

# *Oneida Tribal Judicial System*

Onlayote ? aka Tsi? Shakotiya? Tolé hte

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## TRIAL COURT

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**Dale Wheelock,  
Petitioner**

v.

**Docket No. 13-TC-024**

**Edward Delgado,  
Respondent**

**Date: April 1, 2013**

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## ORDER

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This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers; Mary Adams, Kathy Hughes, and Jean M. Webster, presiding.

### **I Background**

This case involves a request for a Remand from the Appellate Court in docket 13-AC-001 dated February 6, 2013, that directed the OTJS Trial Court to hear the merits of this case as presented by the Appellant in his Notice of Appeal.

#### *Procedural background*

On January 15, 2013 Petitioner's case came before the Oneida Personnel Commission. The Respondent, Ed Delgado and his attorney, Patricia Garvey appeared. Petitioner, Dale Wheelock and his attorney, Aaron Shenk, failed to appear. The Oneida Personnel Commission granted Respondent's motion to dismiss in accordance with the Tribe's Personnel Policies and Procedures Manual, Section V.D.6.Grievance.c.5., subsection a:

*Should the petitioner and his/her representative both fail to appear for any scheduled hearing without justifiable cause the decision of the Area Manager shall be upheld and the grievance dismissed.*

On January 25, 2013 Petitioner filed for an appeal at the OTJS Appellate Court. The Appellate Court issued its opinion on February 6, 2013 and directs the OTJS Trial Court to hear the merits

of this case as presented by the Appellant in this Notice of Appeal. In accordance with Rule 19(A)(2): Reversal, Affirmance, or Modification. Remand this matter to the trial court or original hearing body and order a new trial/hearing on any or all issues presented; the order returning a case shall contain specific instructions for the trial court or original hearing body.

A Pre-trial was scheduled for March 19, 2013.

On March 15, 2013 Respondent filed a motion for continuance. The Court granted the motion for continuance for April, 1, 2013.

On April 1, 2013 a Pre-trial hearing was held. Two issues were discussed; 1) The Court denied Petitioner's motion to recuse Judicial Officer, Mary Adams, and 2) Whether this Court has jurisdiction. The Trial Court denied Petitioner's motion to recuse Judicial Officer, Mary Adams.

### **Analysis**

#### *Findings of fact*

Petitioner claims he did not appear at the Oneida Personnel Commission hearing on January 15, 2013 because he never received notice. This case is an employment issue, which was properly before the Oneida Personnel Commission. Petitioner appealed the Oneida Personnel Commission's decision. The Appellate Court remanded this case to the OTJS Trial Court to hear merits of this case as presented to the Appellate Court.

#### *Conclusion of law*

The Oneida Personnel Commission took jurisdiction of this case and proceeded to hold a hearing. A hearing was scheduled for January 15, 2013. The January 15<sup>th</sup> hearing was dismissed due to Petitioner's non-appearance.

We, the trial Court, believe the Appellate Court may have erred because the proper court to hear the merits of this case is the original hearing body. The Appellate Court decision did not provide any explanation as to why the OTJS Trial Court division would have jurisdiction over a matter where the original hearing body is already established as the Oneida Personnel

Commission. The Oneida Personnel Policies and Procedures, Sec. VD6 gives the Oneida Personnel Commission jurisdiction over employee grievances. This appears to be an employee grievance. The Oneida Personnel Commission is the original hearing body. The remand should have directed the Oneida Personnel Commission to hear the merits of this case.

Subject matter jurisdiction cannot be created by an appellate court. Subject matter jurisdiction is created by the laws and enactments of the governing body of any jurisdiction. The Oneida Tribal Judicial System, Trial Court division, does not have jurisdiction over this claim.

### **III Decision**

This matter is dismissed due to lack of jurisdiction. The remand should have directed the Oneida Personnel Commission to hear the merits of this case.