



**LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**  
Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
October 17, 2018 9:00 a.m.

**I. Call to Order and Approval of the Agenda**

**II. Minutes to be Approved**

1. October 3, 2018 LOC Meeting Minutes (pg. 2)

**III. Current Business**

1. Harvest Law (pg. 4)
2. Sanctions and Penalties Law (pg. 9)
3. Employee Protection Policy Amendments (pg. 99)
4. Children's Code (pg. 120)

**IV. New Submissions**

1. Petition: Dallas – Special Per Capita Payments and/or Options (pg. 126)
2. Petition: Cathy L. Metoxen – Oneida Youth Leadership Institute (pg. 127)
3. TAP Laws and Policy Subcommittee Memorandum (pg. 128)

**V. Additions**

**VI. Administrative Updates**

1. Landlord Tenant Rule No. 1 (pg. 136)

**VII. Executive Session**

**VIII. Recess/Adjourn**



**LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES**  
Oneida Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
October 03, 2018  
9:00 a.m.

**Present:** David P. Jordan, Kirby Metoxen, Ernest Stevens III, Daniel Guzman King

**Excused:** Jennifer Webster

**Others Present:** Maureen Perkins, Kristen Hooker, Brandon Wisneski, Clorissa Santiago, Jennifer Falck, Evander Delgado, Leyne Orosco, Bonnie Pigman

**I. Call to Order and Approval of the Agenda**

David P. Jordan called the October 3, 2018 Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Ernest Stevens III to approve the agenda as is; seconded by Kirby Metoxen. Motion carried unanimously.

**II. Minutes to be Approved (:26 -:47)**  
**September 19, 2018 LOC Minutes**

Motion by Kirby Metoxen to approve the September 19, 2018 Legislative Operating Committee meeting minutes and forward to the Oneida Business Committee for consideration; seconded by Ernest Stevens III. Motion carried unanimously.

**III. Current Business**

**IV. New Submissions**

**1. Boards, Committees, and Commissions Bylaws (:48-2:07)**

Motion by Ernest Stevens III to add the following boards, committees, and commissions to the Active Files List: Oneida Gaming Commission, Oneida Land Claims Commission, Oneida Nation Commission on Aging, Oneida Nation School Board, Anna John Resident Centered Care Community Board, Environmental Resource Board, Oneida Community Library Board, Oneida Nation Arts Board, Oneida Police Commission, Oneida Powwow Committee, Pardon and Forgiveness Screening Committee, Southeastern Oneida Tribal Services Advisory Board; seconded by Kirby Metoxen. Motion carried unanimously.

**V. Additions**

**VI. Administrative Items**

**1. Rescission of Dissolution of the OPC Resolution E-poll Results (2:09-2:44)**

Motion by Kirby Metoxen to enter the e-poll results into the record; seconded by Ernest



Stevens III. Motion carried unanimously.

**2. Personnel Commission Bylaws E-poll Results (2:47-3:02)**

Motion by Ernest Stevens III to enter the Oneida Personnel Commission Bylaws e-poll results into the record; seconded by Kirby Metoxen. Motion carried unanimously.

**3. Active Files List Update Memo (3:04-7:19)**

Motion by Kirby Metoxen to approve and forward to the Oneida Business Committee; seconded by Ernest Stevens III. Motion carried unanimously.

Motion by Kirby Metoxen to remove the Military Service Employee Protection Policy from the Active Files List; seconded by Ernest Stevens III. Motion carried unanimously.

Motion by Ernest Stevens III to remove the Oneida Personnel Policies and Procedures from the Active Files List; seconded by Kirby Metoxen. Motion carried unanimously.

Motion by Kirby Metoxen to remove the emergency designation from the Employee Protection Policy amendments; seconded by Ernest Stevens III. Motion carried unanimously.

Motion by Ernest Stevens to remove the emergency designation from the Oneida Judiciary Rules of Civil Procedure amendments; seconded by Kirby Metoxen. Motion carried unanimously.

**4. GTC Petition Process (7:20-7:28)**

Motion by Ernest Stevens III to approve and forward to the Oneida Business Committee for consideration; seconded by Kirby Metoxen.

**VII. Executive Session**

**VIII. Adjourn**

Motion by Ernest Stevens III to adjourn the October 03, 2018 Legislative Operating Committee meeting at 9:09 a.m.; seconded by Kirby Metoxen. Motion carried unanimously.



## Legislative Operating Committee October 17, 2018

# Harvest Law

|  |  |
|--|--|
| <b>Submission Date:</b> 6/6/18         | <b>Public Meeting:</b> N/A                           |
| <b>LOC Sponsor:</b> Ernest Stevens III | <b>Emergency Enacted:</b> n/a<br><b>Expires:</b> n/a |

**Summary:** *This item was requested by Rae Skenandore, who is interested in having laws and regulations that manage the harvesting and gathering of the Nation’s natural resources.*

**6/6/18 LOC:** Motion by Jennifer Webster to add Harvest Law into the active files list as a medium priority and Ernest Stevens III as the sponsor; seconded by Ernest Stevens III. Motion carried unanimously.

**8/13/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Clorissa Santiago, Brandon Wisneski, Kristen Hooker, Maureen Perkins, Laura Laitinen-Warren. The purpose of this meeting was to discuss whether to include the Harvest Law on the agenda for the pending September 27, 2018 community meeting potluck so as to get community input and ideas prior to drafting the Harvest Law. Based on LOC directive, drafting attorney will put together a notice packet for the LOC’s approval at its August 15, 2018 meeting, which will allow for notice of the community meeting potluck to be published in the Kalihwisaks on September 6th and September 20th of 2018.

**8/15/18 LOC:** Motion by Jennifer Webster to approve the notice packet and direct that a community meeting potluck be held on September 27, 2018 to get public input on the harvesting legislation; seconded by Kirby Metoxen. Motion carried unanimously.

**8/22/18:** *Work Meeting.* Present: Jennifer Falck, Maureen Perkins, Kristen Hooker, Anthony Kuchma, Patrick Pelky, Eugene Schubert, Lauren Hartman, Lori Elm, Melissa Johnson, Shad L. Webster, Eric Boulanger, Cathy Bachhuber. The purpose of this meeting was to collect input from various staff members of the Oneida Nation on the pending harvest legislation prior to drafting. The next steps will be to: (1) compile the input gathered at the meeting to present to the LOC in preparation for the September 27th community meeting potluck; (2) distribute copies of the compiled input to members of the work group in attendance and not in attendance at the meeting for consideration and use at future work meetings; and (3) send all work group members an invite to attend the September 27th community meeting potluck.

**9/27/18:** *Work Meeting.* Present: Jennifer Falck, Clorissa Santiago, Kristen M. Hooker, Fawn Billie, Brandon Wisneski, Maureen Perkins, Earnest Stevens III, David P. Jordan, Jennifer Webster, Kirby Metoxen. The purpose of this meeting was to: (1) provide the LOC with a summary of the August 22, 2018 Work Group Meeting that was held to collect information from the agencies most likely to be impacted by the legislation on the Who, What, Where, Why and How of the proposed Harvest Law; and (2) prepare the LOC for the Community Outreach Potluck Event on the proposed Harvest Law scheduled for September 27, 2018 at 5:00 p.m.

**9/27/18:** *Community Outreach Potluck Event.* Present: Clorissa Santiago, Kristen M. Hooker, Michelle Myers, David P. Jordan, Vanessa Miller, Mel Webster, Rae Skenandore, Lori Webster, Don McLester, Jameson Wilson, Barbara Cornelius, Fawn Billie, Diane Wilson, Kirby Metoxen, Ernest Stevens III, Jennifer Webster, Rosa Laster, Brandon Wisneski, Maureen Perkins, Jennifer Falck. This outreach event was scheduled in advance of the drafting process and was meant to be exploratory in nature – the purpose being to collect comments, opinions, and concerns from the community regarding the creation of a law that would govern the gathering and harvesting of the Nation’s natural resources. Nine (9) community members attended and 6 written comments received. The event began with a brief “LRO 101” Presentation by Jennifer Falck. Councilman Ernest Stevens III followed with an introduction on the pending Harvest Law and a brief explanation as to the purpose of the event. Councilman Stevens III then opened the floor for comments from the public on the Who, What and Why of the pending legislation. The next steps are to: (1) compile the information received from the potluck event, both orally and in writing; (2) provide summary notes from the potluck event that were received both orally and in writing to the community members included their email addresses on the sign-up sheet; and (3) present the oral and writing information collected from the potluck event, as well as the information collected during the August 22, 2018 Work Group meeting, to the LOC for consideration and directive.

**10/03/18:** *LOC Work Meeting.* Present: Jennifer Falck, Clorissa Santiago, Kristen M. Hooker, Brandon Wisneski, Maureen Perkins, David P. Jordan, Kirby Metoxen, Ernest Stevens III, Daniel Guzman King. The purpose of this meeting was to present the LOC with a summary of the information that was collected during: (1) the August 22, 2018 Work Group meeting that was held to collect input from various staff members of the Nation who may be impacted by a harvest law; and (2) the September 27, 2018 community outreach potluck event, with a subsequent written comment period, that was held to collect comments, opinions and concerns from the community regarding the creation of a law that would govern the gathering and harvesting of the Nation’s natural resources. Based on the information collected, the LOC decided that there may be a more efficient and effective way to protect the Nation’s natural resources and the harvesting culture. The next steps are to: (1) take formal action to remove the Harvest Law from the Active Files List; (2) draft a memo to Land Commission, ERB, Land Management, Natural Resource Department and EHSLD encouraging that processes/programming be put in place to address the harvesting of the Nation’s natural resources and the inclusion of the Nation’s descendants and non-tribal spouses, in harvesting, fishing, hunting, and trapping on

the Reservation; and (3) draft a follow up communication to the potluck attendees regarding the decision of the LOC.

**Next Steps:**

- Remove the Harvest Law from the Active Files List.
  
- Accept the Harvest Law Update Memo and Forward to the following for consideration:
  - Jameson Wilson, Environmental Resource Board Chair;
  - Rae Skenandore, Oneida Land Commission Chair;
  - Patrick Pelky, Environmental, Health Safety & Land Division Director and Division of Land Management Interim Director; and
  - Shad Webster, Natural Resources Department Director.



Oneida Nation  
Oneida Business Committee  
Legislative Operating Committee  
PO Box 365 • Oneida, WI 54155-0365  
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TO: Jameson Wilson, Environmental Resource Board Chairperson  
Rae Skenandore, Oneida Land Commission Chairperson  
Patrick Pelky, Environmental, Health, Safety & Land Division Director and  
Division of Land Management Interim Director  
Shad Webster, Natural Resources Department Director

FROM: David P. Jordan, Legislative Operating Committee Chairperson

DATE: October 17, 2018

RE: Harvest Law Update

On June 6, 2018, the Legislative Operating Committee (LOC) added the Harvest Law (“Law”) to its Active Files List. The addition of this Law was prompted by an agenda request from a community member who was interested in having laws and/or regulations in place that manage the harvesting and gathering of the Nation’s natural resources.

On August 22, 2018 a work group meeting was held to collect input from various agencies of the Nation that may be impacted by the pending legislation. In attendance at the work group meeting were representatives from the Natural Resources Department, the Division of Land Management, the Environmental Resource Board, the Oneida Police Department, the Legislative Reference Office and the LOC.

On September 27, 2018 a community outreach potluck event was held to collect comments, opinions and concerns from members of the community regarding the creation of a law that would govern the gathering and harvesting of the Nation’s natural resources. Along with their verbal comments, members of the community were invited to submit written comments during the potluck event by filling out a survey that was provided to them upon arrival. The LOC announced that it would be accepting written submissions from the community for a period of time following the potluck event. Nine (9) members from the community attended the potluck event and five (5) written submissions were submitted to either the LOC or the Legislative Reference Office.

On October 17, 2018, the LOC decided to remove the Harvest Law from the Active Files List. The LOC considers the harvesting and gathering of the Nation’s natural resources to be an important topic that needs to be addressed in a manner that sustains the Nation’s land and natural resources, while protects and promotes the culture upon which it is based. However, based on the information collected during both the work group meeting and the potluck event, the LOC does not believe, at least at this time, that the harvesting and gathering of the Nation’s natural resources should be addressed through legislation. Rather, the LOC feels that the Nation has sufficient and sophisticated enough resources within its various agencies to address this issue in a more effective manner. Thus, it recommends that you pursue programming on the harvesting and gathering of the Nation’s natural resources with due consideration being given to the community feedback the LOC received in support of allowing descendants and non-tribal spouses of Tribal Members free access to not only harvest and gather, but hunt, fish and trap, on the Reservation.

**Requested Action**

Pursue programming to address the harvesting and gathering of the Nation's natural resources.

A good mind. A good heart. A strong fire.





Legislative Operating Committee  
October 17, 2018

# Sanctions and Penalties Law

|                                      |                                |
|--------------------------------------|--------------------------------|
| <b>Submission Date:</b> 9/6/17       | <b>Public Meeting:</b> 10/4/18 |
| <b>LOC Sponsor:</b> Jennifer Webster | <b>Emergency Enacted:</b> n/a  |

**Summary:** *This item was carried over from the previous term. The original proposal was to develop a consistent process that would provide for members of the Oneida Business Committee and other Boards, Committees and Commissions to face sanctions for misconduct. Currently, the only penalty that OBC members may be subject to, is removal from office – meaning that less serious misconduct would either go unpunished or would result in a penalty that might be considered too extreme for a particular violation.*

**9/6/17 LOC:** Motion by Ernest Stevens III to add Sanctions and Penalties Law to the active files list with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

**9/6/17:** *Work Meeting.* Present: David P. Jordan, Jenny Webster Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Candice Skenandore, Maureen Perkins, Tani Thurner. Drafting attorney provided an update on the status of the Sanctions and Penalties law. Next steps will be: 1) pull the current draft back, 2) hold community meetings to understand what sanctions/penalties the community is interested in, 3) meeting with the boards/committees/commissions for input, and 4) holding work meeting with LOC to make policy decisions and choose next steps.

**11/1/17 LOC:** Motion by Kirby Metoxen to approve the 60 day active files list update and continue development of all the items on the active files list; seconded by Ernie Stevens III. Motion carried unanimously.

**11/1/17:** *Work Meeting.* Present: Carol Silva, Bonnie Pigman, Ed Delgado, Rachel Hill, Matthew Denny, Reynold Danforth, Kirby Metoxen, Rosa Laster, Clorissa Santiago, Candice Skenandore, Maureen Perkins, Jennifer Falck. Representatives from all the B/C/C's were invited to this meeting to provide input on what a Sanctions & Penalties Law might look like.

**12/6/17:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Clorissa Santiago, Jennifer Falck. The LOC reviewed and considered comments from the November 1, 2017, work meeting with boards, committees, and commissions. LOC began making policy decisions. Drafter will work on draft, and policy options, and bring materials back to LOC when ready.

**3/9/18:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Clorissa Santiago, Brandon Wisneski, Rosa Laster, Laura Laitinen-Warren. LOC reviewed the first draft of the law, and directed that the LRO schedule a community meeting, with a special invitation to members of boards, committees, and commissions, to discuss the proposed law.

- 3/16/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman, Ernest Stevens III, Clorissa Santiago, Brandon Wisneski, Cathy Bachhuber, Rosa Laster. The LOC reviewed the potential date for the community meeting, and directed the drafting attorney to schedule the community meeting for May 3, 2018, and to ensure the notice is published in the Kalihwisaks twice, an appointment is sent to all members of the LOC and boards, committees, and commissions, and that the Communications Department is included in the appointment so they can make efforts to communicate notice of the event.
- 4/2/18 LOC:** Motion by Jennifer Webster to accept the draft of the Sanctions and Penalties law and direct that a community meeting/potluck be held on May 3, 2018; seconded by Daniel Guzman King. Motion carried unanimously.
- 4/26/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Jennifer Falck. This was an LRO prep meeting to prepare a plan for the upcoming community meeting.
- 4/27/18:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Rosa Laster, Cathy Bachhuber, Tani Thurner. The purpose of this work meeting was to prepare for the upcoming community meeting.
- 5/2/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Jennifer Falck, David P. Jordan, Jennifer Webster. The LOC continued to prepare and discuss the upcoming community meeting.
- 5/3/18:** *Community Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Maureen Perkins, Carol Silva, Chad Wilson, Janice McLester, Gina Buenrostro, Winnifred Thomas, Brooke Doxtator, Ed Delgado, Oyanolu Adams, Michelle Braaten, Mark Powless, Cathy L. Metoxen, Carole Liggins, Madelyn Genskow. The purpose of this community meeting was to gain input on the proposed Sanctions and Penalties law.
- 5/11/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Daniel Guzman, Clorissa Santiago, Brandon Wisneski, Jennifer Falck. The purpose of this work meeting was to review the comments received during the community meeting, and to determine if any revisions should be made to the law. The drafting attorney will update the draft of the law based on this discussion.
- 5/16/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Laura Laitinen-Warren. The purpose of this work meeting was to review and discuss the revisions to the draft made based on comments collected from the community meeting. Drafting attorney will update the draft.
- 6/6/18/ LOC:** Motion by Jennifer Webster to accept the draft of the Sanctions and Penalties law and direct that a legislative analysis be completed; seconded by Ernest Stevens III. Motion carried unanimously.
- 7/9/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Brooke Doxtator. The purpose of this work meeting was to review the BCSO's involvement in the Sanctions and Penalties law to ensure their role can be implemented as required by law.
- 7/18/18 LOC:** Motion by Kirby Metoxen to accept the legislative analysis for the Sanctions and Penalties Law and defer to a work meeting; seconded by Daniel Guzman King. Motion carried unanimously.
- 8/1/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Kristen Hooker. The purpose of this work meeting was to review and consider the legislative analysis.

**8/15/18 LOC:** Motion by Jennifer Webster to approve the public meeting packet and forward the Sanctions and Penalties Law to a public meeting to be held on September 20, 2018; seconded by Kirby Metoxen. Motion carried unanimously.

Subsequent Motion by Jennifer Webster to forward the Sanctions & Penalties Law to the Finance Office for a fiscal analysis to be completed; seconded by Kirby Metoxen. Motion carried unanimously.

**9/10/18:** *Work Meeting.* Present: David P. Jordan, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Kristen Hooker, Cathy Bachhuber, Maureen Perkins. The purpose of this work meeting was to discuss the fact that the September 20, 2018 public meeting on the proposed law will have to be canceled due to the Kalihwisaks failing to publish the public meeting notice in the September 6, 2018, edition. The LOC determined the next steps for moving the public meeting forward – an e-poll of an updated public meeting notice will be completed and the appointment that was sent out changed to reflect the new date.

E-poll conducted.

**9/19/18 LOC:** Motion by Daniel Guzman King to enter the e-poll results into the record; seconded by Jennifer Webster. Motion carried unanimously.

**10/4/18:** Public Meeting Held.

#### **Next Steps:**

- Accept the public meeting comments and public meeting comments review memorandum and defer to a work meeting.



TO: Legislative Operating Committee (LOC)  
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney  
DATE: October 17, 2018  
RE: Sanctions and Penalties Law: Public Meeting Comment Review

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On October 4, 2018, a public meeting was held regarding proposed Sanctions and Penalties law (“the Law”). The public comment period was then held open until October 11, 2018. This memorandum is submitted as a review of the oral and written comments received within the public meeting and public comment period.

The public meeting draft, public meeting transcript, and written comments received are attached to this memorandum for review.

### Comment 1 – Sanctions and Penalties Referendum:

**Lisa Liggins (oral):** First I would like to thank the LOC and LRO for all their work, including this draft together. I submitted the referendum question in 2016 and was glad to see that it was supported and I looked forward to the draft being forwarded to General Tribal Council for consideration.

#### *Response*

The commenter thanks the Legislative Operating Committee and the Legislative Reference Office for the work in completing a draft of the proposed Sanctions and Penalties law, as the commenter submitted a referendum question on the matter in 2016.

The July 2016 Special Election ballot contained a referendum question which asked, “*Should the BC develop a law which provides for sanctions and due process for elected officials?*” This referendum question was approved by a vote of one hundred and seventy-eight (78) to fifty-nine (59) during the July 2016 Special Elected to be presented to General Tribal Council.

A referendum question that receives a majority vote is not automatically enacted into law, it is simply an expression of the membership that the issue should be brought forward for discussion and action. *1 O.C 102.12-9(a)*.

On July 26, 2017, a legal opinion of the referendum question was submitted to the Oneida Business Committee, with the conclusion that there are no legal prohibitions regarding adoption of this type of a law.

The proposed Sanctions and Penalties law will ultimately be submitted to the General Tribal Council for consideration of adoption.

There is no recommended revision based on this comment.

### *LOC Consideration*

## Comment 2 – Purpose and Policy:

### **120.1. Purpose and Policy**

**120.1-1. Purpose.** The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties. This law does not apply to judges of the Oneida Nation Judiciary.

**Bonnie Pigman (written):** The draft Sanctions and Penalties law states the purpose "is to establish a consistent set of sanction and penalties that maybe imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties."

Comment: I could agree with the purpose "if the context in other laws such as the Board, Committee, Commission law didn't expressly excludes the Business Committee as an elected entity.

### ***Response***

The commenter disagrees with the purpose of this Law due to the fact that the Oneida Business Committee is not subject to the provisions of the Boards, Committees, and Commissions law.

It is important to remember that the exemption of an entity of the Nation from the provisions of one law does not necessarily affect the application of a different law to that very same entity.

The Boards, Committees, and Commissions law purposefully exempts the Oneida Business Committee by clearly stating that the law does not apply to the Oneida Business Committee. [*O.C. 105.1-1(a)*].

The Oneida Business Committee is one (1) of only three (3) governmental bodies formally recognized by the Constitution and Bylaws of the Oneida Nation, the others being the General Tribal Council as the governing body of the Nation when in session, and the Judiciary as the judicial authority of the Nation. The Oneida Business Committee is delegated the authority by the Constitution to perform such duties as authorized by the General Tribal Council. [*Constitution Article III, Section 3*]. The Constitution provides various requirements for the Oneida Business Committee such as:

- Who may run for office with the Oneida Business Committee (must be age twenty-one (21) or over and physically reside in either Brown or Outagamie Counties);
- How many members may sit on the Oneida Business Committee (overall nine (9) members);
- What officer positions must be held on the Oneida Business Committee (necessary to have a chairman, a vice chairman, a treasurer, and a secretary);
- What constitutes a quorum (a majority of the body including the chairman or vice chairman);
- How regular meetings will be established (by resolution of the Oneida Business Committee);
- Notice requirements for special meetings (three (3) day advance notice by the chairman to all members or upon written request of a majority of the Oneida Business Committee stating the time, place, and purpose of the special meeting);
- How vacancies are filled (General Tribal Council may at any regular special meeting fill any vacancies that occur on the Oneida Business Committee for an unexpired term);
- How Oneida Business Committee members are removed (at the discretion of the General Tribal Council by a two-thirds (2/3) majority vote at any regular or special meeting of the General Tribal Council pursuant to a duly adopted ordinance); and
- How often Oneida Business Committee members are elected (every three years in the month of July).

*[see Constitution Article III, Section 3 and Article III, Section 4].*

Many of the standards and requirements that the Boards, Committees, and Commissions law sets forth for boards, committees, and commissions of the Nation are already addressed by the Constitution in terms of application to the Oneida Business Committee. Therefore, it is not that the Oneida Business Committee is exempt from many of the same requirements as other boards, committees, and commissions of the Nation are expected to comply with, it is just that the standards and requirements for the Oneida Business Committee are addressed through other legislative means.

In recognition of the fact that the Oneida Business Committee is a constitutionally recognized extension of the General Tribal Council, and the fact that the standards and procedures regarding the Oneida Business Committee are already addressed by other legislative means, the Oneida Business Committee was exempted from the provisions of the Boards, Committees, and Commissions law.

On the other hand, this Law clearly states that the Oneida Business Committee is to be subject to the provisions of this law. *[120.1-1, 120.3-1(i), 120.3-1(m)]*. The members of the Oneida Business Committee are subject to the provisions of this Law because there is no other legislation of the Nation that provides a process for addressing misconduct of an elected official outside of the Removal law. Therefore, the Legislative Operating Committee intended to develop one (1) law that could apply to all elected officials of the Nation, including the Oneida Business Committee members.

There is no recommended revision based on this comment.

### *LOC Consideration*

## **Comment 3 – Application of the Law to the Oneida Business Committee:**

### **120.1. Purpose and Policy**

**120.1-1. Purpose.** The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties. This law does not apply to judges of the Oneida Nation Judiciary.

### **120.3. Definitions**

**120.3-1.** This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(i) “Entity” means a board, committee or commission of the Nation, including the Oneida Business Committee.

(m) “Official” means any person who is elected or appointed to serve on a board, committee or commission of the Nation, including the Oneida Business Committee.

**Bonnie Pigman (written):** On page 2 of 13 in the public meeting packet line 22 reflects a box that identifies elected and appointed Board, Committee, Commission's. The Business Committee states this law applies to them, however, they are clearly not included in the box. (This shows perspective, meaning the Business Committee is separate from all other "elected officials").

### *Response*

The commenter implies that the Oneida Business Committee does not see themselves as subject to this law since the box contained on page two (2) of the legislative analysis that identifies elected and appointed boards, committees, and commissions of the Nation does not include the Oneida Business Committee.

The Law is clear that members of the Oneida Business Committee are subject to the provisions of this Law. The Law states that the purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties. This law does not apply to judges of the Oneida Nation Judiciary. [1 O.C. 120.1-1]. The Law then goes on to define official as any person who is elected or appointed to serve on a board, committee or commission of the Nation,

including the Oneida Business Committee. [1 O.C. 120.3-1(m)], and defines entity as a board, committee or commission of the Nation, including the Oneida Business Committee. [1 O.C. 120.3-1(i)].

Line twenty (20) of the legislative analysis, which appears two (2) lines above the chart referenced by the commenter clearly states that the Oneida Business Committee is subject to the provisions of this Law. Line twenty-one (21) of the legislative analysis then states that all other boards, committees, and commissions are subject to the provisions of this law. The box found on page two (2) simply provides a visual breakdown of which boards, committees, and commissions are appointed and which are elected.

The legislative analysis is a plain language analysis describing the important features of the legislation being considered as well as factual information to enable the Legislative Operating Committee to make informed decisions regarding legislation. [1 O.C. 109.3-1(g)]. The legislative analysis includes:

1. a statement of the legislation's terms and substance;
2. intent of the legislation;
3. a description of the subject(s) involved;
4. a description of any conflicts with Oneida or other law;
5. a description of key issues; and
6. a description of potential the impacts of the legislation and policy considerations.

[1 O.C. 109.3-1(g)]

The legislative analysis is a tool used during the legislative process to help inform the Legislative Operating Committee and community on the development of a law. Although the legislative analysis provides a valuable breakdown of essential information that is used in the development of a law, it is ultimately the provisions within the law itself that govern and control. Therefore, the reader's understanding of the law should be based on the provisions of the law itself, and not solely on the legislative analysis, or any perceived inconsistencies within the legislative analysis.

There is no recommended revision based on this comment.

### *LOC Consideration*

## **Comment 4 – Application of the Law to the Legal Resource Center Advocates:**

### **120.1. Purpose and Policy**

**120.1-1. Purpose.** The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an

**orderly and fair process for imposing such sanctions and penalties. This law does not apply to judges of the Oneida Nation Judiciary.**

**Lisa Liggins (oral):** Lines 4 and 5 indicate the law applies to elected and appointed officials, including members of the Oneida Business Committee. Lines 5 and 6 state that the law does not apply to judges of the Judiciary. In the analysis, earlier in the meeting packet, there is a table that lists the 18 appointed and elected boards, committees and commissions to which this law applies and the Legal Resource Center is not included. Chapter 8-11, which is the Legal Resource Center laws organized under Title 8, The Judiciary. Section 8-11.7 of the Legal Resource Center law covers discipline and removal of attorneys and advocates and states they are subject to disciplinary action pursuant to the Professional Conduct of Attorneys and Advocates law and any other law that governs discipline or removal of elected positions. So it's unclear to me if the Sanctions and Penalties law applies to the attorneys and advocates for the Legal Resource Center. If it does then perhaps just the analysis needs to be updated. If it does not, then I think that the language in Line 6 and 7 should be updated.

**Response**

The commenter questions whether the attorney and advocates of the Nation's Legal Resource Center are subject to the provisions of this law.

The Nation's Legal Resource Center was established by the adoption of the Legal Resource Center law for the purpose of providing legal advice and representation to both Tribal members and employees in cases before the Judiciary and to represent the Oneida General Tribal Council at General Tribal Council meetings. [8 O.C. 811.1-1, 811.4-1]. The Legal Resource Center consists of at least one (1) full-time attorney and at least two (2) full-time advocates, all of which shall be elected by the Nation's membership. [8 O.C. 811.5-1, 811.5-2 811.6-1,811.6-2].

The Legal Resource Center law states that attorneys and advocates shall be subject to disciplinary actions pursuant to the Professional Conduct for Attorneys and Advocates law and any other laws that govern discipline and/or removal of elected positions. [8 O.C. 811.7-1].

The Professional Conduct for Attorneys and Advocates law governs the conduct of attorneys and advocates that are admitted to practice law before the Judiciary. [8 O.C. 810.1-1]. The Professional Conduct for Attorneys and Advocates law sets standards for the behaviors of attorneys and advocates, as well as outlines what constitutes misconduct. A client alleging that an attorney or advocate was negligent or violated a duty under the Professional Conduct for Attorneys and Advocates law may initiate a civil action against the attorney or advocate by filing a complaint with the Trial Court. [8 O.C. 810.22-1]. The Professional Conduct for Attorneys and Advocates law also allows the Trial Court to hear complaints filed regarding any disciplinary actions pertaining to this law. [8 O.C. 810.23-1]. Complaints of alleged violations of the Professional Conduct for Attorneys and Advocates may be filed on behalf of the client with the Trial Court or initiated by the Judiciary. [8 O.C. 810.23-2].

