

Oneida Tribal Judicial System

Onayote ? a-ka Tsi? Shakotiya? Tolé hte

September 10, 2013

Brian A. Doxtator
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Oneida, WI 54155

Edward J. Delgado
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RE: Docket #13-TC-124, In Re: Removal Petition Brian A. Doxtator vs Edward J. Delgado

Please find enclosed the Oneida Tribal Judicial System Decision filed on September 10, 2013, in the above captioned case. This correspondence is sent to the legal advocate/counsel of record, and Oneida Tribe Administration for enforcement, if necessary.

Should you have any questions regarding this correspondence, please do not hesitate to contact me.

Sincerely,



Kristina Danforth
Clerk of Court - Trial

Enc: Decision

c: File

Oneida Tribal Judicial System

Onayote ʔ aka Tsiʔ Shakotiyaʔ Tolé hte

TRIAL COURT

In re: Removal Petition Statement & Affidavit

**Brian A. Doxtator,
Petitioner,**

and

**Edward Delgado,
Respondent.**

Case No. 13-TC-124

DECISION

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Jean Webster, Sandra Skenadore, and James Van Stippen, presiding.

I. Background

This matter arises out of Petitioner's attempt to remove Chairman Edward Delgado in accordance with Chapter 4 of the Oneida Removal Law. Petitioner alleges that Chairman Delgado violated the Tribe's Code of Ethics and the Oath of Office in various ways including several instances where he authorized program action beyond policy and procedure. As we describe below, the Petitioner's allegations either have not been proven with clear and convincing evidence or do not constitute a violation of Chapter 3. Therefore, we find the Petitioner has not shown there are sufficient grounds for removal and we decline to forward the Petition to the General Council.

A. Procedural History

On August 7, 2013, the Oneida Tribal Judicial System, also known as the Oneida Appeals Commission, received the Removal Petition of Chairman Edward Delgado. The court has jurisdiction under Chapter 4 of the Removal Law which requires the Tribal Secretary to forward the Removal Petition to the Oneida Tribal Judicial System after the Tribal Secretary determined there was sufficient number of signatures. Sec. 4.5-6. A Preliminary review was held on August 21, 2013.

On August 16, 2013, Respondent filed "In the Matter of the Removal of Chairman Edward Delgado" with a list of Judicial Officers and why they should recuse themselves from this case.

On August 21, 2013, the preliminary review was held. Addressed at the preliminary review was Respondent's request for the recusal of the Judicial Officers and the issue of whether the petitioner filed timely. Also during the preliminary review both parties had the opportunity to address preliminary matters related to the petition.

Each Judicial Officer addressed the recusal request. According to the Oneida Tribal Judicial System Judicial Code, Article IV Disqualification/Recusal, a Judicial Officer shall disqualify themselves in a proceeding if their impartiality might reasonably be questioned. None of the Judicial Officers on the panel is closely related to or friends with Chairman Delgado or Mr. Doxtator, none of the Judicial Officers were involved with the removal effort, and none of the Judicial Officers signed the removal petition. We find no basis for our impartiality to be reasonably questioned. The court asked each party if there was any further objection and neither party objected; therefore, all three Judicial Officers remained on the case. Respondent's request for recusal of Judicial Officer Jean M. Webster, Judicial Officer Sandra L. Skenadore, and Judicial Officer James Van Stippen was denied.

We also addressed the issue of whether the Petition was timely filed. Respondent argued the requirement of Sec. 4.5-2 was not met because the last signature on the Petition was not obtained within 30 days of the first. Petitioner pointed to the fact that eight signatures were dated June 6, 2013, while the last signature was obtained on or about August 1, 2013, a span of about 56 days.

At the preliminary review on August 21, 2013, it was shown that the eight signatures were obtained on July 6, 2013, and misdated as being obtained on June 6, 2013. Petitioner presented evidence through affidavits of seven of the eight signers in question that they actually signed on July 6, 2013. In addition, evidence was presented that the Removal Petition forms had not yet been created as of June 6, 2013; therefore, it was impossible that the signers could have signed on that date. Respondent Chairman Delgado did not show any harm that came to him as a result of the misdated signatures. He did not rely on the date to his detriment. Petitioner established that the misdating was nothing more than a typographical error with no measurable consequence to the proceedings. Therefore, we found that signatures in question were obtained on July 6, 2013, and that the requirements of Sec. 4.5-2 were met.

