

Oneida Tribal Judicial System

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TRIAL COURT

**Franklin L. Cornelius,
Petitioner**

Docket No. 14-TC-104

v.

**Edward Delgado,
Respondent**

DECISION

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers: Jean M. Webster, Mary Adams, and Chris Cornelius presiding.

The above-captioned matter came before the Oneida Tribal Judicial System for a pre-trial hearing on the 16th day of July, 2014.

Appearing in person: Petitioner, Franklin L. Cornelius with Attorney William Hinkfuss. Respondent, Edward Delgado with Attorney Rebecca Webster and Heidi Wennesheimer, Senior Paralegal Oneida Law Office.

Background

On June 10, 2014, Petitioner filed a complaint which included 32 allegations against the Respondent. The allegations are related to a General Tribal Council (GTC) motion to dissolve the Seven Generations Corporation. Petitioner alleges the Respondent, along with the Oneida Business Committee, is not carrying out the GTC action. The Court finds the Respondent is protected by sovereign immunity as the Court did not find any law or rule that has been violated;

therefore, we grant the Respondent's Motion to Dismiss.

Procedural Background

On July 11, 2014, Respondent filed a Motion to Dismiss. Respondent claims the Petitioner has failed to state a claim, lacks standing, failed to cite any law that would entitle the Petitioner relief, and failed to allege a plausible, ongoing violation of tribal law.

On July 16, 2014 a hearing was held. Both parties were given an opportunity to provide opening statements in relation to their respective filings. As the Respondent filed a Motion to Dismiss the Court proceeded to address this motion prior to hearing the Petitioner's complaint. Before the Court heard from each party, Judicial Officer Jean M. Webster stated for the record that Attorney Rebecca Webster is married to her nephew and that she took the oath of office to judge fairly and independently without prejudice. Petitioner asked how close is the relationship. Petitioner strongly objected to Judicial Officer Jean M. Webster presiding over the case.

Judicial Officer Chris Cornelius stated for the record her father and the Petitioner are first cousins and that she took the oath of office to judge fairly and independently without prejudice. Neither party had any objection to Judicial Officer Chris Cornelius presiding over the case.

On August 14, 2014, Lead Judicial Officer, Jean M. Webster issued a notice to the parties of a 30 day extension of filing the written decision.

On August 25, 2014 the court held a deliberation.

Recusal Request

Article VI, Sec. 6-1, is intended to remove a judicial officer from a proceeding in which their impartiality might reasonably be questioned and it gives a list of instances. According to Sec. 6-1(c), removal is necessary if a Judicial Officer is a reasonably close family member. In this instance, Attorney Webster is married into the Judicial Officer's extended family. Recently enacted Chapter 152, Cannons of Judicial Conduct, defines "Immediate Family;" there is no

reference to nephew-in-law or niece-in-law within the definition. Attorney Webster is a niece-in-law to Judicial Officer Webster.

In addition, the trial court is unique in that it has three judges for every trial. Having three judges minimizes the influence of personal bias, conflict of interest and prejudicial notions. Also, Attorney Webster has practiced before Judicial Officer Jean Webster numerous times without recusal issues. Judicial Officer Jean Webster has always disclosed the relationship and has not had to recuse herself. Furthermore, in the appellate case 13-AC-019 *Leah Dodge, Cathy Metoxen, and Michael Debraska vs Oneida Business Committee* the Appellate Court ruled and stated in part, “....reasonably close family member” verbiage in the *Oneida tribal Judicial Code of Conduct, Article VI* would include a niece-in-law and nephews-in-law as in this case and would be just cause for recusal. However, there is no definition of what constitutes reasonable close.” Accordingly, Petitioners’ objection for recusal is denied.

Respondent’s arguments

Respondents argue the Petitioner has failed to state a claim. A claim must state with clarity how one was harmed by the allegations and establish a link between the violation and harm suffered. Respondent argues the Petitioner was not specific as to what laws are in question, how the laws were violated, and how the violations harmed the Petitioner. Respondent further argues the Petitioner failed to allege a plausible ongoing violation of the law.

Respondent argues the Petitioner lacks standing and has failed to site any law that would entitle him to relief. To have standing Respondent argues one shall have an injury recognized in the law. The injury must be one that can be tried or examined before the court.

Respondent argues he is protected by the Tribe’s Sovereign Immunity. Tribal officials and tribal employees are immune from suit for actions taken in their representative capacities and within their scope of authority. See Chapter 14 of the Oneida Ordinances.

Respondent argues the Petitioner was appointed by General Tribal Council, not elected. Furthermore, the Respondent claims due to the information the Petitioner would be involved with a confidentiality statement would need to be signed. Petitioner failed to sign the form.

Respondent further argued the dissolution could take twelve (12) months to achieve; however, it could be longer as there has been a suit filed in court against the Oneida Tribe that pertains to Oneida Seven Generation Corporation and the issue is currently in litigation.

Petitioner's arguments

Petitioner argues he was elected by the General Tribal Council (GTC) on December 13, 2013 to work with the Oneida Business Committee (OBC) to dissolve the Oneida Seven Generations Corporation.

