

**RECEIVED**

JAN 13 2015

ONEIDA TRIBAL JUDICIAL SYSTEM  
TRIAL LEVEL

ONEIDA JUDICIARY

Clerk of Court:

Michael T. Debraska, Leah Sue Dodge,  
Franklin Cornelius, John G. Orie,  
Bradley Graham, Petitioners

**NOTICE OF MOTION and MOTION**

**Docket #14-TC-173**

**Date: January 14, 2015**

Oneida Business Committee, Oneida Law  
Office, Oneida Election Board, Respondents

**RECEIVED**

JAN 14 2015

**MOTION FOR RECUSAL**

**ONEIDA LAW OFFICE**

Petitioners hereby motion for the recusals of Judicial Officers Jean Webster, Kathy Hughes and Chris J. Cornelius from this case because these are the original Hearing Officers that the December 18, 2014 Appellate Body Decision (Exhibit A) found to have

1. Arbitrarily and capriciously denied relief without explanation and without addressing Petitioners' claim for a declaratory ruling (pages 4-5);
2. Failed to provide an answer to the Petitioners' requests (page 6); and
3. Denied the Petitioners' due process rights by failing to conduct a hearing on the issues presented (page 7) as the Law requires.

Judicial Officers Jean Webster, Kathy Hughes and Chris J. Cornelius thereby intentionally and/or incompetently violated the Petitioners' civil rights and right to due process so blatantly via their August 21, 2014, Trial Body Decision that the Petitioners justifiably have no confidence in the Trial Body's ability nor will to properly and impartially adjudicate this case which the Appellate Body has remanded back to the Trial Body.

Further, it would be inappropriate for this case to be forwarded to the Oneida Tribal Judiciary due to the issues surrounding and the very validity of their own election.

Therefore, Petitioners hereby exercise their right to request that the Trial Body Hearing Officers be selected from the pool of Wisconsin Tribal Judges Association, and Petitioners further assert rights to participate in the selection of judges under *voir dire*, same as a jury trial, to eliminate any possible or potential bias or collusion by the judges in rendering a decision in this matter/case fairly and equitably. Further, Petitioners reserve the right to bring a petition in this matter should an adverse ruling be made as all administrative and legal remedies would have been exhausted at that point and General Tribal Council will become the final arbiter of this matter.

Petitioners immediately reject the participation of Stockbridge-Munsee member David Raasch due to his unnecessarily taking nearly six (6) years to render a clearly flawed decision in a grievance matter involving Petitioner Dodge (Menominee Tribal Court Case 03-CV-09, Leah Sue Dodge v. Menominee Indian Tribe of Wisconsin), and make their objection on the basis that justice delayed is justice denied, and injustice prolonged is intolerable.

Signed this 14th day of January, 2015

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Leah Sue Dodge, Petitioner, on behalf of Co-Petitioners  
Michael T. Debraska, Franklin Cornelius, John G. Orie and  
Bradley Graham

c/o Leah Sue Dodge

# ***Oneida Tribal Judicial System***

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**EXHIBIT A**  
**Page 1 of 9**

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## **APPELLATE COURT**

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**Michael T. Debraska, Leah S. Dodge,  
Frank Cornelius, John Orie,  
Bradley Graham,  
Appellant**

**Docket No. 14-AC-012**

**vs.**

**Oneida Business Committee,  
Oneida Election Board,  
Oneida Law Office,  
Respondent**

**Date: December 18, 2014**

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## **DECISION**

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This case has come before the Oneida Tribal Judicial System, Appellate Court. Judicial Officers Janice L. McLester, Pro Tem Robert Miller, Winnifred L. Thomas, Pro Tem James Van Stippen and Stanley R. Webster presiding.

### **I. Background**

This case arises out of a dispute involving the Special Election of the judges for the new Judiciary enacted by the General Council on January 7, 2013. Specifically, Appellants complained that the Special Election must also include a polling place in Milwaukee. The Trial Court denied the requested relief. On August 22, 2014, the day before the election, Appellants, Michael T. Debraska, Leah S. Dodge, Frank Cornelius, John Orie, and Bradley Graham filed an appeal of the trial court decision, Docket No. 14-TC-173 of August 21, 2014 alleging it to be

# EXHIBIT A

## Page 2 of 9

arbitrary and capricious and erroneous. We took jurisdiction and issued a stay of the election. While the appeal was pending, the Oneida Business Committee authorized a Milwaukee polling place for the Special Judicial Election. We subsequently lifted the stay. The issue with respect to the Special Judicial Election is moot as the election has been held and the new judges sworn in. However, we remand this case to the Oneida Tribal Judicial System, Trial Court for it to issue a decision on Appellants' request for a declaratory ruling.

