

Oneida Tribal Judicial System

Onayote ? aka Tsi? Shakotiya? Tolé hte

TRIAL COURT

In re: Petition Removal of Chairman Delgado,

**Brian A. Doxtator,
Petitioner,**

and

**Edward Delgado,
Respondent.**

Case No. 13-TC-124

PRELIMINARY REVIEW DECISION

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Jean Webster, Sandra Skenadore, and James Van Stippen, presiding.

I. Background

On August 7, 2013 the Oneida Tribal Judicial System, also known as the Oneida Appeals Commission, received the Petition Removal of Chairman Edward Delgado. In accordance with Sec. 4.6, a preliminary review was scheduled for August 21, 2013. Chairman Delgado appeared with counsel. Petitioner Brian Doxtator appeared in person, pro se. After listening to both parties and considering the relevant evidence, we find there are sufficient grounds for the process to move forward.

II. Jurisdiction

We have jurisdiction under Chapter 4 of the Removal Law which requires the Secretary to forward the Removal Petition to the Oneida Tribal Judicial System once she has determined there are a sufficient number of signatures. Sec. 4.5-6. The Oneida Tribal Judicial System is

then to conduct a preliminary review to determine the sufficiency of the Petition. Sec. 4.6. Once the sufficiency of the Petition is determined, a hearing is to be held to determine whether Petitioner can prove the allegations in the Petition by clear and convincing evidence. Sec. 4.7.

III. Issues

1. Should Judicial Officers Jean M. Webster, Sandra L. Skenadore and James Van Stippen recuse themselves from this case?
2. Was the removal petition filed within 30 days after the first signature was obtained as required by Sec. 4.5-2?
3. Do the allegations set forth in the Petition, if true, constitute sufficient grounds for removal?

IV. Analysis

A. Findings of Fact

The Respondent is Chairman Edward Delgado, the duly elected Chairman of the Oneida Tribe. The Petitioner is Brian Doxtator, an Oneida Tribal Member.

On August 2, 2013 Petitioner filed a removal petition with the Oneida Tribal Secretary's office seeking removal of Chairman Edward Delgado. On the same day the Tribal Secretary's office submitted the petition to Oneida Enrollment Office. Over the next few days, the Oneida Enrollment Office completed the verification of signatures and returned the removal petition to the Tribal Secretary. The Oneida Enrollment Department verified there were 623 signatures on the Petition. Of the 623 signatures 12 of the signatures were considered not valid, leaving a total of 611 valid signatures. The Secretary's submission to the OTJS is incorporated by reference into our Findings of Facts.

The Tribal Secretary determined the requisite number of signatures needed was 521. This number is based on Sec. 4.5-1 which states there must be signatures equal to at least 30 percent of the vote cast in the previous general election. The previous General Election was the July 16,

2011 general election. One thousand seven hundred thirty five (1,735) were cast, therefore, Petitioner needed signatures of 30% of votes cast or 521 signatures.

On August 7, 2013 the Oneida Tribal Secretary's office forwarded the removal petition to the Oneida Tribal Judicial Systems stating, "Based upon this examination, it is hereby determined and certified that the petition qualifies as sufficient pursuant to section 4.5-1 of the Oneida Removal Law and was signed by the requisite number of valid signatures for a sufficient petition."

On August 16, 2013 Respondent filed "In the Matter of the Removal of Chairman Edward Delgado" with a list of Judicial Officers and why they should recuse themselves from this case.

On August 21, 2013 a preliminary review was held and each party had an opportunity to address the Court.

Eight signatures on one of the petition signature sheets contained signatures dated June 6, 2013. In fact, by affidavits filed with the OTJS on August 21, 2013, these signatures were actually made on July 6, 2013. The signatures were misdated.

B. Recusal

Chairman Delgado suggested in a previous filing that certain judicial officers may need to recuse themselves. Each member of the panel addressed this issue at the August 21, 2013 preliminary review hearing.

According to the Oneida Tribal Judicial System Judicial Code, Article IV Disqualification/Recusal, a Judicial Officer shall disqualify themselves in a proceeding if their impartiality might reasonable be questioned. We find no basis for our impartiality to be reasonably questioned.

None of the Judicial Officers on the panel is closely related to or friends with Chairman Delgado or Mr. Doxtator. None of us has been involved with the removal effort. None of us signed the removal petition.

The court than asked each party if there was any further objection and neither party objected, therefore, all three Judicial Officers shall remain on the case. Respondents request for recusal of Judicial Officer Jean M. Webster, Judicial Officer Sandra L. Skenadore, and Judicial Officer James Van Stippen is denied.