After listening to both parties and considering the relevant evidence, the court found there were sufficient grounds for the process to move forward to a hearing. Sec. 4.6. A hearing was scheduled and held on September 5 and 6, 2013.

II. Issues

1. Did the Chairman Edward Delgado violate the Code of Ethic Secs. 3.3-3(a)(1)(2) and Sec 3.3-3(b)(2)(3) by directing the scores be reconsidered as related to the SEOTS Facility Proposal?
2. Did Chairman Edward Delgado violate the Code of Ethics Secs. 3.3-3(b)(2)(3) and Sec. 3.3-3(d) by giving approval to divulge sensitive strategic information to Bonnilake?
3. Did Chairman Edward Delgado violate GTC Resolution 2-25-82, GTC Resolution 1-17-98, and GTC approved Chairman Job Description by directing tribal management positions to act over and above their approved program procedures?
4. Did Chairman Edward Delgado violate the Oath of Office?

III. Applicable Law

Sec. 4.4 of the Removal Law lists the specific grounds upon which an elected official may be removed. Petitioner is relying on Sec. 4.4-1(f) which states that an elected official can be removed if a violation of a law is shown and the penalty for violation of that law is removal. Petitioner alleges the removal petition is based on Chairman Delgado's alleged violation of the Code of Ethics, Chapter 3 of the Oneida Law. That Law, Sec. 3.6-1(a), states that elected officials who are shown to have violated Chapter 3 are subject to removal.

A. Code of Ethics

Code of Ethics Sec. 3.3-3(a) states:

"A government official shall create and maintain an independent and honorable political system, and shall observe high standards of conduct toward achieving this goal, including, but not limited to"

Code of Ethics Sec. 3.3-3(a)(1) states:

"encouraging separation between department or entities of tribal government, and should avoid contact or duty that violates such a separation."

Code of Ethics Sec. 3.3-3(a)(2) states:

"avoid participation in action or decision making (except where participation is in accordance with the traditions of the Tribe) that would present an appearance of conflict of interest or an actual conflict of interest."

Code of Ethics Sec. 3.3-3(b) states:

"A government official should respect and comply with the law and tradition of the Tribe and should at all times act in a manner that promotes public confidence in the honesty and impartiality of government officials, including but not limited to"

Code of Ethics Sec. 3.3-3(b)(2) states:

"using prestige of the office to advance private interest of others"

Code of Ethics Sec. 3.3-3(b)(3) states

“conveying use of special influence or being specially influenced.”

Code of Ethics Sec. 3.3-3(c) states:

“A government official should use the following standards in relation to the duties of office”

Code of Ethics Sec. 3.3-3(c)(1) states:

“adhere to the laws, customs, and traditions of the Tribe”

Code of Ethics Sec. 3.3-3(d) states:

“Government officials and their administrative staff shall protect the privileged information to which they have access in the course of official duties, and be prudent in the use of information acquired in the course of their duties. Further, they should not use confidential information for any personal gain, or in a manner which would be detrimental to the welfare of the employer.”

IV. Findings of Fact

The Petitioner is Brian Doxtator, an Oneida Tribal Member. The Respondent is Chairman Edward Delgado, the duly elected Chairman of the Oneida Tribe.

During the two-day hearing the Petitioner alleged the Respondent was in violation of the Code of Ethics regarding the following issues: the South Eastern Oneida Tribal Services (SEOTS) Facility Proposal, divulging sensitive information to Bonnilake; and also directing management to act over and above their approved program procedures in relation to: A) providing firewood to a family sweat lodge, B) assisting an elder with car repair and tire replacement, C) overriding an eviction, D) authorizing utility payment from the Community Support Fund above the policy limit, and E) request for reconsideration of an intern application.

We start by noting that most, if not all, of the relevant facts are not in dispute. Chairman Delgado generally does not deny the facts in the Petition. What is in great dispute is whether the acts by the Chairman were in violation of Code of Ethics and the 1982 General Council Resolution.

A. SEOTS Facility Proposal

For years the Tribe had been attempting to construct a SEOTS Facility in Milwaukee. It is not clear whether this was in addition to the existing facility or to replace it. The Proposal was a Capital Improvements Project (CIP) and headed by the CDPC (Community Development Planning Committee) which is essentially a sub-committee of the Oneida Business Committee.

