

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

**Oneida Nation / Oneida Police Department,
Petitioners**

v.

**CASE NO: 21-CT-002
21-CT-003
21-CT-004
21-CT-005**

**Lindsey A. Blackowl,
Defendant**

DATE: September 21, 2021

ORDER

This case has come before the Oneida Trial Court, Honorable Patricia Ninham Hoeft presiding.

Appearing telephonically: Attorney Kelly McAndrews, representing Petitioners.

Non-appearance: Lindsey A. Blackowl, Defendant.

STATEMENT OF THE CASE

Four citations were issued in May 2021 to the Defendant for violations of the Oneida Code of Laws, Chapter 304, Domestic Animals. A citation pre-hearing held on August 19, 2021 was continued and rescheduled when Defendant did not appear. The rescheduled pre-hearing was held on September 16, 2021 and the Defendant did not appear.

FINDING OF FACTS

1. The Court has subject matter, personal and territorial jurisdiction over this matter.
2. The Defendant received proper notice.
 - a. On July 7, 2021, an Oneida Police Department officer hand-delivered four citations to the Defendant's spouse, Mr. Brandon Blackowl, an adult family member present at the Defendant's home and who also resides in the Defendant's home. On each of the four citations, the date and time of the citation pre-hearing was listed as, August 19, 2021, at 9:00 a.m.
 - b. On August 19, 2021, the Court mailed to the Defendant a continuance order with notice that the Defendant's citation pre-hearing was rescheduled to September 16, 2021, at 9:15 a.m.

3. On June 11, 2021, the Court mailed the Defendant a copy of the “Acknowledgement of Rights” form along with the hearing notice for Defendant’s first citation pre-hearing.
4. The Defendant was issued four citations for violations of the Oneida Code of Laws, Ch. 304, Domestic Animals: two citations were issued on May 16, 2021; two more citations were issued on May 26, 2021 for repeated violations.
 - a. On May 16, 2021, two citations, totaling \$700.00 in fines and court costs, were issued to Defendant:
 - i. 304.6-4. *Running at Large*, 3rd offense
 - \$500.00 fine and \$25.00 court costs
 - Appearance required
 - ii. 304.6-5. *Nuisance*, 2nd offense
 - \$150 fine and \$25.00 court costs
 - Appearance not required
 - b. On May 26, 2021, two more citations, totaling \$1,050.00 in fines and court costs, were issued to Defendant:
 - i. 304.6-4. *Running at Large*, 4th offense
 - \$500.00 fine and \$25.00 court costs
 - Appearance required
 - ii. 304.6-5. *Nuisance*, 3rd offense
 - \$500.00 fine and \$25.00 court costs
 - Appearance required
5. The Defendant did not appear at the first citation pre-hearing on August 19, 2021, which was continued and rescheduled to September 16, 2021.
 - a. Prior to the first pre-hearing, the Defendant did not provide the Court with any written notice to contest the violations, payment of the citation, or settlement agreement with Petitioners.
 - b. Before the start of the first pre-hearing, the Court received a phone call from a person calling on behalf of the Defendant to verify the start time of the hearing and ensure the Court had the Defendant’s correct telephone number. The telephone number provided by the caller was the same number listed on each of the four citations.
 - c. During the first pre-hearing, the Court made four attempts to call the Defendant at the telephone number listed on each of the citations and each attempt went directly to voice mail.
6. The Defendant did not appear at the rescheduled citation pre-hearing on September 16, 2021.
 - a. Prior to the rescheduled pre-hearing, the Defendant did not provide the Court with any written notice to contest the violations, payment of the citation, or settlement agreement with Petitioners.
 - b. During the rescheduled pre-hearing, the Court made three attempts to call the Defendant at the telephone number listed on each of the citations and the Defendant did not answer.

7. The Defendant was found in default for failure to appear at the rescheduled citation pre-hearing.

PRINCIPLES OF LAW

Oneida Code of Laws, Title 3. Health and Public Safety – Chapter 304 Domestic Animals

304.6. Dogs and Cats

304.6-4. *Running at Large.* An owner shall not allow a dog or cat to run at large by being any place except upon the premises of the owner, unless the dog or cat is crated, penned, or on a leash under the control of a person physically able to control the animal.

- (a) A stray dog or cat running at large may be referred to the Oneida Police Department or Oneida Conservation Department.

