

Oneida Appeals Commission

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Trial Court

In Re: Oneida Appeals Commission Judicial
Code/Code of Ethics

Docket No. 04-TC-011

Date: June 2, 2004

Declaratory Ruling

This case has come before the Oneida Appeals Commission, Trial Court. Judicial Officers, Mary Adams, Janice McLester and Marjorie Stevens, presiding.

Background

Interested parties are: Scott D. Wilson, Attorney for the Legislative Operating Committee; and Ed Delgado, Legislative Analyst for the Legislative Reference Office. On April 2, 2004 Scott D. Wilson, filed for a declaratory ruling questioning whether Ed Delgado would have a conflict of interest and be in violation of Oneida laws if he also serves as a Judicial Officer for the Appeals Commission. On April 19, 2004 Mr. Delgado filed a Motion for Injunctive Relief. Mr. Delgado alleges that according to the Rules of Civil Procedure, Rule 33 section (A)(1)(3) a court must make a decision and then that decision can be questioned by a declaratory ruling. Furthermore, there is no pending case, due to a failure to comply with both criteria, Mr. Delgado argues this case should be dismissed.¹

¹ Rule 33(A)(1) Declaratory Ruling: A declaratory ruling is a decision by an agency hearing body or the OAC trial court which established the applicability of any ordinance or rule enforceable by the agency to any person, property, entity, or other state of facts. (3): Both Declaratory Rulings

On May 4, 2004 a hearing was held. The Motion to Dismiss was denied. According to the Rules of Civil Procedure, Rule 33(A)(1), Attorney Wilson is correctly filing a declaratory ruling. Attorney Wilson is questioning a set of rules, specifically which positions within the tribe that cannot hold an elected position on the Appeals Commission. Rule 33(A)(3), allows for declaratory rulings that are made outside the context of a pending case. There is no pending case before the Appeals Commission. Mr. Delgado failed to show that Attorney Wilson improperly filed a declaratory ruling.

Issue

Does the position of a Legislative Analyst propose a conflict of interest if he/she serves as an Oneida Appeals Commissioner?

Analysis

Attorney Wilson's arguments

Attorney Wilson asserts that Mr. Delgado is employed as a Legislative Analyst which supports the Legislative Operating Committee (LOC). Attorney Wilson asserts, LOC is a subcommittee of the Oneida Business Committee (OBC) and is charged with developing Tribal law for the OBC and/or the General Tribal Council consideration. On March 6, 2004 Mr. Delgado was elected to the Oneida Appeals Commission in a special election. Attorney Wilson asserts that according to the Oneida Code of Ethics, interest or activities that conflict with the conduct of official duties are to be avoided. Attorney Wilson claims the Code of Ethics governs the conduct of employees and elected officials. Furthermore, Attorney Wilson asserts that according to the Oneida Appeals Commission Judicial Code, Rule 10-5, does not allow a judicial officer to be a member of an executive or legislative branch of the Oneida Government.²

and Judgements are made outside the context of a pending case.

² Judicial Code (10-5): A judicial Officer may not cross over the bounds separating the powers of government to serve as a member of the executive or legislative branches of the Oneida Government.

Attorney Wilson contends that according to the Code of Ethics, 3.3-3 (a)(2), that a government official should avoid participation in action or decision making that would present an appearance of a conflict of interest or an actual conflict of interest.³ Attorney Wilson argues that if Mr. Delgado would become an Oneida Appeals Commissioner who would participate in hearing cases this would present an appearance of conflict of interest or an actual conflict of interest provided that he would also remain a Legislative Analyst. Attorney Wilson argues that the interest of a legislative body and interest of judicial body are different, especially in a separation doctrine. Attorney Wilson contends that Mr. Delgado's job description expressly states this position will include drafting proposed laws. Attorney Wilson asserts that this means Mr. Delgado will literally write the written word that becomes law. Attorney Wilson contends as a Legislative Analyst, Mr. Delgado assists in drafting a law that the OBC may or may not adopt, nevertheless, Attorney Wilson asserts, Mr. Delgado will be writing and then interpreting the law, thereby the appearance of a conflict of interest is apparent.

Attorney Wilson argues that when Resolution #3-20-92A was adopted the Legislative Office, LOC and Mr. Delgado's position of Legislative Analyst did not exist. Attorney Wilson argues that in 1998 a proposal to limit certain positions from holding a seat on the Oneida Appeals Commission was not adopted, again the Legislative Analyst position did not exist.

Attorney Wilson maintains that Mr. Delgado, Legislative Analyst of the LOC, is part of the legislative branch of government and therefore would be in violation of the Judicial Code if he serves as an Appeals Commissioner concurrently with his legislative position.

Mr. Delgado's arguments

Mr. Delgado claims his position is a staff position which takes direction from the LOC. Mr.

