

Oneida Tribal Judicial System

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ONEIDA TRIBAL JUDICIAL SYSTEM TRIAL COURT

Judicial Officer Leland Wigg-Ninham
Petitioner,

Docket # 11-TC-136

v.

Date: October 4, 2011

Oneida Tribal Judicial System
Respondent

DECISION – INJUNCTIVE RELIEF

This case has come before the Oneida Tribal Judicial System-Trial Court. Judicial Officers Stanley R. Webster, Kathy Hughes, and Carole Liggins, pro tem, presiding.

BACKGROUND

This case originated with Petitioner, Judicial Officer Leland Wigg-Ninham filing suit against the Oneida Tribal Judicial System, Respondent.

September 7, 2011, the Oneida Tribal Judicial System held its monthly meeting and selected four of seven Judicial Officers who had announced their interest to fill four full time positions. Although Judicial Officer Leland Wigg-Ninham participated in selecting the four Judicial Officers, he was not one of the four selected.

September 14, 2011, Petitioner, Judicial Officer Leland Wigg-Ninham represented by attorney Brian T. Stevens, filed a Motion for Injunctive Relief against implementation of full time Judicial Officers contracts pending review and action by the Oneida General Tribal Council. Petitioner included a Motion for Assignment of Judicial Officers Pro Tempore from the Wisconsin Tribal Judges Association to a panel to review this matter.

Petitioner states the following grounds for the motion:

1. The current Oneida Tribal Judicial System (hereinafter OTJS) is to consist of eleven (11) elected officials.
2. There are presently nine (9) people filling seats, with two (2) open seats pending election next year.
3. Out of the eleven (11) seats, there are four (4) full time judicial officer positions available.
4. Of those nine (9) members, five are of sufficiently close family relation as to establish an inherent conflict of interest where decision making is concerned.
5. The present system under the Judicial Code, Chapter 1, Article 2, Section 4, states that full time judicial officers are selected internally by the members of the OTJS.
6. The process of internal selection where five (5) of the nine (9) present to vote creates an inherent appearance of impropriety and possible family nepotism which is to be avoided both under the Judicial Code and the Oneida Tribe's rules governing boards, committees, and commissions.
7. The pending Judiciary Law addresses this situation and provides for five (5) full time positions, four (4) of which serve on the trial court and one (1) serving as the chief judge of the appellate court.

Relief requested by Petitioner

1. The September 2011 selection of full time judicial officers by the OTJS is voided and any implementation of a change to these positions is stayed.
2. The current full time judicial officers maintain their employment status and positions until this matter is resolved.
3. The selection method of full time judicial officers will be amended by the hearing body to eliminate any appearance of impropriety, such as through selection based on the number of votes a judicial officer received in the most recent election for which the judicial officer was a candidate; or
4. This matter should be resolved by a G.T.C. vote upon the pending judiciary act or a specific G.T.C. resolution vote governing the selection of full time judicial officers.

September 16, 2011, Respondent Oneida Tribal Judicial System represented by Attorney Paul Stencil filed a Motion in Opposition to the Motion for Injunctive Relief, and a Motion for Attorney's Fees for Filing Frivolous Action. Respondent raises sovereign immunity and judicial immunity as a defense against Petitioner's motion for Injunctive Relief citing Chapter 14

Section 14.4-2 The sovereign immunity of Tribal Entities, including sovereign immunity from suit in any state, federal or tribal court, is hereby expressly reaffirmed. No suit or other proceeding, including any tribal proceeding, may be instituted or maintained against a Tribal Entity unless the Tribe or the Tribal Entity has specifically waived sovereign immunity for purposes of such suit or proceeding. (Emphasis added)

Respondent also cites Oneida General Tribal Council Resolution 8-19-91-A, Judiciary Immunity

Section IV. A. The Oneida Appeals Commission officers shall maintain their immunity from suit, but are subject to the "Oneida Legislatively appointed Committee Removal Ordinance", and the Oneida Elected Official Removal Ordinance.

Respondent also filed a Motion for Attorney's Fees for Filing Frivolous Action under Oneida Tribal Judicial System Rule 18 (F) (4) which permits the court to award attorney's fees when it has been shown by clear and convincing evidence that a claim is frivolous.

Relief Requested by Respondent

Respondent requests the court to find that Judicial Officer Leland Wigg-Ninham's motion for injunction should be denied, and to find that Judicial Officer Leland Wigg-Ninham's claims are frivolous and to award the amount of \$375 in attorneys' fees based on the time spent on this matter.

ISSUES

Does the motion for injunctive relief clearly establish the grounds for preliminary injunctive relief under Rule 31 of Chapter II?

Does the Oneida Tribal Judicial System have sovereign immunity and/or Judicial Immunity?

Is the claim against the Oneida Tribal Judicial System a frivolous claim?

The issue of sovereign immunity and/or judiciary immunity takes precedence. If the court finds the Oneida Tribal Judicial System has sovereign immunity and/or judiciary immunity, the court will deny the motion for injunctive relief. If it is found that sovereign immunity and /or judiciary immunity does not apply, the petition will be considered.