### *A. Jurisdiction*

This case comes to us as an appeal of an original hearing body, the Oneida Tribal Judicial System, Trial Court. Any person aggrieved by a final decision in a contested case can seek Oneida Tribal Judicial System review under Sec. 1.8-1 of the Oneida Administrative Procedures Act.

### *B. Factual Background*

On August 20, 2014, the Appellants, Michael T. Debraska, Leah S. Dodge, Franklin Cornelius, John Orie and Bradley Graham, filed a class action as representatives of the Oneida General Tribal Council, seeking an Injunction/Restraining Order against Respondents, Oneida Business Committee (OBC), Oneida Election Board (OEB) and the Oneida Law Office (OLO). Relief requested 1) a temporary restraining order for the postponement of the August 23, 2014 Special election to a future date, the election include the SEOTS polling site and 2) a Declaratory Ruling that all Business Committee and Judiciary elections include the SEOTS polling site.

On August 20, 2014, Oneida Tribal Judicial System, Trial Court consisting of Judicial Officers, Jean Webster, Chris Cornelius and Kathy Hughes deliberated. On August 21, 2014 the OTJS-TC body issued their decision dismissing and denying the Appellant's request for an Injunction/Restraining Order of the August 23, 2014 Judiciary election. The OTJS-TC found there was no substantiated evidence to support irreparable harm, a requirement in Oneida Tribal Judicial System, Rules of Civil Procedure, Rule 31(E)(1) & (2) Preliminary Injunctions and Temporary Restraining orders: *parties must establish and the Court must find there is a*

## EXHIBIT A

### Page 3 of 9

*it has no adequate remedy at law; and will suffer irreparable harm if the injunction is not issued.*

The OTJS-TC failed to respond to the Declaratory Ruling relief requested by Petitioners in Docket No. 14-TC-173.

On August 22, 2014, Appellants appealed to the Oneida Tribal Judicial System, Appellate body alleging the decision of the OTJS-TC to be arbitrary and capricious and erroneous.

#### *C. Procedural Background*

On August 22, 2014, the Initial Review Body, consisting of Judicial Officers Janice L. McLester, Winnifred L. Thomas, and Stanley R. Webster, of the Oneida Tribal Judicial System, Appellate Court met and accepted the appeal for review, in accordance with Rules of Appellate Procedure, Rule 9(D)(4): *The decision is arbitrary and/or capricious. A decision is arbitrary and capricious when there has been a clear error of judgment and there is no rational connection between the facts found and the ruling made.*

A Stay was placed on the August 23, 2014 Special Election until final adjudication of the appeal.

On August 28, 2014, the Oneida Business Committee passed Resolution 8-28-14-A “Authorizing an Exception to Conducting the Special Election to Elect Judges for New Judiciary to Include Polling Places both in Oneida and Milwaukee.” On August 29, 2014, Respondents filed a Motion to Lift the Stay on the Special Election.

On September 5, 2014 this Appellate body lifted the stay based on the Business Committee’s decision to provide a polling place in Milwaukee. With the Oneida Business Committee Resolution 8-28-14-A, this issue had been resolved with respect to this election; however, the Resolution enacted by the Business Committee still left unanswered the larger legal issue for future elections. The remaining issues in this case were to continue as previously ordered.

# EXHIBIT A

## Page 4 of 9

On November 10, 2014, an exchange of briefs was completed.

On November 17, 2014, the Appellate Review body consisting of Judicial Officer Janice L. McLester, Robert Miller (Pro Tem), James Van Stippen (Pro Tem), Winnifred L. Thomas and Stanley R. Webster deliberated to review the merits of the appeal and now files its decision to remand this case to the Oneida Tribal Judicial System, Trial Court for review of Appellants' request for Declaratory Ruling.

### II. Issues

**Was the decision of the Oneida Tribal Judicial System, Trial Court arbitrary and capricious?**

### III. Analysis

**Was the decision of the Oneida Tribal Judicial System, Trial Court arbitrary and capricious?**

Yes, it was arbitrary and capricious in that it essentially denied relief without addressing Petitioners' claim for a declaratory ruling.

