

# *Oneida Tribal Judicial System*

Onayote 7 a-ka Tsi7 Shakotiya7 Tolé hte

February 27, 2015

Michael T. Debraska,  
Franklin L Cornelius,  
John Orie,  
Bradley Graham,  
c/o Leah Sue Dodge  
P.O. Box 95  
Oneida, WI 54155

Oneida Business Committee,  
Oneida Election Board,  
Oneida Law Office  
Attorney Patricia Stevens Garvey  
P O Box 109  
Oneida, WI 54155

RE: Docket #14-TC-173, Michael T. Debraska, Franklin L Cornelius, Leah Sue Dodge, John Orie and Bradley Graham vs. Oneida Business Committee, Oneida Election Board and Oneida Law Office

Please find enclosed the Oneida Tribal Judicial System Decision – Motion for Recusal filed on February 26, 2015, 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 Trial Court

Enc: Decision

c: Secretary, Oneida Business Committee  
File

# ***Oneida Tribal Judicial System***

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## **TRIAL COURT**

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

**Docket No: 14-TC-173**

**v.**

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

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## **DECISION MOTION FOR RECUSAL**

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This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Jean M. Webster, Kathy Hughes, and Chris J. Cornelius, presiding.

The above-captioned matter came before the Oneida Tribal Judicial System for a hearing on the 16<sup>th</sup> day of January 2015.

*Appearing in person:* Petitioners, Leah Sue Dodge and Bradley Graham; Respondents represented by Attorney Patricia Garvey-Stevens, Oneida Law Office.

At the hearing on January 16, 2015, the Trial Court issued a verbal decision stating the Court denied the Petitioners Motion for Recusal. Upon issuing a written decision, Judicial Officer, Chris J. Cornelius noted she concurs in part with the Courts decision and dissents in part with the Courts decision. Judicial Officer, Chris J. Cornelius dissenting opinion is noted at the conclusion of this decision.

### **Background**

On August 22, 2014, the Petitioners filed an appeal with the Appellate Court in regards to the Trial Court's decision of August 21, 2014.

On December 18, 2014, the appellate court issued their decision and remanded this matter back to the trial court stating in part: *"The trial court shall conduct further proceedings consistent with this opinion within thirty (30) days including issuing a decision on the Appellant'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."*

On December 29, 2014, the Trial Court issued an Order noticing the parties a hearing was scheduled for January 16, 2015 in regards to the Petitioner's request for a Declaratory Ruling.

On January 13, 2015, the Petitioners filed a Motion for Recusal.

### **Analysis**

On January 16, 2015 a hearing was held. The Motion for Recusal was addressed first. Both parties had an opportunity to address the Petitioner's Motion for Recusal.

#### *Petitioners' Arguments*

1. Petitioners argue the Trial Court intentionally and/or incompetently violated the Petitioners' civil rights and right to due process. Petitioners also state they have no confidence in the Trial Court's ability to properly and impartially adjudicate their case that was originally filed on August 20, 2014; therefore, the Petitioners motioned to have the all three judicial officers recuse themselves from hearing this case.
2. Petitioners argue it is not fair the Law Office represents the Oneida Business Committee, Oneida Election Board and themselves and that a separate entity should be representing the Respondents; therefore, the Petitioners ask for the Law Office recusal.
3. Petitioners argue it would be inappropriate for the new Judiciary to adjudicate this case as the original filing pertained to the Judiciary election. Subsequently, the Petitioner did not

understand why the new Judiciary Judges were present at the hearing.

4. Petitioners request Judges be selected from the Wisconsin Tribal Judges Association and that Petitioners participate in the selection of the judges under voir dire.

#### *Respondents' Arguments*

1. Respondents argue the Petitioners have not alleged sufficient bias for the Judicial Officers to recuse themselves from this case.
2. Respondents argue the only reason the Appellate Court stated the case was arbitrary and capricious was because the Trial Court did not rule on the Petitioners' request for a Declaratory Ruling regarding the SEOTS polling site and elections.
3. Respondents do not understand why the Law Office is a party in this claim and why the new Judiciary Judges were present.
4. Respondents argue the motion should not be allowed to come forward. Rule 24 of the Rules of Civil Procedure, specifically Rule 24 I (B) speaks about motions being brought forward; therefore, the Respondents do not consent to the motion being brought forward.

#### **Conclusion of Law**

##### **Representation**

Petitioners claim it was not fair the Oneida Business Committee, Oneida Law Office and Oneida Election Board should be represented by the Oneida Law Office. Petitioner asserts Respondents should retain counsel from an outside entity; therefore Petitioners request they be recused from this case.