Although the Professional Conduct for Attorneys and Advocates law provides a process for both a civil action against an attorney or advocate, and a disciplinary action against an attorney or

advocate, both of those actions are specific to violations of the Professional Conduct for Attorney and Advocates law, and do not necessarily address any violations of other laws and/or policies of the Nation. It may be for that reason that the Legal Resource Center law alluded to an attorney or advocate of the Legal Resource Center being subject to any other laws that govern discipline and/or removal of elected positions.

Although the purpose of this Law is stated generally as establishing a consistent set of sanctions and penalties that may be imposed upon all elected and appointed officials of the Nation, some definitions of terms included in the Law may exclude the Legal Resource Center advocates and attorney.

An “official” is defined as any person who is elected or appointed to serve on a board, committee or commission of the Nation, including the Oneida Business Committee. [1 O.C. 120.3-1(m)]. An “entity” is then defined as a board, committee or commission of the Nation, including the Oneida Business Committee. [1 O.C. 120.3-1(i)]. The Legal Resource Center is not technically a board, committee, or commission of the Nation, and therefore does not meet the definition of official or entity under this Law. Due to the definitions, the Legal Resource Center advocates and attorney would not be subject to the provisions of this Law.

The Legislative Operating Committee may consider whether the Legal Resource Center advocates and attorney should be subject to this Law. The Legislative Operating Committee may determine:

1. The Legal Resource Center advocates and attorney are not subject to the provisions of this Law.
  - a. If the Legislative Operating Committee makes this determination, then it is recommended that a provision be added to section 120.1-1 of the Law clearly stating that the Legal Resource Center advocates and attorney are not subject to the provisions of this Law.
2. The Legal Resource Center advocates and attorney should be subject to the provisions of this law as they are officials that were elected by the membership.
  - a. If the Legislative Operating Committee makes this determination, then it is recommended that the definitions for “official” and “entity” be amended as follows:
    - (i) “Entity” means a board, committee, ~~or~~ commission, office, or center of the Nation, including the Oneida Business Committee.
    - (m) “Official” means any person who is elected or appointed to serve on a board, committee, ~~or~~ commission, office, center, or other position of the Nation, including the Oneida Business Committee.

### ***LOC Consideration***

## Comment 5 – Application to All Boards of the Nation:

### 120.1. Purpose and Policy

**120.1-1. Purpose.** The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties. This law does not apply to judges of the Oneida Nation Judiciary.

**Travis Wallenfang (written):** *[Referencing Affected Entities Oneida Business Committee; All elected and appointed members of boards, committees, and commissions; Any individual who has knowledge that an official has committed misconduct, Judiciary Trial Court, Judiciary Court of Appeals, Business Committee Support Office. This law does not apply to the judges of the Oneida Judiciary, whose misconduct process is located in the Judiciary Law. This does not apply to members of corporate boards. (Page 1)].*

There needs to be accountability for all boards when operating in appearance of conflicts of interests or potential Conflict of Interests.

Example: Tribally Owned Company and an Oneida Nation’s member on a Board for Tribally Owned Company and works as an employee. They report to only the GTC and Business Committee.

### **Response**

The commenter is stating that there should be accountability for all boards of the Nation. The commenter may be questioning whether all corporate boards, committees, and commission are subject to the provisions of this Law as other boards, committees, and commission of the Nation are.

The Law defines an “official” as any person who is elected or appointed to serve on a board, committee or commission of the Nation, including the Oneida Business Committee. *[1 O.C. 120.3-1(m)]*. The Law then defines an “entity” as a board, committee or commission of the Nation, including the Oneida Business Committee. *[1 O.C. 120.3-1(i)]*. From these definitions, it can be presumed that corporate boards, committees, and commissions of the Nation are subject to this law.

It is recommended that the Legislative Operating Committee clarify whether it was intended that corporate boards, committees, and commissions are subject to the provisions of this law. The LOC may determine:

1. Corporate boards, committees, and commissions of the Nation are subject to the provisions of this law.
  - a. If the Legislative Operating Committee makes this determination then no revision to the Law would be necessary, but the Legislative Operating Committee could determine that the definitions for official and entity could be clarified to expressly state this includes corporate boards.

2. Corporate boards, committees, and commissions of the Nation are not subject to the provisions of this law.
  - a. If the Legislative Operating Committee makes this determination then the following revision is recommended:
    - 120.1-1. Purpose. The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties.
      - (a) This law does not apply to judges of the Oneida Nation Judiciary.
      - (b) This law does not apply to corporate entities of the Nation.

Additionally, in regard to the comment about the importance of accountability for perceived conflicts of interest, it is important to note that the Nation has a Conflict of Interest law that ensures all employees, contractors, elected officials, officers, political appointees, appointed and elected members and all others who may have access to information or materials that are confidential or may be used by competitors of the Nations enterprises or interests be subject to specific limitations to which such information and materials may be used in order to protect the interests of the Nation. [2 O.C. 217.1-1]. The Conflict of Interest law also contains provisions specific to organization conflicts of interest, and a presumption that there is an organization conflict of interest. [2 O.C. 217.5].

Although the Nation's Boards, Committees, and Commission law does not apply to corporate entities of the Nation, this law also requires all other boards, committees, and commissions to adhere to the Nation's Conflict of Interest law, and disclose conflicts of interest to the Nation's Secretary as the conflict arises, and update a conflict of interest disclosure form on an annual basis. [1 O.C. 105.15-1, 105.15-2].

A violation of the Conflict of Interest law or the Boards, Committees, and Commissions law would constitute misconduct under this law and result in the official being subject to sanctions and penalties.. [1 O.C. 120.4-2(a)].

### *LOC Consideration*

## **Comment 6 – Removal of the Nation's Core Values:**

### **120.1. Purpose and Policy**

**120.1-3. It is the intent of the Nation that all elected and appointed officials strive to exhibit and uphold the Nation's core values of The Good Mind as expressed by OnAyote'a·ka, which includes:**

- (a) **Kahletsyalúsla. The heart felt encouragement of the best in each of us.**
- (b) **Kanolukhwásla. Compassion, caring, identity, and joy of being.**

- (c) **Ka?nikuhli·yó. The openness of the good spirit and mind.**
- (d) **Ka?tshatstásla. The strength of belief and vision as a People.**
- (e) **Kalihwi·yó. The use of the good words about ourselves, our Nation, and our future.**
- (f) **Twahwahtsílawayá. All of us are family.**
- (g) **Yukwatsístayá. Our fire, our spirit within each one of us.**

**Bonnie Pigman (written):** This is a "SANCTIONS AND PENALTIES" law. I feel the principles in Section 120.1-3 conflict with the very purpose and intent for drafting this law. I would like them to be deleted. If it is a desire to keep it in this law please insert them into Section 120.1-1. Idealistically, "The Good Mind" principles language could also be more appropriately placed on the application one might complete if interested in applying for an elected or appointed position.

### ***Response***

The commenter requests that the inclusion of the Nation's core values be removed from section 120.1-3 of this Law.

The Legislative Operating Committee made the determination to include the Nation's core values of The Good Mind as expressed by Onáyoṭe?á·ka in the section of this Law that provides for the purpose and policy in an effort to set a tone that officials of the Nation are expected to behave in a manner that promotes and exhibits the Nation's core values. The Legislative Operating Committee wanted to be clear that it is when an official fails to exhibit the Nation's core values that the allegations of misconduct arise, and the process for filing and determining a complaint against an official as provided for by this Law are used.

The commenter's suggestion to move the provisions of section 120.1-3 into section 120.1-1 would not affect the intent, meaning, or interpretation of the provisions contained in section 120.1-3. Therefore it is recommended that no revision be made to move the location of this provision as suggested.

The commenter also proposes the idea that the Nation's core values be included on an application for an elected or appointed position. The Boards, Committees, and Commissions law delegates the approval of all application materials to the Oneida Business Committee. [1 O.C. 105.5-1]. It is recommended that the Legislative Operating Committee share this idea with the Oneida Business Committee for consideration.

### ***LOC Consideration***

## Comment 7 – Definition of Day:

### 120.3. Definitions

**120.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.**

**(d) “Business day” means Monday through Friday 8:00 a.m. – 4:30 p.m., excluding holidays recognized by the Nation.**

### 120.8. Sanctions and Penalties

**120.8-2. Sanctions and penalties may include:**

**(d) *Suspension.* An official may be suspended from performing his or her duties as an official for one (1) consecutive period of time, not to exceed sixty (60) days.**

**Matthew W. Denny (oral):** Afternoon. My first comment has to do with the definitions. What’s missing is the fact that there are no, when you mention what days in the suspension or in here, I would like it defined whether you are talking about working days or calendar days, because there is a big difference in regards to suspension and that kind of stuff. So I would like to see the definition of days or otherwise be defined within whatever section is referencing days in the law.

### *Response*

The commenter requests clarification on whether the reference to days for suspension means business days or calendar days, as this can change the amount of time referenced. The law does define “business day” in section 120.3-1(d) as Monday through Friday 8:00 a.m. – 4:30 p.m., excluding holidays recognized by the Nation. Any other reference to solely the term “day” means calendar day.

Therefore section 120.8-2 which states that an official may be suspended for a period of time not to exceed sixty (60) days, this means sixty (60) calendar days.

There is no recommended revision based on this comment. The LOC may determine whether the reference to days for suspensions should remain calendar days, or be amended to business days.

It is recommended the LOC complete a review of all references to both “days” and “business days” to ensure the timeframes included in the law are designated appropriately.

### *LOC Consideration*

## Comment 8 – Terminology:

**120.5-3. Contents of the Complaint.** The complaint alleging misconduct by an official shall include the following information:

(h) A notarized sworn statement attesting that the information provided in and with the complaint is true, accurate, and complete to the best of the complainant’s knowledge;

**120.6-5. Initial Review.** The Oneida Business Committee shall perform an initial review of an allegation of misconduct on the part of an official. The purpose of the initial review shall be to determine whether the allegation made within the complaint has merit.

(c) The Oneida Business Committee shall determine, by majority vote, whether the complaint has merit.

(2) Upon finding that a complaint has no merit, the Oneida Business Committee shall dismiss the complaint.

(A) If the Oneida Business Committee dismisses the complaint based on a determination that the complaint was frivolous, false, or made with a malicious intent, the complainant may be subject to:

- (i) a fine not to exceed five hundred dollars (\$500);
- (ii) prohibition from filing another complaint for a period of time not to exceed one (1) year; and/or
- (iii) a civil suit in the Nation’s Trial Court brought by the official accused by the frivolous, false or malicious allegation.

**Rae Skenandore (written):** Terminology. Change the language from complaint to charge. Require the individual making the charge to sign a written statement under oath.

### *Response*

The commenter suggests changing all mention of the word “complaint” to the word “charge.”

The Legislative Operating Committee has used the term “complaint” throughout the provisions of this Law because complaint is a plain English term that is easily understood by members of the community. Additionally, use of the word complaint is consistent with the Oneida Judiciary Rules of Civil Procedure which uses the term complaint, and defines it as the initial pleading setting out the case or cause of action on which relief is sought by the plaintiff. [8 O.C. 803.3-1(i)].

It is recommended that the word complaint remain in the Law.

The commenter also requests that the Law be amended to require the individual making the complaint to sign a written statement under oath.

The Law requires that the complaint include a notarized sworn statement attesting that the information provided in and with the complaint is true, accurate, and complete to the best of the complainant’s knowledge. [1 O.C. 120.5-3(h)].

The requirement to have a notarized sworn statement as a part of the complaint is more than what other procedures of the Nation regarding the filing of a complaint require. The Oneida Judiciary Rules of Civil Procedure does not require that a complaint that is filed with the Trial Court be signed under oath. Simply, the complaint that is filed must contain all the required information and attached summons in order to commence an action in the Trial Court. [8 O.C. 803.5].

The Nation's Child Care Department Consumer Complaint law, which sets a formal process for addressing complaints against the Oneida Child Care Department, also does not require that the complaint that is filed be signed under oath, and simply provides that all the information required by the law be provided in the complaint. [9 O.C. 902.4-4].

Additionally, complaints reported under the Nation's Workplace Violence law [2 O.C. 223], and the Oneida Personnel Policies and Procedures do not require the written statement of the complaint to be signed under oath.

It is important to note that the Law contains a provision that addresses an individual who has filed a frivolous, false, or malicious complaint that was determined to have no merit. [1 O.C. 120.6-5(c)(2)(A)]. The Law allows the Oneida Business Committee to take the following actions against an individual who has filed a frivolous, false, or malicious complaint:

1. Impose a fine not to exceed five hundred dollars (\$500); or
2. Prohibit the individual from filing another complaint for a period of time not to exceed one (1) year. [1 O.C. 120.6-5(c)(2)(A)(i)-(ii)]

The official accused by the frivolous, false, or malicious allegation may also file a s civil suit in the Nation's Trial Court against the individual who made the complaint. [1 O.C. 120.6-5(c)(2)(A)(iii)].

The Oneida Judiciary Rules of Civil Procedure also requires that all pleadings, written motions, or other papers-whether by signing, filing, submitting, or later advocating it, an attorney, advocate or unrepresented party certifies that to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances that it is not being presented to the Court for any improper purpose. [8 O.C. 803.8-2(a)]. If the Court has determined that provisions has been violated, the Court may impose an appropriate sanction on any attorney, law firm, advocate, or party that violated the Rules of Civil Procedure or is responsible for the violation. [8 O.C. 803.8-3(a)].

There is no recommended revision based on this comment.

### ***LOC Consideration***

## Comments 9 through 10 – Definition of Misconduct:

### 120.4. Misconduct

**120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which constitutes misconduct. Misconduct includes:**

- (a) a violation of the Constitution or any of the Nation’s laws, policies, or rules;
- (b) a violation of the bylaws, standard operating procedures or other internal operating documents that govern the entity upon which the official serves;
- (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law; and
- (d) any other activity that is incompatible with the high moral and ethical standards that are expected of the Nation’s officials.

**Travis Wallenfang (written):** *[Referencing Lines 1,2,3,4,5,6,7,8 SECTION 2. 1 LEGISLATIVE DEVELOPMENT A. When officials of the Nation commit misconduct in office, there are few remedies available for the Nation to discipline that official. Currently, appointed officials may have their appointment terminated by the Business Committee, and elected officials may be removed in accordance with the Removal Law. However, there have been instances of misconduct that do not rise to the level of removal. For example, officials with multiple unexcused absences, failure to submit reports on time, or behaving disrespectfully to community members or fellow officials. In these cases, other remedies such as verbal reprimands, fines, or suspensions may be more appropriate. (Page 1)].*

The following needs to be defined or clarified as they are subject to the interpretations:

- Unexcused absences,
- Failure to submit reports on time
- Behaving disrespectfully to community members or fellow officials
- Appearance or potential of conflicts of interests for self-interests.
- Misconduct
- Wrongful improper or unlawful conduct or behavior.

**Brian Doxtator (oral):** I went through the Sanctions and Penalties law and I have pros and cons of everything in there, but one of the things that kind of just hit me real hard was the word misconduct and I think back on the last four years, an elected official not showing up to work is not necessarily misconduct and that a penalty or sanction of some form to say hey we need you at work. Obviously there were e-mails asking certain elected officials to come to work, but that’s kind of what, that’s not really misconduct, but elected officials are not employees.

### **Response**

Both commenters begin to question what constitutes misconduct, and whether misconduct should be further defined so that the interpretation is clear.

The Law intends that all elected and appointed officials will strive to exhibit and uphold the Nation’s core values of The Good Mind as expressed by Onʼayoteʼa ka, which includes:

1. Kahletsyalúsla. The heart felt encouragement of the best in each of us.

2. Kanolukhwásla. Compassion, caring, identity, and joy of being.
  3. Kaʔnikuhli-yó. The openness of the good spirit and mind.
  4. Kaʔtshatstásla. The strength of belief and vision as a People.
  5. Kalihwi-yó. The use of the good words about ourselves, our Nation, and our future.
  6. Twahwahtsílawayá. All of us are family.
  7. Yukwatsístayá. Our fire, our spirit within each one of us.
- [1 O.C. 120.1-3]

Furthermore, the Law states that it is the obligation of every official to behave in a manner that promotes the highest ethical and moral standard, since high moral and ethical standards amongst officials of the Nation is essential to the conduct of government. [1 O.C. 120.4-1].

The Law then states that misconduct includes:

1. a violation of the Constitution or any of the Nation's laws, policies, or rules;
2. a violation of the bylaws, standard operating procedures or other internal operating documents that govern the entity upon which the official serves;
3. a conviction of a felony, or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law; and
4. any other activity that is incompatible with the high moral and ethical standards that are expected of the Nation's officials.

[1 O.C. 120.4-2]

When developing this Law the Legislative Operating Committee made the decision to keep what constitutes misconduct as open as possible to allow for flexibility in addressing whatever situation arises. The Legislative Operating Committee understood that creating an exhaustive list of what behaviors constitutes misconduct, and defining exactly what those behaviors mean, would be nearly impossible. The Legislative Operating Committee wanted to avoid seeing someone prevented from filing a complaint in the future, because the alleged misconduct was not specifically included in the law.

The Law does however provide the opportunity for other laws, policies, rules, bylaws, and standard operating procedures to provide more specific standards of what may constitute misconduct.

The Legislative Operating Committee determined that it would be up to the Oneida Business Committee, for appointed officials, and the Trial Court, for elected officials, to review all information presented and interpret whether the action of the official constitutes misconduct.

The Legislative Operating Committee may determine whether:

1. The Law should remain as drafted and allow for flexibility in the interpretation of what constitutes misconduct. Or
2. The Law should be amended to provide for more specific information on what constitutes misconduct.

### ***LOC Consideration***

## Comment 11 – Process For Filing a Complaint:

**Rae Skenandore (written):** Process. The majority of the process is predicated on the assumption of guilt on the official. On the flip side, when it's considered, it's overly harsh upon the complainant. If it's based on personality conflicts, where is the middle ground to reach some sort of understanding or compromise before it gets to a point of a written complaint and an investigation?

### *Response*

The commenter states that the process contained in the Law for addressing complaints of misconduct against an official is both predicated on the assumption of guilt of the official, and overly harsh to the complainant.

It was the intention of the Legislative Operating Committee to provide a process that is fair and equitable to the complainant and the official alleged to have engaged in misconduct. Therefore, it is the policy of the Law to ensure that elected and appointed officials who commit misconduct while in office be subject to appropriate sanctions and penalties; and to ensure that there is a fair process in place that enables officials to fairly respond to allegations of misconduct. [1 O.C. 120.1-2].

The Legislative Operating Committee made efforts to ensure the process was both fair to the complainant and the official alleged to have engaged in misconduct by including the following provisions:

1. The Law discusses what information is required for a complaint, resulting in an expansive amount of information to be included in the complaint so that the best determination can be made as to the merit of the complaint. [1 O.C. 120.5-3];
2. The Law prohibits any retaliation against any individual who makes a complaint or party or witness to a complaint, or any person offering testimony or evidence or complying with directives authorized under this law. [1 O.C. 120.5-5];
3. The Law allows any official who is the subject of a complaint has the right to be represented by an attorney or advocate, at his or her own expense, for any actions or proceedings related to the complaint. [1 O.C. 120.5-6];
4. The Law allows the accused official to provide an answer to the complaint. [1 O.C. 120.6-3];
5. The Law prevents an Oneida Business Committee member that has a conflict of interest in a complaint brought before the Oneida Business Committee from participating in the complaint. [1 O.C. 120.6-4];
6. The Law allows the Oneida Business Committee to dismiss a complaint based on a determination that the complaint was frivolous, false, or made with a malicious intent, and subject the complainant to a fine or prohibition against filing another complaint. [1 O.C. 120.6-5(c)(2)(A)];

7. All complaints of alleged misconduct have to be proved by clear and convincing evidence. [1 O.C. 120.6-6, 120.7-2];
8. Appeals of both the Oneida Business Committee and Trial Court decisions are appealable to the Nation's Court of Appeals. [1 O.C. 120.6-9, 120.7-4]; and
9. The resignation of an official after a complaint has been filed against the official shall not affect the status of the hearing and determination by either the Oneida Business Committee or Trial Court. [1 O.C. 120.9-1].

Additionally, the commenter questions what is in place to allow for the complainant and the accused official to come to an understanding or compromise before a written complaint and an investigation occurs.

The Law focuses on the point in time where an official complaint is made, and investigation and determination of that complaint occurs. This does not prevent the complainant and official involved in the complaint from making efforts to come to an understanding prior to filing a complaint under this Law.

Additionally, nothing prevents an entity of the Nation from creating a process to address complaints or misunderstanding that may arise before an individual chooses to file a complaint under this Law.

For those cases that are filed with the Trial Court, the Trial Court has a Peacemaking and Mediation Division that provides a forum for the use of peacemaking and mediation to resolve disputes in a fair manner. [8 O.C. 801.6-1]. Peacemaking and mediation services are available at all stages of litigation. [8 O.C. 801.6-1].

### ***LOC Consideration***

## **Comment 12 – Who May File a Complaint:**

### **120.5. Filing of a Complaint**

**120.5-1. *Who May File.*** Any individual at least eighteen (18) years of age or older, or entity, who in good faith, has knowledge or reason to believe that an official has committed misconduct, may file a written complaint.

**Travis Wallenfang (written):** [Referencing Lines 83,84,85,86,87,88 120.5. Filing of a Complaint 120.5-1. *Who May File.* Any individual at least eighteen (18) years of age or older, or entity, who in good faith, has knowledge or reason to believe that an official has committed misconduct, may file a written complaint. (Page 4)].

Can a Parent file a complaint on behalf of their child if something has happened to their child?

***Response***

The commenter questions whether a parent can file a complaint on behalf of their child if something has happened to their child.

Yes, the Law does not require that the act of misconduct was directly at you personally in order to be eligible to file a complaint. As long as the parent is at least eighteen (18) years of age or older, is acting in good faith, and has knowledge or reason to believe that an official has committed misconduct, that parent can file a complaint on behalf of his or her child. [1 O.C. 120.5-1].

There is no recommended revision based on this comment.

***LOC Consideration***

### Comment 13 – Statute of Limitations:

**120.5. Filing of a Complaint**

**120.5-2. When to File.** A complaint may be filed as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ninety (90) days.

**Rae Skenandore (written):** Statute of limitations. Is there a timeframe for bringing forward alleged violations/charges/complaints? 3 years? 5 years? What about after the individual is out of office? Can you still make charges against them 6 years later?

***Response***

The commenter questions whether there is a statute of limitations associated with making a complaint. The Law provides that a complaint may be filed as long as the alleged misconduct occurred, or was discovered to have occurred, within the previous ninety (90) days. [1 O.C. 120.5-2].

There is no recommended revision based on this comment.

***LOC Consideration***

## Comment 14 – Where to File a Complaint:

### 120.5. Filing of a Complaint

#### 120.5-4. *Where to File.*

(a) ***Appointed Official.*** Complaints against an appointed official shall be filed with the Business Committee Support Office.

(b) ***Elected Official.*** Complaints against an elected official shall be filed with the Nation’s Trial Court.

**Bonnie Pigman (written):** On page 4 of 13, the boxes reflected at the end of line 90 conflict with the language written on draft law lines 248 to 342.

#### ***Response***

The commenter asserts that the boxes contained at the end of line ninety (90) of the legislative analysis conflict with the Law, specifically the provisions contained within lines two hundred and forty-eight (248) and three hundred and forty-two (342).

Lines two hundred and forty-eight (248) to three hundred and forty-two (342).of this Law contains provisions of the law which govern:

1. sanctions and penalties [*1 O.C. 120.8-2*];
2. factors in determining an appropriate sanction and/or penalty[*1 O.C. 120.8-3*];
3. fact that imposition of a sanction under this Law does not exempt an official from individual liability from his or her misconduct [*1 O.C. 120.8-4*]; and
4. effect of a resignation by an official after a complaint is filed [*1 O.C. 120.9-1*].

The boxes on page four (4) of the analysis simply provide a visual demonstration of the fact that complaints against appointed officials are filed with the Business Committee Support Office, and complaints against elected officials are filed with Trial Court.

It is unclear how the commenter interprets the chart in the legislative analysis to conflict with this Law. The Law clearly states that complaints against an appointed official shall be filed with the Business Committee Support Office, and complaints against an elected official shall be filed with the Nation’s Trial Court. [*1 O.C. 120.5-4*].

There is no recommended revision based on this comment.

#### ***LOC Consideration***

## Comment 15 – Where to File a Complaint Against an Elected Official:

### 120.5. Filing of a Complaint

#### 120.5-4. Where to File.

(b) *Elected Official.* **Complaints against an elected official shall be filed with the Nation’s Trial Court.**

**Bonnie Pigman (written):** I disagree with where complaints against elected officials are to be filed, however, if GTC determines to have the complaints go to the Judiciary, then that's final.

#### *Response*

The commenter disagrees with the determination that complaints against an elected official should be filed with the Trial Court.

The Legislative Operating Committee made the policy determination that complaints against an elected official should be filed with the Trial Court. The Legislative Operating Committee made this determination based on the fact that elected officials serve in his or her position at the discretion of the Nation’s membership. Therefore, since the General Tribal Council adopted the Judiciary law as a step to formalize the hearing authority of the Oneida Nation in an independent judicial body, the Trial Court would be the most appropriate body to hear complaints of alleged misconduct against an elected official.

There is no revision recommended based on this comment.

#### *LOC Consideration*

## Comment 16 – Filing of a Complaint with a Board, Committee, or Commission:

### 120.5. Filing of a Complaint

#### 120.5-4. Where to File.

(a) *Appointed Official.* **Complaints against an appointed official shall be filed with the Business Committee Support Office.**

(b) *Elected Official.* **Complaints against an elected official shall be filed with the Nation’s Trial Court.**

**Rae Skenandore (written):** Complaints. For more minor infractions, has the Committee considered pushing some authority down to the BCC’s Chairperson? That person is in a leadership role and has some responsibility for the actions of those on their BCC. For more major infractions the Chair or the entire BCC should be required to be a mandatory reporter. Again, some sort of

training of unacceptable behaviors/action should be offered. Again, the development of an expected code of conduct for elected or appointed officials.

### ***Response***

The commenter questions whether the Legislative Operating Committee has considered delegating authority to the chairperson of a board, committee, or commission to handle allegations of misconduct.

During the various work meetings that were held, and the community meeting, the Legislative Operating Committee did consider the possibility of delegating authority to boards, committees, and commission to handle allegations of misconduct against a fellow member of the board, committee, and commission.

Ultimately the Legislative Operating Committee decided against the delegation of authority to boards, committees, and commission for a couple reasons:

1. The Legislative Operating Committee decided not to delegate authority to boards, committees, and commission to handle allegations of misconduct against a fellow member due to the potential for conflicts of interest to arise. The Legislative Operating Committee had concerns that the individual making the complaint would fear that a complaint will not be taken seriously if it is submitted to someone who works closely with the individual alleged to have engaged in misconduct.
2. The Legislative Operating Committee decided not to delegate authority to boards, committees, and commission to handle allegations of misconduct against a fellow member due to the desire for consistency in how complaints made against an official are handled. There are currently nearly twenty (20) different elected or appointed entities. Instead of allowing for the potential for allegations of misconduct to be addressed in different ways and by different standards by each entity, the Legislative Operating Committee determined that all complaints for appointed officials should go to the Oneida Business Committee, and all complaints against elected officials should go to the Trial Court. This results in only two (2) bodies handling allegations of misconduct and interpreting this law instead of upwards of twenty (20). This will lead to consistency in how allegations of misconduct are filed and handled, and how sanctions and penalties are imposed.
3. The Legislative Operating Committee decided not to delegate authority to boards, committees, and commission to handle allegations of misconduct against a fellow member due to the fact that the Boards, Committees, and Commissions law already allows a board, committee, or commission of the Nation to develop standards in their bylaws that address specific behavioral expectations and how the entity will enforce those behavioral expectations. [1 O.C. 105.10-3(d)(1)]. This means that a board, committee, or commission of the Nation already has the authority to create and enforce internal processes on handling complaints of misconduct. Although each board, committee, or commission of the Nation has the ability to set standards for misconduct for officials and how misconduct will be addressed as an individual entity, the Legislative Operating Committee still felt it was important to provide an impartial and consistent process for those who wish to make a complaint of misconduct outside of the individual entity to official serves. Although the Boards, Committees, and Commissions law does not apply to every official of the Nation,

there is nothing that prohibits any other entity of the Nation from developing internal policies and procedures that address this issue.

Additionally, an entity can decide to include a specific requirement in the bylaws of an entity, or other internal governing document, that states the expectation that every member of the entity would be a mandatory reporter of misconduct.

Ultimately, the Legislative Operating Committee determined that complaints against an appointed official shall be filed with the Business Committee Support Office, and complaints against an elected official shall be filed with the Nation's Trial Court. [1 O.C. 102.5-4].

There is no recommended revision based on this comment.

### *LOC Consideration*

## Comment 17 – Where to File for Complaints Against Appointed Officials:

### **120.6. Complaints Alleged Against an Appointed Official**

**120.6-1. Due to the fact that an appointed official serves at the discretion of the Oneida Business Committee, all complaints alleged against an appointed official shall be handled by the Oneida Business Committee.**

**Rae Skenandore (written):** Appointed officials. I understand that appointed officials serve at the discretion of the Oneida Business Committee. However, it seems repetitive, inconsistent, a conflict of interest and an unnecessary use of the elected officials' time to respond to complaints against appointed officials.

- a. The process for appointed officials should be the same for all those impacted under this law.
- b. The process should be consistent.
- c. There is inherent conflict of interest in the fact that the OBC appointed those individuals.
- d. A neutral third party, i.e. the Judiciary should hear all the complaints and determine appropriate sanctions and penalties in a consistent manner as defined under this law. This decision should be removed from any political influence, interests or activities.

### *Response*

The commenter disagrees with the delegation of authority to the Oneida Business Committee to handle complaints against appointed officials of the Nation.

The Legislative Operating Committee made the determination that complaints alleged against an appointed official should be handled by the Oneida Business Committee based on the fact that an

official who is appointed by the Oneida Business Committee serves at the discretion of the Oneida Business Committee. [1 O.C. 105.7-4, 120.6-1].

