

Oneida Appeals Commission

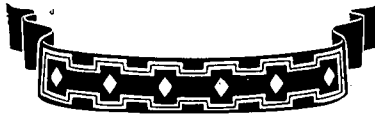
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Trial Court

Linda S. Dallas
Petitioner

Docket No. 04-TC-070

v.

Oneida Election Board,
Respondent

Date: October 12, 2004

Motion for Injunction

This case has come before the Oneida Appeals Commission, Oneida Judicial Office, Oneida, Wisconsin, on October 8, 2004. The parties are Petitioner, Linda S. Dallas, and Respondent, Stanley R. Webster, Janice L. McLester and William J. Brown.

I Background

On October 8, 2004, Petitioner, Linda S. Dallas, filed a motion for injunction seeking to stay the October 16, 2004 special election for a position on the Oneida Appeals Commission. The Petitioner claims that the Election Board has refused to place her name on the election ballot. The trial court scheduled an injunction hearing for October 12, 2004 at 9:00AM.

On October 12, 2004, 9:00AM, the injunction hearing was held. Appearance was made by petitioner, Linda S. Dallas, representing herself. Appearance was made by respondent, attorney Stanley R. Webster of the Oneida Law Office, representing the Oneida Election Board.

The Petitioner seeks the following relief:

1. A temporary injunction to stay the elections for the Oneida Appeals Commission scheduled for Saturday, October 16, 2004, until this matter is decided and corrected; and
2. A Stay of Enforcement of the Oneida Election Board's decision dated September 9, 2004; and
3. Reversal of the Oneida Election Board's decision dated September 9, 2004; and
4. The Petitioner's name properly placed alphabetically upon the official ballot for the Oneida Appeals Commission, and
5. The Oneida Election Board be directed to properly notice the voting membership that the Petitioner is an eligible candidate for the vacant seat on the Oneida Appeals Commission; and
6. An opportunity (equal to all of the other candidates opportunities) to advertise, campaign and solicit votes for herself.
7. Reimbursement of the Petitioner's cost to prepare and execute the matter at hand.

II Issues

Was petitioner's application for candidacy for the Oneida Appeals Commission filed in a timely manner?

Was petitioner denied the right for due process?

III Analysis

The applicable rule of law that applies to this matter is the Oneida Appeals Commission Rules of Civil Procedure. Specifically;

Pursuant to Oneida Appeals Commission Rules of Civil Procedure, Rule 31(E)

(1) an injunction may be granted "when it appears by the pleadings on file that a party is

entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act complained of, either for a limited period of time or perpetually.”

(2) an injunction may be granted “when it appears from the pleadings or by affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the party seeking injunctive relief.”

3) an injunction may be granted “when it appears during the litigation that either party is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual.”

(4) an injunction may be granted “when in any case where an injunction would be proper in equity.”

Petitioner’s request for an injunction to stay the special election of October 16, 2004 must be denied. Evidence and testimony presented by the petitioner for this injunction did not meet any one of the above criteria described in Rule 31 E, 1 through 4.

We find that the petitioner did not file her candidacy application in the time requirements as indicated in the Oneida Election Law 2.5-3. In pursuance to Chapter 2 Oneida Election Law:

2.5-3, Candidate information sheets and petitions where the candidate was not nominated during caucus shall be filed by presenting the information to the Tribal Secretary, or designated agent, during normal business hours, 8:00 to 4:30 Monday through Friday, prior to close of business on the deadline date.

The petitioner did not question the time indicated on the Receipt of Application form dated September 7, 2004, which indicates the time of 4:33PM. Petitioner was given this receipt at the time her application was submitted. In addition, a memorandum dated August 2, 2004 (tribal mailout) from Mark Denning, Chairperson of the Oneida Tribal Election Board and the

Candidate Information Packet was mailed out to the Oneida General Tribal Council which clearly states, "the deadline for all tribal packets to be submitted to the Tribal Secretary's office is Tuesday, September 7, 2004 by 4:30PM."

The material, as stated above, was presented in the October 12, 2004 hearing. Based on the evidence and testimony presented by the Petitioner that she was not knowledgeable of the time for filing, the hearing body finds that the Petitioner did not file her application for candidacy to the Tribal Secretary's Office in a timely manner.

Petitioner was not denied her due process. She did receive a hearing where she had the opportunity to present and argue her case. Her right to petition for a hearing has been met with this hearing. All other requests for relief do not apply.

IV Decision

Petitioner's motion for injunction to stay the election scheduled for Saturday, October 16, 2004 is hereby denied.

It is so ordered.