When the project was put out for bid through a Request for Proposal (RFP), the Bonnilake contractor did not receive the RFP because it was sent to an incorrect e-mail address. When the error was discovered, the time for all contractors was extended to submit bids. Only four bids were submitted including one from Bonnilake.

The Bonnilake proposal exceeded the construction budget by \$176,000 and had the lowest score. Their proposal lacked a lot of qualifications. The RFP was 17 pages, however Bonnilake's submitted a five-page response which did not compare favorably with other bids. Bonnilake submitted a second bid that was received two days after the RFP deadline. The CDCP provided a recommendation to the OBC; however, the OBC had some concerns. These concerns were forwarded to the CFO to review. This included the seconded Bonnilake proposal.

Respondent (Chairman) sent an e-mail on 12/31/12 encouraging the SEOTS Development Team to reconsider their scoring and further stated if the team did not take the responsibility seriously perhaps the Oneida Business Committee will have to.

Paul Witek, Senior Tribal Architect, noted in an e-mail dated 1/2/2013 to Respondent that the firm selected is required to work within the budget parameters the Tribe had set for the project and the firm with the highest score is awarded the work.

An e-mail from Wilbert Rentmeester, Development Division Director dated 5/9/2013 was sent to Respondent regarding concerns with the Bonnilake contract as currently written. He stated there were risks and abnormalities involved with the contract, and is recommending OBC against approving the contract without major modifications.

Witnesses testified they have a process to follow and look for action from the committee. Respondent (Chairman) was appointed by the Oneida Business Committee (OBC) to be on the negotiating team that involved Bonnilake.

On May 6, 2013 Diane House, Senior Policy Advisor to the Chairman, sent an email clarifying an accusation she made regarding a confidential memo that was to be sent by the Chairman's Office. Ms. House was informed by the Respondent he delegated Vince Dela Rosa, Council Member and Chairman of the CDPC team, to send the confidential memo to Mr. Bersch.

B. Firewood

The Tribe provides firewood to tribal members in certain situations. For example, elders and sweat lodges used for Wellness Programs can receive firewood. Elders receive it to use for heating; sweat lodges for ceremonial purposes. Because there is a limited supply of wood, the amount and type of wood and how it is distributed is regulated by policy.

A tribal member approached Environmental Health and Safety Area Manager, Pat Pelky, who oversees the Conservation Department, regarding firewood for a sweat lodge. According to policy, the request was denied. The individual then complained to the Chairman's office. (The name of the person was never introduced by Petitioner.)

The Chairman believed this sweat lodge should receive two cords of wood as it was viewed as a wellness program akin to ceremonial sweat lodges. Other wellness programs had received firewood in accordance with the policy. Mr. Pelky met with the Respondent and described the procedures for receiving firewood. Mr. Pelky explained why this sweat lodge could not receive firewood under the current policy. Mr. Pelky suggested to Respondent that if he wanted to recognize a member for a good job they have done in the community, a Certificate of Appreciation could be issued. The Conservation Department would then be able to deliver wood on the basis of the certificate issued by the Chairman's office and receive some firewood. Receiving wood based on a Certificate of Appreciation from the Chairman's Office would be in accordance with the Conservation Department's policy on firewood.

C. Assisting an elder with car repair and tire replacement

Respondent's office received notice that a tribal elder in the southwestern United States needed assistance in repairing his car so he could return to Green Bay in order to receive dialysis. Through medical documentation, the Chairman's Office verified that the elder should return to Green Bay for medical treatment.

On May 3, 2013, Respondent sent a message, through his Senior Policy Advisor as Respondent was out on travel, to the Governmental Services Director. Within the context of the memo it states, "I am directing you to assist this tribal elder in getting his car fixed so he can get his dialysis treatment here in Green Bay."

Under the policy of the program to which the elder was applying for financial assistance, only car repairs were eligible for funding. Financial assistance could not be provided for routine maintenance, such as tires. The elder was also seeking financial assistance to purchase tires. The elder was informed that the repairs would be paid for, but not the tires. Apparently the elder did not believe that he would be able to return to Wisconsin without the tires.

Three witnesses within the Governmental Services Division testified that the elder's request for assistance was granted in accordance with the policy. The elder's car was fixed, however, the request to provide tires was denied as this is considered routine maintenance. The elder was offered a plane ticket to fly back to Green Bay, but refused it.