Petitioner alleges the Respondent, Edward Delgado, has acted on his own without the vote of the entire OBC. Petitioner further alleges there are 32 violations that have occurred by the Respondent and Oneida Business Committee.

Petitioner argues his freedom of speech was violated. Petitioner claims he filed a petition and the Respondent failed to have the petition added to the June 2014 Special GTC meeting and has failed to comply with the 10 Day Notice policy enacted by the GTC.

Analysis & Conclusion of Law

Mr. Cornelius has raised many issues. We respect that he is a passionate advocate for what he believes is in the best interest of the Tribe; we are empathetic to his frustration. Nevertheless, there does not appear to be a legal basis for his lawsuit to go forward.

The crux of Mr. Cornelius' claims stem from his appointment by the General Tribal Council to "work with" the Business Committee on the dissolution of the Oneida Seven Generations Corporation. The Tribe appears to be working with Mr. Cornelius but he may not be working

with the Tribe. Mr. Cornelius has refused to sign a confidentiality agreement so that the Tribe will share sensitive information with him.

There is no firm legal basis for Mr. Cornelius to be granted the things he is asking for. The General Tribal Council merely voted him "to work with" the Business Committee. As the Respondent has shown, all of Mr. Cornelius' claims are unsupported assertions. Being voted to work with the Tribe does not suspend all of the usual rules and requirements that apply to tribal members and the public. For example, Mr. Cornelius demands that GTC meetings are held at his request. Mr. Cornelius, like all tribal members, is subject to the regular rules and procedures governing when GTC meetings are called, how the agendas are set and who can speak.

In addition to a lack of legal authority supporting Mr. Cornelius' claims, Respondent Delgado is acting in his official capacity as Chairman of the Tribe and therefore protected by sovereign immunity. Petitioner failed to sufficiently support the alleged allegation the Chairman Delgado has acted outside his authority. Rather Mr. Cornelius is complaining that Chairman Delgado is enforcing the regular rules that everyone else must follow. Mr. Cornelius must follow them too.

The Tribe's sovereign immunity protects Chairman Delgado for actions taken within his official capacity and within the scope of his authority.

The Court finds Chairman Delgado acted within his official capacity and within his scope of authority.

Vote vs Elected

We find that Mr. Cornelius was voted rather than elected. The difference is that Mr. Cornelius does not hold office or have any special powers. In accordance with Black's Law Dictionary, Sixth Edition "appoint" is defined as, "*To designate, choose, select, assign, ordain, prescribe, constitute, or nominate. To allot or set apart. To assign authority to a particular us, task, position, or office*".

In Accordance with Black's Law Dictionary, Sixth Edition "elect" is defined as, "*The word "elected," in its ordinary signification, carries with it the idea of a vote, generally popular, sometimes more restricted, and cannot be held the synonym of any other mode of filling a position.*"

Petitioner claims he was elected by the General Tribal Council to work with the Oneida Business Committee in dissolving the Oneida Seven Generation Corporation. Petitioner testified he received 819 yes votes, 689 no votes and 69 abstentions. Since being elected, Petitioner alleges the Respondent and OBC failed to work with him, there is no communication, and he was denied to give a report at the Special GTC Meeting held in June 2014.

Respondent testified the Petitioner was voted by the GTC membership. The vote did not give the Petitioner any power or authority. The vote was merely for the Petitioner to work with the OBC in dissolving the Oneida Seven Generation Corporation.

The Court finds the Petitioner was "voted" by the GTC membership not elected. If the Petitioner was elected the GTC membership would have had to receive prior notice that an election was going to take place at the December 2013 Special GTC Meeting and identify what the election was for. The Court further finds the "vote" identified the Petitioner to work with the Respondent on the task of dissolution of the Oneida Seven Generation Corporation.

10 Day Notice

The purpose of the 10-Day Notice Policy is to provide notice to GTC membership of regular or special business to be conducted or action taken at a GTC meeting. The 10 Day Notice includes the date, time, and place along with an agenda identifying topic(s) of discussion, motions, and resolutions.

Petitioner claims he filed a timely petition with the respective amount of signatures to the OBC. Petitioner was requesting to have his petition heard at the Special GTC in June 2014. Petitioner alleges the Respondent has failed to comply with the GTC 10 Day Notice Policy. Respondent

claims there is a process when a petition is filed with the OBC Secretary's office. A petition does not automatically get placed on the next available GTC Agenda. A petitioner cannot state what GTC Agenda an item shall be placed on, nor is a GTC meeting called within 10 days. The Respondent claims when the Petitioner was voted to work with the OBC, the GTC did not give the Petitioner any type of power or authority, and certainly not the authority to avoid the regular rules like the 10-Day Notice Policy.

The Court finds the Respondent has not violated the 10 Day Notice Policy.

Decision

Petitioner seeks special privileges and rights that are not permitted by law and have not been granted by the General Tribal Council. The Court finds the rest of the Petitioner's claims moot. Chairman Delgado is protected by sovereign immunity.

The Court hereby grants the Respondent's Motion to Dismiss. This case dismissed.