The Legislative Operating Committee decided that if the Oneida Business Committee is the appropriate body to terminate the appointment of an appointed official due to the Oneida Business Committee's direct interest in the governance of that official, then the Oneida Business Committee should be delegated the authority to take action through other sanctions and penalties to address the misconduct of officials before termination of appointment is necessary.

The delegation of authority to a specific body to handle complaints alleged against appointed officials is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee may determine this authority should stay with the Oneida Business Committee and leave the Law as currently drafted, or determine that this Law should be amended to delegate the authority to handle complaints alleged against an appointed official to a different entity.

Additionally, this Law is consistent in the sense that it provides a process for filing a complaint, and how that complaint will be handled, even if it differentiates between elected and appointed officials.

### *LOC Consideration*

## Comment 18 – Retaliation Based on a Complaint:

### **120.5. Filing of a Complaint**

**120.5-5. Retaliation Prohibited.** Retaliation against any individual who makes a complaint or party or witness to a complaint is prohibited. This protection shall also be afforded to any person offering testimony or evidence or complying with directives authorized under this law. Retaliation shall include any form of adverse or punitive action by or caused by, any official.

**Travis Wallenfang (written):** There needs to be a measure of protection if a person has information and is afraid to come forward for fear of retaliation.

### *Response*

The commenter suggests that there be a measure of protection if a person has information and is afraid to come forward for fear of retaliation.

The Law addresses this very issue and prohibits retaliation against any individual who makes a complaint or is a party or witness to a complaint. [1 O.C. 120.5-5]. This protection from retaliation is also afforded to any person offering testimony or evidence or complying with directives

authorized under this law. [1 O.C. 120.5-5]. The Law then clarifies that retaliation is any form of adverse or punitive action by or caused by, any official. [1 O.C. 120.5-5].

There is no recommended revision based on this comment.

### *LOC Consideration*

## **Comment 19 – Enforcement of Prohibition of Retaliation:**

### **120.5. Filing of a Complaint**

**120.5-5. Retaliation Prohibited.** Retaliation against any individual who makes a complaint or party or witness to a complaint is prohibited. This protection shall also be afforded to any person offering testimony or evidence or complying with directives authorized under this law. Retaliation shall include any form of adverse or punitive action by or caused by, any official.

**Lisa Liggins (oral):** Line 110 regarding retaliation. I am wondering how that is going to be enforced. If a complainant is retaliated against, where do they go, what do they do, who do they report it to. There doesn't appear to be any recourse identified within the law.

### *Response*

The commenter states that although the Law provides that retaliation against an individual who makes a complaint against an official is prohibited, the Law does not provide details on how retaliatory actions will be handled or addressed.

It is recommended that the Legislative Operating Committee expand this provision of the Law so that more detail can be provided on how retaliatory action will be addressed.

The LOC may consider making the following amendment to the proposed Law:

**120.5-5. Retaliation Prohibited.** Retaliation against any individual who makes a complaint or party or witness to a complaint is prohibited. This protection shall also be afforded to any person offering testimony or evidence or complying with directives authorized under this law. Retaliation shall include any form of adverse or punitive action by or caused by, any official.

(a) If an individual alleges that retaliatory action has been threatened or taken based on the individual's complaint, or cooperation with directives authorized under this law, the individual may file a complaint for the retaliatory action in accordance with section 120.5 of this law.

### *LOC Consideration*

## Comment 20 – Timelines for Initial Review:

### 120.6. Complaints Alleged Against an Appointed Official

**120.6-2. Receipt of Complaint.** Upon receiving a complaint, the Business Committee Support Office shall:

- (b) place the complaint on the executive session portion of the agenda of a regular or special meeting of the Oneida Business Committee for an initial review within thirty (30) days after receipt of complaint.

**Lisa Liggins(oral):** Lines 128 and 130. I believe the intent is that the initial review occur within 30 days after the receipt of the complaint, but the language could be misunderstood to mean that the placement on the agenda by the Business Committee Support Office occurs within the 30 day time period.

### *Response*

The commenter points out the potential for misinterpretation of the thirty (30) day timeline provided for the initial review of a complaint.

It is recommended that the Legislative Operating Committee make the following revision to avoid any misinterpretation:

**120.6-2. Receipt of Complaint.** Upon receiving a complaint, the Business Committee Support Office shall:

- (b) place the complaint on the executive session portion of the agenda of a regular or special meeting of the Oneida Business Committee for an initial review which shall occur within thirty (30) days after the initial receipt of a complaint.

### *LOC Consideration*

## Comment 21 – Recusal Based on Conflict of Interest:

**120.6-4. Conflict of Interest.** An Oneida Business Committee member that has a conflict of interest in a complaint brought before the Oneida Business Committee, shall immediately recuse themselves and shall not participate in the initial review or the investigatory hearing.

- (a) Failure of an Oneida Business Committee member to recuse themselves due to a conflict of interest shall constitute grounds for sanctions and/or penalties.

**Travis Wallenfang (written):** [Referencing Lines 132 133, 134,135, Conflict of Interest. If a member of the Oneida Business Committee (BC) has a conflict of interest regarding a complaint,

*they must recuse themselves and not participate in the review or hearings. If a member of the BC fails to recuse themselves, that member may be subject to sanctions and penalties under this law. (Page 5)].*

This should be defined in all of the following processes. The application to the Investigatory, Deliberation, Determination, & Appeal processes.

### ***Response***

The commenter states that the provision prohibiting an Oneida Business Committee member from participating in the initial review or the investigatory hearing due to a conflict of interest should apply to any part of the complaint process, including the investigatory hearing, deliberation, determination, and the appeal process.

Although it was intended that an Oneida Business Committee member who recuses himself or herself from the initial review and the investigatory hearing due to a conflict of interest would not then be participating in deliberation or determination due to the fact they were not present for the hearing, this can be made more clear through the following revision:

120.6-4. *Conflict of Interest.* An Oneida Business Committee member that has a conflict of interest in a complaint brought before the Oneida Business Committee, shall immediately recuse themselves and shall not participate in any portion of the complaint process~~the initial review or the investigatory hearing.~~

- (a) Failure of an Oneida Business Committee member to recuse themselves due to a conflict of interest shall constitute grounds for sanctions and/or penalties.

### ***LOC Consideration***

## **Comment 22– Notice of Investigatory Hearing:**

### **120.6. Complaints Alleged Against an Appointed Official**

**120.6-6. *Investigatory Hearing.*** The investigatory hearing shall occur within thirty (30) days after the initial review has concluded. The investigatory hearing shall take place during the executive session portion of the agenda of a regular or special meeting of the Oneida Business Committee. The purpose of the investigatory hearing is for the Oneida Business Committee to determine if there is enough evidence to substantiate the allegations of misconduct by clear and convincing evidence.

- (a) When conducting an investigatory hearing, the Oneida Business Committee shall have the broadest grant of authority to compel any person or organization within the Nation to:

- (1) appear at the hearing to provide testimony under oath and/or information relevant to the allegations against the official; and/or
  - (2) produce physical evidence that is relevant to the allegations.
- (b) The Oneida Business Committee shall provide an opportunity for the official who is the subject of the complaint to answer all allegations and to provide witness testimony, documents, and other evidence on his or her own behalf.
- (c) The Oneida Business Committee shall also provide the complainant the opportunity to answer questions, provide witness testimony or additional information, and/or to otherwise speak on his or her own behalf.
- (d) The hearing shall be informal and conducted as the interests of justice so require, and shall be recorded by the Business Committee Support Office.

**Lisa Liggins (oral):** Line 167, this starts the process for the investigatory hearing. It indicates the hearing shall occur within 30 days of the initial review and indicates that the complainant and the elected official, the official, have the opportunity to appear, but that doesn't include a requirement to provide notice to the complainant or the official and I think requiring notice is important, it should be included.

### *Response*

The commenter identifies that although the Law provides a timeline for when the investigatory hearing, where both the complainant and the official have an opportunity to appear, shall occur, the Law does not include any requirements that the complainant or official be provided notice of that hearing.

It is recommended that the Legislative Operating Committee make the following revision to include a notice requirement:

120.6-6. *Investigatory Hearing.* The investigatory hearing shall occur within thirty (30) days after the initial review has concluded. The investigatory hearing shall take place during the executive session portion of the agenda of a regular or special meeting of the Oneida Business Committee. The purpose of the investigatory hearing is for the Oneida Business Committee to determine if there is enough evidence to substantiate the allegations of misconduct by clear and convincing evidence.

(a) When conducting an investigatory hearing, the Oneida Business Committee shall have the broadest grant of authority to compel any person or organization within the Nation to:

(1) appear at the hearing to provide testimony under oath and/or information relevant to the allegations against the official; and/or

(2) produce physical evidence that is relevant to the allegations.

(b) The Business Committee Support Office shall provide the complainant, the official who is the subject of the complaint, and any other individual compelled to attend the hearing with written notice of the the date and the time of the investigatory hearing at least (#) days before the investigatory hearing.

~~(b)~~ (c) The Oneida Business Committee shall provide an opportunity for the official who is the subject of the complaint to answer all allegations and to provide witness testimony, documents, and other evidence on his or her own behalf.

(ed) The Oneida Business Committee shall also provide the complainant the opportunity to answer questions, provide witness testimony or additional information, and/or to otherwise speak on his or her own behalf.

(de) The hearing shall be informal and conducted as the interests of justice so require, and shall be recorded by the Business Committee Support Office.

### *LOC Consideration*

#### **Comment 23 – Recording of an Investigatory Hearing:**

#### **120.6. Complaints Alleged Against an Appointed Official**

**120.6-6. *Investigatory Hearing.*** The investigatory hearing shall occur within thirty (30) days after the initial review has concluded. The investigatory hearing shall take place during the executive session portion of the agenda of a regular or special meeting of the Oneida Business Committee. The purpose of the investigatory hearing is for the Oneida Business Committee to determine if there is enough evidence to substantiate the allegations of misconduct by clear and convincing evidence.

(d) The hearing shall be informal and conducted as the interests of justice so require, and shall be recorded by the Business Committee Support Office.

**120.6-9. *Appeal.*** The complainant and the official who is the subject of the complaint shall both have the right to appeal the Oneida Business Committee's decision to the Court of Appeals within twenty (20) days after the written decision is issued. The appeal shall be limited to review of the record, and the Oneida Business Committee's decision may only be overturned if the Court of Appeals determines that:

- (a) The findings or penalties imposed were clearly erroneous, unsupported by the record, or made on unreasonable grounds or without any proper consideration of circumstances; or
- (b) Procedural irregularities occurred which prevented a fair and impartial hearing.

#### **120.10. Record of Conduct in Office**

**120.10-1.** The Business Committee Support Office shall maintain a record of conduct in office for each official.

**120.10-2.** The record of conduct in office maintained for each official shall include, at a minimum:

- (a) a copy of each complaint filed against the official;
- (b) the outcome of the complaint, and
- (c) any sanctions or penalties imposed upon an official.

**120.10-3.** The record of conduct in office for each official shall be maintained for a period of no less than ten (10) years.

**Lisa Liggins (oral):** Line 185 is regarding the recording of the investigatory hearing and I am unclear as to why it would be recorded because it occurs within executive session and what is done with it after the hearing? I'm not sure if it would be included in the record, referenced in the appeal process in Line 214. And then subsequently Line 347 at the end of the law indicates that the record of conduct in office is maintained by the Business Committee Support Office, but that recording of the hearing is not included in that record, so I guess I just don't understand why it's recorded and what's done with it after the hearing.

### ***Response***

The commenter questions for what purpose the investigatory hearing is recorded, since the investigatory hearing occurs during executive session of the Oneida Business Committee.

Although meetings of the Oneida Business Committee are required by the Nation's Open Records and Open Meetings law to be held in open session [1 O.C. 107.14-1], a closed meeting session, known as executive session, is allowed when an exception due to the sensitive nature of certain subjects is provided under the law. [1 O.C. 107.17-1].

The Nation's Open Records and Open Meetings law recognizes that there are discussions during meetings and/or records produced in the course of governmental business that are sensitive in nature, and the public's right to a document or attendance at a meeting is outweighed by the public interest in keeping such a meeting or record confidential. [1 O.C. 107.4-1]. One such exception is for a discussion or record that contains personally identifiable information that is collected or maintained in connection with a complaint, investigation, or other circumstances that may lead to an enforcement action, administrative proceeding, arbitration proceeding, or court proceeding. [1 O.C. 107.4-1(j)].

The fact that the recording of the investigatory hearing clearly meets the standard for an exception from an open record as provided by the Open Records and Open Meetings law, this does not mean that the recording cannot be made, this means that the public would not have access to inspect or copy this recording.

The Legislative Operating Committee may determine if the requirement that a recording of the investigatory hearing should be made, as currently provided, should remain in the Law.

1. If the Legislative Operating Committee determines that the requirement that the recording of the investigatory hearing be made, then it is recommended that the Law is clarified as to whether that recording is a part of the record that is reviewed by the Court of Appeals when decision of the Oneida Business Committee is appealed, and a part of the official's record of conduct in office that is maintained by the Business Committee Support Office.
2. If the Legislative Operating Committee determines that the recording of the investigatory hearing is unnecessary, then the Law should be revised to remove reference to this recording.

### ***LOC Consideration***

## Comment 24 – Who Imposes a Sanction:

### 120.6. Complaints Alleged Against an Appointed Official

**120.6-8. Determination by the Oneida Business Committee.** After the investigatory hearing has concluded and the Oneida Business Committee has deliberated, the Oneida Business Committee shall in open session of a regular or special Oneida Business Committee meeting, by majority vote, declare whether the Oneida Business Committee has determined there is enough evidence to substantiate the allegations of misconduct by clear and convincing evidence.

- (a) If the Oneida Business Committee finds that there is clear and convincing evidence that the official engaged in misconduct, the Oneida Business Committee shall, by majority vote, determine and impose appropriate sanctions and/or penalties.
- (b) If the Oneida Business Committee does not find that there is clear and convincing evidence to support the allegations that the official engaged in misconduct, the complaint shall be dismissed.
- (c) Within ten (10) business days after the investigatory hearing, the Oneida Business Committee shall issue a written decision and provide copies of the decision to:
  - (1) the complainant,
  - (2) the official who is the subject of the complaint, and
  - (3) the Business Committee Support Office, for recordkeeping.

### 120.7. Complaints Alleged Against an Elected Official

**120.7-3. In making a final determination, the Trial Court shall determine if there is enough evidence to substantiate the allegations of misconduct by the official by clear and convincing evidence.**

- (a) If the Trial Court finds that there is clear and convincing evidence that the official engaged in misconduct, the Trial Court shall determine and impose any sanctions and/or penalties deemed appropriate in accordance with this law.
- (b) If the Trial Court does not find that there is clear and convincing evidence to support the allegations that the official engaged in misconduct, the complaint shall be dismissed.

**Bonnie Pigman (written):** Question: Why in this draft law (specifically Sections 120.8 & 120.9) does it read the Business Committee has appointed themselves the same authority or responsibility determine and/or carry out the court's findings? I believe the intent was to mean the Business Committee is responsible to carry out the sanctions and penalties related to appointed officials and the Tribal Court for carrying out sanctions and penalties related to elected officials. If so, then the law should read that way. This law should be so clear so there is little or no room for any other interpretation.

### *Response*

The commenter expresses confusion on whether section 120.8 and 120.9 of the Law allow the Oneida Business Committee to carry out sanctions and penalties based on the Trial Court's determination. The commenter suggests that the Law be clarified that the Oneida Business

Committee imposes sanctions and/or penalties on appointed officials, and the Trial Court imposes sanctions and/or penalties on elected officials.

This distinction is already made clear in the Law. The Law states that if the Oneida Business Committee finds that there is clear and convincing evidence that the official engaged in misconduct, the Oneida Business Committee shall, by majority vote, determine and impose appropriate sanctions and/or penalties. [1 O.C. 120.6-8(a)]. The Law also states that if the Trial Court finds that there is clear and convincing evidence that the official engaged in misconduct, the Trial Court shall determine and impose any sanctions and/or penalties deemed appropriate in accordance with this law. [1 O.C. 120.7-3(a)]. Therefore, the Oneida Business Committee will not be imposing sanctions and/or penalties against an elected official based on a determination from the Trial Court, and the Trial Court will not be imposing sanctions and/or penalties against an appointed official based on a determination from the Oneida Business Committee.

There is no recommended revision based on this law.

### *LOC Consideration*

## **Comment 25 – Trial Court Provides Determination for Record of Conduct:**

### **120.7. Complaints Alleged Against an Elected Official**

**120.7-5. The Trial Court shall provide the Business Committee Support Office a copy of the complaint and the determination of the Trial Court for the official’s record of conduct in office.**

**Bonnie Pigman (written):** In Section 120.10, I agree once the Judiciary has made a determination a copy of the imposed sentence could be provided to the Business Committee as stated on lines 238 & 239 Section 12.7-5.

### *Response*

The commenter expresses agreement with the provision of section 120.7-5 which requires the Trial Court to provide the Business Committee Support Office a copy of the complaint and the determination of the Trial Court for inclusion in the official’s record of conduct in office.

There is no recommended revision based on this comment.

### *LOC Consideration*

## Comment 26 – Involvement of the Oneida Business Committee and Business Committee Support Office in Sanctions and Penalties:

**Bonnie Pigman (written):** Question: In Section 120.8 I'm not sure why the Business Committee or their Support Staff are performing duties that should be court or law enforcement personnel related. Isn't that what Judiciary staff /law enforcement officials are responsible for? If not, it should be. That's how other court' s handle their actions. Once a court determination is made, it becomes law enforcements responsibility to see that the sanction or penalty of the court is carried out. When did our Business Committee or their support staff become law enforcers? How are these duties outlined in the Constitution for elected officials or in the "Business Committee job descriptions"?

### *Response*

The commenter questions why the Oneida Business Committee and the Oneida Business Committee Support Office staff are performing duties that should be completed by personnel of the Court or law enforcement.

The Law does not require the Oneida Business Committee or the Business Committee Support Office to engage in any activity that should be handled by law enforcement or the Trial Court.

The Oneida Business Committee imposes sanctions and/or penalties against appointed officials, and the Trial Court imposes sanctions and/or penalties against elected officials. [1 O.C. 120.6-8(a), 120.7-3(a)]. The further involvement of the Oneida Business Committee and/or Business Committee Support Office in section 120.8-1 of the Law is to conduct administrative duties in regard to the sanctions and/or penalties, such as:

1. Accepting notice of when a verbal reprimand will take place at an Oneida Business Committee or General Tribal Council meeting so the agenda can be properly prepared [1 O.C. 120.8-2(a)(1)];
2. Reading the verbal reprimand statement at an Oneida Business Committee or General Tribal Council meeting [1 O.C. 120.8-2(a)(2)];
3. Accepting notice of when a public apology will take place at an Oneida Business Committee or General Tribal Council meeting so that the agenda can be properly prepared [1 O.C. 120.8-2(b)]; and
4. Accepting notice of when an official will be placed on suspension [1 O.C. 120.8-2(d)(2)].

There is no recommended revision based on this comment.

### *LOC Consideration*

**Comment 27 – Verbal Reprimand Imposed Against the Oneida Business Committee Chairperson:**

**120.8. Sanctions and Penalties**

**120.8-2. Sanctions and penalties may include:**

(a) *Verbal Reprimand.* A verbal reprimand may be imposed on the official.

(1) The Oneida Business Committee or Trial Court shall submit written notices to both the official and to the Business Committee Support Office of the specific date, time and location of the verbal reprimand. The verbal reprimand shall occur at an Oneida Business Committee meeting and/or a General Tribal Council meeting.

(2) To impose the verbal reprimand, the Oneida Business Committee Chairperson shall read a statement that identifies:

(A) The Oneida Business Committee or Trial Court’s findings regarding the specific actions or inaction taken by the official that were found to be misconduct;

(B) The reasons why the official’s actions or inactions amounted to misconduct;

(C) A statement identifying that the misconduct violates the high standards of behavior expected of the Nation’s officials and is not acceptable; and

(D) A direction to the official to refrain from engaging in future misconduct.

**Lisa Liggins (oral):** Line 253, if a verbal reprimand is imposed upon the Oneida Business Committee Chairperson, who should read the statement. I didn’t see it outlined in the definitions, but I might have missed it.

***Response***

Since the Law provides that the Oneida Business Committee Chairperson shall deliver the verbal reprimand to an official, the commenter questions who would deliver a verbal reprimand if the verbal reprimand is imposed upon the Oneida Business Committee Chairperson.

It is recommended that the Legislative Operating Committee makes the following revision to the Law to address this concern:

120.8-2(a)(2) To impose the verbal reprimand, the presiding Oneida Business Committee Chairperson, or another Oneida Business Committee member holding an officer position if the verbal reprimand is imposed against the presiding Oneida Business Committee Chairperson, shall read a statement that identifies:

***LOC Consideration***

## Comment 28 – Consequences of a Refusal to Make a Public Apology:

**Lisa Liggins (oral):** Line 262 is regarding public apologies and what's the consequence if an official refuses to give a public apology that's been imposed upon them or if the public apology that they do provide doesn't meet the requirements in Lines 267 to 270. It seems like the only recourse would be the Removal Law, but then if that's the case, it should probably be referenced in this section.

### *Response*

The commenter questions if the only recourse for an official who refuses to make an ordered public apology, or makes an apology that does not meet the requirements of the Law, would be the Removal law. If so, the commenter suggests that that fact be referenced in this section of the Law.

Removal of an official, pursuant to the Nation's Removal law, would not be the only recourse available if an official does not comply with the provisions of this Law, as the Removal law only applies to those officials which are elected by the Nation's membership. [1 O.C. 104.1-1]. Although the Removal law does not apply to those officials that serve appointed positions, appointed officials of the Nation are subject to termination of appointment by the Oneida Business Committee in accordance with the Nation's Boards, Committees, and Commissions law. [1 O.C. 105.7-4].

Therefore, there are a couple options for responding to an official who does not comply with the provisions of this Law, which include:

1. Filing another complaint of misconduct against the official in accordance with this Law for the opportunity of imposing additional penalties against the official;
2. Proceeding with fulfilling the requirements for removal pursuant to the Removal law, if an elected official; or
3. Proceeding with fulfilling the requirements for termination of appointment pursuant to the Boards, Committees, and Commissions law, if an appointed official.

The Legislative Operating Committee may determine if it is necessary to revise the Law to state the consequences of not following provisions of this Law, or if it is understood that there is always the option of filing an additional complaint against the official, pursuing removal, or pursuing termination of appointment separately.

### *LOC Consideration*

### Comment 29 – Conditional Use of Public Apologies:

**Lisa Liggins (oral):** But overall I do agree with the recommendation in Lines 407 to 409 of the analysis of offering public apology as an alternative to other sanctions and penalties and I would ask that the LOC consider this recommendation.

#### *Response*

The commenter agrees with the consideration offered in the legislative analysis that public apologies should be offered on an alternative to the imposition of other sanctions and penalties.

This means that if the Oneida Business Committee or the Trial Court makes the determination that a sanction should be imposed against the official, a public apology can be imposed against the official as a sanction, with the condition that if the official does not make the public apology then a verbal reprimand or fine will be imposed. The conditional use of a public apology would encourage the official to take accountability and make an apology for his or her action.

During the review and discussion of the legislative analysis, the Legislative Operating Committee supported the suggestion of using public apologies as an alternative to other sanctions, but ultimately decided that the use of a public apology as an alternative to other sanctions can be used in that way without any revision to the Law.

The Legislative Operating Committee may consider if the conditional use of certain sanctions and/or penalties should be referenced directly in the Law.

#### *LOC Consideration*

### Comments 30 through 31 – Simplify Suspension Language:

**Lisa Liggins (oral):** Line 277 is regarding suspension. I think that the intent is that the period of time can only be once per complaint and it can't be split, it's the language that says one consecutive set of days or something like that. It's just confusing. And so I have just one other, but I will submit that in writing and thank you for your consideration.

**Lisa Liggins (written):** Line 277 - regarding Suspension. I think I understand the intent that the "period of time" (i.e. hours, days, weeks) imposed can only be "one (1)" time per complaint (as opposed to per act of misconduct) and it cannot be split up and must be taken one after another ("consecutive"). If that is the intent, I think plainer language is needed. Such as: An official may be suspended from performing his or her duties as an official for a period of time, not to exceed sixty (60) days. The period of time must run consecutively. Suspensions may be imposed once per complaint.

### *Response*

The commenter states that the language used in regard to suspension “An official may be suspended from performing his or her duties as an official for one (1) consecutive period of time, not to exceed sixty (60) days” is confusing and should be simplified into plainer language.

It is recommended that this provision of the Law be simplified to remove “one (1) consecutive.”

### *LOC Consideration*

## Comments 32 through 33 – Timeframe for Suspensions:

### **120.8. Sanctions and Penalties**

#### **120.8-2. Sanctions and penalties may include:**

**(d) *Suspension.* An official may be suspended from performing his or her duties as an official for one (1) consecutive period of time, not to exceed sixty (60) days.**

**Matthew W. Denny (oral):** The other issue would be Line 276, Suspension, it says an official may be suspended not to exceed 60 days and I know it was mentioned in the analysis about the Gaming Commission and the Business Committee, but that is not in this law as it’s written right now and I would like that to be referenced about the Business Committee and the Gaming Commission as they are not monthly or bi-monthly meetings, they are five day a week jobs and a 60 day suspension is way too long. I know that may not be the intent, but the fact is the law says you could be suspended up to 60 days, when in fact any employee is only to be suspended up to 15 days. I think there should be some consistency with a suspension of that kind and additionally, any suspension that has to do with 60 days is not the intent of this law. The intent of this law is to bring about corrective action for minor infractions of a law, that does not mean removal. So a 60 day suspension to me is cause for removal. You shouldn’t be suspended for 60 days or even past 15 days. If you’re suspended past 15 days, that’s cause for removal in my opinion and it’s not consistent with the other parts of this law.

**Travis Wallenfang (written):** Suspensions longer than 14 days are not conducive to the Tribal governments as work still continues so it is with my recommendation Shall not exceed 14 business day and if more serious look at termination.

### *Response*

The commenters suggest that the maximum time allowed for an official to be suspended be lowered from the sixty (60) days currently provided for in the Law for couple reasons:

1. To be consistent with the Nation's policies governing suspension for employees, which only allows a maximum suspension of three (3) weeks;
2. An action that would warrant a suspension of sixty (60) days would most likely rise to the level of removal; and
3. A suspension longer than fourteen (14) days would cause a burdensome delay to the Nation's government functions, that still have to operate while that person is on suspension.

Elected and appointed officials are not employees of the Nation, and therefore are not subject to the Oneida Personnel Policies and Procedures. This means that elected and appointed officials are not subject to the requirement that suspensions will be limited to a maximum of three (3) weeks. [*Personnel Policies and Procedures Section V.5.6.1.1*]. Although elected and appointed officials are not subject to the three (3) week limitation, it is up to the Legislative Operating Committee to determine in the sixty (60) day maximum should remain in the law, or if the maximum time allowed for suspensions should be modified. The Legislative Operating Committee may choose to lower the maximum amount of time allowed for suspensions to reflect the fact that the most egregious of cases can be addressed through termination or removal.

Additionally, the commenter suggests that the Law be amended to specifically reference the fact that some elected or appointed officials serve in a full-time capacity, such as members of the Oneida Business Committee or Oneida Gaming Commission. Suspension of a full time official will have different consequences and impacts than suspension of an official who attends monthly regular meetings. Suspension of a full-time official will impact salaries, benefits such as health insurance, and access to buildings and email.

The Legislative Operating Committee may determine if the Law should specifically address those elected or appointed officials that serve in a full-time capacity when setting limitations for suspension. The LOC may make the determination that:

1. The Law should remain as currently drafted and set one maximum suspension timeframe for elected or appointed officials, whether or not they serve in a full-time capacity.
2. The Law should be amended as follows to reflect the fact that some officials serve in a full-time capacity:

120.8-2. Sanctions and penalties may include:

(d) *Suspension*. An official may be suspended from performing his or her duties as an official for ~~one (1) consecutive~~ a period of time, not to exceed (#) meetings, or (#) sixty (60) days if the official serves in a full-time capacity.

### ***LOC Consideration***

### Comment 34 – Community Service instead of Suspension:

#### 120.8. Sanctions and Penalties

##### 120.8-2. Sanctions and penalties may include:

(d) *Suspension*. An official may be suspended from performing his or her duties as an official for one (1) consecutive period of time, not to exceed sixty (60) days.

(f) *Fines*. An official may be ordered to pay a fine not to exceed five thousand dollars (\$5,000) per act of misconduct.

(4) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.

**Travis Wallenfang (written):** *[Referencing lines 264,265, 266, 267 Suspension. The BC or Trial Court may suspend an official for up to sixty (60) days. During a suspension, the official cannot attend meetings, trainings, or conferences. The official also cannot vote or perform work for the board. In addition, the official cannot earn any stipends, salary or mileage during the suspension. (Page 9)].*

Suspension- is not a means of discipline, why not do community service instead of could order community service along with the other items.

#### *Response*

The commenter questions why suspension is included in the Law as a sanction that may be imposed on an official, while community service is not included.

Although community service is not included as a standalone sanction that can be imposed on an official, community service is referenced in the Law as an alternative to paying a fine.

The Law states that community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service. *[1 O.C. 120.8-2(f)(4)].*

It would be a policy consideration for the Legislative Operating to determine if community service should be added into the Law as a standalone sanction that may be imposed on an elected official.

#### *LOC Consideration*

### Comment 35 – Should Suspension be a Sanction:

#### 120.8. Sanctions and Penalties

##### 120.8-2. Sanctions and penalties may include:

**(d) *Suspension.* An official may be suspended from performing his or her duties as an official for one (1) consecutive period of time, not to exceed sixty (60) days.**

**Brian Doxtator (oral):** Shekoli, (other Oneida greeting), Brian Doxtator (speaking Oneida), Enrollment number (speaking Oneida). Thank you for holding this public hearing on sanctions and penalties. I don't know how to say this, but the sanctions and penalties is not suspension and it's not removal and I didn't get the connection of talking about suspending and removing in regards to the whole law, it's something to try to get a leader back on track and so I thought it was a disconnect from that whole conceptual thinking and so when this kind of started.