The Chairman's Office did not direct anyone in the Governmental Services Division to go against policy or direct that the elder be awarded financial assistance to pay for new tires for his car.

D. Eviction

The Oneida Housing Authority maintains a transitional housing program for families who, for whatever reason, are facing difficulties and need a place to stay while getting back on their feet. While in the program, the family must follow certain requirements which are designed to have the family achieve economic self-sufficiency.

This issue concerns a family who had been living in the transitional housing program for approximately three years. The established limit for a stay at the transitional housing program is one year. Tenants were behind on their rent, utilities, and tenants were to develop a plan to maintain a constant source of income. After three years it was determined by the Director of Housing to terminate the family from the program. Terminating the family means they must leave the housing unit and if they refuse they will be evicted. (The name of the family was never introduced by Petitioner.)

At the time the family was to be evicted, the male member of the household had recently undergone back surgery and was essentially disabled during his recovery.

The family apparently contacted the Chairman's office. The Housing Department received a call from the Chairman's office requesting a meeting. The Housing Department was then informed the Chairman was going to override the decision to evict the family.

Scott Denny, the Housing Operations Manager at that time, requested the Chairman place the override decision in writing, which the Housing Executive Director and Housing Operations Manager later received.

Prior to the eviction, Housing was aware one of the tenants had received back surgery, but received medical information the individual's conditions were not as bad as being stated. The Housing Department has intake policies and procedures, as well as an eviction policy in place. Under the Eviction Policy the tenant may appeal the eviction decision to the Executive Director. If tenant is still dissatisfied the tenant may appeal the decision to the Oneida Tribal Judicial System.

No evidence was presented that the tenant had exercised either of these avenues.

E. Utilities payment

The Tribe maintains a program, called the Community Support Fund, through which tribal members with emergency financial needs can receive assistance with a limit of \$500.

Ms. Jean Penn, the administrator of the fund, had received a request from a family for assistance in restoring their electricity. The family had been without electricity for a week. The weather had been very hot. The family has seven minor children, the youngest of which was two years old. The family's request was denied because they were asking for \$600, but the policy limit is \$500. The family appealed the initial decision and was denied. The family had one more opportunity to appeal but failed to file for a final appeal. (The family's name was not introduced by the Petitioner.)

On July 3, 2013, Ms. Penn received notice from the Governmental Service Director Don White to contact the Chairman's office. Ms. Penn called the Chairman's office and talked with Kitty Melchert, Assistant to Chairman Delgado. Ms. Penn explained the situation stating that \$600 was needed to turn the electricity back on. Ms. Penn had contacted WPS and verified this amount. Ms. Penn stated that if the Chairman's office authorized her to go forward she would pay \$600 to WPS to get the family's power restored. Jean Penn did not actually speak to Chairman Delgado. Authorization was relayed through Kitty Melchert authorizing Ms. Penn to pay \$600 to have the electricity restored.

It was noted during testimony that Community Support was violating their own policy by implying that the \$500 limit could be exceeded by approval of the Chairman's Office.

F. Intern position

This issue involved a tribal member who applied for an intern position and was denied due to failing a drug test. The matter came to the attention of the Business Committee. The Business Committee directed Chairman Delgado to inquire of the HR Director, Geraldine Danforth, whether there was any room for reconsideration. Ms. Danforth told Chairman Delgado there was not. That was the end of the matter. Chairman Delgado did not attempt to influence a different decision or change the outcome. He simply inquired of Ms. Danforth about the issue as he had

been directed by the Business Committee. The name of the applicant was not introduced into evidence by the Petitioner.

V. Analysis

A. SEOTS Facility Proposal

The Respondent is alleged to have violated the Code of Ethics Sec. 3.3-3(a)(1)(2) and Sec. 3.3-3(b)(2)(3) which states governmental officials encourage separation between department or entities of tribal government; avoid participation in action or decision making that would present an appearance of or actual conflict of interest; using prestige of office to advance private interest of others; and conveying use of special influence or being specially influenced.

