

# ***Oneida Tribal Judicial System***

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## **TRIAL COURT**

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**Yvonne Metivier  
Petitioner**

**Docket # 11-TC-091**

**v.**

**Date: August 15, 2011**

**Jennifer Hill-Kelley,  
Debbie Thundercloud  
Respondent**

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## **Order to Dismiss**

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This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers James Van Stippen (Pro Tem), Gerald Cornelius (Pro Tem), Marjorie Stevens (Pro Tem) presiding.

### **Background**

This case comes through a motion for an injunction concerning the placement of a political sign on leased Tribal Property.

The Petitioner is Ms. Yvonne Metivier filed for an injunction on July 14, 2011 at the Oneida Tribal Judicial System. Her issue concerned a notice she received from the Oneida Housing Authority Director. This notice was prompted by an e-mail received by the Oneida Housing Authority Director which was sent by Ms. Jennifer Hill Kelly, Interim Assistant General Manager and approved by Ms. Debbie Thundercloud, General Manager. The e-mail stated: It has been brought to the attention of the Election Board that a "Ride to the Polls" flyer is

circulating which includes many of the candidates of the 2011 General Election Ballot. The Oneida Election Law states 2.5-9. Campaign Signs and Campaigning:

(a) Placement of campaign signs:

**(1) Campaign signs shall not be posted or erected on any Tribal property except for private property with the owner/tenant's permission.**

The Election Board took formal action at the regular meeting of July 12, 2011 to have the Chair or designee contact all Tribal Managers, Directors and Supervisors as this type of correspondence can be constituted as campaign material, and, therefore shall NOT be posted in any Tribal entity. Do not allow this flyer to be posted within the organization and if any are seen within a Tribal entity, please remove.

In Ms. Metivier's request she states that candidates for Tribal Elections were given permission to place political signs on Tribal property on March 12, 2011 by the Oneida Housing Authority Director.

#### **Issues**

**Was Ms. Metivier harmed by the Notice from Oneida Housing Authority re: Oneida Election Law - Section C, 2.5-9 Campaign Signs and Campaigning?**

**Was Ms. Metivier in default for non-appearance at the Court Hearing scheduled for August 4, 2011?**

#### **Analysis**

On July 14, 2011 the Oneida Housing Authority Director issued an e-mail ordering removal of political signs from Tribal Property to all tribal tenants and home owners. That same day the Oneida Housing Authority Director retracted the same e-mail notice and had his staff notify the

same tenants and home owners that the original e-mail was misinterpreted, he also issued an apology for any confusion this may have caused.

The Petitioner should have had previous knowledge that the original e-mail she received on July 14, 2011 was issued in error and was corrected on the same date July 14, 2011.

Chapter 2 Oneida Election Law GTC 7-06-98-A, Section C: 2.5-9.

(a) Placement of campaign signs:

- (1) Campaign signs shall not be posted or erected on any Tribal property except for private property with the owner/tenant's permission.
- (2) No campaign sign shall exceed sixteen (16) square feet in area. A maximum of seven
- (7) such signs may be placed on a building or on a lot.
- (3) No campaign sign shall project beyond the property line into the public right of way.

The E-mail in question as referenced by the Oneida Housing Authority Director actually dealt with a different subject regarding a "Ride to the Polls" Flyers that contained candidate names.

Rule 31 is quoted in brevity: The Rule was reviewed in its entirety. Oneida Rules of Civil Procedure: Rule 31 Preliminary and Temporary Restraining Orders

- (A) Injunctions and Temporary Restraining Orders Generally: All requests for a preliminary injunction or temporary restraining order which are not associated with a pending action (trial or appellate) shall be treated like an initial pleading pursuant to Rule 2 for purposes of service of process. All such requests shall be reviewed by the trial court pursuant to this Rule. No preliminary injunction should be issued without notice to the adverse party. Orders and injunctions under this rule shall be timely issued and within such time so that their effectiveness will not be limited.

- (B) Temporary Restraining Order: A temporary restraining order is an injunction of limited scope and duration that is generally reserved for use when imminent action, if allowed to go forward, will create irreparable harm that will seriously impair the ability of the Court to order full and fair relief. Temporary restraining orders may be issued without notice to the adverse party and may only be issued if the circumstances are satisfied.
- (E) Issuance of a Preliminary Injunction: A Preliminary Injunction is an injunction issued by the Court enjoining a party from taking action pending the outcome of a case and meeting the requirements of the subpart (E).
- (1) A party seeking a Preliminary Injunction must establish and the Court must find:
- a. A likelihood of success on the merits;
  - b. That it has no adequate remedy at law; and
  - c. That it will suffer irreparable harm if the injunction is not issued.
- (2) If Petitioner meets the requirements of (1), the court must then consider any irreparable harm that would come to the Respondent by issuing the injunction and whether the preliminary injunction would harm or benefit the public interest.
- (F) Procedure:
- (1) A party seeking preliminary injunctive relief shall submit a motion or application for said relief with the Oneida Tribal Judicial System.
- (a) The trial court shall determine if the motion for a preliminary injunction has clearly established the grounds for preliminary injunctive relief. If immediate and irreparable harm is not apparent, but grounds for an injunction are established, a hearing shall be scheduled.
- (2) Upon notice the adverse party, unless notice is not able to be given for reasons set forth above, a hearing on the application shall be scheduled within thirty (30) days after receipt of notice by the adverse party.
- (3) The adverse party may file a written response to the motion for injunction at least two (2) days prior to the scheduled hearing and/or may make oral arguments at the hearing.

As defined by Black's Law Dictionary Sixth Edition revised 1997.

