

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

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**TRIAL COURT**

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**Lori A. Elm,**  
**Petitioner;**

v.

**CASE NO: 23-TC-001**

**Oneida Business Committee,**  
**Respondent.**

**DATE: March 22, 2023**

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**ORDER**

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

*Non-Appearance:* Petitioner, Lori A. Elm; Respondent, Oneida Business Committee.

**BACKGROUND**

On February 16, 2023, Petitioner filed a complaint, paid the \$50.00 filing fee, and was provided a summons that scheduled a hearing on the complaint on March 21, 2023. At the March 21, 2023 hearing, neither party appeared.

**ANALYSIS**

A party who files a claim is required to do three things: First, the party must provide (to serve) the other party with a copy of the claim along with a summons; next, the party must give the Court proof that the summons and complaint were served to the other party; and finally, the party must appear at the hearing on the date listed on the summons. Here, Petitioner filed a claim on February 16, 2023, paid the filing fee, and received a summons. The summons required the parties to attend a hearing on March 21, 2023. Petitioner was required, under O.C.L. 803.5-3, to serve the complaint and summons on the Respondent within 30 calendar days after receiving the summons. The 30-day timeframe expired on March 18, 2023. Because service was not

completed by Petitioner, the Court cannot hear this claim until the Respondent is served with the summons and complaint. Additionally, O.C.L. 803.5-6(b) requires a party to file proof of service with the Court within 10 calendar days after serving the Respondent with the summons and complaint. Here, as of March 21, 2023, the Court did not receive proof of service from Petitioner. The Court also did not receive an answer from Respondent that would indicate they received the complaint and summons. Thus, the Court cannot hear this matter because service was not completed.

On March 21, 2023, the hearing was conducted and neither party appeared. Under O.C.L. 803.29-1, parties are required to appear before the Court at any scheduled hearing or proceeding unless the party was granted prior permission from the Court to be excused. Here, it's likely Respondent did not appear because Petitioner did not provide them with a copy of the complaint and summons. However, Respondent's appearance is not at issue in this case. When the party who filed a claim does not appear, the Court may dismiss the claim. Under O.C.L. 803.29-3, the Court may dismiss a claim when a party who filed the claim fails to appear, plead, or prosecute their claim and find the party in default. Because Petitioner is the party who filed the claim and did not appear or receive the Court's permission prior to the hearing to be excused, the Court finds Petitioner in default and dismisses the claim without prejudice.

### **FINDINGS**

**The Court finds as follows:**

1. The Court has subject matter and personal jurisdiction over this matter.
2. Petitioner received proper notice.
3. A pre-trial hearing was held on March 21, 2023, at 10:00 a.m.
  - a. Both Petitioner and Respondent did not appear.
4. On February 16, 2023, Petitioner filed a claim, paid the \$50.00 filing fee, and was issued a summons to give notice to Respondent requiring them to attend a hearing on March 21, 2023.
5. As of March 21, 2023, the Court did not receive the following:
  - a. a request from Petitioner seeking permission to be excused from the March 21, 2023 hearing; and

- b. answer from the Respondent indicating Petitioner served them with the summons and complaint.

## PRINCIPLES OF LAW

### Oneida Code of Laws Title 8. Judiciary – Chapter 803 Oneida Judiciary Rules of Civil

#### Procedure

**803.5-3. *Service.*** Within thirty (30) days after filing the summons and complaint with the Court, the plaintiff shall serve the summons and complaint upon the defendant in accordance with Rule

**803.5-6.** If the Tribe, or the officers, committees, commissions, boards, or any other department or division of the Tribe is a party, the plaintiff shall also serve notice to the Tribe's Secretary's Office within thirty (30) days.

(a) An additional thirty (30) days to serve the defendant may be requested and shall be in writing. The request may be granted by the Court upon a showing of good cause. The granting of this request is within the discretion of the Court.

(b) Proof of service shall be delivered, by the plaintiff, to the Court within ten (10) days of service upon the defendant. Proof of service shall be in accordance with Rule 803.5-6.

(c) If proof of service is not completed and/or delivered to the Court within thirty (30) days, or sixty (60) days if an extension is granted, then the Court shall, after notice to the plaintiff, dismiss the matter without a hearing. Such dismissal based on a failure to timely serve shall be without prejudice.

#### **803.29. Default; Default Judgment**

**803.29-1. *Appearance Required.*** Parties to a case are required to appear before the Court at any scheduled hearing or proceeding.

(a) A party may be excused from appearing with the permission of the Court if the party makes a motion seeking permission prior to the hearing or proceeding and shows good cause as to why the party's appearance is not necessary.

**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

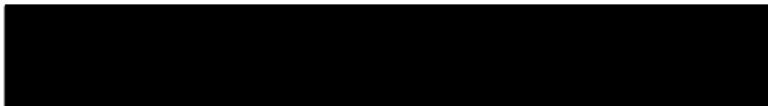
or on a party's motion, dismissing the claim. For purposes of this section, dismissal shall be treated as default.

**ORDER**

1. The Court finds Petitioner in default for failing to appear at the March 21, 2023 hearing.
2. Petitioner's claim is dismissed without 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 March 22, 2023.



Patricia Ninham Hoeft, Trial Court Judge