In the SEOTS Facility Proposal, the Community Development Planning Committee (CDPC) basically oversaw the project through the RFP (Request for Proposal) process. When the process was completed, CDPC forwarded their recommendation to the Oneida Business Committee. Respondent was selected by the OBC to be on the negotiating team. Testimony clearly stated the RFP with the highest score is awarded the project. However, there are numerous unanswered questions which cause this claim to fall short of meeting the clear and convincing standard necessary in order for this charge to be forwarded to the General Tribal Council. What is not clear is:

- Why did the Respondent ask for the scores to be reconsidered by the RFP team? Was the reconsideration a sole request from Respondent or was the reconsideration of the scores being asked by the entire OBC?
- Was Bonnilake's proposal one of the recommended proposals submitted to the OBC for consideration?
- Did the Respondent have some connection to Bonnilake?
- Did the Respondent influence the OBC to choose Bonnilake for this project when it is clear they received the lowest score?
- Why did Bonnilake submit a second RFP after the deadline to submit the RFP had passed?
- Was Bonnilake told to submit a second RFP?
- Was the Bonnilake's second proposal reviewed, if so by whom?

The answers to these questions would have shed more light on the entire Bonnillake/SEOTS situation. However, due to the lack of or insufficient evidence we do not have enough evidence before us to find by clear and convincing evidence that Sec. 3.3(a) or (b) have been violated by the Chairman.

B. Divulging sensitive information to Bonnillake

Did Respondent violate the Code of Ethics Sec. 3.3-3(b)(2)(3) and Sec. 3.3-3(d) which states it is prohibited for an elected official to use the prestige of the office to advance private interest of others, or to convey use of special influence or being specially influenced, and requires protecting privileged information, and to be prudent in the use of information and not using confidential information for personal gains.

Respondent was selected by the Oneida Business Committee to be a part of the negotiating team. Respondent was charged as the lead negotiator by the OBC and negotiating team. As part of negotiating the Bonnillake contract, the Chairman was authorized to divulge confidential information about Bonnillake to Bonnillake. Divulging what may be considered sensitive information to Bonnillake was within Respondent's responsibility. However, it is not clear how the Respondent violated the above mentioned Code of Ethics. Several questions remain unanswered:

- What sensitive information did the Respondent divulge?
- Did Respondent have a special relationship or connection with Bonnillake that would show that the Chairman was using his office to advance private interests?
- Did the Respondent influence the negotiating team during the negotiation process?

These questions remained unanswered and thus we conclude that Petitioner has not met his burden of proof of showing by clear and convincing evidence that the Code of Ethics was violated.

C. Directing management to act over and above their approved program procedures

Did Respondent violate GTC Resolution 2-25-82, GTC Resolution 1-17-98, and GTC approved Chairman Job Description?

During the hearing Petitioner focused on five incidents: 1) providing firewood for family sweat lodge; 2) assisting an elder with car repair and tire replacement; 3) an eviction of a couple from the transitional housing program; 4) authorizing a Community Support Fund payment beyond the \$500 policy limit; and 5) inquiring of the HR Director to reconsider an applicant who was denied an intern position.

Before discussing these incidents in detail, we make some general observations. Much was made during the hearing that the Chairman violated the Oneida General Tribal Council (GTC) prohibition on being involved in "day-to-day" affairs. Two sources were cited for the prohibition: Resolution 2-25-82 and by motion of the GTC at the January 17, 1998 annual GTC meeting. Resolution 2-25-82 does not prohibit Business Committee members from being involved in day-to-day matters; in fact, the words "day-to-day" do not appear in that resolution. The resolution directs the BC to hire a General Manager.

The minutes from the January 17, 1998 annual GTC meeting include the following entry:

VOTE ON THE MAIN MOTION: MOTION BY DEBBIE POWLESS TO APPROVE THE HRD PERSONNEL POLICY STATUS REPORT AND TO MAKE FURTHER CLARIFICATION THAT THE ONEIDA BUSINESS COMMITTEE'S INVOLVEMENT AND/OR ACTIVITY IS HEREBY RESTRICTED TO LEGISLATIVE POLICY DEVELOPMENT AND NOT IN DAY TO DAY PERSONNEL/HRD MATTERS INCLUDING RESTRICTION OF THEIR INVOLVEMENT ON VARIOUS COMMITTEES RELATED TO HRD AND PERSONNEL MATTERS OR ACTIVITY, SECOND BY CELENE ELM. FIVE ABSTENTIONS. MOTION CARRIED.

