

Oneida Tribal Judicial System

OnΛyote ʔ aka Tsiʔ Shakotiyaʔ Tolé hte

TRIAL COURT

**Leah S. Dodge,
Petitioner**

Docket No: 13-TC-126

v.

**Oneida Land Commission,
Respondent**

**Decision
Motion for Continuance, Motion for Recusal
&
Motion for Injunctive Relief**

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers; Jean M. Webster, Leland Wigg-Ninham, and Jim VanStippen presiding.

This matter came for a hearing on the 24th day of September, 2013.

Appearing in person: Petitioner; Leah S. Dodge and Respondents; Oneida Land Commission via their Attorney, Rebecca Webster; Senior Paralegal, Heidi Wennesheimer, and Troy Parr.

I. Background

On September 18, 2013, the Petitioner filed a Motion for Continuance, Motion for Recusal and Substitution, and Motion for Injunctive Relief.

Findings of Facts

On September 3, 2013 the court granted the Petitioner's motion for an Injunctive Relief seeking the court to reverse the decision and rescission of a building permit issued by Oneida Zoning Department based on the Oneida Land Commission improper decision. An Injunctive Relief

hearing was scheduled for September 20, 2013 to hear the merits of the petition.

On September 06, 2013, Respondents filed a motion for continuance, due to the Respondent's Attorney having a prior commitment and motion was granted. The Injunctive Relief hearing was rescheduled for September 24, 2013 to discuss the merits of the case and decide whether the case would move forward to a trial.

On September 18, 2013, the Petitioner filed three motions: (1) Motion for Recusal and Substitution, (2) Motion for Injunctive Relief, and (3) Motion for Continuance.

On September 20, 2013 the court held a deliberation to address the three motions filed by the Petitioner. The court ruled as follows:

1. The Petitioner's Motion for Continuance of the September 24, 2013 hearing to discuss the merits of the case was granted. The hearing is rescheduled to October 9, 2013.
2. The Petitioner's Motion for Injunctive Relief to halt the construction of the commercial office building, also referred in the petition as the "garage" located at 112 Riverdale Drive, and Motion for Recusal of Judicial Officers Jean M. Webster, Chris J. Cornelius, and Lois Powless were both to be heard on September 24, 2013.
3. According to the Rules of Civil Procedure, Rule 31(B) "When a temporary restraining order is granted without notice, the Court shall cause to be scheduled, within three (3) days, a hearing for an injunction." Hearing scheduled for September 24, 2013.

On September 24, 2013 a hearing was held to address the Petitioner's Motion for Recusal and Injunctive Relief.

Petitioner

Petitioner presented to the court an "addendum" to the Motion for Recusal and Substitution. The Petitioner requested the presiding Judicial Officers and the pool of Judicial Officers disclose on record the following:

1. The Judicial Officer(s) or immediate family members have been past/present clients of Owista Taxes.
2. The Judicial Officer(s) or immediate family members have a personal, professional or fiduciary relationship with the Oneida Land Commission.
3. Whether Brian A. Doxtator and/or any of the Oneida Land Commissions are their immediate family members.
4. The Judicial Officer(s) or immediate family members of Attorney Rebecca Webster, Oneida Tribal Senior Attorney.
5. Petitioner further requested Judicial Officers, Chris J. Cornelius and Lois Powless be recused from the case. Petitioner further request Attorney Webster be recused from the case as the Petitioner stated she would be calling Attorney Webster as a witness.

II. Analysis

Prior to addressing the Petitioner's addendum for the recusal of Judicial Officers, the court informed the Petitioner that if the current Judicial Officers find they should recuse themselves from hearing the Motion for Recusal, this will only cause further delay in hearing the Petitioner's petition and any other motions that were to be heard on September 20, 2013, will also be delayed. Without an injunction or order in place, the status quo is not being preserved. Therefore, it will be more difficult and potentially inequitable to undo any construction that may occur between now and when a decision is able to be rendered. This delay is squarely the responsibility of the Petitioner. The court noted to the Petitioner if the case is heard by a panel of three (3) Wisconsin Tribal Judges Association (WTJA), the hearing would be scheduled according to their (WTJA) schedule.