Failure to state cause of action. Failure of the plaintiff to allege sufficient facts in the complaint to maintain action. In other words, even if the plaintiff proved all the facts alleged in the complaint, the facts would not establish a cause of action entitling the plaintiff to recover against the defendant. The motion to dismiss for failure to state a cause of action is sometimes referred to as (a) a demurrer (e.g. California) or (b) a failure to state a claim upon which relief can be granted Fed. R. Civ. P. 12 (b).

The petition for an injunction based on information reviewed indicates that the petitioners claim for an injunction is a frivolous act by the petitioner. Further, Ms. Metivier's motion for an injunction is devoid of merit and is a frivolous act which she should have voluntarily dismissed.

Quote: Blacks Law Dictionary Sixth Edition revised 1997.

Frivolous. Of little weight or importance. A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense.

Frivolous appeal. One in which no judiciable question has been presented and appeal is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed.

Oneida Rules of Civil Procedure: Rule 14 Dismissal of Actions

(A) Voluntary Dismissal: Prior to the responsive pleading by the party against whom a claim has been made or a motion to dismiss or for summary judgment on such claim, the party making the claim may file a notice of dismissal and that claim shall be deemed dismissed without prejudice.

- 1) A party may move the trial court to dismiss that party's claim and the trial court shall do so with or without prejudice as is just and proper given the stage of the proceedings.

- 2) If a crossclaim or counterclaim has been filed against the moving party, the trial court shall dismiss the original claim only with the consent of the adverse party or only if it appears that the other party is able to prosecute said crossclaims or counterclaims independently without undue additional hardship.
- (B) Involuntary Dismissal: A party against whom a claim has been made may move the trial court to dismiss the claim of the adverse party upon any of the following grounds, to include but not be limited to:
- 1) Failure of the adverse party to pursue prosecution of the claim;
  - 2) Failure of the adverse party to comply with an order of the trial court;
  - 3) Failure of the adverse party to establish a right to relief based on the facts and law presented;
  - 4) Failure of the adverse party to prove a claim, for which dismissal is the proper relief afforded to the moving party;
  - 5) Lack of subject matter jurisdiction;
  - 6) Lack of personal jurisdiction.
- (C) Final Adjudication: Dismissal of the action or claim shall be deemed to be an adjudication of the merits of the issue unless the trial court orders otherwise.
- 1) The trial court may postpone ruling on a motion to dismiss for failure to establish a right to relief until the close of all of the evidence.
  - 2) The trial court may order a party moving to dismiss that party's own claim to pay the costs of the adverse party where:
    - (a) The proceedings have progressed beyond the pleadings stage;
    - (b) It is deemed appropriate by the trial court.

A scheduled hearing was held on August 4, 2011, at 5 p.m. at the Oneida Judicial System, 3759 West Mason Street, Suite #1, Ridgeview Plaza, Oneida WI. 54155. Ms. Metivier failed to appear or appoint a representative (advocate). The trial court finds Ms. Metivier in default.

Oneida Rules of Civil Procedure: Rule 16, Default

- (A) Appearance Required: Parties to a case are required to appear before the trial court at any scheduled hearing or proceeding.
  - 1) A party may be excused from appearing with the permission of the trial court if the party makes a motion seeking permission prior to the hearing and shows good cause as to why the party's appearance is not necessary.
  - 2) The trial court may allow a proceeding to continue without a party's appearance so long as a representative of the party appears, or may postpone the hearing until the party will attend, or may find the party not in attendance in contempt for failing to appear.
  - 3) Phone appearance allowed after permission from the Lead Judicial Officer.
- (B) Respondent: When a party against whom a judgment for relief is sought has failed to appear, plead or otherwise defend as required in these rules or elsewhere, a default judgment may be granted by the trial court upon the receipt of whatever evidence is deemed necessary to establish the claim.
- (C) Petitioner: When a party who has filed a claim fails to appear, plead, or prosecute said claim as provided in these rules or elsewhere, a dismissal may be granted by the trial court, dismissing the claim.
- (D) Costs: The trial court may assign any costs incurred by the non-defaulting party and any hearing costs incurred by the trial court, to the defaulting party.
- (E) Overturn: Within one (1) year of the entry of judgment, the trial court may, for good cause shown, overturn any default judgment.
- (F) After a default or dismissal entered pursuant to this Rule, the court may reinstate the case upon a showing of good cause by the party seeking reinstatement.

This Court will not rule on whether the Election Law was violated due to the Petitioner failure to appear at Court to support her arguments.

## **Decision**

The Respondent's Motion to Dismiss is granted. The trial court finds Ms. Metivier in default and rules to dismiss the motion for an injunction for failure to properly represent her motion, state relief/harm and failure to state a cause of action.

The Respondent's Request to assess cost of the hearing and any other relief that may be just and equitable against the Petitioner is granted. The trial court orders that Ms. Yvonne Metivier be assessed all costs incurred by the Oneida Tribe's Legal Department in the amount of Five Hundred dollars (\$500.00), and all costs incurred by the Oneida Tribal Judicial System in the amount of Eighteen Hundred dollars (\$1,800.00).

Appeal procedures in accordance with the Oneida Administrative Procedures Act (APA), 1.11-1; any person aggrieved by either a final decision in a contested case or by the promulgation of a rule or regulation of a rule under the act, is entitled to appellate review. The appeal must be filed within thirty (30) business days of the entry of the final decision, order or judgment. A notice of appeal must be sent to all parties within (10) business days. Please see the entire rule for details.

Appeals procedure in accordance with the Rules of Appellate Procedure, Rule 2; a party has ten (10) business days from the date of receipt of the final decision.