(Original in all caps.) January 17, 1998 Annual GTC meeting minutes, page 28.

Note that the language states the restriction applies to "day-to-day personnel/HRD matters." The presence of the words "personnel/HRD" qualifies and limits "matters." The prohibition on involvement in day-to-day matters is arguably limited to HRD and personnel matters.

In addition to the limited nature of the 1998 motion language, the motion does not make removal a penalty for violation of this GTC directive. Under the Removal Law, unless one of the specific grounds under Sec. 4.4 is met, removal is only allowed for violations of law where the penalty is removal. Therefore, even if Chairman Delgado were shown to have been involved in day-to-day

affairs, he could not be removed for that alone. (Petitioner also alleges that Chairman Delgado violated the Code of Ethics in these incident and that law does include removal as a penalty.)

In each of these situations, the Respondent and/or Respondent's office became aware of the situations through individuals contacting the Respondent or Respondent's office. In one case, the Chairman was directed by his colleagues to follow up with concerns. We point this out because it adds to the context of these issues by showing that Chairman Delgado did not actively seek to interfere or alter the functioning of the Tribe. Rather, he was reacting to constituent concerns and trying to find the best way to address the problem. This task is specifically identified in his job description which states the Chairman is to keep informed on major tribal problems and actively work to resolve these problems.

Finally, Petitioner asserts that Sec. 3.3-3(a)(1) was violated in each of these incidents. That section states that government officials shall encourage separation between departments or entities of tribal government and should avoid contact or duty that violates such a separation. Petitioner did not offer and is not clear or convincing to the panel what precise conduct this section is meant and how Chairman Delgado might have violated it. Therefore, we find that this section has not been violated with respect to any of the incidents and will not repeat this finding for each issue.

1. Firewood

With respect to the request for firewood for the family sweat lodge, Pat Pelky testified he met with the Respondent and explained the procedures the Conservation Department has in place to receive wood. Mr. Pelky further stated if one wanted to recognize a community member for their work they have done in the community a Certificate of Appreciation could be issued to receive firewood. This is what happened.

There was not any evidence that Chairman Delgado had a special connection to this family either by friendship or family relations therefore, Sec. 3.3-3(a)(2) was not violated. Sec. 3.3-3(b)(2) prohibits elected officials from using the prestige of their office to advance private interests. This would seem to be the only section which even would remotely apply to this situation.

However, no violation of this section occurred because there was no misuse of the Chairman's office: Pat Pelky told Chairman Delgado that a certificate of appreciation was an acceptable method that fit within the Conservation Department's policies. Finally, Sec. 3.3-3(c)(1), which requires adherence to the laws, customs and traditions of the Tribe, was not violated because there was no evidence presented that Chairman Delgado violated a law, custom or tradition.

2. Assisting an elder for car repair and tire replacement

The evidence presented on this issue weighed strongly in support of the conclusion that the elder seeking assistance for car repair and tire replacement received only the assistance that was allowed by the Community Support Services Fund policy and procedure. Car repair requests are eligible to receive financial assistance, but routine maintenance such as tire replacement, is not included. In the end, the evidence shows that the benefits received or offered were not above or beyond policy limits.

The Respondent sent an email on May 3, 2013, "directing" Don White, Governmental Services Division Director, to assist the tribal elder in getting his car fixed. This is not a misuse of government authority or involvement in day-to-day affairs; this is the Chairman directing someone to do his job.

The Court finds the Chairman's Office did not direct anyone in the Governmental Services Division to go against policy or direct that the elder be awarded financial assistance to pay for new tires for his car.

3. Eviction

The Housing Department decision to evict a tenant is within that agency's realm. Scott Denny, Housing Operations Manager, testified the tenants were part of the Transitional Living Program. Tenant generally stay in the program for a year. In this case, the tenants remained in the program for approximately three years. Tenants were obligated to pay rent, utilities and develop a plan to maintain constant source of income. Tenant failed to comply. Mr. Denny also noted they were aware the male tenant had undergone back surgery, but had received medical information the surgery was not as bad as being stated. The family apparently contacted the Chairman's office.