### ***Response***

The commenter states that sanctions and penalties should not include suspension, or removal, and instead should focus on getting the official back on track, and not removing from his or her position.

Currently, there are few remedies available to address an official of the Nation that commits misconduct in office. Appointed officials may have their position terminated by the Oneida Business Committee in accordance with the Boards, Committees, and Commissions law, and elected officials may be subject to removal in accordance with the Removal law. The Legislative Operating Committee recognized that there might be instances of misconduct that occur that do not rise to the level of termination of appointment or removal. For that reason, this Law was developed. It was the intention of the Legislative Operating Committee to provide a means to address instances of misconduct before the misconduct rises to the level of removal. This will provide members of the community an opportunity to voice their concerns about alleged misconduct, and also allow officials of the Nation an opportunity to accept accountability for behavior that has been classified as misconduct and become a better official as a result of the growth that may come from a sanction and/or penalty.

The Legislative Operating Committee made an effort to include a wide variety of potential sanctions and penalties that could be imposed against an official in an effort to provide options to address any potential act of misconduct that may arise. The Law allows the Oneida Business Committee and the Trial Court the opportunity to impose a single sanction and/or penalty, or a combination of sanctions and/or penalties. [1 O.C. 120.8-1]. The Law then provides guidance to the Oneida Business Committee and the Trial Court in what factors to consider when determining the appropriate sanction and/or penalty to impose. [1 O.C. 120.8-3].

The Legislative Operating Committee made the policy determination that suspension of an official should be included in the Law as a sanction and penalty. The Legislative Operating Committee may determine:

1. The Law should remain as currently drafted and include suspensions as a potential sanction and penalty that may be imposed against an official.
2. The Law should be amended to remove suspension from the potential sanctions and penalties that may be imposed against an official.

### ***LOC Consideration***

### Comment 36 – Restitution:

#### 120.8. Sanctions and Penalties

##### 120.8-2. Sanctions and penalties may include:

(e) *Restitution*. An official may be ordered to pay restitution, which may include the repayment of any improperly-received benefit, or any other payment which is intended to make another whole after suffering losses as a result of the official's misconduct.

**Lisa Liggins (written):** Line 289 – Typo. The "n" in "Restitution" should be capitalized

#### *Response*

The commenter correctly identified an error in line 289 of the draft. The term restitution appears as “(e) *Restitution*.”

It is recommended that this error be corrected, and the last “n” in restitution be italicized as the rest of the word.

#### *LOC Consideration*

### Comments 37 through 38 - Amount of Fines:

#### 120.8. Sanctions and Penalties

##### 120.8-2. Sanctions and penalties may include:

(f) *Fines*. An official may be ordered to pay a fine not to exceed five thousand dollars (\$5,000) per act of misconduct.

**Matthew W. Denny (oral):** Another issue, comment, is on line 292, Fines. The official may be ordered to pay not to exceed \$5,000. Again, \$5,000 to me is way too high. If something were to be so severe that you would come up with a \$5,000 fine, then that to me is a removal process. Again, that's way too much, way too excessive for a minor infraction, so I would like to see that number reduced, possibly to \$500 to \$1,000 would be my recommendation, but \$5,000 is way too much. You're talking about removal at that point.

**Travis Wallenfang (written):** *[Referencing lines 272 & 273 Fines. An official can be ordered to pay a fine for each act of misconduct. Unlike restitution, a fine is a punishment. The maximum amount of each fine is \$5000. (Page 9)].*

Fines should not get to the excessive point of \$5000 and the Oneida Business Committee, Boards, Committees and Commissions should be Termination or official to be removed from the position. fines may be applicable based on Sections F Factors in Determining Appropriate Sanction and /or penalty and amount for the Fines.

### ***Response***

The commenters express the opinion that allowing an official to be ordered to pay a fine up to five thousand dollars (\$5,000) per act of misconduct is excessive. One commenter instead suggests that fines be limited to possibly five hundred dollars (\$500) or to one thousand dollars (\$1,000).

The maximum amount of fines that may be ordered upon an official found to have committed misconduct is a policy determination for the Legislative Operating Committee to make. The LOC may determine:

1. The Law should remain as drafted; or
2. The Law should be amended to reflect an alternative maximum fine amount.

### ***LOC Consideration***

## **Comment 39 – Fines Per Act of Misconduct:**

### **120.8. Sanctions and Penalties**

#### **120.8-2. Sanctions and penalties may include:**

**(f) *Fines.* An official may be ordered to pay a fine not to exceed five thousand dollars (\$5,000) per act of misconduct.**

**(1) Fines shall be paid to the Trial Court.**

**(2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later. Cash shall not be accepted for payment of fines. If the fine is not paid by this deadline, the Trial Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process.**

**(3) Money received from fines shall be deposited into the General Fund.**

**(4) Community service may be substituted for part or all of any fine at the minimum wage rate of the Nation for each hour of community service.**

**Lisa Liggins (written):** Line 293 - regarding Fines. This section states fines can be imposed "per act". This is the only sanction or penalty that is specifically imposed "per act". Is it the intent that

the others are imposed "per complaint"? If so, then maybe language should be added to line 242 of the main section which indicates all except fines may imposed "per complaint". Or could any of the other sanctions and penalties also be imposed "per act"? Another option might be to include "per complaint" or "per act" language to each sanction or penalty.

### ***Response***

The expresses confusion on why the section of the Law regarding fines includes the qualifier that the fine is imposed per act of misconduct, and none of the other sanctions mention whether the sanction is imposed per act of misconduct or per complaint.

It was the intent of this Law that every sanction and/or penalty that could be imposed would be imposed as a result of the complaint as a whole, and not per act of misconduct contained in one complaint. For clarification purposes it is recommended that the following revision be made:

120.8-2. Sanctions and penalties may include:

- (f) *Fines*. An official may be ordered to pay a fine not to exceed five thousand dollars (\$5,000) ~~per act of misconduct~~.

### ***LOC Consideration***

## **Comment 40 – Cultural Context of Fines:**

**Travis Wallenfang (written):** My Next comment was to the context of the fines as the Anglo-American law systems often times do not reflect the ways of the of the Traditional/Cultural laws. In section pertaining to the fines it essential to take look at the tradition ways once again because if they elders have spoken to the leadership multiple times and the leadership has chosen not to listen, then they can be removed from the positions of leadership.

### ***Response***

The commenter questions the cultural context of the inclusion of fines in the Law, and worries that the inclusion of fines does not reflect traditional and/or cultural ways.

The Legislative Operating Committee made an effort to include a wide variety of potential sanctions and penalties that could be imposed against an official in an effort to provide options to address any potential act of misconduct that may arise. The Law allows the Oneida Business Committee and the Trial Court the opportunity to impose a single sanction and/or penalty, or a combination of sanctions and/or penalties. [1 O.C. 120.8-1]. The Law then provides guidance to the Oneida Business Committee and the Trial Court in what factors to consider when determining the appropriate sanction and/or penalty to impose. [1 O.C. 120.8-3].

The Legislative Operating Committee made the policy determination that fines should be included in the Law as a sanction and penalty. The Legislative Operating Committee may determine:

3. The Law should remain as currently drafted and include fines as a potential sanction and penalty that may be imposed against an official.
4. The Law should be amended to remove fines from the potential sanctions and penalties that may be imposed against an official.

Additionally, the commenter provides an example of a traditional practice by which elders provide warnings to an official if the official engages in behavior that constitutes misconduct, and if the official fails to heed the warnings of the elders, the official can be removed from the position of leadership. Today, the removal of an official from his or her position of leadership can only be done in accordance with the process contained in the Removal law, which was adopted by the Nation's General Tribal Council.

### *LOC Consideration*

## **Comment 41 – Loss of Stipends:**

### **120.8. Sanctions and Penalties**

#### **120.8-2. Sanctions and penalties may include:**

- (g) *Loss of Stipend.* An official may be ordered to forfeit a stipend for his or her service on an entity not to exceed twelve (12) meetings.**

**Matthew W. Denny (oral):** Additionally, I want to comment about line 303, the loss of a stipend. You go back, at the bottom, it says you cannot exceed 12 meetings. Again, that is being inconsistent with a suspension, because a suspension loses your stipend as well with a 60 day policy. So you have a loss of stipend for 12 meetings which could be 12 days, a 12 day suspension more or less. That should be consistent with the suspension part of it. So, if you going to lose 60 days, you are going to be suspended for 60 days, but you can only lose your stipend for 12 meetings, it's not consistent, so I would like that clarified or cleaned up a little bit. And that's it, that's all I got.

### ***Response***

The commenter believes that the provisions regarding a loss of stipend and suspension are inconsistent since a suspension can span a maximum of sixty (60) days while a person can be ordered to forfeit a stipend for a maximum of twelve (12) meetings.

A suspension automatically includes a loss of stipend and/or any other form of compensation during the suspension period due to the fact that an official is not allowed to attend meetings,

trainings, conferences, or any other activity. [1 O.C. 120.8-2(d)]. Although a loss of stipend is inherent to a suspension, a suspension is not required in order for the Oneida Business Committee of the Judiciary to order a loss of stipend. The Law states that a sanction or penalty, or any combination of sanctions and penalties, may be imposed upon an official. [1 O.C. 120.8-1]. Therefore, a loss of stipend can be ordered independent of a suspension, and the maximum allotments for each sanction do not necessarily have to be consistent.

The Legislative Operating Committee may consider whether the maximum amount of time an official may be ordered to forfeit a stipend should be consistent with the maximum amount of time an official may be ordered to be suspended for. The Legislative Operating Committee may decide:

1. The Law should remain as currently drafted; or
2. The Law should be amended to make the maximum amount of time an official may be ordered to forfeit a stipend consistent with the maximum amount of time an official may be ordered to be suspended for.

### *LOC Consideration*

## **Comment 42 – Application of the Loss of Stipend:**

### **120.8. Sanctions and Penalties**

#### **120.8-2. Sanctions and penalties may include:**

**(g) *Loss of Stipend.* An official may be ordered to forfeit a stipend for his or her service on an entity not to exceed twelve (12) meetings.**

**Bonnie Pigman (written):** Example of an incomplete sanction of penalty is found on lines 303-304: (g) Loss of Stipend. States that the fine is to forfeit a stipend for twelve (12) meetings. The doesn't say it has to occur consecutively or even if applies to only the entity which the individual may have committed the misconduct. (Example individual is on 3 entities and misconduct occurs on only one. Since the stipends are now a standard \$100 for every Board, Committee, Commission, what difference would it make if they had the stipend withheld from each until the twelve (12) were met?

### ***Response***

The commenter suggests that more detail regarding the loss of stipend provision would be beneficial to aid in the understanding of the application of this sanction. The commenter questions if the loss of stipend happens for a consecutive period of time, and if the loss of stipends applies to all boards, committees, and commissions an individual sits on, or just the board, committee, or commission that the complaint arose from.

It was intended that the loss of stipend for a set number of time would designate the period of time in which the person would not be eligible to receive a stipend for. Since it sets a period of time the assumption is that this will be a consecutive period of time.

In regards to the question of whether an individual would lose his or her stipend for a determined amount of meetings for all positions the individual serves, or just the position that is most related to the complaint, this is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee may determine:

1. The loss of stipends should apply for a set number of meetings, and include meetings for all positions the official serves.
2. The loss of stipends should apply for a set number of meetings, and only include meetings for the positions that is most related to the complaint, not any other position of the official.
3. The Law should allow for flexibility in making the determination of whether the loss of stipends only applies to meetings of one position or meetings of all positions of an official, as there are many different situations that may arise.

### *LOC Consideration*

#### **Comment 43 – Application of Loss of Stipend to the Oneida Business Committee:**

### **120.8. Sanctions and Penalties**

#### **120.8-2. Sanctions and penalties may include:**

- (g) *Loss of Stipend.* **An official may be ordered to forfeit a stipend for his or her service on an entity not to exceed twelve (12) meetings.**

**Bonnie Pigman (written):** How would a Loss of Stipend apply to the Business Committee as they are exempted from the Board, Committee, Commission's law.

### ***Response***

The commenter questions how the loss of stipend sanction would apply to the Oneida Business Committee since they are not subject to the Boards, Committees, and Commissions law which governs stipends.

The loss of stipend sanction would not necessarily apply to those officials that serve in a full-time capacity, such as members of the Oneida Business Committee and the Oneida Gaming Commission.

The Law provides a variety of potential sanctions and penalties that can be applied to officials of the Nation that engage in misconduct, and the discretion to determine which sanction and/or penalty is appropriate is left up to either the Oneida Business Committee or the Trial Court. [1

*O.C. 120.8J*. Not every sanction will be applicable to every elected or appointed official, and not every sanction has to be used.

Since the Oneida Business Committee and Oneida Gaming Commission members are full-time officials and receive a salary instead of a stipend for every meeting, the loss of stipend sanction is not a sanction that would be imposed against a full-time official. Instead, a sanction such as suspension or a fine would be more appropriate for a full-time official.

It is a policy consideration for the Legislative Operating Committee to determine if every sanction and/or penalty should be applicable to every elected or appointed official, or if it is permissible to have a variety of options for sanctions that may not be applicable to every individual official. The Legislative Operating Committee may determine:

1. The Law should remain as currently drafted, with the understanding that while a loss of stipend would not apply to the Oneida Business Committee or Oneida Gaming Commission members, other sanctions and penalties do apply.
2. The Law should be amended so that every sanction and/or penalty that is available under this law can be applied to every individual official.

### *LOC Consideration*

## **Comment 44 – Prohibition from Office:**

### **120.8. Sanctions and Penalties**

#### **120.8-2. Sanctions and penalties may include:**

**(j) Prohibition. Once terminated from office, an appointed official may be prohibited from serving on an entity for a period of time not to exceed three (3) years.**

**Bonnie Pigman (written):** Also, on lines 310 - 311: (j) Prohibition. Is the language in this to mean prohibition would not apply to elected officials? Why not? Is this intentionally written to be a protection for the Business Committee?

### ***Response***

The commenter questions if this provision of the Law only applies to appointed officials, and if this provision was included for the purpose of providing protection to the Oneida Business Committee.

Section 120.8-2(j), which governs the prohibition of officials, does only apply to appointed officials that have been terminated from his or her position.

When discussing the inclusion of this provision in the Law, the Legislative Operating Committee originally wanted to apply a prohibition from office to both appointed and elected officials, recognizing that there might be egregious situations that arise in the future that would result in the desire to prohibit an official from seeking office again.

During these discussions the Legislative Operating Committee discussed the Nation's Constitution and Bylaws which provide for the qualifications for election to the Oneida Business Committee. The Constitution states that the qualified voters may elect an individual for placement on the Oneida Business Committee if the individual is age twenty-one (21) and over, physically resides in either Brown or Outagamie Counties of Wisconsin, and is an enrolled member of the Nation. *[Article III, Section 3]*.

The Constitution later states that it is within the General Tribal Council's authority to adopt resolutions on behalf of the Nation, but that they may not be inconsistent with the Constitution in regard to regulating the procedure of other tribal agencies, tribal officials, or tribal organizations. *[Article IV, Section 1(i)]*.

Additionally, the Legislative Operating Committee discussed the Nation's Election law, which provides requirements for candidate eligibility. The Election law requires that every candidate for election be an enrolled member of the Nation, be a qualified voter on the day of the election, and provide proof of physical residency as required for the position for which they seek. *[1 O.C. 102.5-2]*. The Election law then goes on to recognize that any further specific requirements or exceptions that are set out in duly adopted bylaws or other documents must be followed. *[1 O.C. 102.5-1]*.

The Legislative Operating Committee did not want to inhibit an individual's right to run for an elected position within the Nation, and for that reason the Legislative Operating Committee ultimately decided to apply this provision only to appointed officials. This concern was for all elected positions of the Nation, and not just a protection for the Oneida Business Committee.

If an elected official exhibited such egregious behavior that he or she was removed from office, it would be up to the membership of the Nation to choose not to elect that official again. Who serves in an elected position is up to the discretion of the Nation's membership, and therefore the Legislative Operating Committee was not comfortable with allowing the Trial Court to make a determination that a prohibition sanction should be imposed against an individual resulting in that individual not being able to run for an elected position for some time.

Although the Legislative Operating Committee made the determination not to apply prohibitions to elected officials, it is worth noting that the Election law does state that an Election Board member who is removed from the Election Board shall be ineligible to serve on the Election Board for a period of three (3) years. *[1 O.C. 102.4-4]*. This prohibition after removal is specific to the Election Board only.

The Legislative Operating Committee determined that a prohibition from office could be a sanction that is imposed against appointed officials that are terminated from office due to the fact that appointed officials serve at the discretion of the Oneida Business Committee. *[1 O.C. 105.7-4, 1*

*O.C. 120.6-1*]. Therefore, it is within the authority of the Oneida Business Committee to make a decision that an individual will not be reconsidered to serve an appointment for a period of time.

Additionally, in regard to the application of this provision, it is important to note that the Oneida Business Committee is the body that has the authority to remove an appointed official. The Oneida Business Committee can then make the decision to terminate the appointment of an individual and prohibit that individual from running for an appointed position for a set period of time at the same time. This would not be the case for the Trial Court and prohibition of elected officials. Although the Trial Court may impose sanctions and penalties against an elected official, the Trial Court cannot order the removal of an elected official from office. The Trial Court may simply recommend that the process for removing an elected official be initiated in accordance with the Nation's Removal law. [*1 O.C. 120.8-2(i)*]. The Removal law ultimately delegates the authority to make a determination as to the removal of an elected official to the General Tribal Council. [*1 O.C.104.8-3*]. Therefore, even if the Law allowed the Trial Court to prohibit an elected official from running for office for a period not to exceed three (3) years, this does not mean the official would be removed from his or her position.

To whom a prohibition from office applies to is ultimately a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee may determine:

1. The Law shall remain as currently drafted, and prohibitions from office shall only apply to an appointed official who is terminated from his or her position.
2. The Law should be amended to allow for a prohibition from office to apply to both elected and appointed officials.

### *LOC Consideration*

## Comments 45 through 47 – Determination of Sanctions and Penalties:

### **120.8. Sanctions and Penalties**

**120.8-1. A sanction or penalty, or any combination of sanctions and/or penalties, may be imposed upon the Nation's officials for misconduct in office, in accordance with this law.**

**120.8-3. *Factors in Determining an Appropriate Sanction and/or Penalty.* When determining the appropriate sanction or sanctions to impose, the Oneida Business Committee or the Trial Court may consider all factors it deems relevant, including but not limited to:**

- (a) **the seriousness or severity of the misconduct;**
- (b) **whether the conduct was intentional or not;**
- (c) **the likelihood of repetition;**
- (d) **the extent of probable damage to the finances or reputation of the Nation, the complainant, the entity, or to any other person or organization;**
- (e) **whether the official or his or her family personally profited, financially or otherwise, from the prohibited conduct;**
- (f) **the official's remorse, or**

**(g) the official's willingness and ability to take steps to mitigate the harm caused by the violation, and**

**(h) any prior complaints filed, including any previous sanctions and penalties imposed upon the official while serving on an entity.**

**Rae Skenandore (written):** Sanctions and Penalties. Specific actions should have specific penalties. This need not be in the Law, but it should be available similar to a fines & fees schedule.

**Bonnie Pigman (written):** I feel the Sanctions and Penalties draft law lacks clearly outlining what the fine or penalty will be assessed for each offense. I read there are "factors" the court is to use, but there should some table like there is for Hunting and Fishing or the Domestic Animal laws so people know. The law only identifies some offenses.

**Travis Wallenfang (written):** Another opportunity is to take a look if money was associated similar to felonies with the state which over a certain dollar amount sets in place the amount of actions to be taken.

### ***Response***

The commenters state that each action of misconduct should have a specific sanction and/or penalty that is associated with that misconduct. Additionally, that when allegations of misconduct arise that are associated with money, the process for imposing sanctions and penalties should be modeled after how felonies are handled in the state of Wisconsin, where every misconduct associated with money over a certain dollar amount sets in place the amount of actions, and therefore sanctions, to be taken against the individual.

Through the development of this Law the Legislative Operating Committee spent a lot of time discussing how sanctions and penalties should be imposed upon officials who have been found to have participated in some form of misconduct. The Legislative Operating Committee debated whether the Law should provide an exhaustive list of potential misconduct, and then prescribe specific sanctions and penalties for each type of misconduct. Ultimately, the Legislative Operating Committee made the decision to keep what constitutes misconduct and what sanctions and penalties should be imposed against an official as open as possible to allow for flexibility in addressing whatever situation arises.

Instead of prescribing specific sanctions and/or penalties for behaviors that constitute misconduct, the Law provides factors for the Oneida Business Committee and the Trial Court to use when determining what an appropriate sanction and/or penalty is. [1 O.C. 120.8-3]. When determining the appropriate sanction or sanctions to impose, the Oneida Business Committee or the Trial Court may consider all factors it deems relevant, including but not limited to:

1. the seriousness or severity of the misconduct;
2. whether the conduct was intentional or not;
3. the likelihood of repetition;
4. the extent of probable damage to the finances or reputation of the Nation, the complainant, the entity, or to any other person or organization;

5. whether the official or his or her family personally profited, financially or otherwise, from the prohibited conduct;
  6. the official's remorse, or
  7. the official's willingness and ability to take steps to mitigate the harm caused by the violation, and
  8. any prior complaints filed, including any previous sanctions and penalties imposed upon the official while serving on an entity.
- [1 O.C. 120.8-3].

The Legislative Operating Committee may make the following policy determination as to the detail the Law should provide when prescribing sanctions and/or penalties to officials:

1. The Law should remain as drafted and allow for flexibility in the determination of what sanction and/or penalty should be imposed on an official.
2. The Law should be amended to provide for more specific information on what sanction and/or penalty should be imposed for what misconduct.

### *LOC Consideration*

#### **Comment 48 – Length of Time to Maintain a Record of Conduct in Office:**

#### **120.10. Record of Conduct in Office**

**120.10-1. The Business Committee Support Office shall maintain a record of conduct in office for each official.**

**120.10-2. The record of conduct in office maintained for each official shall include, at a minimum:**

- (a) a copy of each complaint filed against the official;
- (b) the outcome of the complaint, and
- (c) any sanctions or penalties imposed upon an official.

**120.10-3. The record of conduct in office for each official shall be maintained for a period of no less than ten (10) years.**

**Bonnie Pigman (written):** Question: What was the rationale for recommending the ten (10) years in section 120.10-3?

### *Response*

The commenter questions the rationale behind requiring the record of conduct in office for each official to be maintained for a period of no less than ten (10) years.

The Legislative Operating Committee made the policy determination that an official's record of conduct in office should be maintained by the Business Committee Support Office for a period of ten (10) years.

The Open Records and Open Meetings law outlines a general retention period of seven (7) years for records that are maintained by the Records Management Department before destruction, but allows for alternate retention period to be approved by the Oneida Business Committee for specific records. [1 O.C. 107.9-4].

The Legislative Operating Committee may consider whether an alternative time period should be developed for the retention of records in the Law, or if the law should remain as currently drafted with the requirement that records be maintained for a period no less than ten (10) years.

### *LOC Consideration*

#### **Comment 49 – Mistreatment of Record of Conduct in Office:**

##### **120.10. Record of Conduct in Office**

**120.10-1. The Business Committee Support Office shall maintain a record of conduct in office for each official.**

**120.10-2. The record of conduct in office maintained for each official shall include, at a minimum:**

- (a) a copy of each complaint filed against the official;**
- (b) the outcome of the complaint, and**
- (c) any sanctions or penalties imposed upon an official.**

**120.10-3. The record of conduct in office for each official shall be maintained for a period of no less than ten (10) years.**

**Bonnie Pigman (written):** What controls are in place when there are changes to Business Committee (who oversee the BC Support Staff) to ensure no prior misconducts for themselves could be just deleted, because they are now the supervisor?

### *Response*

The commenter questions what controls are in place to ensure that the Oneida Business Committee does not direct the Business Committee Support Office staff to destroy records.

The Law requires the Business Committee Support Office to maintain an official's record of conduct in office for a period of no less than ten (10) years. [1 O.C. 120.10-3]. If a member of the Oneida Business Committee directed the destruction or alteration of a record before the ten (10)

year timeframe required by this Law has expired, then that would be a direct violation of this Law and the official would be subject to sanctions and/or penalties under this Law.

The Oneida Business Committee is also not the direct supervisor of the staff in the Business Committee Support Office. The staff in the Business Committee Support Office report to the Area Manager of the Oneida Business Committee Records.

If an employee in the Business Committee Support Office improperly maintained the record of conduct for an official in violation of this Law, that employee would be subject to the disciplinary procedures provided in the Oneida Personnel Policies and Procedures, since the Oneida Personnel Policies and Procedures provides that a violation of a duly adopted law of the Nation may result in discipline. [*Personnel Policies and Procedures Section V.5*].

There is no recommended revision based on this comment.

### *LOC Consideration*

#### **Comment 50 – Confidentiality:**

**Rae Skenandore (written):** Confidentiality. Is there any presumption of confidentiality prior to the hearing of the case? I understand that most documents are public record. However, a reputation can be damaged much more readily than it can be repaired. Should these types of cases require some sort of confidentiality until a judgement is reached? Also, having information go through the courts would help maintain confidentiality. The fewer hands that a complaint goes through, the more likely it is to remain confidential.

### *Response*

The commenter questions whether there is a presumption of confidentiality prior to the hearing of the case.

When complaints against an appointed official is filed with the Business Committee Support Office, the complaint is placed onto an executive session meeting agenda of the Oneida Business Committee. Although meetings of the Oneida Business Committee are required by the Nation's Open Records and Open Meetings law to be held in open session [*1 O.C. 107.14-1*], a closed meeting session, known as executive session, is allowed when an exception due to the sensitive nature of certain subjects is provided under the law. [*1 O.C. 107.17-1*].

The Nation's Open Records and Open Meetings law recognizes that there are discussions during meetings and/or records produced in the course of governmental business that are sensitive in nature, and the public's right to a document or attendance at a meeting is outweighed by the public

interest in keeping such a meeting or record confidential. [1 O.C. 107.4-1]. One such exception is for a discussion or record that contains personally identifiable information that is collected or maintained in connection with a complaint, investigation, or other circumstances that may lead to an enforcement action, administrative proceeding, arbitration proceeding, or court proceeding. [1 O.C. 107.4-1(j)].

This means that all records and discussions during the executive session portion of the Oneida Business Committee meeting related to the complaint would be kept confidential, and would not be subject to review by the general public.

There is the expectation that the Business Committee Support Office staff, the members of the Oneida Business Committee, and other any staff that handles confidential records, or is present during executive session, will properly handle and maintain the confidential information. If an official mishandles confidential information, then that official would be subject to sanctions and/or penalties under this Law. If an employee mishandles confidential information, then that employee can be subject to disciplinary action in accordance with the Oneida Personnel Policies and Procedures.

The Nation's Judiciary law states that the proceedings of the Trial Court shall be public and members of the general public may freely attend the same, except for peacemaking or mediation proceedings or if expressly prohibited by law; provided that, in any case where the presiding Judge determines that there are safety or confidentiality concerns the Judge may exclude from the proceedings all individuals not necessarily present as parties or witnesses. [8 O.C. 801.4-4]. Additionally, the Oneida Judiciary Rules of Civil Procedure states that the records of all hearings and matters shall be available except where they are prohibited from disclosure by this Law, any other Tribal law or Court order or rule. [8 O.C. 803.32-2]. Deliberations of the Court are confidential, and not included in the record, and not subject to reproduction. [8 O.C. 803.32-2(c)].

The Legislative Operating Committee may determine if confidentiality is adequately addressed in the Law, or if the Law should be amended to include a specific provision that states a complaint is treated as confidential by the Oneida Business Committee and Trial Court until a decision is made regarding the complaint.

### *LOC Consideration*

#### **Comment 51 – Conflict Resolution Alternatives:**

**Rae Skenandore (written):** Conflict Resolution Alternatives. It is possible that a complaint may arise out of personality conflicts or bad behavior on the part of an official toward another official, staff, or the general public. A ½ hearted public apology does little to actually solve the problem.

- a. If the complainant agrees, the process should include a step that could resolve the issue before it elevates beyond a complaint.

- i. HRD offers a CIMs mediation between employees.
- ii. The Judiciary offers peacemaking.
- b. The ability to apply court ordered training at the offender's expense, i.e.
  - i. Anger management
  - ii. Sexual harassment training
  - iii. Other sensitivity training

### ***Response***

The commenter suggests that a provision be added to the Law that allows for an alternative conflict resolution to take place before the issues elevate beyond an initial complaint. For those cases that are filed with the Trial Court, the Trial Court has a Peacemaking and Mediation Division that provides a forum for the use of peacemaking and mediation to resolve disputes in a fair manner. [8 O.C. 801.6-1]. Peacemaking and mediation services are available at all stages of litigation. [8 O.C. 801.6-1].

There is currently no provision that allows for mediation or a form of an alternative conflict resolution to take place for those complaints that are alleged against appointed officials. The Legislative Operating Committee may make one of the following policy considerations:

1. The Law should remain as currently drafted and not address mediation or alternative conflict resolutions for complaints alleged against appointed officials.
2. The Law should be amended to include a provision that addresses mediation or alternative conflict resolutions for complaints alleged against appointed officials.

The commenter also suggests including provisions that allow for training, such as anger management training or sexual harassment training, to be imposed on the official as a sanction and/or penalty at the official's expense. Whether or not to include ordered trainings as a sanction for an official will be a policy determination for the Legislative Operating Committee. The Legislative Operating Committee may make one of the following policy considerations:

1. The Law should remain as currently drafted and not include the imposition of ordered training as a sanction and/or penalty for an official.
2. The Law should be amended to include the imposition of ordered training as a sanction and/or penalty for an official.