Previous case law sets out the arbitrary and capricious standard:

Under the arbitrary and capricious standard, a reviewing court must consider whether an original hearing body's decision was based on consideration of relevant facts and evidence and whether there had been a clear error of judgment. The court may reverse only when the original hearing body offers a decision so implausible that it could not be attributed to the evidence and facts presented. Thus, the scope of review under the standard is narrow, and a court may not substitute its judgment for that of the original hearing body. O-Tech Solutions, LLC, Mr. Curtis Danforth v. Oneida Bingo & Casino, Oneida Indian Preference, Docket No. 10-AC-017, (12-10-10).

In this case the Appellants (Petitioners at the Trial Court) in their original filing had requested a

## EXHIBIT A

### Page 5 of 9

Declaratory Ruling from the Trial Court in Docket No. 14-TC-173. The Trial Court failed to answer this relief request and therefore essentially denied the request without explanation. Under arbitrary and capricious standard “*a reviewing court must consider whether an [original hearing body’s] decision was based on a consideration of the relevant factors or whether there has been a clear error of judgment*”. The Trial Court failed to provide consideration or reasoning of the Petitioner’s request for a Declaratory Ruling. No hearing/record of the Declaratory Ruling request was made by the Trial Court. This would have enabled the Appellate Court to review upon appeal.

The *O-Tech Solutions, LLC* case states that the Appellate Court may not substitute a judgment of the trial court, unless the relevant facts of evidence or a clear error of judgment is presented. The Appellate Court can only overturn if the agency committed a clear error of judgment. There was no decision (other than the denial of relief) made by the Trial Court to provide the Appellate Court for review.

Under Oneida Tribal Judicial System, Rules of Civil Procedure, Rule 33 Declaratory Ruling and Declaratory Judgment:

(A) *Definitions*

- (1) *Declaratory Ruling: A declaratory ruling is a decision by an agency hearing body or the OTJS trial court which established the applicability of any ordinance or rule enforceable by the agency to any person, property, entity, or other state of facts.*
- (2) *Declaratory Judgment: A declaratory judgment is a decision by the OTJS trial court or appellate court (if the original trial court declaratory judgment is later appealed) and will determine the validity of any Ordinance/Rule or its proposed application.*
- (3) *Both Declaratory Rulings and Judgments are made outside the context of a pending case. Issues of the application of a law or the validity of a law raised in pending litigation shall be settled by the trial court or appellate court assigned to resolve that pending dispute.*

(B) *Declaratory Rule Procedure*

- (A) *Petitioner whose status, rights, duties, or other responsibilities under any Rule or Ordinance may petition the agency with enforcement*

## EXHIBIT A

### Page 6 of 9

*authority over the Rule/Ordinance in question or the OTJS trial court in order to settle the question raised. Priority of resolution forum shall lie with the agency if the agency has an established hearing body.*

On August 20, 2014, the Appellants (Petitioners) filed a request for an Injunction/Temporary Restraining Order against the Respondents to postpone the August 23, 2014 Special Election and inclusion of the SEOTS polling site. They also requested a Declaratory Ruling that all Business Committee and Judiciary elections include the SEOTS polling site. The Trial Court answered the Injunction/Restraining Order by denial. The Declaratory Ruling request was not answered by the Trial Court.

On August 21, 2014 the Trial Court denied the injunction for failure to provide substantiated evidence to support irreparable harm in accordance with Oneida Tribal Judicial System, Rules of Civil Procedure, Rule 31 Preliminary Injunctions and Temporary Restraining Orders, (E)(1) and (2):

- (E) *Issuance of a Preliminary Injunction: A Preliminary Injunction is an injunction issued by the Court enjoining a party from taking action pending the outcome of a case and meeting the requirement of this subpart (E).*
  - (1) *A party seeking a Preliminary Injunction must establish and the Court must find:*
    - a. *A likelihood of success on the merits;*
    - b. *That it has no adequate remedy at law; and*
    - c. *That it will suffer irreparable harm if the injunction is not issued.*
  - (2) *If Petitioner meets the requirements of (1), the court must then consider any irreparable harm that would come to the Respondent by issuing the injunction and whether the preliminary injunction would harm or benefit the public interest.*

On August 22, 2014, the Appellants' appealed the decision of the Trial Court and requested this Appellant body issue a Declaratory Ruling on having all Oneida Business Committee and Judiciary elections to include the Milwaukee SEOTS polling site. The Original Hearing body, Trial Court, serves as the first formal dispute resolution forum. The Original Hearing body, Trial Court, hears witness testimony, receives documents, and makes the initial findings of fact and conclusions of law. The Trial Court failed to provide an answer to the Appellants' request

## EXHIBIT A

### Page 7 of 9

By the Trial Court's failure to conduct a hearing on issued presented, we find a denial of their due process rights was made. No hearing was held. The Oneida Tribal Judicial System, Rules of Civil Procedure, Rule 21 Record of Proceedings:

