

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Oneida Nation / Oneida Police Department,
PLAINTIFFS;

CASE NO: 22-CT-037

v.

Marcus D. Skenandore,
DEFENDANT.

DATE: February 24, 2023

DEFAULT JUDGMENT

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

Appearing In-person: Attorney Krystal John, representing Plaintiffs. *Non-appearance:*
Defendant, Marcus D. Skenandore.

BACKGROUND

On November 23, 2022, Defendant was issued a citation for Possession of Prohibited Drugs – 1st Offense, 3 O.C. 309.9-8. A citation pre-hearing was held on February 16, 2023, at 9:00 a.m.

FINDING OF FACTS

1. The Court has subject matter, personal and territorial jurisdiction over this matter.
2. Defendant was personally served notice of this hearing.
3. A citation pre-hearing was held on February 16, 2023, at 9:00 a.m.
 - 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 November 23, 2022:
 - i. Possession of Prohibited Drugs – 1st Offense, required Defendant's appearance at the citation pre-hearing.
4. Oneida Police Department (OPD) officer personally 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.L. Title 3. Health and Public Safety - Chapter 309 Public Peace

309.9. Civil Infractions Involving Alcohol, Tobacco, and Drugs

309.9-8. *Possession of Prohibited Drugs.* A person commits the civil infraction of possession of prohibited drugs if he or she possesses or consumes a prohibited drug or is in possession of any drug paraphernalia.

O.C.L. 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.L. Title 8. Judiciary – Chapter 801 Judiciary, Rule #1 – Oneida Trial 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.

1.5-3. 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.L. 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 Possession of Prohibited Drugs, 3 O.C.L.309.9-8, on November 23, 2022 when the car Defendant was driving was stopped by an Oneida Police Department officer. 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. Under 8 O.C.L. 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.

First, Defendant did not appear for the pre-hearing and did nothing prior to the hearing to respond to the citation. Second, Defendant was properly notified about the pre-hearing date, time, and location. Finally, at the pre-hearing, the Nation's attorney asserted that the police officers at the scene observed an odor of marijuana inside Defendant's vehicle. Because Defendant did not appear at the citation pre-hearing and did nothing prior to the hearing to pay the fine or enter into a stipulation with the Plaintiff's attorney, the Plaintiff's attorney motioned the Court to find Defendant in default and enter a default judgment for the full amount of the fine and court costs.

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:

Possession of Prohibited Drugs – 1st Offense – 3 O.C.L. 309.9-8

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

The total amount due is payable to the Oneida Judiciary **within 90 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 was signed on February 24, 2023.



Patricia Ninham Hoeft, Trial Court Judge