### ***LOC Consideration***

## **Comment 52 – Clarification Provided in Flowcharts of the Legislative Analysis:**

**Bonnie Pigman (written):** The flowcharts on pages 7 and 8 of the analysis provide more clarity than the language in the draft law does. The law should mirror the flowcharts in the analysis.

## ***Response***

The Commenter states that the flowcharts provided on pages seven (7) regarding the complaint process for appointed officials, and eight (8) regarding the complaint process for elected officials, in the legislative analysis provide more clarity than the language in the draft law does, and therefore the language in the law should mirror the flowcharts.

Both flowcharts contained in the legislative analysis provide a simplified visual representation of the provisions stated in the Law.

All the information that is provided on page seven (7) of the legislative analysis in the flowchart regarding the complaint process against appointed officials is clearly stated in section 120.6 of the Law.

In regard to the information that is provided on page eight (8) of the legislative analysis in the flowchart on the complaint process for elected officials, the flowchart in the legislative analysis does contain more information than is provided for in section 120.7 of the Law. More information is provided in the flowchart than the actual provision of the Law due to the fact that the Law states that complaints of alleged misconduct shall be filed with the Trial Court pursuant to the Nation's Rules of Civil Procedure. [*1 O.C. 120.7-1*]. The Oneida Judiciary Rules of Civil Procedure governs all civil actions that fall under the jurisdiction of the Nation and provides a consistent set of rules governing the process for civil claims, in order to ensure equal and fair treatment to all persons who come before the Nation's courts to have their disputes resolved. [*8 O.C. 803.1*].

The Law simply references the Rules of Civil Procedure instead of including the specific information contained in the Rules of Civil Procedure like the flowchart does for a couple reasons:

1. The Legislative Operating Committee wanted to avoid having two (2) separate laws that provide the same procedure as this would be duplicative. The Rules of Civil Procedure already extensively outlines how a complaint is filed and handled by the Trial Court, so the Legislative Operating Committee can simply reference this existing process in this Law.
2. The Legislative Operating Committee understands that the Nation's Rules of Civil Procedure might be amended in the future and the Trial Court's processes and procedures might change. The Legislative Operating Committee wanted to avoid a situation where a potential conflict between two (2) provisions in two (2) laws arises because the provisions that were once consistent now conflict after amendments were made to one (1) of the laws. Referencing the Rules of Civil Procedure instead of duplicating the provisions in the Law allow the flexibility for the procedures contained in the Rules of Civil Procedure to change, while still remaining compatible with the most current court process and procedure.

There is no recommended revision based on this law.

## ***LOC Consideration***

### Comment 53 – Judiciary:

**Rae Skenandore (written):** Judiciary. Title 8. Judiciary - Chapter 801 Section 801.12. Reprimand, Suspension and Removal of Judges along with the Canons of Judicial Ethics contains a process and criteria for complaints against Judges. Sanctions and penalties should have mirrored the already established process & not attempted to reinvent the wheel. Instead of sanctions and penalties, what should have been updated/created first is a Governmental Ethics Ordinance that includes all of these areas and a standard of conduct for elected officials.

#### *Response*

The commenter states that this Law should have mirrored the provisions of the Judiciary law and Canons of Judicial Ethics for the process and criteria for complaints against judges, instead of creating an alternative process for complaints against officials.

The process for complaints against judges contained in the Judiciary Law and the Oneida Tribal Judiciary Canons of Judicial Conduct was reviewed during the development of this law.

Ultimately, the process and criteria for making a complaint against an official of the Nation was a policy determination for the Legislative Operating Committee to make, and the Legislative Operating Committee made the determination to move forward with a different process for elected and appointed officials of the Nation.

There is no recommended revision based on this comment.

#### *LOC Consideration*

### Comments 54 through 56 – Code of Ethics:

**Travis Wallenfang (written):** *[Referencing Lines 81 & 82 Any other activity that does not uphold the moral and ethical standards expected of the Nation’s officials. (Page 3)].*

Establish a code of Ethical and moral standards expected of the Nation’s Officials.

**Rae Skenandore (written):** Code of conduct. This process should have included the development of a specific code of conduct FIRST, prior to developing the punishment. What are the expectations for the behavior of all of our public officials?

**Rae Skenandore (written):** I understand that a lot of work went into developing this law. However, overall, I think the cart is before the horse. Prior to an allegation of misconduct, you need a code of conduct to hold them to. A stronger code of ethics needs to be in place, and you need to train everyone on the standards and ethics they will be held to. I think that will go a lot farther in instilling public trust than the Hodge podge of punishment listed in sanctions & penalties.

### **Response**

The commenters all suggests that the Nation establish a code of ethical and moral standards expected of the Nation's officials.

The Nation currently has a Code of Ethics law for the purpose of promoting the highest ethical conduct in all of its elected and appointed officials, and employees. [1 O.C. 103.1-1]. The Code of Ethics sets the minimum standard of conduct that is expected of officials and employees.

The Legislative Operating Committee currently has the Code of Ethics on its Active Files List, and intends on pursuing amendments to the law to provide more details as to the ethical expectations of elected and appointed officials of the Nation.

The Law also provides information on what behavior constitutes misconduct. [1 O.C. 120.4-2]. Expectations for the behavior of an official include:

1. The official shall abide by the Constitution and all laws, policies, and rules of the Nation.
2. The official shall abide by all bylaws, standards operating procedures, and/or other internal policies that govern the entity upon which the official serves.
  - a. The Boards, Committees, and Commissions law provides all boards, committees, and commissions of the Nation the opportunity and flexibility to create detailed behavioral expectations that meet the specific needs of their board, committee, or commission, and details on how the entity will enforce those expectations. [1 O.C. 105.10-3(d)].
  - b. Oneida Business Committee resolution BC-09-26-18-C requires that all boards, committees, and commissions of the Nation update their bylaws in accordance with the requirements of the most recently amended Boards, Committees, and Commissions law by March 26, 2019.
  - c. This means that boards, committees, and commissions will have the opportunity to provide for more specific behavioral and ethical requirements, in addition to those already present in the Code of Ethics and other laws and policies of the Nation.
3. The official shall avoid conviction of a felony, or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law.
4. The official shall avoid any other activity that is incompatible with the high moral and ethical standards that are expected of the Nation's officials.

In addition to the Code of Ethics, and the information provided by this Law, the Nation also possesses a variety of other laws that contain expectations for the behavior of an official, including, but not limited to:

1. Boards, Committees, and Commissions law [1 O.C. 105];
2. Removal law [1 O.C. 104];

3. Conflict of Interest law [2 O.C. 217];
4. Social Media Policy [2 O.C. 218]; and
5. Oneida Travel and Expense Policy [2 O.C. 219].

There is no recommended revision based on these comments.

### ***LOC Consideration***

#### **Comment 57 – Ethics Training :**

**Rae Skenandore (written):** Ethic’s training. While training is not specifically addressed in this law, it is a standard used for imposing sanctions and penalties. If it is a standard to be held to, perhaps the offer of ethics training would be beneficial.

#### ***Response***

The commenter suggests that ethics training be provided to officials, since the Law will hold officials of the Nation to an ethical standard, or impose sanctions upon them.

The Law provides the various sanctions and/or penalties that may be imposed upon an official found to have engaged in misconduct, as well as an orderly and fair process for determining when those sanctions should be imposed. [1 O.C. 120.1-1].

Although the Law does not provide for training on the ethical standards an official is expected to meet, the Legislative Operating Committee may consider whether some type of ethics training should be made available to officials of the Nation as a part of the implementation of this proposed Law.

### ***LOC Consideration***

#### **Comment 58 – Additional Research:**

**Travis Wallenfang (written):** [Referencing Lines 23,24,25,26,27,28,29,30,31,32,33,34, SECTION 3. CONSULTATION AND OUTREACH - A. The Rules of Civil Procedure, Rules of Appellate Procedure, Judiciary Law, Code of Ethics, Open Meetings and Open Records Law, and

*Comprehensive Policy on Boards Committees and Commissions were reviewed in drafting this analysis. In addition, the following laws were reviewed in drafting this analysis: (Page 2)*

- *Ho Chunk Nation Code of Ethics 2 HCC 1;*
- *Oglala Sioux Tribe Code of Ethics Ordinance No. 08-11;*
- *Pokagon Band of Potawatomi Indians Ethics Code;*
- *Rosebud Sioux Tribal Code of Ethics Ordinance 86-04;*
- *Siletz Tribal Council Ethics Ordinance –Siletz Tribal Code 2.200;*
- *Skokomish Code of Ethics S.T.C. 1.05;*
- *Pit River Tribal Government Code of Conduct Section 80.]*

Take a look at the Navajo law system Constitutions and bylaws.

### ***Response***

The commenter suggests reviewing the Constitution and Bylaws, as well as the law system, of the Navajo Nation.

Although the laws and/or policies of the Navajo Nation were not reviewed in the development of this Law, laws and policies from the following Nations were reviewed:

1. Ho Chunk Nation;
2. Oglala Sioux Tribe;
3. Pokagon Band of Potawatomi Indians;
4. Rosebud Sioux;
5. Siletz Tribe;
6. Skokomish Indian Tribe;
7. Pit River Tribe.

The provisions of this Law are consistent with the other tribal laws and policies that were consulted during the development of this law.

There is no recommended revision based on this comment.

### ***LOC Consideration***

## **Comment 59 – Additional Research Specific to Culture:**

**Travis Wallenfang (written):** Proof of Oneida Custom Tradition, & Culture- all components are essential In determining what if any limitations period applies under Oneida Nations law, the laws and rules interpretations of such laws and rules as the law of the Oneida Nation of Wisconsin, the

Oneida Nation needs to discuss the a application of customary law to identify methods of finding, analyzing and applying customary Law in order to discern the strengths and weakness of their methods.

Resources regarding the adaptation of Intertribal or common law into tribal government:

- Hoopla Valley Tribe Traditional Tribal Law, Hoopla Valley Tribal Code §2.1.04
- Pat Sekaqiptewa, 32 Am. Indian L. Rev. 319, 375-85 (2007-2008)
- Considering Individual Religious Freedoms under Tribal Constitutions, 14 Kan. J.L. & Pub. POL'Y 561,562-64 (2004)
- Elizabeth E. Joh, Custom, Tribal Court Practice, and Popular Justice, 25 AM. Indian L. Rev. 117 121 (2000-2001)
- e.g. Keith Basso, Wisdom Sits In Places: Landscape and Language Among wester Apache 40(1996)
- Navajo Nation v. Rodriguez, No. SC-SC-03-0, at 10 (Navajo 2004)
- In re: (Certified Question II: Navajo Nation v. MacDonald, 16 Indian L. Rep. 6086 (Navajo Sup. Ct. Apr. 13, 1989).

### ***Response***

The commenter states the importance of integrating Oneida custom and culture into legislation of the Nation, and provides a list of resources regarding the adaptation of common law into tribal governmental.

There is no recommended revision based on this comment.

### ***LOC Consideration***

## **Comment 60 – SOP Instead of a Law:**

**Brian Doxtator (oral):** I also talked to previous leaders, whether they be a board, committee or commission or the Business Committee and one of the recommendations was to take just the sanctions and penalties, create an SOP and implement it immediately, let it run for about a three year period of time, just on the Business Committee, not other boards, committees and commissions. At the end of that election period assess it to see what worked, what didn't work and then draft a law for consideration of the new Business Committee, then to be placed across the realm of the Nation of all appointed boards, committees and commissions and elected officials. So I guess it feels like when we start implementing the large fines and the suspensions and all this stuff it went against, not against, I apologize, it kind of became more of a big huge book and a really nice undertaking of the LRO as well as the LOC, I am recommending going back to just the sanctions and penalties, applying it just to the Business Committee immediately and not all other boards, committees and commissions. Move forward and then assess it at the end of this term and

then give to the next Business Committee the consideration to adopt this recommended law and so forth. That's my thinking.

### ***Response***

The commenter suggests that instead of creating this Law, an Oneida Business Committee standard operating procedure be developed instead. The standard operating procedure could be implemented immediately only for the Oneida Business Committee for a three (3) year period of time. Then after the initial period of time for the standard operating procedure has expired, use the three (3) years of implementation experience to draft a law that would then apply to all boards, committees, and commission.

On November 1, 2017, the Legislative Operating Committee held a work meeting in which all members of a board, committee, or commission of the Nation were invited to participate. During this work meeting many of the representatives of the various boards, committees, and commissions expressed the fact that a Sanctions and Penalties law was necessary, not just to address misconduct of the Oneida Business Committee, but to address misconduct that occurs throughout any board, committee, or commission of the Nation.

For that reason, the Legislative Operating Committee made the determination to develop a law that establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties.

There is no recommended revision based on this comment.

### ***LOC Consideration***

#### **Comment 61 – Officials are not Employees:**

**Brian Doxtator (oral):** The other thing is this understanding in our current system is to file a complaint and that kind of took me into a different realm again in treating our elected officials as employees. They are not employees. I've never considered any elected official an employee and I don't like that whole thought that we are all equal to be treated the same way. I disagree in that whole idea of filing a complaint is how we deal with employees, I don't like the idea.

So I started making comments pros and cons and I thought it just seems a little bit more like an employee written, no I'm sorry, an employee focused on our leadership when swear word, so anyway thank you to the LRO and the LOC for this public hearing and that's all my comments publicly, Yawko.

**Response**

The commenter expresses concern that the Law appears too similar to an employee complaint process, and cautions that officials are not employees.

Elected and/or appointed officials are not considered employees of the Nation. The intent of the Law is not to liken the position of an official to that of an employee, it is to establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties. [1 O.C. 120.1-1].

During both the work meeting held with members of various boards, committees, and commission on November 1, 2017, and the community meeting held on May 3, 2018, the Legislative Operating Committee received comments that expressed a desire for the development of a process that can be used to address instances of misconduct by an official of the Nation. For that reason, the Legislative Operating Committee has made the policy decision to develop a law discussion sanctions and penalties.

There is no recommended revision based on this comment.

**LOC Consideration**

**Comments 62 through 63 – Cultural Context of the Law:**

**Brian Doxtator (oral):** I know we're not close to our culture, but you know the clan mothers had a way of addressing a chief and they could do it three times before they would remove his antlers, de-horn him so to speak and our system doesn't have enough trust to give that to say ONCOA or to give it to, maybe like to choose the three oldest grandmas on the reservation to go and talk to that leader. I know that we don't have that system of trust in place, but filing a complaint and these penalties and suspensions, it doesn't fit in line with that cultural value.

**Travis Wallenfang (written):** Good morning, I would like to give submit my comments in regard to the Sanctions & Penalties Law. Before establishing the set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties.

It is my recommendation that when establishing the Sanctions and Penalties Law portions that we take a look at the not only our Oneida Constitutional and Oneidas Traditional Laws but also take a look at the Haudenosaunee Confederacy before making any decisions on establishing any sanctions and penalties. This is to be sure to intergrade the cultural and traditional aspects into

sanctions and penalties to help identify the best balanced application of Traditional laws & Anglo American Laws before establishing any code of law, sanctions, ordinances, and penalties. Take a look at the Navajo Law structures as well to reference information.

In the Haudenosaunee Confederacy, Removing Chiefs is left to the authority of the Clan Mother. If she believes he is not acting for the benefit of the people, she will warn him to change his actions. If his behavior does not change after her warning she will then take him aside and remove his antlers, thus removing his authority as Chief.

If a Chief acts improperly or is not living up to his responsibilities his Clan Mother and Faith Keepers will warn him about his actions. If he continues to act selfishly the Clan Mother may symbolically remove his antlers, thus removing his authority as Chief.

To maintain balance with the cultural and tradition ways it is my recommendation to establish Clans Mothers or Group of Elders as they have paved the roads and set everything in place.

### ***Response***

The commenters both discuss a perceived disconnect between the proposed Law and cultural and traditional values of the Nation, and encourage the incorporation of these values in to the Law.

The Law does incorporate the Nation's core values by stating that it is the intent of the Nation that all elected and appointed officials strive to exhibit and uphold the Nation's core values of The Good Mind as expressed by OnΛyote'a-ka, which includes:

1. Kahletsyalúsla. The heart felt encouragement of the best in each of us.
2. Kanolukhwásla. Compassion, caring, identity, and joy of being.
3. Ka?nikuhli-yó. The openness of the good spirit and mind.
4. Ka?tshatstásla. The strength of belief and vision as a People.
5. Kalihwi-yó. The use of the good words about ourselves, our Nation, and our future.
6. TwahwahtsílayΛ. All of us are family.
7. YukwatsístayΛ. Our fire, our spirit within each one of us.

To what extent tradition and culture is incorporated into a law of the Nation is a policy determination for the Legislative Operating Committee to make.

Additionally, both comments suggested the use of a group of elders that could address misconduct. The Legislative Operating Committee did consider the creation of an Ethics Committee that could handle addressing all alleged instances of misconduct. Ultimately, the Legislative Operating Committee decided against this option for a couple reasons:

1. Since an official who is appointed by the Oneida Business Committee serves at the discretion of the Oneida Business Committee, the Legislative Operating Committee felt the Oneida Business Committee was the best entity to address alleged misconduct of appointed officials. [1 O.C. 105.7-4, 120.6-1].
2. The General Tribal Council adopted the Judiciary law as a step to formalize the hearing authority of the Oneida Nation in an independent judicial body. Therefore, the Legislative Operating Committee felt it appropriate to allow the Trial Court to serve as the hearing

authority for those individuals who are elected to his or her position by the membership of the Nation.

There is no recommended revision based on this comment. It would be up to the Legislative Operating Committee to determine to what degree this law should reflect traditions and culture.

### *LOC Consideration*

#### **Comment 64 – Legislative Process:**

**Bonnie Pigman (written):** Question: Should the five (5) Business Committee councilpersons be recusing themselves as they are initially determining & approving what goes in draft laws, then approving those laws to go on a Business Committee agenda? Then those same five (5) Business Committee councilpersons are approving the laws now as Business Committee members and because the Tribal Chair has no vote, this law would get adopted overwhelmingly. The draft language in Section 120.6-4 Conflict of Interest, spells out an example of this. I understand what authorities are afforded the Business Committee in the Constitution, one being to promulgate law. I don't believe the five (5) Business Committee members who comprise of the LOC should be both drafting and then turning around and adopting the laws they drafted. A comparative would be having the Judiciary judges drafting and adopting the laws they are using to determine legal proceedings on.

### *Response*

The commenter believes a conflict of interest exists within the fact that the Legislative Operating Committee members that develop and draft legislation for the Nation are a part of the Oneida Business Committee which adopts legislation of the Nation.

The members of the Legislative Operating Committee participating in the drafting and development of law, and then participating in the approval and adoption of that law as members of the Oneida Business Committee is not a conflict of interest.

General Tribal Council prescribed the manner in which legislation of the Nation should be drafted, developed, and adopted through the adoption of the Legislative Procedures Act. The Legislative Procedures Act provides a process for the adoption of laws of the Nation. [1 O.C. 109.1-1]. The Legislative Procedures Act provides:

1. The Legislative Operating Committee is the legislative committee of the Nation that is responsible for the development of laws of the Nation. [1 O.C. 109.4-1, 109.4-2].
1. The Legislative Operating Committee handles requests for legislation and determines if the request for the development of legislation should be accepted or denied. [1 O.C. 109.5].
2. The Legislative Operating Committee will direct an agency of the Nation to complete a fiscal impact statement for all legislation. [1 O.C. 109.6].

3. A legislative analysis shall be completed by the Legislative Reference Office and provided to the Legislative Operating Committee. [1 O.C. 109.7].
4. The Legislative Operating Committee will hold open a public comment period with a public meeting, and then consider fully all comments received. [1 O.C. 109.8].
5. The Legislative Operating Committee shall forward the legislation, legislative analysis and fiscal impact statement to the Oneida Business Committee when legislation is ready for consideration. [1 O.C. 109.9-1].
6. The Oneida Business Committee shall consider the adoption of the legislation, or forward the legislation to the General Tribal Council for consideration. [1 O.C. 109.9-1].

Additionally, the General Tribal Council adopted the Nation's Ten Day Notice Policy, which clarifies that the Legislative Operating Committee shall consist of the Oneida Business Committee members who are not officers of the Oneida Business Committee. [1 O.C. 110.4-1(b)].

The adoption of both the Ten Day Notice Policy and the Legislative Procedures Act clearly demonstrates General Tribal Council's intention to have the members of the Legislative Procedures Act draft and develop legislation of the Nation, and then the members of the Oneida Business Committee adopt legislation, or forward legislation to the General Tribal Council for adoption. Therefore, no conflict exists in the role the members of the Legislative Operating Committee play with the role those same members play as part of the Oneida Business Committee.

Additionally, the Legislative Operating Committee has made the determination that the General Tribal Council, and not the Oneida Business Committee, should be the adopting authority for this law, and therefore this Law will be presented to the General Tribal Council for the final consideration of adoption.

Although the commenter likens the role of the Legislative Operating Committee members in the adoption of legislation through their role on the Oneida Business Committee to the Judiciary drafting and adopting legislation, it is important to note that the Judiciary Canons of Judicial Conduct clearly prohibit a Judge of the Judiciary from participating in any service or activities that cross the bounds separating the powers of the Nation's government, such as the development and adoption of legislation. [8 O.C. 1.2].

There is no recommended revision based on this comment.

### ***LOC Consideration***

**Title 1. Government and Finances - Chapter 120**  
**SANCTIONS AND PENALTIES**

|  |  |
|--|--|
| 120.1. Purpose and Policy                              | 120.7. Complaint Alleged Against an Elected Official |
| 120.2. Adoption, Amendment, Repeal                     | 120.8. Sanctions and Penalties                       |
| 120.3. Definitions                                     | 120.9. Effect of Resignation by an Official          |
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1  
2 **120.1. Purpose and Policy**

3 120.1-1. *Purpose.* The purpose of this law is to establish a consistent set of sanctions and  
4 penalties that may be imposed upon elected and appointed officials of the Nation, including  
5 members of the Oneida Business Committee, for misconduct in office; and to establish an  
6 orderly and fair process for imposing such sanctions and penalties. This law does not apply to  
7 judges of the Oneida Nation Judiciary.

8 120.1-2. *Policy.* It is the policy of the Nation to ensure that elected and appointed officials who  
9 commit misconduct while in office be subject to appropriate sanctions and penalties; and to  
10 ensure that there is a fair process in place that enables officials to fairly respond to allegations of  
11 misconduct.

12 120.1-3. It is the intent of the Nation that all elected and appointed officials strive to exhibit and  
13 uphold the Nation’s core values of The Good Mind as expressed by OnΛyote’a·ka, which  
14 includes:

- 15 (a) Kahletsyalúsla. The heart felt encouragement of the best in each of us.
- 16 (b) Kanolukhwásla. Compassion, caring, identity, and joy of being.
- 17 (c) Ka?nikuhli·yó. The openness of the good spirit and mind.
- 18 (d) Ka?tshatstásla. The strength of belief and vision as a People.
- 19 (e) Kalihwi·yó. The use of the good words about ourselves, our Nation, and our future.
- 20 (f) TwahwahtsílayΛ. All of us are family.
- 21 (g) YukwatsístayΛ. Our fire, our spirit within each one of us.

22  
23 **120.2. Adoption, Amendment, Repeal**

24 120.2-1. This law was adopted by the General Tribal Council by resolution GTC-\_\_-\_\_-\_\_-\_\_.

25 120.2-2. This law may be amended or repealed by the General Tribal Council pursuant to the  
26 procedures set out in the Legislative Procedures Act.

27 120.2-3. Should a provision of this law or the application thereof to any person or circumstances  
28 be held as invalid, such invalidity shall not affect other provisions of this law which are  
29 considered to have legal force without the invalid portions.

30 120.2-4. In the event of a conflict between a provision of this law and a provision of another law,  
31 the provisions of this law shall control.

32 120.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

33  
34 **120.3. Definitions**

35 120.3-1. This section shall govern the definitions of words and phrases used within this law. All  
36 words not defined herein shall be used in their ordinary and everyday sense.

- 37 (a) “Affirmative defense” means a fact or set of facts other than those alleged by the  
38 complainant which, if proven by the official, defeats or mitigates the consequences of the  
39 official’s otherwise unlawful conduct.

- 40 (b) “Answer” means a formal written statement addressing the dispute on the merits  
41 and presents any defenses and counterclaims.  
42 (c) “Business Committee Support Office” means the office that provides administrative  
43 support for the Oneida Business Committee and various other governmental operations.  
44 (d) “Business day” means Monday through Friday 8:00 a.m. – 4:30 p.m., excluding  
45 holidays recognized by the Nation.  
46 (e) “Clear and convincing evidence” means that it is substantially more likely than not  
47 that the facts presented are true.  
48 (f) “Complainant” means an individual who has made a complaint.  
49 (g) “Constitution” means the Constitution and By-Laws of the Oneida Nation.  
50 (h) “Court of Appeals” means the Court of Appeals of the Oneida Nation Judiciary.  
51 (i) “Entity” means a board, committee or commission of the Nation, including the  
52 Oneida Business Committee.  
53 (j) “Frivolous” means a complaint without any reasonable basis or merit, that cannot be  
54 supported by a good faith argument. Most often frivolous complaints are intended to  
55 merely harass, delay, or embarrass the opposition.  
56 (k) “Misconduct” means wrongful, improper or unlawful conduct or behavior.  
57 (l) “Nation” means the Oneida Nation.  
58 (m) “Official” means any person who is elected or appointed to serve on a board,  
59 committee or commission of the Nation, including the Oneida Business Committee.  
60 (n) “Restitution” means compensation to an individual for an injury, damage or loss.  
61 (o) “Stipend” means the amount paid by the Oneida Nation to individuals serving on  
62 boards, committees and commissions of the Nation to offset the expenses of being a  
63 member on the board, committee or commission.  
64 (p) “Substantiate” means to find that the complaint or allegation in the complaint is valid  
65 because there is clear and convincing evidence.  
66 (q) “Trial Court” means the Trial Court of the Oneida Nation Judiciary.

#### 67 68 **120.4. Misconduct**

69 120.4-1. It shall be the obligation of every official to behave in a manner that promotes the  
70 highest ethical and moral standard. High moral and ethical standards amongst officials of the  
71 Nation is essential to the conduct of government.

72 120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which  
73 constitutes misconduct. Misconduct includes:

- 74 (a) a violation of the Constitution or any of the Nation’s laws, policies, or rules;  
75 (b) a violation of the bylaws, standard operating procedures or other internal operating  
76 documents that govern the entity upon which the official serves;  
77 (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a  
78 felony under federal law or Wisconsin law; and  
79 (d) any other activity that is incompatible with the high moral and ethical standards that  
80 are expected of the Nation’s officials.

#### 81 82 **120.5. Filing of a Complaint**

83 120.5-1. *Who May File.* Any individual at least eighteen (18) years of age or older, or entity,  
84 who in good faith, has knowledge or reason to believe that an official has committed misconduct,  
85 may file a written complaint.

86 120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has  
87 occurred, or was discovered to have occurred, within the previous ninety (90) days.

88 120.5-3. *Contents of the Complaint.* The complaint alleging misconduct by an official shall  
89 include the following information:

- 90 (a) The name(s) of the official alleged to have committed the misconduct;
- 91 (b) The entity or entities upon which the official serves;
- 92 (c) The specific date(s), time(s), and location(s) of the alleged misconduct;
- 93 (d) The specific details of the official’s misconduct;
- 94 (e) The specific provision of law, policy, rule, or bylaw of the Nation allegedly violated  
95 by the official;
- 96 (f) Names of any witnesses of the alleged misconduct, or individuals who may have  
97 knowledge pertinent to the alleged misconduct;
- 98 (g) The contact information for the person filing the complaint, which at minimum shall  
99 include the person’s name, address, and telephone number;
- 100 (h) A notarized sworn statement attesting that the information provided in and with the  
101 complaint is true, accurate, and complete to the best of the complainant’s knowledge;
- 102 (i) Any supporting documentation; and
- 103 (j) Any other information required by the Nation’s Rules of Civil Procedure if the  
104 complaint is alleging misconduct of an elected official.

105 120.5-4. *Where to File.*

106 (a) *Appointed Official.* Complaints against an appointed official shall be filed with the  
107 Business Committee Support Office.

108 (b) *Elected Official.* Complaints against an elected official shall be filed with the  
109 Nation’s Trial Court.

110 120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or  
111 party or witness to a complaint is prohibited. This protection shall also be afforded to any person  
112 offering testimony or evidence or complying with directives authorized under this law.  
113 Retaliation shall include any form of adverse or punitive action by or caused by, any official.

114 120.5-6. Any official who is the subject of a complaint has the right to be represented by an  
115 attorney or advocate, at his or her own expense, for any actions or proceedings related to the  
116 complaint.

117

## 118 **120.6. Complaints Alleged Against an Appointed Official**

119 120.6-1. Due to the fact that an appointed official serves at the discretion of the Oneida Business  
120 Committee, all complaints alleged against an appointed official shall be handled by the Oneida  
121 Business Committee.

122 120.6-2. *Receipt of Complaint.* Upon receiving a complaint, the Business Committee Support  
123 Office shall:

124 (a) immediately forward copies of the complaint, including any supporting  
125 documentation, to:

- 126 (1) all members of the Oneida Business Committee for review; and
- 127 (2) the individual who is the subject of the complaint.

128 (b) place the complaint on the executive session portion of the agenda of a regular or  
129 special meeting of the Oneida Business Committee for an initial review within thirty (30)  
130 days after receipt of complaint.

131 120.6-3. *Answer to the Complaint.* The individual who is the subject of the complaint shall have  
132 ten (10) business days after receiving his or her copy of the complaint, to submit to the Business

133 Committee Support Office a written answer setting forth any admission, denial, affirmative  
134 defense, or other relevant information upon which the official intends to rely during proceedings  
135 related to the complaint.

136 (a) The Business Committee Support Office shall immediately forward the answer and  
137 any supporting documentation to all members of the Oneida Business Committee upon  
138 receipt from the individual who is the subject of the complaint.