The Housing Department received a call from the Chairman's office requesting a meeting. The Housing Department was then informed the Chairman was going to override the decision to evict the family. Scott Denny, Housing Operations Manager, requested the decision to override be placed in writing. The Housing Executive Director and Housing Operation Manager did receive a written decision from the Chairman's office. As a point of notice, Mr. Denny testified Oneida Housing has a process in place relating to evictions. A tenant can appeal the eviction to the Executive Director. If tenant is dissatisfied with Executive Director's decision, tenant can file an appeal at the Oneida Tribal Judicial System.

It is not clear to the Court why the Respondent overrode Oneida Housing Authorities decision to evict the tenant. Petitioner failed to provide a copy of the memo from the Respondent and failed to ask the witness to identify the contents of the memo that stated why the Respondent was overriding Oneida Housing Authority decision. Not having this critical piece of information, the Court can only speculate the Respondent may have acted outside of his authority.

Furthermore, the family's name was not identified; therefore, there was insufficient evidence that Chairman Delgado had a conflict of interest with respect to this family. It is unknown whether these individuals were friends or family of the Chairman.

Did the Respondent act outside of his authority? Perhaps. But that is not the issue before the Court. The issue is whether Chairman Delgado violated Chapter 3 of the Oneida Code of Ethics. Just because a government official exercises authority in a case where not everyone agrees on that authority, doesn't mean the official was acting unethically. Sec. 3.3-3(b)(1) which prohibits the use of the prestige of the office to advance private interests, is the most relevant section in this instance. We do not view that section as applying to this conduct. The Chairman did not seek to use the honor of his office to enrich a friend or relative. Rather, he made a decision in the course of his regular duties as Chairman and as the supervisor of the Housing Director. Furthermore, it does not appear any law, custom or tradition was violated. In fact, it is arguable that our traditions require taking care of each other where possible.

Nevertheless, we are somewhat troubled that the Chairman appears to override a decision largely out of sympathy where medical documentation possessed by the Operations Manager supported the decision to terminate the family. The family had far exceeded the time limit set by policy and there was an established process in place for appeals. Families regularly use the Oneida Tribal Judicial System to try to prevent evictions. We urge the Chairman to use caution in this type of situation in the future.

4. Utilities

A family of seven children had been without electricity and was requesting utility assistance available through the Community Support Services Fund. The utility assistance was initially denied. The requestor appealed and the decision was again denied. The requestor had one more level to appeal to, however, failed to file a final appeal.

On July 3, 2013, Ms. Penn received notice from the Governmental Services Division Director Don White to contact the Chairman's office. Ms. Penn reached the Chairman's Assistant, Kitty Melchert by phone. Ms. Penn explained the maximum amount allowed for utilities was \$500, but \$600 was needed to turn the electricity back on. Ms. Penn stated to Ms. Melchert that if the Chairman's office authorized her to go forward she would pay \$600 to WPS to get the family's electricity restored. Jean Penn testified she did not actually speak to Chairman Delgado only to his Assistant. Jean Penn further stated the Community Support Services Fund was violating their own policy by implying that the \$500 limit could be exceeded by approval of the Chairman's Office.

Was the Respondent acting outside of his authority in approving Community Support to exceed the maximum amount allowed for utilities? Before the Court could find a violation by clear and convincing evidence, the Court needed such information as:

- Why didn't the Governmental Services Division Director resolve this issue or authorize the payment?
- Did the CSSF case manager contact WPS to see if a payment plan could be worked out as stated in Sec. 4.1 of the CSSF Standard Operating Procedure?

Without this information, it appears to the court that Jean Penn was looking for someone to give her authorization and authorization to exceed the maximum amount allowed to restore the electricity.

These facts do not support a clear and convincing finding that Chairman Delgado violated the Code of Ethics. The name of the family was not presented as evidence; therefore there is no support for a finding of a conflict of interest. Chairman Delgado did not use the prestige of his office to advance a private interest. He was responding to a request by a family to prevent the suffering of children. Ms. Penn's concern for this family was admirable. This was a very difficult situation for everyone involved. We do not believe it was a violation of ethics to prevent harm or injury to children. The amount of money involved is also a factor. The excess amount was \$100. This is a relatively small amount. Ms. Penn receives 15 or 20 requests per day and this is the only one in which Chairman Delgado's office authorized money beyond the policy limit.

If Petitioner had shown a pattern of exceptions or some abuse of the office such as favoring friends or family or if there was evidence of an expectation by the Chairman to receive something in exchange then maybe ethics would be in play. But instead the evidence shows us an elected official making a difficult decision to prevent harm or injury by authorizing a small exception to the established policy that was suggested by the case manager. It was not imposed by the Chairman's Office.

