

Oneida Tribal Judicial System

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TRIAL COURT

**Dawn M. Delebreaux,
Petitioner**

Docket No: 14-TC-189

v.

**Oneida HRD,
Anita Barber, and
Rita Lara
Respondents**

DECISION

Petitioner's Motion for a Declaratory Judgment

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Jean M. Webster, Kathy Hughes, and Leland Wigg-Nirham, presiding.

Background

On October 8, 2014, Petitioner, Dawn A. Delebreaux filed a petition for a Declaratory Judgment alleging various employment actions taken against her.

The Court dismisses the Petitioner's filing as Petitioner failed to provide notice to the Respondent of their filing.

Analysis

Finding of Facts

On October 8, 2014, Petitioner filed a petition for a Declaratory Judgment, along with providing an Affidavit of Service identifying the Petitioner, Dawn M. Delabreau, personally served a legal letter from Attorney Brian Stevens to the Respondent, Anita Barber.

- Petitioner's Original Complaint identifies the Respondents to be: HRD, Anita Barber and Rita Lara.

On October 14, 2014, the Trial Court held a deliberation and on October 16, 2014 the Court issued a Decision providing the Petitioner with five (5) business days from the date of the signing of the decision to perfect her claim for a Declaratory Ruling. Petitioner was given until October 23, 2014.

On October 24, 2014, the Petitioner filed her perfected claim. On the perfected claim, the Petitioner identifies only HRD as the Respondent. No other names were listed.

On October 29, 2014, the Court held a deliberation to review the perfected claim filed by the Petitioner. No notice to the Respondent was filed by the Petitioner and the court ruled to dismiss. However, Rule 2(B) 1) and 2) of the Rules of Civil Procedure allows a Petitioner 30 days, or 60 days if Petitioner request an extension, to serve notice of the Petitioner's filing. Rendering the decision to dismiss is being held in abeyance to afford the Petitioner the 30 days, or 60 days if an extension is requested, to serve notice to the Respondent.

Conclusion

In the filing of the Original Complaint of October 8, 2014 and the filing of the perfected claim on October 24, 2014, the Court found errors with the filing by the Petitioner.

1. Notice

At the initial filing of October 8, 2014, the Petitioner noted on the Original Complaint the Respondents are HRD, Anita Barber, and Rita Law. In the section that requests the name, address and phone number the Respondent section only list HRD. In the Petitioner's Petition for Declaratory Judgment it is noted that HRD would be the primary interested party to respond to the petition. However, in the Original filing of October 8, 2014, the only party to receive notice of the Petitioner's filing was Anita Barber. The notice was served by the Petitioner, Dawn M. Delebreaux. Upon deliberation of the initial filing of October 8, 2014, the Court held a deliberation and issued a decision to give the Petitioner five (5) business days to perfect their original complaint. Petitioner had until October 23, 2014 to perfect her claim. The Court further noted in the decision to the Petitioner the Court reviewed the Rules of Civil Procedure, Rule 33 with focus on Rule 33(C) Declaratory Judgment Procedure sections 1-8.

According to the Rules of Civil Procedure, specifically Rule 33(C) identifies the procedures for Declaratory Judgments and according to Rule 33(C)(4) states:

- *"Notice of the petition shall be served upon agents of the Oneida Business Committee and any other interested parties, entities or agencies known to the petitioner or the court. These parties shall have fifteen (15) days from receipt of the notice of the petition to file a brief in response to the petition."*

2. Service

According to the Rules of Civil Procedure, Rule 2 Commencement of Actions, specifically Rule 2(B) states, in part:

- *"When Served: Service of the complaint shall be the responsibility (emphasis) of the Petitioner and made in accordance with Rule 3 within thirty (30) days of filing of the complaint...."*

- *“1) If proof of service is not delivered to the Court within thirty (30) days the Petitioner may request and receive one 30-day extension of time to serve the complaint.”*
- *“2) If service is not completed within thirty (30) days, or sixty (60) days if an extension is in place, the Court may dismiss the matter without hearing and without notice to the parties. Such dismissal based on failure to serve, may be with or without prejudice.”*

According to Rule 3 Service of Complaint and Other Documents, Rule 3(B) 3) regarding personal service states:

- *“Service may be made by any law enforcement officer or other person, not a party, who is at least eighteen (18) years of age.”*

3. Order to Perfect Claim

Perfect claim was not filed timely. Petitioner had until October 23, 2014 to file their perfect claim. The perfected claim was filed at the Court on October 24, 2014 at 12:31 p.m. Although the Court did not put a lot of weight into the lateness of the filing, as a strong cause to dismiss the case, the Court is noticing the Petitioner court Decisions or Orders shall be followed.

The Court finds the Respondent was not given notice of said claim; therefore, the Court dismisses the Petitioner's claim.

Decision

The Court hereby dismisses the Petitioner's claim for a Declaratory Judgment for failure to notice the Respondent of the filing. Case dismissed without prejudice.