

Oneida Tribal Judicial System

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ONEIDA TRIBAL JUDICIAL SYSTEM TRIAL COURT

**Gary G. Metoxen
Petitioner**

Docket No: 07-TC-106

v.

Date: October 25, 2007

**Oneida Business Committee
Respondent**

Decision

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Mary Adams, James Van Stippen, and Gary Jordan, presiding.

Background

On June 19, 2007, Petitioner, Gary G. Metoxen, filed a complaint against Respondents, Oneida Business Committee, et al, William Gollnick, Chief of Staff, and Rick Cornelius, ex-Chief of Police, alleging Respondents illegally terminated his appointment as a member of the Police Commission. Petitioner asserts his termination was based on false and misleading information. Furthermore, Petitioner contends Respondents violated his due process right to petition the court to review his case.

On July 5, 2007, counsel for the Respondents submitted several motions: 1) Motion to Dismiss for Failure to State a Claim as to Respondents Gollnick and Cornelius; 2) Motion for Clarification; and 3) Motion for an Extension of Time.

On July 10, 2007, the court granted the motion to dismiss Respondents Gollnick and Cornelius from this case. The court granted the motion for an extension of time and provided Petitioner with a due date to answer Respondent's motion. A new Pre-Trial hearing was scheduled for Tuesday, September 4, 2007.

On August 31, 2007, Petitioner filed a Motion for Continuance due to his required appearance in another court system on the same day at 8:00 am. The court decided all motions not addressed and filed in accordance with the Rules of Civil Procedure would be examined at the Pre-Trial hearing. The motion for continuance was granted, the new Pre-Trial hearing date was scheduled for Friday, September 14, 2007.

On September 14, 2007, at the Pre-Trial, the court decided that if this case proceeds to another Pre-Trial Hearing the parties shall be prepared to argue Respondent's motion to Dismiss for Failure to State a Claim. The parties agreed to consider a possible settlement and if the settlement is not reached then court shall resume on September 28, 2007, and arguments on the motion to Dismiss for Failure to State a Claim.

On September 28, 2007, the parties informed the court that a settlement could not be reached. Therefore, the parties argued the motion to dismiss.

Issues

Should Petitioner's case be dismissed due to failure to state a claim?

Analysis

A. Failure to state a claim

Should Petitioner's case be dismissed due to failure to state a claim? Yes. To understand a failure to state a claim we look to the Oneida Rules of Civil Procedure, Rule 14(B) state several grounds for involuntary dismissal of a case including failure to state a claim.

- 3) Failure of the adverse party to establish a right to relief based on the facts and law present;

There are no Oneida cases applying or discussing the concept of a Petitioner's failure to state a claim. Under Rule 1 of the Oneida Rules of Civil Procedure, the Court is allowed to look to

other jurisdictions for guidance. The federal system routinely addresses motions for failure to state a claim. In addition, there was a case in the U.S. Court of Appeals for the Seventh Circuit, *Moranski v. General Motors Corp.*, 433 F.3d 537 (7th Cir. 12/29/2005),

Concluded dismissing a complaint for failure to state a claim is proper if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations."

The Court adopts this standard and applies it to the facts alleged by Petitioner.

B. Arguments of the Parties

Petitioner:

Petitioner argues the Oneida Business Committee terminated his appointment from the Oneida Police Commission based on false and misleading information. Therefore, Petitioner asserts the termination of his appointment was illegal. Petitioner claims according to the U.S. Constitution and/or the Indian Civil Rights Act, every Oneida Citizen is guaranteed to be treated fairly and a decision is made based on true and correct information. Furthermore, Petitioner contends every complaint must be thoroughly investigated so that a decision is based on true and correct information. Petitioner argues his reputation and defamation of character were grossly harmed by false and misleading information and an incomplete investigation, which resulted in his termination of his appointment.

Petitioner asserts his request to the Oneida Police Commission to accept his resignation effective as of April 24, 2007 was dated on September 19, 2007 and should have been considered by Respondent.

Respondent:

Respondent denies all Petitioner's claims set forth in his complaint and asserts they have acted within the scope of their authority. Furthermore, Respondent has not waived sovereign immunity in this case. Respondent asserts only the Business Committee has the authority to appoint members to the Oneida Police Commission under the Oneida Law Enforcement Ordinance (section 37.6-2) and Police Commission Bylaws (section 1-4(c)(3)(c)). Respondent points out that the Business Committee is granted the authority to terminate appointed members

of an entity under the tribe's Comprehensive Policy Governing Boards, Committees and Commissions (section 6-5). Respondent argues Outagamie County Circuit Court entered a conviction against Petitioner on November 28, 2006 based upon charges stemming from an incident on September 19, 2006. Respondent contends an investigation was conducted and based on its findings, took unanimous action on April 25, 2007 to terminate Petitioner's appointment.