Each Judicial Officer addressed the court stating why they would not recuse themselves from the case, followed by the Petitioner addressing the recusal addendum and each Judicial Officer answering appropriately. As for the list of pool Judicial Officers forwarded by the Petitioner, the court shall not and cannot speak for them as to disclosing information on record as to possibly disqualifying themselves from this case.

Petitioner alleged the Oneida Tribal Judicial System disregarded the laws in regards to conflict of interest as Judicial Officer Chris J. Cornelius was initially assigned to the case, however, was removed from this case by the Lead Judicial Officer due to a conflict of interest. This example shows that the Oneida Tribal Judicial System is applying the laws on conflicts of interest. No notice was sent to the Petitioner, as this an in-house decision. The Court further noted Judicial Officer Lois Powless does not hear trial cases. Judicial Officer Powless only hears appellate court cases; therefore her participation is not an issue at the trial level.

Petitioner further requested Attorney Rebecca Webster recuse herself from the case as the Petitioner noted she would be calling Attorney Webster as a witness. Attorney Webster stated she would not recuse herself from the case due the Attorney/client privilege information; therefore, the Petitioner would not be able to call or subpoena Attorney Webster as a witness.

III. Conclusion

Motion for Recusal (filed 9/18/13) -

According to the Oneida Tribal Judiciary Canons of Judicial Conduct and the Oneida Tribal Judicial Code of Ethics, the presiding Judicial Officers were willing and able to hear the Petitioner's motions, however, the Petitioner was very adamant that each Judicial Officer and/or immediate family member who have any connection to the parties would be perceived as a conflict of interest. Petitioner also requested the Judicial Officer's named on the pool list should not be a part of this case. Without the pool of Judicial Officers present to address the Petitioner's questions, the court shall not rule whether a conflict of interest existed for judges who were not present.

Petitioner's perception that a conflict of interest existed was also noted to the court when Petitioner would strenuously object to a Judicial Officer's responses about remaining on the case and noting to the court she will object to any Judicial Officer who's impartiality can reasonable be questioned. Noting the strong objections by the Petitioner and having warned the Petitioner about the risks of delaying the case, the court grants the Petitioner's request and the current presiding Judicial Officers have recused themselves from this case. The court will arrange for this case to be heard by judges selected through the Wisconsin Tribal Judges Association.

Motion for Injunctive Relief (filed 9/18/13)-

The Petitioner's Motion for Injunctive Relief to halt the construction of the commercial office building, also referred in the petition as the "garage" located at 112 Riverdale Drive, Oneida, WI cannot be addressed at this time and shall be placed in abeyance until a hearing is rescheduled.

Motion for Continuance (filed 9/18/13) –

The Petitioner's Motion for Continuance of the September 24, 2013 hearing, which was a pre-trial conference and for determining if the petition shall move forward to a trial, was rescheduled to October 9, 2013. However, due to having to select a new panel of judges from the WTJA, the hearing of October 9, 2013 is cancelled and shall be rescheduled at a later date.

IV. Decision

1. Petitioner's Motion for Recusal of the current presiding Judicial Officers is granted.
2. The following motions filed by the Petitioner shall be held in abeyance, until a panel of judges from the Wisconsin Tribal Judges Association can be selected:
 - a. Motion for Injunctive Relief filed on August 26, 2013;
 - b. Motion for Continuance filed on September 18, 2013- to reschedule the September 24, 2013 Injunctive Relief hearing to hear the merits of the petition;
and
 - c. Motion for Injunctive Relief filed on September 18, 2013 to halt the construction of the office building, also referred to as a "garage" in the original petition.
3. The Injunctive Relief hearing scheduled for October 9, 2013 is canceled until further notice of this court.