committee Resolutions # 04-11-18-A and BC Resolution #04-11-18-B as not thought out, a “knee-jerking” action. The Petitioner continually uses the word *Emergency* in describing these resolutions. However, when reviewing the resolutions, they do not indicate and are not captioned as emergency resolutions. The Petitioners have not supported its claim that these resolutions are emergency based.

The Petitioners captioned this case Oneida Personnel Commission v. Oneida Business Committee. On April 17, 2018, (8) Personnel Commission members signed the complaint, but yet (5) Personnel Commission members, which includes one vacant position, did not sign the complaint. The Rules of Civil Procedure outlines a clear process identifying all contents that shall be included in a complaint, such as listing the full name of each plaintiff. On April 11, 2018, the Personnel Commission consisted of (13) members, one of which was vacant. Furthermore, the signature page for this complaint shows that none of the Officers of the Personnel Commission signed to be a part of this filing.

CONCLUSIONS OF LAW

The Petitioners did not meet the Temporary Restraining Order requirement of presenting specific facts in its complaint clearly showing immediate and irreparable injury, loss, or damage will result to the movant before the Oneida Personnel Commission can be heard in opposition.

ORDER

- 1) The request for a Temporary Restraining Order and the motion for a Preliminary Injunction are denied.
- 2) On its own motion, the Court amends the caption of this case to *Members of the Oneida Personnel Commission v. Oneida Business Committee*.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council and Order signed on 4/19/2018 in the matter of *Members of the Oneida Personnel Commission v. Oneida Business Committee* Case #18-TC-013.

The Petitioners has the right to appeal within thirty (30) calendar days after the date this order or judgment is signed.