5. Intern inquiry

The Oneida Business Committee directed the Chairman to inquire about an intern applicant who had failed a drug test and therefore did not receive the position. The Business Committee wanted to see if any reconsideration was possible. At the direction of the Business Committee, Chairman Delgado asked about reconsideration and Geraldine Danforth, Human Resource Area Manager provided the answer. The answer was that reconsideration was not possible. There was absolutely no evidence that Chairman Delgado sought to change Ms. Danforth's position or otherwise improperly influence her. There was no evidence on this issue remotely supporting a violation of Chapter 3.

VI. Conclusions of Law

Burden of Proof

In accordance with the Removal Law, 4.7-2 states: "Burden of Proof. A person seeking the removal of an elected official shall have the burden of proving by clear and convincing evidence that ground(s) for removal exist."

Clear and convincing evidence is defined in the Blacks Law Dictionary as: "Clear and convincing proof. That proof which results in reasonable certainty of the truth of the ultimate fact in controversy." "Proof which requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt." "Clear and convincing proof will be shown where the truth of the facts asserted is highly probable."

A. SEOTS Facility Proposal

The Petitioner has not proven by clear and convincing evidence that Respondent has violated the Code of Ethics Sec. 3.3-3(a)(1) and (2) and Sec. 3.3-3(b)(2) and (3). Petitioner failed to show by clear and convincing evidence why the Chairman's request for reconsideration of scores was improper, was the request to reconsider the scores acted solely upon by the Respondent or by direction of the OBC, was Bonnilake's seconded proposal ever reviewed and if so by whom; therefore the Court dismisses Fact #1.

B. Divulging sensitive information to Bonnilake

The Petitioner has not proven by clear and convincing evidence that Respondent has violated the Code of Ethics Sec. 3.3-3(b)(2) and (3) and Sec. 3.3-3(d). Petitioner failed to show through testimony and evidence what sensitive information, if any, was divulged to Bonnilake or how the Respondent was acting out of his authority as the lead negotiator. The Court dismisses Fact #2.

C. Directing management to act over and above their approved program procedures

The Petitioner has not proven by clear and convincing evidence that Respondent has violated GTC Resolution 2-25-82, GTC Resolution 1-17-98, and GTC approved Job Description. Petitioner failed to show how the Respondent was acting in violation of Chapter 3 in regards to: request for firewood, elder tribal request for assistance for car repair and tire replacement, tenant eviction, utility request, an intern inquiry. The court dismisses Fact #3.

D. Oath of Office

The court notes for the record, the Petitioner's original filing also included the Respondent has violated the Oath of Office. During the two day hearing, the Oath of Office was never addressed directly or indirectly by the Petitioner; therefore, the court cannot rule as to how the Respondent may have violated the Oath of Office.

Employee Protection

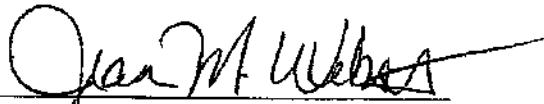
Petitioner requested that the court provide employee protection for the witnesses. If a witness believes they should receive employee protection as a result of this hearing, the witness shall proceed with their request in accordance with the Employee Protection Policy, Article V. Protection; therefore Petitioner's request for the court to provide employee protection for the witnesses is denied.

VII. Decision

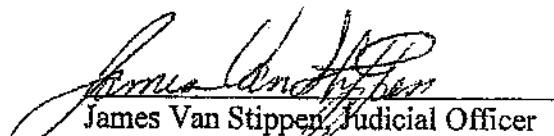
The court finds the Petitioner has failed to meet the burden of proof by clear and convincing evidence and whether the allegations constitute sufficient grounds for removal; therefore the Petitioner's request for removal is dismissed.

IT IS SO ORDERED.

By the authority vested in the Oneida Tribal Judicial System pursuant to Resolution 8-19-91A of the General Tribal Council a hearing held on September 5 and 6, 2013 and decision signed on September 10, 2013, in the matter of Brian Doxtator v Edward Delgado, Docket Number 13-TC-124.


Jean M. Webster, Lead Judicial Officer


Sandra L. Skenadore, Judicial Officer


James Van Stippen, Judicial Officer