139 120.6-4. *Conflict of Interest.* An Oneida Business Committee member that has a conflict of  
140 interest in a complaint brought before the Oneida Business Committee, shall immediately recuse  
141 themselves and shall not participate in the initial review or the investigatory hearing.

142 (a) Failure of an Oneida Business Committee member to recuse themselves due to a  
143 conflict of interest shall constitute grounds for sanctions and/or penalties.

144 120.6-5. *Initial Review.* The Oneida Business Committee shall perform an initial review of an  
145 allegation of misconduct on the part of an official. The purpose of the initial review shall be to  
146 determine whether the allegation made within the complaint has merit.

147 (a) During the initial review the Oneida Business Committee shall review the complaint  
148 and the written answer; as well as any supporting documentation.

149 (b) In order to determine if a complaint has merit, the Oneida Business Committee will  
150 discuss if whether assuming the facts alleged are true, said facts would support a  
151 determination of misconduct.

152 (c) The Oneida Business Committee shall determine, by majority vote, whether the  
153 complaint has merit.

154 (1) Upon a finding that the complaint has merit, the Oneida Business Committee  
155 shall schedule an investigatory hearing to consider the specific allegations  
156 identified in the complaint.

157 (2) Upon finding that a complaint has no merit, the Oneida Business Committee  
158 shall dismiss the complaint.

159 (A) If the Oneida Business Committee dismisses the complaint based on a  
160 determination that the complaint was frivolous, false, or made with a  
161 malicious intent, the complainant may be subject to:

- 162 (i) a fine not to exceed five hundred dollars (\$500);  
163 (ii) prohibition from filing another complaint for a period of time  
164 not to exceed one (1) year; and/or  
165 (iii) a civil suit in the Nation’s Trial Court brought by the official  
166 accused by the frivolous, false or malicious allegation.

167 120.6-6. *Investigatory Hearing.* The investigatory hearing shall occur within thirty (30) days  
168 after the initial review has concluded. The investigatory hearing shall take place during the  
169 executive session portion of the agenda of a regular or special meeting of the Oneida Business  
170 Committee. The purpose of the investigatory hearing is for the Oneida Business Committee to  
171 determine if there is enough evidence to substantiate the allegations of misconduct by clear and  
172 convincing evidence.

173 (a) When conducting an investigatory hearing, the Oneida Business Committee shall  
174 have the broadest grant of authority to compel any person or organization within the  
175 Nation to:

176 (1) appear at the hearing to provide testimony under oath and/or information  
177 relevant to the allegations against the official; and/or

178 (2) produce physical evidence that is relevant to the allegations.

179 (b) The Oneida Business Committee shall provide an opportunity for the official who is  
180 the subject of the complaint to answer all allegations and to provide witness testimony,  
181 documents, and other evidence on his or her own behalf.

182 (c) The Oneida Business Committee shall also provide the complainant the opportunity  
183 to answer questions, provide witness testimony or additional information, and/or to  
184 otherwise speak on his or her own behalf.

185 (d) The hearing shall be informal and conducted as the interests of justice so require, and  
186 shall be recorded by the Business Committee Support Office.

187 120.6-7. *Deliberation of the Oneida Business Committee.* At the conclusion of the investigatory  
188 hearing, the Oneida Business Committee shall excuse everyone from executive session for the  
189 deliberation of the Oneida Business Committee. Prior to making a final determination as to  
190 whether to substantiate the complaint, the Oneida Business Committee shall:

191 (a) consider all evidence and information provided, and shall have a full and complete  
192 discussion of all aspects of the complaint and answer; and

193 (b) have a full and complete discussion of all potential sanctions and penalties that may  
194 be imposed, if appropriate.

195 120.6-8. *Determination by the Oneida Business Committee.* After the investigatory hearing has  
196 concluded and the Oneida Business Committee has deliberated, the Oneida Business Committee  
197 shall in open session of a regular or special Oneida Business Committee meeting, by majority  
198 vote, declare whether the Oneida Business Committee has determined there is enough evidence  
199 to substantiate the allegations of misconduct by clear and convincing evidence.

200 (a) If the Oneida Business Committee finds that there is clear and convincing evidence  
201 that the official engaged in misconduct, the Oneida Business Committee shall, by  
202 majority vote, determine and impose appropriate sanctions and/or penalties.

203 (b) If the Oneida Business Committee does not find that there is clear and convincing  
204 evidence to support the allegations that the official engaged in misconduct, the complaint  
205 shall be dismissed.

206 (c) Within ten (10) business days after the investigatory hearing, the Oneida Business  
207 Committee shall issue a written decision and provide copies of the decision to:

208 (1) the complainant,

209 (2) the official who is the subject of the complaint, and

210 (3) the Business Committee Support Office, for recordkeeping.

211 120.6-9. *Appeal.* The complainant and the official who is the subject of the complaint shall both  
212 have the right to appeal the Oneida Business Committee's decision to the Court of Appeals  
213 within twenty (20) days after the written decision is issued. The appeal shall be limited to review  
214 of the record, and the Oneida Business Committee's decision may only be overturned if the  
215 Court of Appeals determines that:

216 (a) The findings or penalties imposed were clearly erroneous, unsupported by the record,  
217 or made on unreasonable grounds or without any proper consideration of circumstances;  
218 or

219 (b) Procedural irregularities occurred which prevented a fair and impartial hearing.  
220

## 221 **120.7. Complaints Alleged Against an Elected Official**

222 120.7-1. The Trial Court shall have jurisdiction to hear complaints of alleged misconduct of  
223 elected officials. Complaints of alleged misconduct shall be filed with the Trial Court pursuant to  
224 the Nation's Rules of Civil Procedure.

225 120.7-2. In a civil action against an elected official for misconduct, the complainant has the  
226 burden of proving by clear and convincing evidence that the official engaged in misconduct.

227 120.7-3. In making a final determination, the Trial Court shall determine if there is enough  
228 evidence to substantiate the allegations of misconduct by the official by clear and convincing  
229 evidence.

230 (a) If the Trial Court finds that there is clear and convincing evidence that the official  
231 engaged in misconduct, the Trial Court shall determine and impose any sanctions and/or  
232 penalties deemed appropriate in accordance with this law.

233 (b) If the Trial Court does not find that there is clear and convincing evidence to support  
234 the allegations that the official engaged in misconduct, the complaint shall be dismissed.

235 120.7-4. *Appeal*. The complainant and the official who is the subject of the complaint shall both  
236 have the right to appeal the Trial Court’s decision to the Court of Appeals pursuant to the  
237 Nation’s Rules of Appellate Procedure.

238 120.7-5. The Trial Court shall provide the Business Committee Support Office a copy of the  
239 complaint and the determination of the Trial Court for the official’s record of conduct in office.  
240

## 241 **120.8. Sanctions and Penalties**

242 120.8-1. A sanction or penalty, or any combination of sanctions and/or penalties, may be  
243 imposed upon the Nation’s officials for misconduct in office, in accordance with this law.

244 120.8-2. Sanctions and penalties may include:

245 (a) *Verbal Reprimand*. A verbal reprimand may be imposed on the official.

246 (1) The Oneida Business Committee or Trial Court shall submit written notices to  
247 both the official and to the Business Committee Support Office of the specific  
248 date, time and location of the verbal reprimand. The verbal reprimand shall occur  
249 at an Oneida Business Committee meeting and/or a General Tribal Council  
250 meeting.

251 (2) To impose the verbal reprimand, the Oneida Business Committee Chairperson  
252 shall read a statement that identifies:

253 (A) The Oneida Business Committee or Trial Court’s findings regarding  
254 the specific actions or inaction taken by the official that were found to be  
255 misconduct;

256 (B) The reasons why the official’s actions or inactions amounted to  
257 misconduct;

258 (C) A statement identifying that the misconduct violates the high standards  
259 of behavior expected of the Nation’s officials and is not acceptable; and

260 (D) A direction to the official to refrain from engaging in future  
261 misconduct.

262 (b) *Public Apology*. The official may be ordered to make a public apology. The Oneida  
263 Business Committee or Trial Court shall submit written notices to both the official and to  
264 the Business Committee Support Office of the specific date, time and location of the  
265 public apology. The public apology shall occur at an Oneida Business Committee  
266 meeting and/or a General Tribal Council meeting. The public apology shall:

267 (1) identify the specific misconduct committed by the official;

268 (2) recognize that the official’s actions or inactions were wrong;

269 (3) identify the effects of the official’s misconduct; and

270 (4) include a clear and unambiguous apology from the official.

271 (c) *Written Reprimand.* A written reprimand may be imposed on the official by  
272 publication on the Nation’s official media outlets, as determined by the Oneida Business  
273 Committee. The Oneida Business Committee or the Trial Court may publish a written  
274 reprimand which includes the information required for the verbal reprimand as stated in  
275 section 120.8-2(a)(2)(A)-(D).

276 (d) *Suspension.* An official may be suspended from performing his or her duties as an  
277 official for one (1) consecutive period of time, not to exceed sixty (60) days.

278 (1) During a suspension, the official shall not:

- 279 (A) attend meetings, trainings or any other event as part of the entity;
- 280 (B) attend conferences or other events on behalf of, or as a representative  
281 of, the entity;
- 282 (C) vote or participate in any activities of the entity;
- 283 (D) perform work on behalf of the entity; or
- 284 (E) be eligible for any compensation, including regular pay, stipends, or  
285 mileage reimbursement.

286 (2) When an official is suspended, the Oneida Business Committee or Trial Court  
287 shall submit written notices to both the official and to the Business Committee  
288 Support Office of the specific start and end date of the suspension.

289 (e) *Restitution.* An official may be ordered to pay restitution, which may include the  
290 repayment of any improperly-received benefit, or any other payment which is intended to  
291 make another whole after suffering losses as a result of the official’s misconduct.

292 (f) *Fines.* An official may be ordered to pay a fine not to exceed five thousand dollars  
293 (\$5,000) per act of misconduct.

294 (1) Fines shall be paid to the Trial Court.

295 (2) Fines shall be paid within ninety (90) days after the order is issued or upheld  
296 on final appeal, whichever is later. Cash shall not be accepted for payment of  
297 fines. If the fine is not paid by this deadline, the Trial Court may seek to collect  
298 the money owed through the Nation’s garnishment and/or per capita attachment  
299 process.

300 (3) Money received from fines shall be deposited into the General Fund.

301 (4) Community service may be substituted for part or all of any fine at the  
302 minimum wage rate of the Nation for each hour of community service.

303 (g) *Loss of Stipend.* An official may be ordered to forfeit a stipend for his or her service  
304 on an entity not to exceed twelve (12) meetings.

305 (h) *Termination of Appointment.* An appointed official may have his or her appointment  
306 terminated by the Oneida Business Committee in accordance with the Nation’s laws  
307 and/or policies governing boards, committees, and commissions.

308 (i) *Removal.* The Trial Court may recommend that the process for removing an elected  
309 official as contained in the Nation’s laws and/or policies governing removal be initiated.

310 (j) *Prohibition.* Once terminated from office, an appointed official may be prohibited  
311 from serving on an entity for a period of time not to exceed three (3) years.

312 120.8-3. *Factors in Determining an Appropriate Sanction and/or Penalty.* When determining  
313 the appropriate sanction or sanctions to impose, the Oneida Business Committee or the Trial  
314 Court may consider all factors it deems relevant, including but not limited to:

- 315 (a) the seriousness or severity of the misconduct;
- 316 (b) whether the conduct was intentional or not;
- 317 (c) the likelihood of repetition;

- 318 (d) the extent of probable damage to the finances or reputation of the Nation, the  
319 complainant, the entity, or to any other person or organization;  
320 (e) whether the official or his or her family personally profited, financially or otherwise,  
321 from the prohibited conduct;  
322 (f) the official’s remorse, or  
323 (g) the official’s willingness and ability to take steps to mitigate the harm caused by the  
324 violation, and  
325 (h) any prior complaints filed, including any previous sanctions and penalties imposed  
326 upon the official while serving on an entity.

327 120.8-4. The imposition of sanctions and/or penalties in accordance with this law does not  
328 exempt an official from individual liability for the underlying misconduct, and does not limit any  
329 penalties that may be imposed in accordance with other applicable laws. In addition to any  
330 sanctions and penalties that may be imposed in accordance with this law, officials who commit  
331 misconduct in office may be subject to other consequences; including but not limited to:

- 332 (a) removal in accordance with the Nation’s laws and/or policies governing removal, if an  
333 elected official;  
334 (b) termination of appointment by the Oneida Business Committee, if an appointed  
335 official;  
336 (c) criminal prosecution, for misconduct that also violates applicable criminal law;  
337 (d) civil liability, in accordance with the applicable law of any jurisdiction; and/or  
338 (e) penalties for specific misconduct as authorized by any other law of the Nation.  
339

340 **120.9. Effect of Resignation by an Official**

341 120.9-1. The resignation of an official after a complaint has been filed against the official shall  
342 not affect the status of the hearing and determination by either the Oneida Business Committee  
343 or Trial Court.

344 120.9-2. An official who resigns may still be subject to sanctions and/or penalties at the  
345 discretion of the Oneida Business Committee or Trial Court.  
346

347 **120.10. Record of Conduct in Office**

348 120.10-1. The Business Committee Support Office shall maintain a record of conduct in office  
349 for each official.

350 120.10-2. The record of conduct in office maintained for each official shall include, at a  
351 minimum:

- 352 (a) a copy of each complaint filed against the official;  
353 (b) the outcome of the complaint, and  
354 (c) any sanctions or penalties imposed upon an official.

355 120.10-3. The record of conduct in office for each official shall be maintained for a period of no  
356 less than ten (10) years.  
357

358 *End.*  
359

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360 Adopted – GTC-\_\_-\_\_-\_\_-\_\_  
361



**LEGISLATIVE OPERATING COMMITTEE  
PUBLIC MEETING**

**Sanctions and Penalties Law**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
October 4, 2018 12:15 p.m.

**Present:** David P. Jordan, Clorissa N. Santiago, Brandon Wisneski, Lee Cornelius, Jennifer Falck, Cathy Bachhuber, Kristen Hooker, Rae Skenandore, Maureen Perkins, Matthew W. Denny, Travis Wallenfang, Carol Silva, Lisa Liggins, Brooke Doxtator, Brian Doxtator.

**David P. Jordan:** Good Afternoon. The time is 12:15 p.m. and today's date is Thursday, October 4, 2018. I will now call to order the public meeting for the proposed Sanctions and Penalties law.

The Legislative Operating Committee is hosting these public meetings to gather feedback from the community regarding this legislative proposal. The public meeting is not a question and answer period. The Legislative Operating Committee will review and consider all comments received during the public meeting and the public comment period. The Legislative Operating Committee will respond to all comments received in a public comment review memorandum, which will be submitted in the materials of a future LOC meeting.

All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. If you leave an email address on the sign in sheet, we can ensure you will receive a copy of the memorandum.

Additionally, written comments may be submitted to the Nation's Secretary's Office or the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by the close of business on Thursday, October 11, 2018.

In attendance is myself, David Jordan.

The LOC may impose a time limit for all speakers pursuant to section 109.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons.

We will now begin today's public meeting for the proposed Sanctions and Penalties law. The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties.

First up is Travis Wallenfang. Oh, you don't want to have any comments, okay. Moving on to Matt Denny.

**Matt Denny** Afternoon. My first comment has to do with the definitions. What's missing is the fact that there are no, when you mention what days in the suspension or in here, I would like it defined whether you are talking about working days or calendar days, because there is a big difference in regards to suspension and that kind of stuff. So I would like to see the definition of days or otherwise be defined within whatever section is referencing days in the law.

The other issue would be Line 276, Suspension, it says an official may be suspended not to exceed 60 days and I know it was mentioned in the analysis about the Gaming Commission and the Business Committee, but that is not in this law as it's written right now and I would like that to be referenced about the Business Committee and the Gaming Commission as they are not monthly or bi-monthly meetings, they are five day a week jobs and a 60 day suspension is way too long. I know that may not be the intent, but the fact is the law says you could be suspended up to 60 days, when in fact any employee is only to be suspended up to 15 days. I think there should be some consistency with a suspension of that kind and additionally, any suspension that has to do with 60 days is not the intent of this law. The intent of this law is to bring about corrective action for minor infractions of a law, that does not mean removal. So a 60 day suspension to me is cause for removal. You shouldn't be suspended for 60 days or even past 15 days. If you're suspended past 15 days, that's cause for removal in my opinion and it's not consistent with the other parts of this law.

Another issue, comment, is on line 292, Fines. The official may be ordered to pay not to exceed \$5,000. Again, \$5,000 to me is way too high. If something were to be so severe that you would come up with a \$5,000 fine, then that to me is a removal process. Again, that's way too much, way too excessive for a minor infraction, so I would like to see that number reduced, possibly to \$500 to \$1,000 would be my recommendation, but \$5,000 is way too much. You're talking about removal at that point.

Additionally, I want to comment about line 303, the loss of a stipend. You go back, at the bottom, it says you cannot exceed 12 meetings. Again, that is being inconsistent with a suspension, because a suspension loses your stipend as well with a 60 day policy. So you have a loss of stipend for 12 meetings which could be 12 days, a 12 day suspension more or less. That should be consistent with the suspension part of it. So, if you going to lose 60 days, you are going to be suspended for 60 days, but you can only lose your stipend for 12 meetings, it's not consistent, so I would like that clarified or cleaned up a little bit. And that's it, that's all I got.

**David P. Jordan:** All right, thank you Matt. Next up is Lisa Liggins.

**Lisa Liggins:** First I would like to thank the LOC and LRO for all their work, including this draft together. I submitted the referendum question in 2016 and was glad to see that it was supported and I looked forward to the draft being forwarded to General Tribal Council for consideration.

Lines 4 and 5 indicate the law applies to elected and appointed officials, including members of the Oneida Business Committee. Lines 5 and 6 state that the law does not apply to judges of the Judiciary. In the analysis, earlier in the meeting packet, there is a table that lists the 18 appointed and elected boards, committees and commissions to which this law applies and the Legal Resource Center is not included. Chapter 8-11, which is the Legal Resource Center laws organized under Title 8, The Judiciary. Section 8-11.7 of the Legal Resource Center law covers discipline and removal of attorneys and advocates and states

they are subject to disciplinary action pursuant to the Professional Conduct of Attorneys and Advocates law and any other law that governs discipline or removal of elected positions. So it's unclear to me if the Sanctions and Penalties law applies to the attorneys and advocates for the Legal Resource Center. If it does then perhaps just the analysis needs to be updated. If it does not, then I think that the language in Line 6 and 7 should to be updated.

Line 110 regarding retaliation. I am wondering how that is going to be enforced. If a complainant is retaliated against, where do they go, what do they do, who do they report it to. There doesn't appear to be any recourse identified within the law.

Lines 128 and 130. I believe the intent is that the initial review occur within 30 days after the receipt of the complaint, but the language could be misunderstood to mean that the placement on the agenda by the Business Committee Support Office occurs within the 30 day time period.

Line 167, this starts the process for the investigatory hearing. It indicates the hearing shall occur within 30 days of the initial review and indicates that the complainant and the elected official, the official, have the opportunity to appear, but that doesn't include a requirement to provide notice to the complainant or the official and I think requiring notice is important, it should be included.

Line 185 is regarding the recording of the investigatory hearing and I am unclear as to why it would be recorded because it occurs within executive session and what is done with it after the hearing? I'm not sure if it would be included in the record, referenced in the appeal process in Line 214. And then subsequently Line 347 at the end of the law indicates that the record of conduct in office is maintained by the Business Committee Support Office, but that recording of the hearing is not included in that record, so I guess I just don't understand why it's recorded and what's done with it after the hearing.

Line 253, if a verbal reprimand is imposed upon the Oneida Business Committee Chairperson, who should read the statement. I didn't see it outlined in the definitions, but I might have missed it.

Line 262 is regarding public apologies and what's the consequence if an official refuses to give a public apology that's been imposed upon them or if the public apology that they do provide doesn't meet the requirements in Lines 267 to 270. It seems like the only recourse would be the Removal Law, but then if that's the case, it should probably be referenced in this section.

But overall I do agree with the recommendation in Lines 407 to 409 of the analysis of offering public apology as an alternative to other sanctions and penalties and I would ask that the LOC consider this recommendation.

Line 277 is regarding suspension. I think that the intent is that the period of time can only be once per complaint and it can't be split, it's the language that says one consecutive set of days or something like that. It's just confusing.

And so I have just one other, but I will submit that in writing and thank you for your consideration.

**David P. Jordan:** Thank you Lisa. Next up would be Brooke Doxtator. She's passing, okay. Then the next one up would be Brian Doxtator.

**Brian Doxtator:** Shekoli, (other Oneida greeting), Brian Doxtator (speaking Oneida), Enrollment number (speaking Oneida). Thank you for holding this public hearing on sanctions and penalties. I don't know how to say this, but the sanctions and penalties is not suspension and it's not removal and I didn't get the connection of talking about suspending and removing in regards to the whole law, it's something to try to get a leader back on track and so I thought it was a disconnect from that whole conceptual thinking and so when this kind of started, I also talked to previous leaders, whether they be a board, committee or commission or the Business Committee and one of the recommendations was to take just the sanctions and penalties, create an SOP and implement it immediately, let it run for about a three year period of time, just on the Business Committee, not other boards, committees and commissions. At the end of that election period assess it to see what worked, what didn't work and then draft a law for consideration of the new Business Committee, then to be placed across the realm of the Nation of all appointed boards, committees and commissions and elected officials. So I guess it feels like when we start implementing the large fines and the suspensions and all this stuff it went against, not against, I apologize, it kind of became more of a big huge book and a really nice undertaking of the LRO as well as the LOC, I am recommending going back to just the sanctions and penalties, applying it just to the Business Committee immediately and not all other boards, committees and commissions. Move forward and then assess it at the end of this term and then give to the next Business Committee the consideration to adopt this recommended law and so forth. That's my thinking.

I went through the Sanctions and Penalties law and I have pros and cons of everything in there, but one of the things that kind of just hit me real hard was the word misconduct and I think back on the last four years, an elected official not showing up to work is not necessarily misconduct and that a penalty or sanction of some form to say hey we need you at work. Obviously there were e-mails asking certain elected officials to come to work, but that's kind of what, that's not really misconduct, but elected officials are not employees.

The other thing is this understanding in our current system is to file a complaint and that kind of took me into a different realm again in treating our elected officials as employees. They are not employees. I've never considered any elected official an employee and I don't like that whole thought that we are all equal to be treated the same way. I disagree in that whole idea of filing a complaint is how we deal with employees, I don't like the idea. I know we're not close to our culture, but you know the clan mothers had a way of addressing a chief and they could do it three times before they would remove his antlers, de-horn him so to speak and our system doesn't have enough trust to give that to say ONCOA or to give it to, maybe like to choose the three oldest grandmas on the reservation to go and talk to that leader. I know that we don't have that system of trust in place, but filing a complaint and these penalties and suspensions, it doesn't fit in line with that cultural value. So I started making comments pros and cons and I thought it just seems a little bit more like an employee written, no I'm sorry, an employee focused on our leadership when swear word, so anyway thank you to the LRO and the LOC for this public hearing and that's all my comments publicly, Yawko.

**David P. Jordan:** Thank you Brian. Are there any other members that would like to speak on behalf of the Sanctions and Penalties.

With there being no more speakers registered, the public meeting for the proposed Sanctions and Penalties law is now closed at 12:33 p.m.

Written comments may be submitted until close of business on Thursday, October 11, 2018. Thank you for coming out to the public meeting.

**-End of Meeting-**

TO: Lisa Summers, Oneida Nation Secretary,  
 FROM: Bonnie Pigman, #5361  
 SUBJ: Comments regarding Sanctions and Penalties law Public Meeting held October 4, 2018  
 DATE: October 11, 2018

The draft Sanctions and Penalties law states the purpose “is to establish a consistent set of sanction and penalties that maybe imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties.”

Comment: I could agree with the purpose “if” the context in other laws such as the Board, Committee, Commission law didn’t expressly excludes the Business Committee as an elected entity.

This is a “SANCTIONS AND PENALTIES” law. I feel the principles in Section 120.1-3 conflict with the very purpose and intent for drafting this law. I would like them to be deleted. If it is a desire to keep it in this law please insert them into Section 120.1-1. Idealistically, “The Good Mind” principles language could also be more appropriately placed on the application one might complete if interested in applying for an elected or appointed position.

Question: Should the five (5) Business Committee councilpersons be recusing themselves as they are initially determining & approving what goes in draft laws, then approving those laws to go on a Business Committee agenda? Then those same five (5) Business Committee councilpersons are approving the laws now as Business Committee members and because the Tribal Chair has no vote, this law would get adopted overwhelmingly. The draft language in Section 120.6-4 *Conflict of Interest*, spells out an example of this. I understand what authorities are afforded the Business Committee in the Constitution, one being to promulgate law. I don’t believe the five (5) Business Committee members who comprise of the LOC should be both drafting and then turning around and adopting the laws they drafted. A comparative would be having the Judiciary judges drafting and adopting the laws they are using to determine legal proceedings on.

On page 2 of 13 in the public meeting packet line 22 reflects a box that identifies elected and appointed Board, Committee, Commission’s. The Business Committee states this law applies to them, however, they are clearly not included in the box. (This shows perspective, meaning the Business Committee is separate from all other “elected officials”)

On page 4 of 13, the boxes reflected at the end of line 90 conflict with the language written on draft law lines 248 to 342. The flowcharts on pages 7 and 8 of the analysis provide more clarity than the language in the draft law does. The law should mirror the flowcharts in the analysis. I disagree with where complaints against elected officials are to be filed, however, if GTC determines to have the complaints go to the Judiciary, then that’s final.

Question: Why in this draft law (specifically Sections 120.8 & 120.9) does it read the Business Committee has appointed themselves the same authority or responsibility of the Trial Court to

determine and/or carry out the court's findings? I believe the intent was to mean the Business Committee is responsible to carry out the sanctions and penalties related to appointed officials and the Tribal Court for carrying out sanctions and penalties related to elected officials. If so, then the law should read that way. This law should be so clear so there is little or no room for any other interpretation.

Question: In Section 120.8 I'm not sure why the Business Committee or their Support Staff are performing duties that should be court or law enforcement personnel related. Isn't that what Judiciary staff /law enforcement officials are responsible for? If not, it should be. That's how other court's handle their actions. Once a court determination is made, it becomes law enforcements responsibility to see that the sanction or penalty of the court is carried out. When did our Business Committee or their support staff become law enforcers? How are these duties outlined in the Constitution for elected officials or in the "Business Committee job descriptions"?

In Section 120.10, I agree once the Judiciary has made a determination a copy of the imposed sentence could be provided to the Business Committee as stated on lines 238 & 239 Section 12.7-5.

Question: What was the rationale for recommending the ten (10) years in section 120.10-3? What controls are in place when there are changes to Business Committee (who oversee the BC Support Staff) to ensure no prior misconducts for themselves could be just deleted, because they are now the supervisor?

I feel the Sanctions and Penalties draft law lacks clearly outlining what the fine or penalty will be assessed for each offense. I read there are "factors" the court is to use, but there should some table like there is for Hunting and Fishing or the Domestic Animal laws so people know. The law only identifies some offenses. Example of an incomplete sanction of penalty is found on lines 303 – 304: (g) *Loss of Stipend*. States that the fine is to forfeit a stipend for twelve (12) meetings. The doesn't say it has to occur consecutively or even if applies to only the entity which the individual may have committed the misconduct. (Example individual is on 3 entities and misconduct occurs on only one. Since the stipends are now a standard \$100 for every Board, Committee, Commission, what difference would it make if they had the stipend withheld from each until the twelve (12) were met? How would a Loss of Stipend apply to the Business Committee as they are exempted from the Board, Committee, Commission's law.

Also, on lines 310 – 311: (j) *Prohibition*. Is the language in this to mean prohibition would not apply to elected officials? Why not? Is this intentionally written to be a protection for the Business Committee?

### Public Meeting Comments for Sanctions & Penalties.

1. Ethic's training. While training is not specifically addressed in this law, it is a standard used for imposing sanctions and penalties. If it is a standard to be held to, perhaps the offer of ethics training would be beneficial.
2. Code of conduct. This process should have included the development of a specific code of conduct FIRST, prior to developing the punishment. What are the expectations for the behavior of all of our public officials?
3. Process. The majority of the process is predicated on the assumption of guilt on the official. On the flip side, when it's considered, it's overly harsh upon the complainant. If it's based on personality conflicts, where is the middle ground to reach some sort of understanding or compromise before it gets to a point of a written complaint and an investigation?
4. Complaints. For more minor infractions, has the Committee considered pushing some authority down to the BCC's Chairperson? That person is in a leadership role and has some responsibility for the actions of those on their BCC. For more major infractions the Chair or the entire BCC should be required to be a mandatory reporter. Again, some sort of training of unacceptable behaviors/action should be offered. Again, the development of an expected code of conduct for elected or appointed officials.
5. Appointed officials. I understand that appointed official serve at the discretion of the Oneida Business Committee. However, it seems repetitive, inconsistent, a conflict of interest and an unnecessary use of the elected officials time to respond to complaints against appointed officials.
  - a. The process for appointed officials should be the same for all those impacted under this law.
  - b. The process should be consistent.
  - c. There is inherent conflict of interest in the fact that the OBC appointed those individuals.
  - d. A neutral third party, i.e. the Judiciary should hear all the complaints and determine appropriate sanctions and penalties in a consistent manner as defined under this law. This decision should be removed from any political influence, interests or activities.
6. Confidentiality. Is there any presumption of confidentiality prior to the hearing of the case? I understand that most documents are public record. However, a reputation can be damaged much more readily than it can be repaired. Should these types of cases require some sort of confidentiality until a judgement is reached? Also, having information go through the courts would help maintain confidentiality. The fewer hands that a complaint goes through, the more likely it is to remain confidential.
7. Conflict Resolution Alternatives. It is possible that a complaint may arise out of personality conflicts or bad behavior on the part of an official toward another official,

staff, or the general public. A ½ hearted public apology does little to actually solve the problem.