304.6-5. *Nuisance.* An Oneida Police Officer or Oneida Conservation Warden may pick up and impound a dog or cat that has been found to be a nuisance. A dog or cat shall be found to be a nuisance if the actions of the dog or cat:

- (a) resulted in two (2) or more verified disturbances due to excessive barking and/or other noise by the animal, or the animal running at large; and/or
- (b) resulted in one (1) or more verified disturbance due to threatening behavior by the animal running at large.

Amended Domestic Animals Law Fine, Penalty, and Licensing Fee Schedule, BC Resolution # 05-13-20-C

BE IT FURTHER RESOLVED, the issuance of a citation for a third offense or more on the fine and penalty schedule shall require the mandatory appearance of the offender at the Trial Court’s citation pre-hearing.

Oneida Code of Laws, Title 8. Judiciary - Chapter 807 Citations

807.4-3. *Form of Citation.* A citation shall contain the following information:

- (e) A notice to appear at a date, time and place for the citation pre-hearing, and a statement as to whether the appearance at the pre-hearing is mandatory.
- (h) Notice that failure to satisfy a fine, restitution, or any other part of the judgment, may result in per capita attachment, wage garnishment, revocation, suspension of any rights, privileges, licensures, and/or any other action authorized by law and/or other collection processes available to the Court.

807.4-4. *Service of a Citation.* The defendant is served with a citation when one of the following occurs:

- (a) Personal Service. The citation is provided to the defendant directly by the officer, or a copy of the citation is left at the defendant’s home or usual place of abode by the officer:
 - (1) in the presence of a competent family member at least fourteen (14) years of age who shall be informed of the contents of the citation;

807.6-1. Citation Pre-Hearing.

- (a) Appearance at the pre-hearing shall be mandatory only when a law, policy, rule, or resolution of the Nation requires a mandatory appearance for that specific violation of law.
- (c) If a person wishes to contest the citation, the person shall provide notice to the Court in one (1) of the following manners:
 - (1) appear at the pre-hearing to contest the citation; or
 - (2) if an appearance is not mandatory, send written notice to the Court, with a copy to the Oneida Law Office, prior to the pre-hearing notifying the Court that the defendant wishes to contest the citation.
- (f) If a defendant does not appear at the pre-hearing or submit written notice that he or she is contesting the citation when there is a non-mandatory appearance, and the defendant has not entered into a stipulation or paid the fine and/or penalty as listed on the citation, the Court may proceed to enter a default judgment.
 - (1) A default judgment may include any fine amount due, restitution, suspension of any rights, privileges, or licensures, and/or any other penalty authorized by law.
 - (2) Unless otherwise noted by the Court, a defendant shall have ninety (90) days to satisfy a default judgment by paying any fine and/or complying with any condition or penalty ordered.

807.6-3. Appeals of the Court's Determinations. Any person wishing to contest the determination of the Court may appeal to the Nation's Court of Appeals in accordance with the Rules of Appellate Procedure.

1.5 Default Judgment.

1.5-3. If the Trial Court finds that proper notice was provided, the Trial Court may enter judgment against the party that failed to appear. The Trial Court, in its discretion, may require a party to produce sufficient evidence to support a judgment against the other party.

ANALYSIS

A person who receives a citation marked as "mandatory appearance" must appear in court. A default judgment may be entered against a defendant who fails to appear if the Court finds that proper notice was provided. A default judgment may include any fine amount due, restitution, suspension of any rights, privileges, or licensures, and/or any other penalty authorized by law.

Here, the Defendant was provided two opportunities to appear in court to enter a plea or meet with Petitioner's attorney to attempt to reach a settlement. To begin, the Defendant's first citation pre-hearing was held on August 19, 2021. Proper notice was provided to the Defendant. Proper service of a citation requires the police officer to leave the citation at the Defendant's home in the presence of a competent adult who resides in the home. In this case, an Oneida

Police Officer went to the Defendant's home on July 7, 2021 and hand-delivered the four citations to the Defendant's spouse, Mr. Brandon Blackowl. The same date and time of the citation pre-hearing was listed on each of the four citations. Three of the four citations were marked as mandatory court appearances. Because the citations were hand-delivered by the police officer to an adult family member present and residing at the Defendant's home, service was proper. Additionally, a defendant is given instructions on the back of the citation form for payment and court information. The first instruction listed on the back of the citation states:

Mandatory Appearance[.] If your citation is marked "Yes" under the "Appearance Required," you **MUST** appear in Court.