Sovereign Immunity, is defined as a doctrine, which precludes bringing suit against the government without its consent. The Oneida Tribe of Indians of Wisconsin is a federally recognized Tribe retaining the inherent right to make its own laws and be ruled by them. The Oneida tribal government adopted into law Chapter 14 Sovereign Immunity *Yukwatatwani'yó* (*we are free from foreign powers*) by Resolution #BC-10-20-04-C.

14.4-1. Sovereign Immunity of the Tribe. The sovereign immunity of the Tribe, including sovereign immunity from suit in any state, federal or tribal court, is hereby expressly reaffirmed. No suit or other proceeding, including any tribal proceeding, may be instituted or maintained against the Tribe unless the Tribe has specifically waived sovereign immunity for purposes of such suit or proceeding. No suit or other proceeding, including any tribal proceeding, may be instituted or maintained against officers, employees or agents of the Tribe for actions within the scope of their authority, unless the Tribe has specifically waived sovereign immunity for purposes of such suit or proceeding.

The Oneida General Tribal Council established the Oneida Tribal Judicial System as the

judicial arm of government by Resolution 8-19-91-A. Resolution 8-19-91-A defines the “Oneida Tribal Judicial System” as the “judicial arm of the Oneida Tribe completely separate from any executive branch, legislative branch . . . in order to . . . maintain the integrity of a separation of powers.” The court finds “judicial arm” to mean that the “Oneida Tribal Judicial System” is a separate branch of Oneida Tribal government, and is protected from this suit because of its sovereign immunity.

Frivolous Claim:

On September 14, 2011, Petitioner filed a motion for injunctive relief with the Clerk of Court of the Oneida Tribal Judicial System, and names the Oneida Tribal Judicial System as Respondent. Petitioner filed a motion for injunctive relief, and filed a motion for assignment of Judicial Officers pro tempore from the Wisconsin Tribal Judges Association to be appointed to a panel to review this matter. Petitioner seeks a temporary restraining order against the implementation of the full time Judicial Officer contracts pending review and action of the Oneida General Tribal Council.

Petitioner, a full time Judicial Officer, submitted his name along with six other Judicial Officers for selection to one of four full time Judicial Officers positions available. Petitioner participated in selecting the four full time Judicial Officers, during the September 7, 2011, monthly meeting. Judicial Officers by secret ballot, voted for Judicial Officers, Mary Adams, Janice McLester, Jean Webster and Winnifred Thomas.

Even though Judicial Officer Leland Wigg-Ninham seeks injunctive relief through Rule 31, from the Oneida Tribal Judicial System, the fact that Respondent raises Sovereign Immunity and/or Judicial Immunity as a defense in this matter takes precedence over the question of injunctive relief. The court has determined that the Oneida Tribal Judicial System is protected by Sovereign Immunity against suits such as this, but the Respondent also requests the court to determine if Judicial Officer Leland Wigg-Ninham’s claims are frivolous.

Chapter 1, Rules of the Oneida Tribal Judicial System, sets out the process for selection of full time Judicial Officers:

Article II, Section 4, Full Time Judicial Officers, 1. Full time Judicial Officer(s) are selected internally by the members of the Oneida Tribal Judicial System when a position becomes vacant. Judicial Officers selected must comply with the approved employment contract.

The four Judicial Officers selected to full time positions signed contracts binding the Oneida Tribal Judicial System to their terms of service as full time Judicial Officers. Their selection and contracts are in full compliance with Article II, Section 4 above.

Petitioner seeks a panel of Wisconsin Tribal Judges to review his case alleging that a review of this petition by fellow Judicial Officers would be a conflict of interest for current active Judicial Officers because it involves the direct opinions and actions of fellow Judicial Officers. Petitioner has given no proof that this conflict of interest exists in his Judicial colleagues, except for his statement of it.

Petitioner seeks relief in the form of a Temporary Restraining Order under Rule 31 of the Rules of Civil Procedure. An injunction may be issued if the following are met under *Rule 31 Section (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.*

Applying Rule 31 The motion filed under *Rule 31, Section (E) (1) a. a likelihood of success on the merits*; fails the first element, and is determined by the court to be frivolous; citing *Hawk v. Oneida Division of Land Management No. 97-HB-0002 (4/01/1997)*, "A frivolous action . . . is one that is groundless, with little prospect of success . . . A pleading is frivolous when it is clearly insufficient on its face."

CONCLUSIONS OF LAW

The Oneida Tribal Judicial System is protected from suit because of its sovereign immunity.

Hawk v. Oneida Division of Land Management No. 97-HB-0002 (4/01/1997), "A frivolous action . . . is one that is groundless, with little prospect of success . . . A pleading is frivolous when it is clearly insufficient on its face."

Attorney's fees may be awarded to the Oneida Tribal Judicial System under Rule 18(F)(4) when a claim is found to be frivolous.

DECISION

1. The motion for injunctive relief is denied.
2. The filing for injunctive relief has been found to be frivolous, therefore Respondent's request for attorney fees of \$375 is granted.