

**ONEIDA JUDICIARY**  
**Tsi nu téshakotiya?tolétha?**

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**TRIAL COURT**

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**Linda S. Dallas**  
**Cathy L. Metoxen,**  
**Margaret R. Fermanich,**  
**Travis Wallenfang**  
**Petitioners**

v.

**Case No: 20-TC-010**

**Oneida Business Committee,**  
**Oneida Election Board**  
**Respondents**

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**FINAL ORDER**

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This case has come before the Oneida Trial Court, Honorable John E. Powless III presiding.

**STATEMENT OF THE CASE**

Petitioner filed a Request for a Preliminary Injunction and Temporary Restraining Order on Friday, July 24, 2020. Petitioners' request was construed by the court as a request for emergency injunctive relief, a restraining order, a declaratory judgment, and recusals. Petitioners alleged that the Respondents violated the Oneida Election Law by diminishing their rights. Petitioners additionally requested that Respondents' actions to amend the Oneida Election law be overturned, and to conduct a primary election.

On July 31, 2020, Petitioner, Linda S. Dallas filed an Amended Complaint and Notice to Perfect Filing and Response to Order to Not Recuse. A status hearing was held on July 31, 2020, wherein the court ordered a briefing schedule. On August 3, 2020, Petitioner, Travis Wallenfang filed a similar complaint, asserting that Respondents violated the Oneida Election Law; therefore, the election process was flawed. Petitioner Wallenfang requested the Trial Court to rule that the 2020 election process was invalid. On August 4, 2020, pursuant to 8 O.C. 803.22-1(b), the court ordered Petitioner Wallenfang's case, 20-TC-012, to be consolidated with Petitioners Dallas, Metoxen and Fermanich's case, 20-TC-010, due to there being common questions of law and facts related to the election process. A second status hearing was held on August 5, 2020. A final hearing was held on August 12, 2020.

**PRINCIPLES OF LAW**

**803.22-1. Consolidation; Separate Trials.**

Consolidation. If actions before the Court involve a common question of law or fact, the Court may:

- (b) Consolidate the actions;

**803.29-3. Plaintiff.** When a party who has filed a claim fails to appear, plead, or prosecute said claim as provided in this Law or elsewhere, a dismissal may be granted by the Court, on its own or on a party's motion, dismissing the claim. For purposes of this section, dismissal shall be treated as default.

**803.21-1. Voluntary Dismissal.**

(b) By Court Order; Effect. Except as required in Rule 803.21-1(a)(1), an action may be dismissed at the plaintiff's request only by Court order, on terms that the Court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (b) is without prejudice.

**ANALYSIS**

On August 4, 2020, the Trial Court mailed Petitioners Dallas, Metoxen, Fermanich and Wallenfang the Order to Consolidate, which included the court-ordered briefing schedule. Petitioner Wallenfang did appear via phone appearance at the August 5, 2020 status hearing, where the court re-stated the briefing schedule.

At the final hearing, Petitioner Wallenfang did not appear, nor did he request reasonable accommodations or notify the court he would not be present. In accordance with 8 O.C. 803.29-3, when a party has filed a claim and fails to appear, plead or prosecute said claim, a dismissal may be granted by the court, on its own motion, dismissing the claim, in which dismissal shall be treated as default. Petitioner Wallenfang failed to appear, plead or prosecute his claim. On the court's own motion, Petitioner Wallenfang is found in default and, as a result, the court dismisses his claims.

Additionally, at the final hearing, Petitioners Dallas, Metoxen and Fermanich motioned to the court to withdraw their complaint. Prior to the court ruling on Petitioners' motion, the court explained, should this case continue, either party has the right and opportunity to appeal the Trial Court's decision to the Oneida Judiciary's Court of Appeals. The court further explained that should the court dismiss the complaint as requested, that would leave the Petitioners few appellate options as there would be a lack of a record and no decision by a lower hearing body.

After explaining the above to Petitioners, they made a knowingly and voluntary decision to withdraw their case after being informed of the consequences of doing so. As this case was at an advanced stage and evidence has not been provided to support the allegations by a preponderance of the evidence, the case is dismissed with prejudice in accordance with 8 O.C. 803.21-1(b).

**FINDINGS**

The Court finds as follows:

1. The court has subject matter and personal jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
  - a. A final hearing was held on August 12, 2020 at 9:30 a.m.
  - b. Petitioner Wallenfang did not appear.

- i. On the courts own motion, Petitioner Travis Wallenfang is found in default and his claims are dismissed for failure to appear, plead and prosecute.
3. At the final hearing, Petitioners Linda S. Dallas, Cathy L. Metoxen and Margaret R. Fermanich motioned to withdraw their complaint.
  - a. Respondents did not object to Petitioners' Motion to Withdraw.

**ORDER**

The Court enters the following order:

1. Petitioner Travis Wallenfang's claims are DISMISSED.
2. Petitioners Linda S. Dallas, Cathy L. Metoxen and Margaret R. Fermanich's Motion to Withdraw is GRANTED.
  - a. Petitioners Linda S. Dallas, Cathy L. Metoxen and Margaret R. Fermanich's case is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council this Order was signed on August 18, 2020 in Case No. 20-TC-010.

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John E. Powless III  
Trial Court Judge