Respondent claims Petitioner's resignation letter was placed on the Business Committee's agenda and they took no action. Therefore, their official action of April 25, 2007 stands. Respondent asserts there is no tribal law that requires them to consider a resignation. Respondent holds Petitioner had the opportunity to provide his resignation; he failed to submit it prior to their action to terminate his appointment.

C. Relevant Facts

For the purpose only of evaluating Respondent's motion, we accept the facts as alleged in Petitioner's complaint. According to Petitioner's brief, on September 19, 2006, Petitioner called OPD and reported malicious destruction of personal property. At the time, Petitioner served as a member of the Oneida Police Commission. Petitioner cannot understand how this call turned into an alleged domestic abuse call. However, according to the Wisconsin Circuit Court Access, Petitioner was charged with a misdemeanor for disorderly conduct.

The Business Committee called for an Executive Session on April 11, 2007, but was canceled due to Petitioner attending his brother's funeral. A second Executive Session was scheduled for April 25, 2007. Petitioner promptly notified the Business Committee that he was scheduled out of town, but they held the session and took action by way of a unanimous vote to remove Petitioner.

Petitioner claims OPD should not have responded to his call on September 19, 2007, but rather Outagamie County when the complaint involves an Oneida Police Commissioner. Interim Chief of Police, Rich Van Boxtel, supports Petitioner's attempt to remove any perception of conflict of

interest with a memo to OPD staff dated October 26, 2006 from Van Boxtel. This doesn't negate Petitioner's misdemeanor charge of disorderly conduct. This court takes judicial notice that according to the citation, Petitioner plead guilty and was convicted of disorderly conduct. Respondent relied on Petitioner's conviction when removing him in accordance with the qualifications of a police commissioner "*A conviction of any ordinance violation that could bring discredit to the Commission.*"

D. Conclusions of Law

The Oneida Business Committee did not violate any law when removing Petitioner. The Business Committee has the authority to appoint Police Commissioners according to the Oneida Law Enforcement Ordinance, Section 37.6-2, Appointment of Commissioners:

The Oneida Business Committee shall appoint five members to the Oneida Police Commission for a term of five years.

In order to serve on the Oneida Police Commission its members must meet a number of requirements. The following is a list of Petitioner's alleged violations of the Oneida Law Enforcement Ordinance, Section 37.6-3. Commissioner Requirements and Qualifications:

- (c)(2), A felony arrest which results in a misdemeanor conviction due to a plea arrangement.
- (c)(3) A conviction of any ordinance violation that could bring discredit to the Commission.

In addition, Commissioners may be removed for various offenses according to Section 37.6-4.

Removal From Office:

- (b), Conduct which could jeopardize the reputation of the Oneida Tribe, the Oneida Police Commission, or the law enforcement system.

The Oneida Business Committee concluded that Petitioner's actions met the above criteria. It is undisputed Petitioner was convicted of a misdemeanor. The Business Committee was well within its rights when it determined Petitioner's conviction disqualifies him from serving as a Police Commissioner. A conviction for disorderly conduct based on a domestic dispute "could bring discredit to the Commission." Sec. 37.6-3(c)(3). As the body responsible for oversight of tribal law enforcement, the Police Commission and its members must have the confidence of the community. That confidence begins with members conducting themselves as law abiding citizens. Petitioner failed to do this.

In addition to the provisions of the Law Enforcement Ordinance, the Business Committee has the authority to remove Petitioner pursuant to the Tribe's Comprehensive Policy Governing Boards, Committees and Commissions (Comprehensive Policy). Petitioner's position was an appointed one (see sec. 37.6-2) and therefore is subject to the Comprehensive Policy. Under Section 6-5 it states:

Appointed members of entities serve at the discretion of the Oneida Business Committee. Upon the recommendation of the Tribal Chair, an appointed member of an entity may have his or her appointment terminated by the Oneida Business Committee by a two-thirds majority vote of the entire Oneida Business Committee.

Petitioner served at the discretion of the Oneida Business Committee. Therefore it was not a legal requirement to meet with him or conduct an investigation at all. Furthermore, there is no Oneida law governing the extent or lack of an investigation. The Business Committee had the evidence it needed. Respondent provided a copy of Petitioner's charges from the Wisconsin Circuit Court Access. Outagamie County accepted Mr. Metoxen's guilty plea of Disorderly Conduct for the offense dated September 19, 2006 and issued him a Misdemeanor conviction. This court finds Respondent did not violate Petitioner's rights by removing him from the Oneida Police Commission.

Decision

This court grants Respondent's motion to dismiss due to Petitioner's failure to state a claim.