

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

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**TRIAL COURT**

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**Oneida Nation / Oneida Police Department,**  
**PLAINTIFFS;**

**CASE NO: 22-CT-032**

**v.**

**David DeCoteau,**  
**DEFENDANT.**

**DATE: December 2, 2022**

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**DEFAULT JUDGMENT**

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

*Appearing In-person:* Attorney Kelly McAndrews, representing Plaintiffs.

*Non-appearance:* Defendant, David DeCoteau.

**BACKGROUND**

In accordance with 3 O.C. 309.6-1, Defendant was issued one citation for the offense of Disorderly Conduct. On November 17, 2022, a citation pre-hearing was held.

**FINDING OF FACTS**

1. The Court has subject matter, personal and territorial jurisdiction over this matter.
2. Defendant received proper notice of this hearing.
3. A citation pre-hearing was held on November 17, 2022.
  - a. Defendant did not appear.
  - b. Prior to this hearing, Defendant did not pay the fine, file written notice of their intention to contest the citation, nor did Defendant enter into a stipulation with the Nation's attorney.
  - c. Defendant was issued the following citation for an incident on September 9, 2022:
    - i. Disorderly Conduct – 1<sup>st</sup> Offense.
    - i. This citation did not require an appearance.
4. Oneida Police Department (OPD) officer hand-delivered the citation to Defendant. The citation correctly listed the date, time, and location of the citation pre-hearing, and instructions for how to pay the fine or dispute the charge.
5. Defendant was found in default for failure to appear.

**PRINCIPLES OF LAW**

O.C. Title 3, Health and Public Safety - Chapter 309 Public Peace:

O.C. Title 3. Health & Public Safety – Chapter 309 Public Peace

309.6. Civil Infractions Against the Peace

309.6-1. *Disorderly Conduct*. A person commits the civil infraction of disorderly conduct if he or she engages in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance. A civil infraction of disorderly conduct may include, but is not limited to, the following behaviors:

(c) makes or causes to be made any loud, disturbing or unnecessary sounds or noises which may annoy or disturb a person of ordinary sensibilities;

(1) Between the hours of 10:00 p.m. and 6:00 a.m. any excessive noise shall be prohibited.

O. C. Title 8. Judiciary – Chapter 807 Citations:

807.6-1. *Citation Pre-Hearing*.

(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.

O.C. Title 8. Judiciary – Chapter 801 Judiciary, Rule #1 – Oneida Tribal Court Rules

1.5 Default Judgment

1.5-1. If a party fails to appear at any Trial Court matter, the Court shall confirm and be satisfied that proper notice was provided.

1.5-2. If the Trial Court finds that proper notice was not provided, the matter shall be rescheduled. The Trial Court may make orders or give instructions on further service or notice efforts to occur before the rescheduled hearing.

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.

O.C. Title 8. Judiciary – Chapter 803 Oneida Judiciary Rules of Civil Procedure

803.29-6. *Setting Aside a Default or a Default Judgment*. The Court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 803.33-2 within one (1) year of entry of default or default judgment.

803.33-2. *Grounds for Relief from a Final Judgment, Order, or Proceeding*. On motion and just terms, the Court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(a) Mistake, inadvertence, surprise, or excusable neglect;

- (b) Newly discovered evidence that, with reasonable diligence, could not have been discovered;
- (c) Fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (d) The judgment is void;
- (e) The judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (f) Any other reason that justifies relief

### ANALYSIS

Defendant was cited for one violation of 3 O.C. 309.6-1, disorderly conduct, stemming from his conduct on September 9, 2022 where it was reported he was standing outside in front of a neighbor's house, yelling and shouting obscenities at the neighbors. The Court may enter a default judgment after finding the following: first, the Defendant failed to appear at the citation pre-hearing; second, the Defendant was properly notified about the scheduled pre-hearing; and finally, the Nation's Attorney sufficiently showed evidence to support a default judgment.

First, Defendant did not appear for the pre-hearing and did nothing prior to the hearing to respond to the citation. Prior to the pre-hearing, Defendant did not pay the fine, provide written notice to the Court of his intent to contest the citation, or enter into a stipulation with the Nation's authorized attorney. Second, Defendant was properly notified about the pre-hearing date, time and location. After resolving the disruption caused by Defendant in his neighborhood, the OPD officer hand-delivered the citation to Defendant. The citation included the date, time, location, and instructions about how to pay the fine or dispute the charge. Finally, at the pre-hearing, the Nation's attorney provided a police report and testified that officers from the Oneida Police Department (OPD) were dispatched to the Defendant's neighborhood in response to a call from a neighbor about Defendant's yelling and shouting. While investigating, the Nation's attorney claimed that when Defendant refused a police officer's order to identify himself, Defendant was handcuffed and placed in the police vehicle until another police officer arrived to conduct a fingerprint scan to obtain Defendant's identification. Defendant was released after agreeing to identify himself before a scan could be used. The Nation's attorney asserted that Defendant's conduct caused a disturbance requiring police to respond and intervene to resolve the disturbance. Because Defendant's conduct created the possibility of disrupting the safety of the neighborhood, the Nation's attorney claimed the Defendant's behavior warranted disorderly conduct.

As a result, the Nation's attorney motioned the Court to enter a default judgment for the full amount of the fine and court costs. Because the Defendant did not appear, did nothing prior to the pre-hearing to pay the fine or enter into a stipulation with the Nation's attorney, and the Nation's attorney produced sufficient evidence supporting the disorderly conduct charge, the Court grants the motion for a default judgment. Under O.C. 803.33-2, Defendant may seek to set

aside a default judgment by filing a motion with the Court within one year after entry of this final judgment.

Thus, the Court grants a default judgment described below.

**ORDER AND DEFAULT JUDGMENT**

A default judgment is entered in favor of Plaintiffs and against Defendant in the amount as follows:

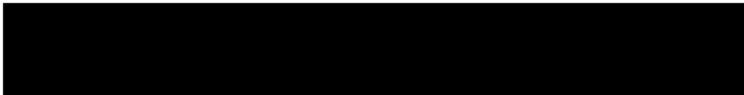
**Disorderly Conduct– 1<sup>st</sup> Offense – 309.6-1**

Fine:	\$250.00
Court Costs:	<u>\$ 25.00</u>
<b>Total Amount owed by Defendant:</b>	<b>\$275.00</b>

The total amount due is payable to the Oneida Judiciary **within 60 calendar days** from the date this default judgment is signed. Failure to pay is subject to the Nation’s laws and remedies.

**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 this Order is signed on December 2, 2022.



Patricia Ninham Hoeft, Trial Court Judge/