³ Code of Ethics, 3.3-3 (a)(2): Avoid participation in action or decision making (except where participation is in accordance with the traditions of the Tribe) that would present an appearance of conflict of interest or an actual conflict of interest.

Delgado contends that he signed a Conflict of Interest Disclosure Form when he was hired. Mr. Delgado claims that he was elected to the Oneida Appeals Commission in March 2004. Mr. Delgado claims that he was a candidate for the Oneida Business Committee in 2002 but was not elected. Mr. Delgado argues he is therefore not a member of the legislative branch of government or the executive branch.

Mr. Delgado argues that the Addendum to Resolution # 8-19-91A established qualifications for the first appointed Appeals Commissioners. Mr. Delgado contends that according to that Resolution, Article I(A)1e, defines the qualifications that would be used as a criteria for elections to the Appeals Commission in accordance with the same qualifications used for appointments.⁴ Mr. Delgado contends that Resolution # 3-20-92A, defines Administrative Staff to mean any one of the (18) Tribal positions that cannot hold an employment position and at the same time be an Appeals Commissioner. Mr. Delgado further contends that "Legislative Analyst" is not on that list of Administrative Staff positions not eligible to serve on the Appeals Commission.

Mr. Delgado asserts that in 1998 the Appeals Commission requested that legislation be enacted that would redefine Administrative Staff person. Mr. Delgado contends that the Oneida Business Committee elected not to pass the legislation. Mr. Delgado argues that by the Oneida Business Committee not adopting the 1998 legislation they affirmed the current policy in allowing high level management and legislative analysts to serve on the Appeals Commission.

Mr. Delgado contends that the Judicial Code, Chapter 5, Article IV (4-2) anticipates that improper influences may arise but recognizes that Judicial Officers are still capable of rising to the occasion and decide without regard to improper influences.⁵ Mr. Delgado argues that Judicial

⁴ Resolution 8-19-91A, Article I(A)1e: An appointee cannot be an administrative staff person for the Oneida Tribe while serving on the Appeals Commission.

⁵ Article 5, (4-2) The Oneida people expect that those who make decisions about their lives and future will be wise and completely independent, and the Judicial Officers will decide without regard to improper influences...

Officers are to be entrusted with a certain degree of personal responsibility and integrity when carrying out their elected duties. Mr. Delgado asserts that the Judicial Code, Chapter 5, Article VI, provides the ability of Judicial Officers to disqualify themselves where their impartiality might reasonably be questioned.⁶ Furthermore, Mr. Delgado argues that as a Legislative Analyst, he does not promulgate legislation nor does he provide legal reviews or interpretations of law, nor is he a decision maker.

Court's position

According to the Rules of the Judiciary, Chapter 1, Section 3(A)6, the judiciary was created to enhance the separation of power.⁷ The role of an Oneida Appeals Commissioner/Judicial Officer is to preside and administer the law. Litigants petition the court for a resolution; each party argues their position in court and the Judicial Officer reviews evidence, documents, testimony and any other supporting facts. The Judicial Officer then interprets the law according to the issue presented. The role of a legislative analyst is to propose laws to the Legislature. The legislative analyst does this by drafting and recommending laws. When the United States Senate endorses laws, their staff and analyst draft the laws prior to the Senators endorsing it.

The purpose of the creation of the Oneida Appeals Commission is to provide a separation of powers. In that, to prevent influences from the legislative and executive branches of government. The separation of powers give equal power among the three branches of government and provides a system of checks and balances.

Several elected Appeals Commissioners have removed themselves from office upon accepting a position on one of the other branches of government. As an example, Commissioner Carole Liggins accepted an administrative aide position for the Vice-Chair and resigned from the

⁶ Judicial Code (5-6): Judicial Officers shall disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including instances where:..

⁷ Judicial Code, (1-3(A)6: To enhance the governmental separation of powers between the legislative, executive and judicial responsibilities of the Oneida Nation;

Appeals Commission. If Commissioner Liggins had not stepped down from her elected seat on the Appeals Commission her case may have eliminated this case before us today.

The underlining principle is integrity. Integrity is knowing when to step down because it is the right thing to do. The fact that the analyst position is not mentioned within Resolution 3-20-92A does not justify the right to be a part of both branches. There are many expectations for Appeal Commissioners and few Commissioners declined a seat on the Appeals Commission due to those expectations.

Ultimately the decision is with each elected official, if one accepts the position, then he/she must accept all expectations of that position. Yes, the position of a Legislative Analyst presents a conflict of interest if that staff person also serves as an Oneida Appeals Commissioner.

Decision

The decision is Mr. Delgado's, if he accepts his position on the Appeals Commission then he must vacate his position as a Legislative Analyst.

It is so ordered.