The Court was not persuaded by Petitioners' request for Respondents' attorneys to be removed from the case. The right to choose one's attorney is fundamental. Under the Rules of Civil Procedure, Rule 10 Parties, specifically Rule 10 (D)(1)-(4), informs the parties they are entitled to retain counsel or legal representation. Obtaining counsel or legal representation is the sole responsibility of the parties and it is at their expense. Petitioner has not presented any compelling reason why Respondents' are not entitled to their choice of counsel.

Furthermore, the regulation of counsel is governed by the Oneida Tribal Judicial System rules for "Admissions to Practice." There is no allegation Respondents' attorney was not properly admitted. If an Attorney or an Advocate wishes to represent a party before this court, they would need to apply and meet the conditions outlined in the Admissions to Practice and take an Oath of Office before being granted permission to practice in the Oneida Tribal Judicial System.

The Court denies the Petitioners' request as the Petitioners failed to cite in specific as to why Attorney Garvey-Stevens should not be allowed to represent the Respondents.

#### New Judiciary (Trial Court Judges)

Both parties agree they did not understand why the New Judiciary (Trial Court Judges) sat in on this case. The newly elected Tribal Court Judges were merely *observing* the trial. They did not participate in any kind of dialogue with the parties or the Court before or after this case.

#### Recusal of Oneida Tribal Judicial System-Trial Court

The Petitioners note the Appellate Court found the Tribal Court's decision of August 21, 2014 was arbitrary and capricious. Petitioners further claim Judicial Officer Jean M. Webster, Kathy Hughes, and Chris Cornelius intentionally and/or incompetently violated the Petitioner civil rights, right of due process, and have no confidence in the Judicial Officers to properly and impartially adjudicate the case. Although the Petitioners made their argument, the Petitioners failed to cite any law to substantiate their argument.

The Respondents argue the Petitioners have not alleged sufficient bias for the recusal of the three Judicial Officers and claim the Petitioner's Motion for Recusal did not follow Rule 24 of the Rules of Civil Procedure; therefore, the Respondent does not consent in allowing the Motion for Recusal to be accepted.

The Rules of Civil Procedure, Rule 24 Hearing Procedures, specifically Rule 24 I (B) and Rule 24 I (B) 1) state:

- Rule 24 I (B) states: "*Pending Motions: All pending motions are resolved prior to the*

*commencement of the full hearing body.”*

- Rule 24 I (B) 1) states: *“Motion filed less than five (5) days prior to the hearing will only be considered and decided with consent of the non-moving party and the opportunity of both parties to argue the merits of the motion or motions.”*

The Court denies the Petitioners’ Motion for Recusal as the Petitioners failed to cite a particular law(s) the Judicial Offices could not properly and impartially adjudicate the case. Furthermore, the Petitioner’s failed to follow the Rules of Civil Procedure, Rule 24 Hearing Procedure specifically Rule 24 I (B) and Rule 24 I (B) 1) when filing their motion.

Baseless allegations of bias and incompetence are not grounds for recusal.

#### **Decision**

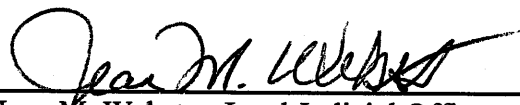
The Court finds in favor of the Respondents. Petitioners’ Motion for Recusal is denied with prejudice.

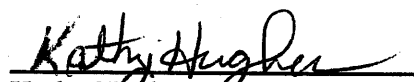
#### **CONCURRING IN PART, DISSENTING IN PART**

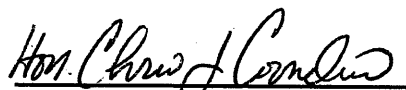
I, Judicial Officer, Chris J. Cornelius concur with the decision to deny the Petitioners Motion for Recusal based solely on the Rules of Civil Procedure, Rule 24. The Respondent stated they did not consent to the Motion for Recusal which was submitted by the Petitioners less than five (5) days before the trial date. In my opinion, this makes the Petitioners argument for recusal moot; therefore, respectfully, I dissent in part.

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 was held on January 16, 2015 and the Order regarding the Motion for Recusal was signed on the 26<sup>th</sup> day of February, 2015, in the matter of Michael T. Debraska, Leah Sue Dodge, Franklin Cornelius, John Orie, and Bradley Graham v Oneida Business Committee, Oneida Election Board, and Oneida Law Office, Docket Number 14-TC-173.

  
Jean M. Webster, Lead Judicial Officer

  
Kathy Hughes, Judicial Officer

 (concur in part)  
Chris J. Cornelius, Judicial Officer