- a. If the complainant agrees, the process should include a step that could resolve the issue before it elevates beyond a complaint.
    - i. HRD offers a CIMs mediation between employees.
    - ii. The Judiciary offers peacemaking.
  - b. The ability to apply court ordered training at the offender's expense, i.e.
    - i. Anger management
    - ii. Sexual harassment training
    - iii. Other sensitivity training
8. Judiciary. Title 8. Judiciary - Chapter 801 Section 801.12. Reprimand, Suspension and Removal of Judges along with the Canons of Judicial Ethics contains a process and criteria for complaints against Judges. Sanctions and penalties should have mirrored the already established process & not attempted to reinvent the wheel. Instead of sanctions and penalties, what should have been updated/created first is a Governmental Ethics Ordinance that includes all of these areas and a standard of conduct for elected officials.
  9. Terminology. Change the language from complaint to charge. Require the individual making the charge to sign a written statement under oath.
  10. Statute of limitations. Is there a timeframe for bringing forward alleged violations/charges/complaints? 3 years? 5 years? What about after the individual is out of office? Can you still make charges against them 6 years later?
  11. Sanctions and Penalties. Specific actions should have specific penalties. This need not be in the Law, but it should be available similar to a fines & fees schedule.

I understand that a lot of work went into developing this law. However, overall, I think the cart is before the horse. Prior to an allegation of misconduct, you need a code of conduct to hold them to. A stronger code of ethics needs to be in place, and you need to train everyone on the standards and ethics they will be held to. I think that will go a lot farther in instilling public trust than the Hodge podge of punishment listed in sanctions & penalties.

**Clorissa N. Santiago**

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**From:** Lisa Liggins <lliggins98@gmail.com>  
**Sent:** Friday, October 05, 2018 9:14 AM  
**To:** LOC  
**Subject:** Conclusion of Public Comments for Sanctions & Penalties law

Please see comments below noting I've clarified the last comment I provided in the five (5) minutes provided for oral testimony at the Public Meeting regarding line 277.

**Line 277 - regarding Suspension**

I think I understand the intent that the "period of time" (i.e. hours, days, weeks) imposed can only be "one (1)" time per complaint (as opposed to per act of misconduct) and it cannot be split up and must be taken one after another ("consecutive").

If that is the intent, I think plainer language is needed. Such as:

An official may be suspended from performing his or her duties as an official for a period of time, not to exceed sixty (60) days. The period of time must run consecutively. Suspensions may be imposed once per complaint.

**Line 289 - Typo**

The "n" in "Restitution" should be capitalized

**Line 293 - regarding Fines**

This section states fines can be imposed "per act". This is the only sanction or penalty that is specifically imposed "per act". Is it the intent that the others are imposed "per complaint"? If so, then maybe language should be added to line 242 of the main section which indicates all except fines may imposed "per complaint".

Or could any of the other sanctions and penalties also be imposed "per act"?

Another option might be to include "per complaint" or "per act" language to each sanction or penalty.

Thank you for you time and consideration

Lisa Liggins  
Roll # 9455

**Clorissa N. Santiago**

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**From:** Travis J. Wallenfang  
**Sent:** Thursday, October 11, 2018 10:10 AM  
**To:** LOC  
**Subject:** RE: PUBLIC MEETING: Sanctions and Penalties Law

**Sensitivity:** Confidential

Good Morning Ms. Santiago,

I do understand that the comments are not confidential. I have resent the email with the revisions made. Thank you.

I would like to give submit my comments regarding the Sanctions & Penalties Law. Before establishing the set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties.

- It is my recommendation that when establishing the Sanctions and Penalties Law portions that we look at the not only our Oneida Constitutional and Oneidas Traditional Laws but also look at the Haudenosaunee Confederacy before making any decisions on establishing any sanctions and penalties. This is to be sure to intergrade the cultural and traditional aspects into sanctions and penalties to help identify the best-balanced application of Traditional laws & Anglo-American Laws before establishing any code of law, sanctions, ordinances, and penalties.
- Look at the Navajo Law structures as well to reference information.
- In the Haudenosaunee Confederacy,
  - Removing Chiefs is left to the authority of the Clan Mother. If she believes he is not acting for the benefit of the people, she will warn him to change his actions. If his behavior does not change after her warning she will then take him aside and remove his antlers, thus removing his authority as Chief.
  - If a Chief acts improperly or is not living up to his responsibilities his Clan Mother and Faith Keepers will warn him about his actions. If he continues to act selfishly the Clan Mother may symbolically remove his antlers, thus removing his authority as Chief.

To maintain balance with the cultural and tradition ways it is my recommendation to establish Clans Mothers or Group of Elders as they have paved the roads and set everything in place.

- My Next comment was to the context of the fines as the Anglo-American law systems often do not reflect the ways of the of the Traditional/Cultural laws. In section pertaining to the fines it essential to take look at the tradition ways once again because if the elders have spoken to the leadership multiple times and the leadership has chosen not to listen, then they can be removed from the positions of leadership.
- **Affected Entities** Oneida Business Committee; All elected and appointed members of boards, committees, and commissions; Any individual who has knowledge that an official has

committed misconduct, Judiciary Trial Court, Judiciary Court of Appeals, Business Committee Support Office. This law does not apply to the judges of the Oneida Judiciary, whose misconduct process is located in the Judiciary Law. This does not apply to members of corporate boards. **(Page 1)**

- There needs to be accountability for all boards when operating in appearance of conflicts of interests or potential Conflict of Interests.
  - **Example:** Tribally Owned Company and an Oneida Nation's member on a Board for Tribally Owned Company and works as an employee. They report to only the GTC and Business Committee.
- There needs to be a measure of protection if a person has information and is afraid to come forward for fear of retaliation.
- **1,2,3,4,5,6,7,8 SECTION 2. 1 LEGISLATIVE DEVELOPMENT A.** When officials of the Nation commit misconduct in office, there are few remedies available for the Nation to discipline that official. Currently, appointed officials may have their appointment terminated by the Business Committee, and elected officials may be removed in accordance with the Removal Law. However, there have been instances of misconduct that do not rise to the level of removal. For example, officials with multiple unexcused absences, failure to submit reports on time, or behaving disrespectfully to community members or fellow officials. In these cases, other remedies such as verbal reprimands, fines, or suspensions may be more appropriate. **(Page 1)**
  - The following needs to be defined or clarified as they are subject to the interpretations:
    - Unexcused absences,
    - Failure to submit reports on time
    - Behaving disrespectfully to community members or fellow officials
    - Appearance or potential of conflicts of interests for self-interests.
    - Misconduct
    - Wrongful improper or unlawful conduct or behavior.
- **23,24,25,26,27,28,29,30,31,32,33,34, SECTION 3. CONSULTATION AND OUTREACH - A.** The Rules of Civil Procedure, Rules of Appellate Procedure, Judiciary Law, Code of Ethics, Open Meetings and Open Records Law, and Comprehensive Policy on Boards Committees and Commissions were reviewed in drafting this analysis. In addition, the following laws were reviewed in drafting this analysis: **(Page 2)**
  - Ho Chunk Nation Code of Ethics 2 HCC 1;
  - Oglala Sioux Tribe Code of Ethics Ordinance No. 08-11;
  - Pokagon Band of Potawatomi Indians Ethics Code;
  - Rosebud Sioux Tribal Code of Ethics Ordinance 86-04;
  - Siletz Tribal Council Ethics Ordinance –Siletz Tribal Code 2.200;
  - Skokomish Code of Ethics S.T.C. 1.05;
  - Pit River Tribal Government Code of Conduct Section 80.
  - **Look at the Navajo law system Constitutions and bylaws.**

- **81 & 82** Any other activity that does not uphold the moral and ethical standards expected of the Nation's officials. **(Page 3)**
  - Establish a code of Ethical and moral standards expected of the Nation's Officials.
- **83,84,85,86,87,88 120.5. Filing of a Complaint 120.5-1. Who May File.** Any individual at least eighteen (18) years of age or older, or entity, who in good faith, has knowledge or reason to believe that an official has committed misconduct, may file a written complaint. **(Page 4)**
  - Can a Parent file a complaint on behalf of their child if something has happened to their child?
- **132 133, 134,135, Conflict of Interest.** If a member of the Oneida Business Committee (BC) has a conflict of interest regarding a complaint, they must recuse themselves and not participate in the review or hearings. If a member of the BC fails to recuse themselves, that member may be subject to sanctions and penalties under this law. **(Page 5)**
  - This should be defined in all the following processes. The application to the Investigatory, Deliberation, Determination, & Appeal processes.
- **264,265, 266, 267 Suspension.** The BC or Trial Court may suspend an official for up to sixty (60) days. During a suspension, the official cannot attend meetings, trainings, or conferences. The official also cannot vote or perform work for the board. In addition, the official cannot earn any stipends, salary or mileage during the suspension. **(Page 9)**
  - **Suspension-** is not a means of discipline, why not do community service instead of could order community service along with the other items.
  - Suspensions longer than 14 days are not conducive to the Tribal governments as work continues so it is with my recommendation. Shall not exceed 14 business day and if more serious look at termination.
- **272 & 273 Fines.** An official can be ordered to pay a fine for each act of misconduct. Unlike restitution, a fine is a punishment. The maximum amount of each fine is \$5000. **(Page 9)**
  - **Fines** should not get to the excessive point of \$5000 and the Oneida Business Committee, Boards, Committees and Commissions should be Termination or official to be removed from the position. fines may be applicable based on Sections F Factors in Determining Appropriate Sanction and /or penalty and amount for the Fines.
  - Another opportunity is to look if money was associated similar to felonies with the state which over a certain dollar amount sets in place the amount of actions to be taken.

Proof of Oneida Custom Tradition, & Culture- all components are essential In determining what if any limitations period applies under Oneida Nations law, the laws and rules interpretations of such laws and rules as the law of the Oneida

Nation of Wisconsin, the Oneida Nation needs to discuss the application of customary law to identify methods of finding, analyzing and applying customary Law in order to discern the strengths and weakness of their methods.

Resources regarding the adaptation of Intertribal or common law into tribal government:

- Hoopla Valley Tribe Traditional Tribal Law, Hoopla Valley Tribal Code §2.1.04
- Pat Sekaqiptewa, 32 Am. Indian L. Rev. 319, 375-85 (2007-2008)
- *Considering Individual Religious Freedoms under Tribal Constitutions*, 14 Kan. J.L. & Pub. POL'Y 561,562-64 (2004)
- Elizabeth E. Joh, *Custom, Tribal Court Practice, and Popular Justice*, 25 AM. Indian L. Rev. 117 121 (2000-2001)
- e.g. Keith Basso, *Wisdom Sits In Places: Landscape and Language Among western Apache* 40(1996)
- *Navajo Nation v. Rodriguez*, No. SC-SC-03-0, at 10 (Navajo 2004)
- *In re: (Certified Question II: Navajo Nation v. MacDonald)*, 16 Indian L. Rep. 6086 (Navajo Sup. Ct. Apr. 13, 1989)

Yawa'kó• and Sahwehniisliyóhak,  
(Thank you and have a good day),

Travis J. Wallenfang,  
Indian Preference Coordinator  
Purchasing Department  
Office 920.496-5316  
Email: [Twallenf@oneidanation.org](mailto:Twallenf@oneidanation.org)



A good mind. A good heart. A strong fire.

PO Box 365  
Oneida, WI 54155-0365  
[Oneida-nsn.gov](http://Oneida-nsn.gov)

**From:** LOC  
**Sent:** Thursday, October 11, 2018 8:27 AM  
**To:** Travis J. Wallenfang  
**Subject:** RE: PUBLIC MEETING: Sanctions and Penalties Law  
**Sensitivity:** Confidential

Good Morning,

I hope this email finds you well. Your email by which you submitted written comments for the proposed Sanctions and Penalties law contained a designation, "Please treat this as Confidential." I just wanted to inform you that the public comments that are received as proposed legislation or amendments to current legislation are not handled in a confidential manner.



Legislative Operating Committee  
October 17, 2018

# Employee Protection Policy Amendments

|                                     |                                   |
|-------------------------------------|-----------------------------------|
| <b>Submission Date:</b> 4/18/18     | <b>Public Meeting:</b> n/a        |
| <b>LOC Sponsor:</b> David P. Jordan | <b>Emergency Enacted:</b> 4/25/18 |

**Summary:** *The purpose of the Employee Protection Policy is to give protection to employees who give information that is intended to protect the Nation. The processes set forth in the Personnel & Procedures may be sufficient protection for employees who act to protect the Nation’s interests. The request is the LOC consider amendments or rescinding the law.*

**12/20/17LOC:** Motion by Jennifer Webster to add Employee Protection Policy to the Active Files List with a high priority and David P. Jordan as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

**2/21/18LOC:** Motion by Jennifer Webster to reprioritize the active files list lowering the Drug and Alcohol Free Law for Elected and Appointed Officials to medium, Employee Protection to medium, removing Hall of Fame Repeal, and to bump up Wellness Court, UCC Codes, and Industrial Hemp to High Priority; seconded by Daniel Guzman King. Motion carried unanimously.

**4/18/18 LOC:** Motion by Jennifer Webster to change the status to Emergency Amendments; seconded by Daniel Guzman King. Motion carried unanimously.

**4/18/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Jo Anne House, Tani Thurner, Laura Laitinen-Warren. The purpose of this work meeting was to discuss an update and plan for the emergency amendments.

**4/20/18:** E-Poll conducted.

**4/25/18 OBC:** Motion by Kirby Metoxen to adopt resolution 04-25-18-G Employee Protection Policy Emergency Amendments, seconded by Brandon Stevens. Motion carried unanimously.

**5/2/18 LOC:** Motion by Ernest Stevens III to enter the Military Service Employee Protection Act Emergency Amendments E-poll into the record; seconded by Kirby Metoxen. Motion carried unanimously.

**5/16/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Laura Laitinen-Warren. The purpose of this work meeting was to review and discuss the drafted permanent amendments. Drafting attorney will update the draft.

- 6/15/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Matthew J. Denny. The purpose of this work meeting was to discuss HRD's potential involvement in the disclosure portion of the Employee Protection Policy.
- 6/22/18:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Brandon Stevens, Clorissa Santiago, Brandon Wisneski, Cathy Bachhuber, Laura Laitinen-Warren. The purpose of this work meeting was to review potential options for revisions to the law – specifically the disclosure section. The LRO will conduct further research, and the drafting attorney will update the draft.
- 7/11/18:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Maureen Perkins. The purpose of this work meeting was to review requested research on other Tribal Employee Protection/Whistleblower laws and to review potential models for the draft.
- 8/23/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Matthew J. Denny, Nic Reynolds. Due to a majority of the meeting attendees not making the meeting, this work meeting was spent answering some questions regarding the draft, and discussing next steps.
- Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Loucinda Conway, Man from Hotline Development Company. Audit provided information on the Whistleblower hotline and how it will work.
- 9/5/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman, Jennifer Falck, Clorissa Santiago, Kristen Hooker, Brandon Wisneski, Maureen Perkins. The purpose of this work meeting was to obtain more direction from the LOC on how to proceed with this law now that more information on Audit's Whistleblower hotline was obtained.
- 9/5/18 LOC:** Motion by Jennifer Webster to approve the memo [*Regarding 8/27 GTC Directive*] and forward to the Oneida Business Committee: seconded by Daniel Guzman King. Motion carried unanimously.
- 9/27/18:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Kristen Hooker, Brandon Wisneski, Maureen Perkins, Fawn Billie. The purpose of this work meeting was to review research and statistics on the Employee Protection law, and then discuss and decide on an option to move this law forward. Drafting attorney and analyst will move forward with finalizing draft and analysis and bring back to LOC.
- 9/26/18/ OBC:** Motion by Lisa Summers to adopt resolution 09-26-18-F Rescission of the Dissolution of the Oneida Personnel Commission and Related Emergency Amendments in Accordance with General Tribal Council's August 27, 2018 Directive with one amendment [to include language which requires bimonthly updates to the Oneida Business Committee at the second regular meeting of the month], seconded by Kirby Metoxen. Motion carried.
- 10/3/18 LOC:** Motion by Kirby Metoxen to remove the emergency designation from the Employee Protection Policy amendments; seconded by Ernest Stevens III. Motion carried unanimously.
- 10/9/18:** *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Loucinda Conway, Jackie Johnson, Mary Graves. The purpose of this work meeting was to obtain Internal Audit's comments on the proposed draft, and find out if it is consistent with the Hotline policies.

**Next Steps:**

- Accept the draft and legislative analysis of the amendments to the Employee Protection Policy and defer to a work meeting for review.

**Title 2. Employment – Chapter 211  
WHISTLEBLOWER PROTECTION**

211.1 Purpose and Policy  
211.2 Adoption, Amendment, Repeal  
211.3 Definitions

211.4 Disclosure of Information  
211.5 Protection from Retaliation

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**211.1. Purpose and Policy**

211.1-1. The purpose of this law is to give protection to employees who give information that is intended to protect the Nation from fraud, theft or other detrimental effects.

211.1-2. It is the policy of the Oneida Nation to extend protection to employees who act within this law to protect the Nation's interests.

**211.2. Adoption, Amendment, Repeal**

211.2-1. This law was adopted by the Oneida Business Committee by resolution BC-12-6-95-B and amended by resolutions BC-1-20-99-B, BC-6-30-04-J, BC-02-25-15-C, and BC-\_\_-\_\_-\_\_-\_\_.

211.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

211.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

211.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

211.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**211.3. Definitions**

211.3-1. This section shall govern the definitions of words as phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Employee" means any individual hired by the Nation and on the Nation's payroll and encompasses all forms of employment, including but not limited to: full-time, part-time, at-will, political appointees, and contracted persons.

(b) "Entity" means a department, program, service, board, committee, or commission of the Nation.

(c) "Nation" means the Oneida Nation.

(d) "Official" means an individual elected or appointed to serve on a board, committee, or commission of the Nation, including the Oneida Business Committee.

**211.4. Disclosure of Information**

211.4-1. Whistleblowing occurs when an employee discloses information that the employee reasonably believes provides evidence that protects the Nation from any adverse actions of its employees that may result in a detrimental effect to the Nation. Adverse action that may result in a detrimental effect to the Nation includes, but is not limited to:

(a) Any dishonest or fraudulent act;

(b) Deceptive business practices;

(c) Theft;

(d) Extortion;

(e) Bribery;

(f) Embezzlement;

- 43 (g) Blackmail;
- 44 (h) Tampering and/or falsifying records contracts, or reports;
- 45 (i) Forgery;
- 46 (j) Misappropriate and/or misuse of the Nation's funds;
- 47 (k) Disclosure of confidential information;
- 48 (l) Destruction, removal, or inappropriate use of property of the Nation;
- 49 (m) Unsafe working conditions;
- 50 (n) Poor management;
- 51 (o) Unethical conduct and conduct that violates a law and/or policy of the Nation.

52 211.4-2. An employee shall be protected from retaliatory action that results from making a  
53 disclosure of information as directed within this law. Retaliatory action includes all action whether  
54 disciplinary or otherwise.

55 (a) Disciplinary action that may be retaliatory includes:

- 56 (1) dismissal;
- 57 (2) demotion;
- 58 (3) transfer;
- 59 (4) removal of duty;
- 60 (5) refusal to restore;
- 61 (6) layoff;
- 62 (7) furlough;
- 63 (8) suspension; and/or
- 64 (9) reprimand.

65 (b) Action other than disciplinary action that may be retaliatory may include, but is not  
66 limited to:

- 67 (1) loss of hours;
- 68 (2) rescheduling shifts outside of normal shift changes;
- 69 (3) change of job requirements without notice;
- 70 (4) verbal or physical harassment;
- 71 (5) reduction of pay;
- 72 (6) denial of educational benefits;
- 73 (7) reassignment; and/or
- 74 (8) failure to increase base pay.

75 (c) Any action that can be reasonably justified as taken in good faith based on documented  
76 employee performance shall be excluded from classification as retaliatory action.

77 211.4-3. An employee shall make a disclosure of information through the:

- 78 (a) use of the anonymous Fraud hotline; or
- 79 (b) submission of a written disclosure to the Nation's Internal Audit department.

80 211.4-4. Once a disclosure of information is made, the disclosing employee shall be provided an  
81 incident number confirm receipt of the disclosure.

82 211.4-5. Internal Audit shall then have the authority to review the disclosure and conduct an  
83 investigation and/or an internal audit into the disclosure, if deemed appropriate. Upon the  
84 conclusion of the investigation the Internal Audit department shall, where necessary, report their  
85 findings to an appropriate entity for action to address the findings, including, but not limited to,  
86 the:

- 87 (a) Oneida Business Committee;
- 88 (b) Oneida Law Office or other legal prosecuting agency;
- 89 (c) Human Resources Department;
- 90 (d) Oneida Police Department or other law enforcement agency;

- 91 (e) Audit Committee; and/or
- 92 (f) any other entity of the Nation.

93

94 **211.5. Protection from Retaliation**

95 211.5-1. If an employee alleges that retaliatory action has been threatened or taken based on the  
96 employee's disclosure of information under this law, the employee may file a complaint for the  
97 retaliatory action in accordance with the grievance procedures provided in the Nation's laws and  
98 policies governing employment.

99 211.5-2. The employee shall be protected from the retaliatory action if the following is found:

- 100 (a) the employee made a disclosure of information;
  - 101 (1) The confirmation of disclosure that is provided when information is disclosed,
  - 102 as well as any resulting findings by the Internal Audit department, shall be used as
  - 103 a reference to prove a disclosure of information.
- 104 (b) the individual alleged to have taken retaliatory action against the disclosing employee
- 105 was aware or became aware that the disclosing employee had disclosed information;
- 106 (c) the action taken against the disclosing employee was retaliatory as a result of the
- 107 disclosure of information.

108 211.5-3. An individual who is found to have retaliated against an employee who made a disclosure  
109 of information pursuant to this law shall be subject to:

- 110 (a) disciplinary action, up to and including termination, pursuant to the Nation's laws and
- 111 policies governing employees, if an employee of the Nation;
- 112 (b) sanctions and penalties pursuant to the Nation's laws and policies governing sanctions
- 113 and penalties, if an official of the Nation;
- 114 (c) removal pursuant to the Nation's laws and policies governing removal, if an elected
- 115 official; and/or
- 116 (d) termination of appointment pursuant to the Nation's laws and policies governing
- 117 boards, committees, and commissions, if an appointed official.

118

119 *End.*

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- 121 Emergency Adopted - BC-4-20-95-B
  - 122 Permanently Adopted - BC-12-6-95-B
  - 123 Amended - BC-1-20-99-B
  - 124 Amended - BC-6-30-04-J
  - 125 Amended - BC-02-25-15-C
  - 126 Emergency Amended - BC-04-25-18-G
  - 127 Amended - BC-\_\_-\_\_-\_\_-\_\_

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**Title 2. Employment – Chapter 211**  
**EMPLOYEE WHISTLEBLOWER PROTECTION POLICY**

211.1 Purpose and Policy

211.2 Adoption, Amendment, Repeal

211.3 Definitions

211.4 Disclosure of Information

211.5 Protection from Retaliation

**211.1 — Purpose and Policy**

211.1-1. The purpose of this policy law is to give protection to employees who give information that is intended to protect the Oneida Nation, or its agencies from fraud, theft or other detrimental effects.

211.1-2. It is the policy of the Oneida Nation to extend protection to employees who act within this policy law to protect the Nation's interests.

**211.2. Adoption, Amendment, Repeal**

~~211.2-1. This policy shall become effective upon adoption.~~

211.2-1. This law was adopted by the Oneida Business Committee by resolution BC-12-6-95-B and amended by resolutions BC-1-20-99-B, BC-6-30-04-J, BC-02-25-15-C, and BC- - - - .

~~211.2-2. This policy shall supersede, repeal, rescind any prior law or policy regarding employee protection. Provided, that the law or policy is in direct conflict or extends lesser protection than this Employee Protection Policy.~~

211.2-3. This policy may be amended or repealed by the Oneida Business Committee and/or the General Tribal Council pursuant to the Oneida Administrative procedures set out in the Legislative Procedures Act.

211.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

211.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

211.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**211.3. Definitions**

211.3-1. This section shall govern the definitions of words as phrases ~~as used herein~~ within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) ~~“Abuse of authority Employee”~~ “Employee” means using any individual hired by the authority, whether real Nation and on the Nation’s payroll and encompasses all forms of employment, including but not limited to: full-time, part-time, at-will, political appointees, and contracted persons.

(b) “Entity” means a department, program, service, board, committee, or assumed, of any position, whether actual commission of the Nation.

(c) “Nation” means the Oneida Nation.

(d) “Official” means an individual elected or appointed to serve on a board, committee, or commission of the Nation, including the Oneida Business Committee.

**211.4 assumed, to obtain. Disclosure of Information**

211.4-1. Whistleblowing occurs when an employee discloses information, goods or services to the detriment of the tribe, or using the authority as described above that the employee reasonably believes provides evidence that protects the Nation from any adverse actions of its employees that

43 may result in a detrimental effect to ~~directly~~ the Nation. Adverse action that may result in a  
44 detrimental effect to the Nation includes, but is not limited to:

- 45 (a) Any dishonest or fraudulent act;
- 46 (b) Deceptive business practices;
- 47 (c) Theft;
- 48 (d) Extortion;
- 49 (e) Bribery;
- 50 (f) Embezzlement;
- 51 (g) Blackmail;
- 52 (h) Tampering and/or ~~indirectly punish any person~~ falsifying records contracts, or
- 53 employee for disclosing reports;
- 54 (i) Forgery;
- 55 (j) Misappropriate and/or misuse of the Nation's funds;
- 56 (k) Disclosure of confidential information ~~as described below;~~
- 57 ~~(b) —“Appropriate agency” means a delegated person or officer to receive disclosures in~~
- 58 ~~the Internal Auditing, Gaming Commission, Tribal School Board, Police Commission and~~
- 59 ~~Personnel Commission.~~
- 60 ~~(e) —“(l) Destruction, removal, or inappropriate use of property of the Nation;~~
- 61 (m) Unsafe working conditions;
- 62 (n) Poor management;
- 63 (o) Unethical conduct and conduct that violates a law and/or policy of the Nation.

64 211.4-2. An employee shall be protected from retaliatory action that results from making a  
65 disclosure of information as directed within this law. Retaliatory action includes all action whether  
66 disciplinary or otherwise.

67 (a) Disciplinary action” ~~means any action by an employer affecting an employee to their~~  
68 detriment, including, but not limited to— that may be retaliatory includes:

- 69 (1) dismissal;
- 70 (2) demotion;
- 71 (3) transfer;
- 72 (4) removal of duty, ~~refuse;~~
- 73 (5) refusal to restore, ~~suspend;~~
- 74 (6) layoff;
- 75 (7) furlough;
- 76 (8) suspension; and/or
- 77 (9) reprimand.

78 ~~(d) —“Disclosure” means to reveal otherwise non public information or other~~  
79 ~~information that would otherwise remain concealed during a period which it should be~~  
80 ~~brought to light.~~

81 ~~(e) —“Employee” means any person working for the Oneida Nation in its programs,~~  
82 ~~enterprises, and governmental functions, whether elected, appointed, or hired as a limited~~  
83 ~~term employee, vendor, or contractor.~~

84 ~~(f) —“Information” means the specific time, date, who, when, where, what, how in any~~  
85 ~~disclosure that would prevent detrimental actions being taken against the Oneida Nation.~~

86 ~~(g) —“Judiciary” means the judicial system that was established by Oneida General~~  
87 ~~Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and~~  
88 ~~responsibilities of the Tribe.~~

89 ~~(h) —“Merit further investigation” means that point at which a person(s) hearing the~~  
90 ~~information believes that it requires further action.~~

91 ~~(i) “Mismanagement” means failure to use reasonable good sense in using the~~  
92 ~~authority granted through the job description, delegated authority by any supervisor, and/or~~  
93 ~~personal judgment to advance the economic, financial, and political value of the Oneida~~  
94 ~~Nation by properly using employee time, equipment, funds, and their own time.~~

95 ~~(j) “Retaliatory action” means any action, either disciplinary or otherwise, taken against~~  
96 ~~any employee, whether supervisory or supervised, for that employee's disclosure of~~  
97 ~~information as directed within this policy, excluding any~~ (b) Action other than disciplinary  
98 action that may be retaliatory may include, but is not limited to:

- 99 (1) loss of hours;
- 100 (2) rescheduling shifts outside of normal shift changes;
- 101 (3) change of job requirements without notice;
- 102 (4) verbal or physical harassment;
- 103 (5) reduction of pay;
- 104 (6) denial of educational benefits;
- 105 (7) reassignment; and/or
- 106 (8) failure to increase base pay.

107 (c) Any action that can be reasonably justified as taken in good faith based on documented  
108 employee performance. ~~Action other than disciplinary action that may be retaliatory, by~~  
109 ~~way of example, could be loss of hours, rescheduling shifts outside of normal shift~~  
110 ~~changes, change of job requirements without notice, verbal or physical harassment,~~  
111 ~~reduction of pay, denial of educational benefits, reassignment, failure to increase base pay~~  
112 ~~shall be excluded from classification as retaliatory action.~~

113 ~~(k) “Substantial waste of public funds” means any~~ 211.4-3. An employee shall make a disclosure  
114 of information through the:

- 115 (a) use of funds in a manner not directed by policy ~~the anonymous Fraud hotline; or~~
- 116 (b) submission of a written disclosure to the Nation’s Internal Audit department.

117 211.4-4. Once a disclosure of information is made, the disclosing employee shall be provided an  
118 incident number confirm receipt of the disclosure.

119 211.4-5. Internal Audit shall then have the authority to review the disclosure and conduct an  
120 investigation and/or an internal audit into the disclosure, if deemed appropriate. Upon the  
121 conclusion of the investigation the Internal Audit department shall, where necessary, report their  
122 findings to an appropriate entity for action to address the findings, including ~~any preference laws~~  
123 ~~adopted by, but not limited to, the:~~

- 124 (a) Oneida Business Committee;
- 125 (b) Oneida Law Office or other legal prosecuting agency;
- 126 (c) Human Resources Department;
- 127 (d) Oneida Police Department or other law enforcement agency;
- 128 (e) Audit Committee; and/or
- 129 (f) any other entity of the Nation.