In this case, three of the four citations issued to the Defendant were marked as mandatory appearances. Mandatory appearance citations require the Defendant to appear in Court where they may dispute the violations or discuss their case with the Petitioner's attorney to work out a settlement. The Defendant did not appear, however, before the first pre-hearing started, the Court received a phone call from a person calling on behalf of the Defendant to verify the starting time of the hearing and to make sure the Court had the Defendant's correct telephone number. During the hearing, the clerk made four attempts to call the Defendant at the number listed on each of the citations and each attempt went directly to voice mail. Although the Defendant did not appear, the Court did not find the Defendant in default for her non-appearance after considering circumstances occurring prior to the start of the hearing and the Petitioner's request to continue the hearing. Thus, the pre-hearing was continued and rescheduled to September 16, 2021 to give the Defendant another opportunity to appear in court

Then, at the rescheduled pre-hearing on September 16, 2021, the Defendant did not appear. Proper notice was provided by the Court when it mailed the continuance order on August 19, 2021 to the Defendant with information that the Defendant's citation pre-hearing was rescheduled. During the rescheduled pre-hearing, the clerk made three attempts to call the Defendant at the telephone number listed on each of the citations and the Defendant did not answer. Mandatory appearance citations can only be resolved by first appearing in court. Unlike the first pre-hearing when it seemed likely that a phone call made on behalf of the Defendant ahead of the hearing indicated that Defendant intended to appear, here, the Defendant provided the Court with no responses or phone calls ahead of the hearing. Additionally, one of the four citations is a non-mandatory appearance citation. A non-mandatory appearance allows the Defendant to resolve the citation before the pre-hearing by paying the fine, meeting with Petitioner's attorney to reach a settlement, or sending a written notice notifying the Court of the Defendant's intention to contest the violation. Here, the Defendant did not provide the Court with any responses prior to both the first and rescheduled pre-hearings to resolve the non-mandatory appearance citation. Instructions on the back of each citation explain that when a defendant does nothing, "the Court may enter a default judgment which may include, but is not limited to, any fine amount that is due, restitution and/or suspension of any rights, privileges or

licensures with the Oneida Nation.” Because the Defendant did nothing to resolve any of the four citations, even though the Defendant was provided two opportunities to appear in court to discuss the citations or work out an agreement with Petitioner’s attorney, the Court finds the Defendant in default for failing to appear at her rescheduled citation pre-hearing.

Generally, a defendant must satisfy a default judgment within 90 calendar days. Here, the Petitioner requested the Defendant be given 180 calendar days to pay in full the fines and court costs. The sum of Defendant’s total fines and court costs is \$1,750.00. The request was granted to give the Defendant more time to satisfy the judgment.

In conclusion, the Defendant’s appearance in court was mandatory for three of the four citations issued to her. The only way the Defendant can resolve her mandatory appearance citations is to appear in court. The Defendant did not appear. Additionally, the Defendant did nothing to resolve her non-appearance citation prior to both the first and rescheduled pre-hearings and did not appear at any of the pre-hearings. Therefore, the Court enters a default judgment.

ORDER

1. A default judgment is entered in favor of Petitioner and against the Defendant in the following amounts:

a) May 16, 2021, total fines and court costs = \$700.00

i. 304.6-4. <i>Running at Large</i> , 3 rd offense	
Fine	\$ 500.00
Court costs	\$ 25.00
Amount owed by Defendant	\$ 525.00

ii. 304.6-5. <i>Nuisance</i> , 2 nd offense	
Fine	\$ 150.00
Court costs	\$ 25.00
Amount owed by Defendant	\$ 175.00

b) May 26, 2021, total fines and court costs =\$1,050.00

i. 304.6-4. <i>Running at Large</i> , 4 th offense	
Fine	\$ 500.00
Court costs	\$ 25.00
Amount owed by Defendant	\$ 525.00

ii. 304.6-5. <i>Nuisance</i> , 3 rd offense	
Fine	\$ 500.00
Court costs	\$ 25.00
Amount owed by Defendant	\$ 525.00

2. The total amount due is \$1,750.00, payable to the Oneida Judiciary within 180 calendar days from the date this Order is signed. Failure to pay is subject to the Nation's laws and remedies.
3. The parties have the right to appeal in accordance with the Nation's laws.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council an Order was signed on September 21, 2021.

Patricia Ninham Hoeft, Trial Court Judge