- (A) To include: The record of the contested case or civil action shall include the following:
  - 1) All pleading, motions, orders, and intermediate rulings; and
  - 2) All evidence received or considered; and
  - 3) All statements of matters officially noticed; and
  - 4) All questions and offers of proof, objections and rulings thereon; and
  - 5) All proposed findings and exceptions; and
  - 6) All decisions, opinions or reports of the trial court officers; and
  - 7) A complete record of the hearing itself, either in the form of written transcripts or audio recordings or both.
- (B) Open Record: The record of all hearings and matters shall be available except where they are prohibited from disclosure by these rules or court order.

In respect to the Appellants (Petitioner's) request for Declaratory Ruling, the Trial Court failed to conduct a hearing, no record was made. Within the founding General Tribal Council Resolution, 8-19-91-A, which established the Oneida Tribal Judicial System (Oneida Appeals Commission) it indicates:

*"Whereas, the Indian Civil Rights Act of 1968, 25 USC Section 1301-1303 supports the policy that all Indian Tribes exercising powers of self-government shall insure that individual rights are protected and that people have a right to "petition for redress of grievances".*

It is wiser and more judicially sound process for the Appellate Court to have the benefit of the Trial Court decision when considering issues that will have impact beyond the specific election in this case.

The Original Hearing body, Trial Court, serves as the first formal dispute resolution forum. The Original Hearing body, Trial Court, hears witness testimony, receives documents, and makes the initial finding of fact and conclusions of law. It would be a mistake for us to proceed without the benefit of the Trial Court's ruling.

# EXHIBIT A

## Page 8 of 9

### IV. Decision

The case is thereby remanded to the Oneida Tribal Judicial System, Trial Court in accordance with Rules of Appellate Procedure, Rule 19 Reversal Affirmance of Modification:

- (A) *Powers of the Appellate Court: Upon appeal from a judgment or order from an original hearing body decision, the appellate court of the Oneida Tribal Judicial System may:*
  - (2) *Remand the matter to the trial court or original hearing body and order a new trial/hearing on any or all issues presented; the order returning a case shall contain specific instructions for the trial court or original hearing body.*

The Trial Court shall conduct further proceedings consistent with this opinion within thirty (30) days including issuing a decision on the Appellant's (Petitioner's) request in Docket No. 14-TC-173 of a Declaratory Ruling that all Business Committee and Judiciary elections (all significant elections) include the SEOTS polling site.

This in accordance with Oneida Tribal Judicial System, Rules of Civil Procedure, Rule 33(B)(1) Declaratory Rule Procedure.:

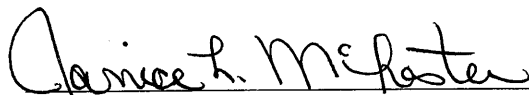
#### *Declaratory Rule Procedure*

- (1) *A Petitioner whose status, rights, duties, or other responsibilities under any Rule or Ordinance may petition the agency with enforcement authority over the Rule/Ordinance in question or the OTJS trial court in order to settle the question raised. Priority of resolution forum shall lie with the agency if the agency has an established hearing body.*

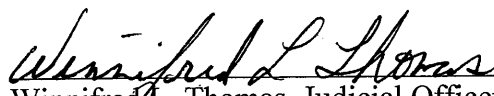
It is so ordered.

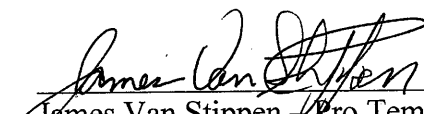
**EXHIBIT A**  
**Page 9 of 9**

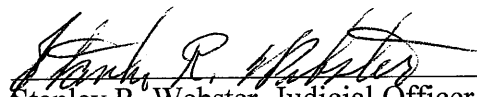
By the authority vested in the Oneida Tribal Judicial System, Appellate Court pursuant to Resolution 8-19-91A of the General Tribal Council it is so held on this 18<sup>th</sup> day of December, 2014, in the matter of Michael T. Debraska, Leah S. Dodge, Frank Cornelius, John Orie, Bradley Graham vs. Oneida Business Committee, Oneida Election Board, Oneida Law Office, Docket number, 14-AC-012.

  
Janice L. McLester, Lead Judicial Officer

  
Robert Miller – Pro Tem Judicial Officer

  
Winnifred L. Thomas, Judicial Officer

  
James Van Stippen – Pro Tem Judicial Officer

  
Stanley R. Webster, Judicial Officer