C. Timing of the signatures under Sec. 4.5-2

Respondent argues the requirement of Sec. 4.5-2 was not met because the last signature on the Petition was not obtained within 30 days of the first. Petitioner points to the fact that eight signatures were dated June 6, 2013 while the last signature was obtained on or about August 1, 2013, a span of about 56 days.

Respondent argues the Petitioner signed and notarized the signature sheet containing the misdated signature and should be held accountable. The Removal Petition Statement and Affidavit clearly states he witnessed the signing of each signature on the petition; therefore, the Petitioner should have been well aware of the signature and date signed. Respondent asks the Court that if the petition moves to a hearing the Court not consider the petition page that had the dates of June 6, 2013, as a result the total tally should be 49 signatures less. We disagree with Respondent and deny the request.

While we agree that Petitioner should be held accountable for the error, it is not justified to disallow the misdated signatures. In fact, as was shown at the preliminary review on August 21, 2013, the eight signatures were obtained on July 6, 2013 and misdated as being obtained on June 6, 2013. Petitioner presented evidence through affidavits of seven of the eight signers in question that they actually signed on July 6, 2013. In addition, evidence was presented that the Removal Petition forms had not yet been created as of June 6, 2013; therefore, it was impossible that the signers could have signed on that date. Therefore, we find that signatures in question were obtained on July 6, 2013, and that the requirements of Sec. 4.5-2 have been met.

Although Petitioner certainly should have been more careful when obtaining the signatures and when reviewing them before submission, Respondent Chairman Delgado has not alleged or shown any harm that came to him as a result of the misdated signatures. He did not rely on the

date to his detriment. In our view, Petitioner has established that the misdating is nothing more than a typographical error with no measurable consequence to the proceedings.

C. Sufficiency of allegations

Sec. 4.4 of the Removal Law lists the specific grounds upon which an elected official may be removed. Petitioner is relying on Sec. 4.4-1(f) which states that an elected official can be removed if a violation of a law is shown and the penalty for violation of that law is removal. Petitioner's alleges the removal petition is based on Chairman Delgado's alleged violation of the Code of Ethics, Chapter 3 of the Oneida Ordinance. That Ordinance, in Sec. 3.6-1(a) states that elected officials who are shown to have violated Chapter 3 are subject to removal.

The Petition alleges three violations of the Code of Ethics. Any one of these, if shown to be true, will serve as sufficient grounds for removal by the General Council. The Petition alleges:

1. Chairman Delgado is in direct violation of the Code of Ethics section 3.3-3(a)(1)(2) and section 3.3-3(b)(2)(3) as it relates to Chairman Delgado directing scores to be reconsidered relative to the SEOTS Facility Proposal.
2. Chairman Delgado is in violation of the Code of Ethics section 3.3-3(b)(2)(3) and 3.3-3(d) as it relates to an email from Diane House dated 5/16/13 stating Chairman's approval to divulge sensitive strategic information to Bonnilake.
3. Chairman Delgado is in violation of the Code of Ethics, Section 3.3-3(a)(1)(2) and Section 3.3-3(b)(2), and Section 3.3-3(c)(1) as it relates to Chairman Delgado's continual violations of GTC Resolution 2-25-82, GTC Resolution 1-17-98, and GTC approved job description.

V. Conclusions of Law

Respondent's recusal requests are denied.

The signatures on the Petition meet the requirement of Sec. 4.5-2.

Based upon the Petition, testimony and evidence presented by both parties, the petition alleges sufficient grounds for removal; therefore, the Removal Petition shall move forward to a hearing in accordance to section 4-7 of the Removal Law.


According to the Removal Law, section 4.7-1 and section 4.7-2, the elected official whose removal is sought shall have the right to present witnesses, cross-examine adverse witnesses, and be represented by counsel of his or her choice. The Petitioner shall have the burden of proof by providing clear and convincing evidence the grounds for removal exist.

According to Section 4.7-3 the Oneida Appeals Commission shall, within 20 days after the preliminary review is completed, determine if the allegations constitute sufficient grounds for removal. Our final decision must be issued by September 10, 2013 in order to comply with the timelines in Chapter 4.


The hearing is scheduled for **September 5 & 6, 2013 at 9:00 a.m.** The parties shall exchange witness lists by 4:30 p.m. on August 30, 2013. Any pre-hearing motions shall be filed with the Court by 4:30 p.m. on August 30, 2013.

IT IS SO ORDERED.

By the authority vested in the Oneida Tribal Judicial System pursuant to Resolution 8-19-91A of the General Tribal Council a preliminary review held on August 21, 2013 and preliminary review signed on the August 27, 2013, in the matter of Brian Doxtator v Edward Delgado, Docket Number 13-TC-124.



Jean M. Webster, Lead Judicial Officer



Sandra L. Skenadore, Judicial Officer

UNAVAILABLE FOR SIGNATURE

James Van Stippen, Judicial Officer