### 131 **211.5. Protection from Retaliation**

132 211.5-1. ~~211.4 Disclosure~~ If an employee alleges that retaliatory action has been threatened or  
133 taken based on the employee’s disclosure of information under this law, the employee may file a  
134 complaint for the retaliatory action in accordance with the grievance procedures provided in the  
135 Nation’s laws and policies governing employment.

136 211.5-2. The employee shall be protected from the retaliatory action if the following is found:

- 137 (a) the employee made a disclosure of information;

138 (1) The confirmation of disclosure that is provided when information is disclosed,  
139 as well as any resulting findings by the Internal Audit department, shall be used as  
140 a reference to prove a disclosure of information.

141 (b) the individual alleged to have taken retaliatory action against the disclosing employee was  
142 aware or became aware

143 ~~211.4 1. — General. The Oneida Tribe recognizing the negative impact on the employee that may~~  
144 ~~arise from presenting information that protects the Oneida Tribe from adverse actions of its elected~~  
145 ~~officials, employees, contractual employees, and contractors and offers the processes in this Policy~~  
146 ~~to protect employees against retaliation in the event information is presented. This Policy is~~  
147 ~~effective after presentation of information and protects against retaliation. No identification of a~~  
148 ~~protected status is necessary when information is properly presented. And no protection can be~~  
149 ~~extended unless information is properly presented.~~

150 ~~211.4 2. — An employee is protected under this policy when the disclosure of the information is~~  
151 ~~given, in confidence, in written form, dated, and signed, to the any of the following persons:~~

- 152 ~~(a) Supervisor~~
- 153 ~~(b) appropriate agency or entity~~
- 154 ~~(c) law enforcement agency~~
- 155 ~~(d) attorney retained by the employee.~~
- 156 ~~(e) Employee Advocates~~

157 ~~Provided that, disclosure, through circumstances other than in person, the employee shall fully~~  
158 ~~identify themselves.~~

159 ~~211.4 3. — A protected disclosure includes the following elements:~~

- 160 ~~—— (a) identity of person making the disclosure~~
- 161 ~~—— (b) identity of person or persons against whom disclosure is being made~~
- 162 ~~—— (c) to the best of the employees knowledge, the date and times at which the disclosed~~  
163 ~~action occurred, and d. summary of the disclosed action.~~

164 ~~211.4 4. — All disclosures shall be kept confidential, until such time as action is being taken~~  
165 ~~against the person or persons identified in the the disclosing employee had disclosed~~  
166 ~~information.;~~

167 (c) the action taken against the disclosing employee was retaliatory as a result of the  
168 disclosure of information.

169 ~~211.5-3,211.4 5. — Disclosures made in reference to section 211.4 1 of this policy shall be~~  
170 ~~directed as soon as possible to the appropriate agency or entity, with the permission of the~~  
171 ~~disclosing person/persons. The disclosed information will be in a sealed envelope, which may be~~  
172 ~~hand-carried, mailed certified or delivered by law enforcement. A receipt shall be required to be~~  
173 ~~signed, and dated by the recipient.~~

174 ~~211.4 6. — Disclosures made in reference to 211.4 2(d) of this policy shall be with the~~  
175 ~~understanding that no attorney shall be directed to act in a manner that the attorney finds to be in~~  
176 ~~conflict with any professional responsibility or rule.~~

177 ~~211.4 7. — The appropriate agency shall send a written decision to the disclosing party that the~~  
178 ~~disclosure has or does not have merit, along with any further action that will be taken within twenty~~  
179 ~~(20) business days. If a disclosure merits further action, the disclosing party will be notified that~~  
180 ~~they may be called by the appropriate agency to give additional testimony at a closed meeting and~~  
181 ~~on approximately what date. Further, appropriate agencies will follow the hearing procedures set~~  
182 ~~out in the Administrative Procedures Act for a Hearing of Record. Appropriate agencies are~~  
183 ~~authorized to use their full powers to take corrective measures where disclosures merit action, and~~

184 ~~to utilize all Tribal agencies to effectively correct any and all problems found. This includes, but~~  
185 ~~is not limited to, the following action:~~

- 186 ~~(a) Oneida Business Committee garnishment action to recover lost funds,~~
- 187 ~~(b) Personnel Commission for disciplinary action,~~
- 188 ~~(c) Judiciary for appropriate civil actions,~~
- 189 ~~(d) Criminal prosecutions, where indicated, in appropriate federal or state courts.~~

## 190 191 **211.5 Protection**

192 An individual who is found to have retaliated against an employee who made a disclosure of  
193 information pursuant to this law shall be subject to:

- 194 (a) disciplinary action, up to and including termination, pursuant to the Nation's laws and  
195 policies governing employees, if an employee of the Nation;
- 196 (b) sanctions and penalties pursuant to the Nation's laws and policies governing sanctions  
197 and penalties, if an official of the Nation;
- 198 (c) removal pursuant to the Nation's laws and policies governing removal, if an elected  
199 official; and/or

200 (d) termination of appointment pursuant to the Nation's laws~~211.5 1. — Any employee who~~  
201 ~~discloses information in the manner described in this policy shall be protected from any and all~~  
202 ~~employment related retaliation to the fullest extent of this section.~~

203 ~~211.5 2. — Any employee who believes that retaliatory action is being taken against them may~~  
204 ~~follow procedures set out below:~~

- 205 ~~(a) This policy supersedes those complaint procedures set out in the Personnel Policy and~~  
206 ~~Procedures Manual and the employee may go directly to their Division Director and state,~~  
207 ~~in person and in writing, or written only, the action that employee believes is retaliatory,~~  
208 ~~or~~  
209 ~~(b) If a disciplinary action, that employee may go directly to the Personnel Commission~~  
210 ~~with their grievance.~~  
211 and policies governing boards, committees, and commissions, if an appointed official.

212  
213 ~~211.5 3. — The Personnel Commission is authorized through this policy to proceed immediately~~  
214 ~~with any alleged retaliation grievance placed before them by any employee. Any resolution of a~~  
215 ~~retaliation grievance must be written and placed in all parties files. All parties include, but are not~~  
216 ~~limited to, persons actively involved with knowingly implementing any retaliation action and~~  
217 ~~named by the grieving party.~~

218 ~~211.5 4. — Any person acting under the authority of another, who has a good faith belief of the~~  
219 ~~correctness of their actions, is a legal defense against any retaliation grievance and, if accepted by~~  
220 ~~the Personnel Commission, bars placement of the results of the action in that employee's file.~~  
221 ~~Provided that, the person was not found to be actively involved in an retaliatory action. Provided~~  
222 ~~further, that the employee acting in good faith has not asked that the results of any retaliation~~  
223 ~~hearing be placed in their file.~~

224 ~~211.5 5. — If a disclosing employee files a grievance alleging a protected status as a result of a~~  
225 ~~disclosure and that retaliation has occurred, the disclosing employee may request a protective order~~  
226 ~~which may be as follows:~~

227 ~~The Personnel Commission Hearing Body hereby orders that the Human Resources~~  
228 ~~Department shall monitor (name of supervisor/job title)'s actions in regard to (name of~~  
229 ~~disclosing employee/job title). This employee has alleged a protected status under the~~  
230 ~~Employee Protection Policy which the Personnel Commission Hearing Body has~~  
231 ~~determined that sufficient evidence exists to prove that such a status exists.~~

232 ~~This protective order shall remain in place until such time as a final decision is issued~~  
233 ~~by this Personnel Commission Hearing Body.~~

234 *End.*  
235

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- 236 Emergency ~~Adoption~~Adopted - BC-4-20-95-B
  - 237 ~~Permanent Adoption~~Permanently Adopted - BC-12-6-95-B
  - 238 ~~Amendments~~Amended - BC-1-20-99-B
  - 239 ~~Amendments~~Amended - BC-6-30-04-J
  - 240 ~~Amendments~~Amended – BC-02-25-15-C
  - 241 ~~Emergency Amended – BC-04-25-18-G~~
  - 242 ~~Amended – BC- - - -~~

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244



# AMENDMENTS TO EMPLOYEE PROTECTION POLICY LEGISLATIVE ANALYSIS

## SECTION 1. EXECUTIVE SUMMARY

| REQUESTER:<br>Chief Counsel | SPONSOR:<br>David Jordan  | DRAFTER:<br>Clorissa N. Santiago | ANALYST:<br>Brandon Wisneski |
|-----------------------------|---|----------------------------------|------------------------------|
| Intent of the Amendments    | To replace the Employee Protection Policy with a Whistleblower Protection Law that incorporates the Nation’s new Fraud Hotline, to ban retaliation against employees, to direct all whistleblower disclosures to the Fraud Hotline or Internal Audit Department, to define a grievance and complaint process for employees who have been retaliated against, and to provide disciplinary actions and other consequences for employees and officials who retaliate against whistleblowers. |                                  |                              |
| Purpose                     | To give protection to employees who give information that is intended to protect the Nation from fraud, theft or other detrimental effects [see 211.1-1].   |                                  |                              |
| Affected Entities           | All employees of the Nation. All elected and appointed officials of the Nation. Internal Audit Department, Audit Committee, Human Resources Department, Personnel Commission, Judiciary, Oneida Business Committee, Oneida Law Office, Oneida Police Commission, Oneida Nation School Board, Gaming Commission.   |                                  |                              |
| Affected Legislation        | Personnel Policies and Procedures (Blue Book), Boards Committees and Commissions Law, Removal Law, Internal Audit Law.  |                                  |                              |
| Enforcement/Due Process     | Employees of the Nation who retaliate against an employee may be subject to disciplinary action, up to and including termination. Elected and appointed officials of the Nation who retaliate against an employee may be subject to sanctions and penalties, removal from office or termination of appointment [see 211.5-3].   |                                  |                              |
| Public Meeting              | A public meeting has not yet been held.   |                                  |                              |

## SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A.** The Employee Protection Policy was first adopted by the Oneida Business Committee on April 20,
- 3 1995. The purpose of the law is to protect employees who give information that is intended to protect
- 4 the Nation from fraud, theft or other detrimental effects. The current Employee Protection Policy
- 5 provides a process for how employees make disclosures, a process to request “protected status” that
- 6 allows protected employees to bypass the normal complaint and grievance process in the Personnel
- 7 Policies and Procedures, and the ability of protected employees to receive a “protective order” from the
- 8 Personnel Commission if they are retaliated against.
- 9 **B.** The amendments to this law are intended to work in conjunction with the Nation’s new Fraud Hotline.
- 10 Oneida Internal Audit Department has developed an anonymous Fraud Hotline, designed to be a
- 11 centralized way for employees to report fraud, unlawful, unethical or other types of inappropriate
- 12 behavior. The Fraud Hotline will be administered by a third party and will be available 24 hours per
- 13 day, seven days per week. Reports from the Fraud Hotline will be sent to Internal Audit for
- 14 investigation.
- 15 **C.** These amendments effectively eliminate the Employee Protection Policy and replace it with a new
- 16 Whistleblower Protection Law. The intent of the law is to ban retaliation against employees, to direct
- 17 all whistleblower disclosures to the Fraud Hotline or Internal Audit Department, to provide a grievance

18 and complaint process for employees who have been retaliated against, and to provide disciplinary  
19 actions and other consequences for employees and officials who retaliate against whistleblowers.  
20

### 21 **SECTION 3. CONSULTATION AND OUTREACH**

- 22 A. The Legislative Operating Committee (LOC) held work meetings with Internal Audit, Human  
23 Resources Equal Employment Opportunity (EEO) and HRD Training and Development in the  
24 development of this law and analysis. In addition, the LOC received information related to Employee  
25 Protection Policy from the staff of the Personnel Commission and School Board.
- 26 B. The following Oneida laws were reviewed in the drafting of this analysis: Personnel Policies and  
27 Procedures, Boards, Committees and Commissions Law, Removal Law, Internal Audit Law, and Code  
28 of Ethics. In addition, the following laws were reviewed in drafting this analysis:
- 29     ▪ Ho Chunk Nation Employment Relations Act
  - 30     ▪ Mashantucket Pequot Tribal Whistleblower Law
  - 31     ▪ Little Traverse Band of Odawa Indians Whistleblower Protection
  - 32     ▪ Seminole Nation Whistleblower Protection
  - 33     ▪ Osage Nation Whistleblower Protection Law
- 34

### 35 **SECTION 4. PROCESS**

- 36 A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- 37 B. The law was added to the Active Files List on 12/20/2017.
- 38 C. At the time this legislative analysis was developed, the following work meetings were held/scheduled  
39 regarding the development of this law and legislative analysis:
- 40     ▪ April 18, 2018: LOC Work Meeting
  - 41     ▪ May 16, 2018: LOC Work Meeting
  - 42     ▪ June 15, 2018: Work Meeting with HRD EEO
  - 43     ▪ June 22, 2018: LOC Work Meeting
  - 44     ▪ July 11, 2018: LOC Work Meeting
  - 45     ▪ August 23, 2018: Work Meeting with HRD EEO and HRD Training and Development
  - 46     ▪ August 23, 2018: Work Meeting with Internal Audit
  - 47     ▪ September 27, 2018: LOC Work Meeting
  - 48     ▪ October 9, 2018: Work Meeting with Internal Audit Department.
- 49

### 50 **SECTION 5. CONTENTS OF THE LEGISLATION**

- 51 A. *What is “Whistleblowing”?* A whistleblower is an employee who shares evidence or provides  
52 information that protects the Oneida Nation from adverse actions of its employees, including fraud,  
53 theft, bribery, misappropriation of funds, disclosure of confidential information, unsafe working  
54 conditions, among other examples [see 211.4-1].
- 55 B. *Ban on Retaliation.* Employees who make whistleblower disclosures under this law are protected from  
56 retaliation [see 211.4-2]. Examples of retaliation listed in this law include:
- 57     ▪ *Disciplinary Actions* such as dismissal, demotion, transfer, removal of duty, refusal to restore,  
58     layoff, furlough, suspension, and/or reprimand.
  - 59     ▪ *Non-Disciplinary Actions* such as loss of hours, rescheduling shifts outside of normal shift  
60     changes, change of job requirements without notice, verbal or physical harassment, reduction  
61     of pay, denial of educational benefits, reassignment, and/or failure to increase base pay.
- 62 C. *Where to Submit Whistleblower Disclosures.* Employees will now submit all whistleblower  
63 disclosures using the Fraud Hotline or by submitting in writing to the Internal Audit Department [see  
64 211.4-3]. Previously, employees also had the option of submitting their disclosures to the Personnel  
65 Commission, Oneida Nation School Board, Oneida Police Commission, or Oneida Gaming

66 Commission, or to a supervisor, law enforcement official, attorney, or employee advocate. Now, all  
67 employees will submit whistleblower disclosures to one centralized location.

- 68 ○ ***Anonymous Fraud Hotline.*** An Anonymous Fraud Hotline has been developed by the  
69 Internal Audit Department. The hotline will be operated by a third-party vendor and will  
70 be available twenty-four hours per day, seven days per week. The purpose of the hotline is  
71 to provide a centralized and anonymous way to report fraud, unlawful, unethical and other  
72 types of improper behavior. For more details regarding the hotline, see Section 9 “Other  
73 Considerations.”
- 74 ○ ***Comparison to Employee Protection Policy.***
  - 75 • The current Employee Protection Policy requires employees to submit a written,  
76 dated, signed disclosure that is hand carried, mail certified or delivered by law  
77 enforcement. The employee must identify themselves in the disclosure and identify  
78 the person and persons against whom the claim is made, and provide date, times  
79 and summary of the misconduct.
  - 80 • In contrast, the proposed Whistleblower Protection Law allows employees to  
81 remain anonymous, if they wish, and to make their disclosure using either the  
82 Fraud Hotline or by submitting in writing to Internal Audit. The Law does not  
83 describe what specific information is required in the disclosure.

84 **D. *Receipt of Disclosure.*** After submitting their disclosure, employees will receive an incident number.  
85 This incident number confirms that the employee’s disclosure was received. This will allow employees  
86 to provide evidence of their disclosure should they be retaliated against and need to file a complaint or  
87 grievance in the future [see 211.4-4].

- 88 ■ ***Comparison to Employee Protection Policy.*** The current Employee Protection Policy requires  
89 the agency to provide a signed and dated receipt to the employee when they submit their  
90 disclosure. In contrast, the proposed Whistleblower Protection Law requires the employee to  
91 provided with an incident number.

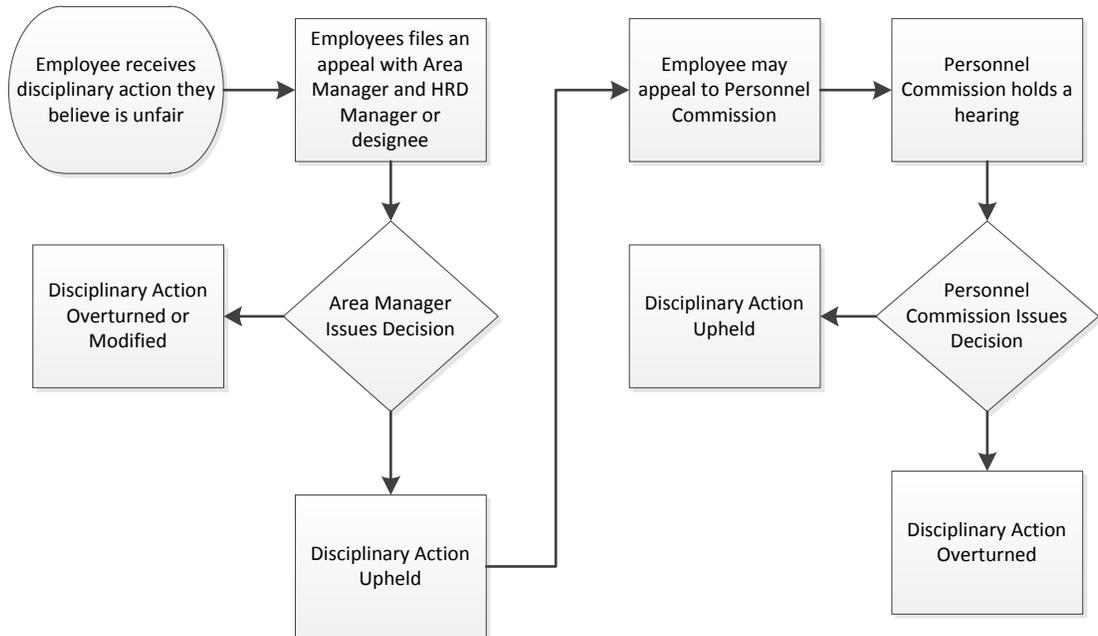
92 **E. *Investigation.*** After receiving a disclosure from the Fraud Hotline or directly from the employee,  
93 Internal Audit has the authority to review and conduct an investigation and/or an audit. Once Internal  
94 Audit’s investigation is complete, they will report their findings to the appropriate entity for further  
95 action, if necessary. For example, the findings could be reported to the Oneida Business Committee,  
96 Oneida Law Office, Human Resources Department, Oneida Police Department or other law  
97 enforcement agency, the Audit Committee, or any other entity of the Nation [see 211.4-5].

98 **F. *Protection from Retaliation.*** If an employee feels they have been retaliated against, they can file a  
99 complaint using the complaint and grievance processes in the Nation’s Personnel Policies and  
100 Procedures, also known as “the blue book” [see 211.5-1].

- 101 ■ ***Disciplinary Actions.*** Chart 1 illustrates the grievance process in the Personnel Policies and  
102 Procedures for disciplinary actions, such as suspensions or termination of employment. If a  
103 disciplinary action is overturned, the employee can be reinstated with back pay. [See  
104 *Personnel Policies and Procedures - Section V Employee Relations, 5. Complaints,*  
105 *Disciplinary Actions and Grievances*].

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**Chart 1. Grievance Process for Disciplinary Actions in Personnel Policies and Procedures**

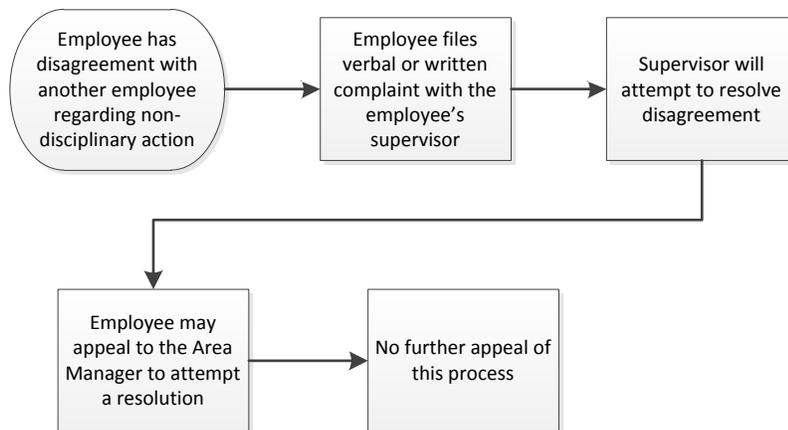


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- **Comparison to Employee Protection Policy.** The current Employee Protection Policy allows employees who have been granted protection to skip a step in the grievance process and go straight to the Personnel Commission if they feel they have been retaliated against. This ability to skip a step in the grievance process is removed in the proposed Whistleblower law.

- **Non-Disciplinary Actions.** Chart 2 depicts the complaint process in the Personnel Policies and Procedures for non-disciplinary complaints, such as loss of hours or change of schedule. [See *Personnel Policies and Procedures - Section V Employee Relations, 5. Complaints, Disciplinary Actions and Grievances*].

**Chart 2. Complaint Process for Non-Disciplinary Actions in Personnel Policies and Procedures**



134

- 135           ○ **Comparison to Employee Protection Policy.** The current Employee Protection Policy  
136 allows employees who have been granted protection to skip the Complaint Process in the  
137 Personnel Policies and Procedures and go straight to their Division Director if they have  
138 received a non-disciplinary action that is retaliatory. This ability to skip the complaint  
139 process and go to the division director is removed in the proposed Whistleblower  
140 Protection law.
- 141 **G. Requirements for Protection:** In order to be protected from retaliation under this law, the employee  
142 must have made a whistleblower disclosure and provide proof of the disclosure in the form of the  
143 incident number provided by the Fraud Hotline or Internal Audit. In addition, the individual who  
144 retaliated against the whistleblower must have been aware that the whistleblower disclosed  
145 information. Finally, the action taken against the whistleblower must be retaliatory as a result of the  
146 disclosure [see 211.5-2].
- 147 **H. Punishment for Retaliation.** Depending on their role, individuals who retaliate against employees in  
148 violation of this law will receive the following consequences [see 211.5-3].
- 149       ▪ *Employees of the Nation.* Employees who retaliate against another employee for making a  
150 whistleblower disclosure will be subject to disciplinary action, up to and including  
151 termination, in accordance with the Personnel Policies and Procedures.
  - 152       ▪ *Appointed officials.* May have their appointment terminated, in accordance with the Nation’s  
153 Boards, Committees and Commissions Law, or may receive sanctions and penalties in  
154 accordance with the Nation’s laws.
  - 155       ▪ *Elected officials.* May be subject to removal from office in accordance with the Nation’s  
156 Removal Law. Elected officials may also be subject to sanctions and penalties in accordance  
157 with the Nation’s laws.
- 158

## 159 **SECTION 6. EFFECT ON EXISTING LEGISLATION**

- 160 **A. Employee Protection Policy.** Although currently categorized as amendments to the Employee  
161 Protection Policy on the LOC’s Active Files List, the changes are substantial enough that the  
162 amendments effectively eliminate the Employee Protection Policy and replaces it with a new  
163 Whistleblower Protection Law.
- 164 **B. References to Other Laws.** The following laws of the Nation are referenced in this law. This law does  
165 not conflict with any of the referenced laws.
- 166       ▪ *Personnel Policies and Procedure.* The proposed amendments refer to the Nation’s grievance  
167 procedure [see 211.5-1] and disciplinary process [see 211.5-3(a)] in the Personnel Policies and  
168 Procedures.
  - 169       ▪ *Boards, Committees and Commissions Law.* The proposed amendments refer to the termination of  
170 appointment officials in the Boards, Committees and Commissions Law [see 211.5-3(d)].
  - 171       ▪ *Removal Law.* These amendments refer to the removal process for elected officials in the Removal  
172 Law [see 211.5-3(c)].
  - 173       ▪ *Internal Audit Law.* The proposed amendments refer to the duties and responsibilities of the  
174 Internal Audit department, which is governed by the Internal Audit Law.
- 175

## 176 **SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS**

- 177 **A. Elimination of “Protected Status” and Ability to Skip a Step in the Complaint and Grievance**  
178 **Process.** Under the current Employee Protection Policy, employees can receive a formal “protected  
179 status” upon making their disclosure to one of the five appropriate agencies. Once an employee is  
180 granted protected status, it allows the employee to skip a step in the complaint and grievance process  
181 and go directly to the Personnel Commission or their Division Director if they are retaliated against  
182 [see current Employee Protection Policy, 211.5-2]. The proposed Whistleblower Protection Law  
183 eliminates this formal “protected status” and the right to skip a step in the complaint and grievance  
184 process. If an employee is retaliated against, they must file a complaint or grievance using the normal

185 complaint and grievance process in the Personnel Policies and Procedures. At the time this analysis  
 186 was developed, the LOC determined that the process in the Personnel Policies and Procedures is  
 187 sufficient for whistleblower protection.

188 **B. Elimination of Protective Orders to Human Resources Department.** Under the current Employee  
 189 Protection Policy, a protected employee who has been retaliated against may request a “protective  
 190 order” from the Personnel Commission. This protective order directs the Human Resource Department  
 191 to monitor the actions of that employee’s supervisor. Under the proposed Whistleblower Protection  
 192 Law, employees will no longer be able to request protective orders from the Personnel Commission. If  
 193 an employee is retaliated against, they must file a complaint or grievance using the normal complaint  
 194 and grievance process in the Personnel Policies and Procedures. At the time this analysis was  
 195 developed, the LOC determined that the process in the Personnel Policies and Procedures is sufficient  
 196 for whistleblower protection.

197 **C. Impact on Boards, Committees, Commissions and Entities.** Under this proposed Whistleblower  
 198 Protection Law, the following entities listed in the Employee Protection Policy will no longer be  
 199 responsible for receiving employee protection or whistleblower disclosures: Personnel Commission,  
 200 Gaming Commission, School Board, and Police Commission. All whistleblower disclosures under  
 201 this law will now be reported to the Fraud Hotline or Internal Audit department, which will  
 202 investigate disclosures and forward findings to relevant entities for further action, if needed.  
 203

204 **SECTION 9. OTHER CONSIDERATIONS**

205 *The following is provided for information:*

206 **A. Data on Employee Protection from Personnel Commission.** The following information shows how  
 207 often the current Employee Protection Policy has been used by employees over the last 5 years. Note  
 208 that as of June 2018, the Oneida Nation employed approximately 2880 people.

- 209 ■ **Number of Disclosures.** Chart 3 depicts the number of employee protection disclosures made by  
 210 employees to the Personnel Commission (OPC). In other words, the number of times employees  
 211 shared information with the Personnel Commission and requested protection. Based on this data,  
 212 the Personnel Commission received about two (2) employee protection requests per year, on  
 213 average.  
 214

215 ***Chart 3. Number of Employee Protection Disclosures Submitted to Personnel Commission***

| <b>YEAR</b>             | <b>Number of Employee Protection Disclosures</b> |
|-------------------------|--|
| 2012                    | 2  |
| 2013                    | 1  |
| 2014                    | 3  |
| 2015                    | 0  |
| 2016                    | 1  |
| 2017                    | 4  |
| 2018 (January-April)    | 1  |
| <b>TOTAL, 2012-2018</b> | <b>12</b>  |

216 ○ *SOURCE: Personnel Commission, communication with staff via email 9/17/2018*

- 217
- 218 ■ **Number of Employees Granted Protection.** Of the twelve (12) requests for Employee Protection  
 219 between 2012-2018, two (2) employees were granted employee protection. In addition, two (2)  
 220 additional employees were granted “interim protection” at the time the OPC was dissolved in April  
 221 2018. “Interim protection” was granted during the Personnel Commission’s initial investigation.
- 222 ■ **Number of Retaliation Grievances Filed by Employees with Protected Status.** One (1)  
 223 retaliation grievance was filed by a protected employee between 2012 and April 2018. This means  
 224 that of the employees who requested and received employee protection, one employee later came  
 225 back and alleged they were retaliated against.

- 226     ▪ **Number of Protective Orders issued by Personnel Commission.** Two (2) protective orders were  
 227     issued by the Personnel Commission between 2012 and April 2018. An employee may request a  
 228     protective order if they have made a disclosure, have been granted protection, and later have been  
 229     found to be retaliated against. A protective order directs the Nation’s Human Resources Department  
 230     to monitor the actions of the employee’s supervisor.
- 231 **B. Data on Employee Protection from Judiciary.** In April 2018, the Oneida Business Committee  
 232     dissolved the Personnel Commission. The Personnel Commissions’ responsibilities regarding  
 233     Employee Protection were transferred to the Oneida Judiciary.
- 234     ▪ According to data provided by the Oneida Law Office, two existing employee protection cases  
 235     transferred to the Judiciary in April 2018. In addition, two new cases were filed with the Judiciary  
 236     between April and August of 2018.
- 237 **C. Data on Employee Protection Requests from Other Entities.** Internal Audit reports that over the last  
 238     five years, the department received approximately two or three requests for employee protection from  
 239     employees of the Nation. The School Board reports that they have not received any Employee  
 240     Protection requests from School System employees in recent years. Data from the Gaming Commission  
 241     and Police Commission was unavailable at the time this analysis was prepared.
- 242 **D. Comparison Between Employee Protection Policy and Whistleblower Policy.** This law effectively  
 243     replaces the Employee Protection Policy with a new Whistleblower Protection Law. Chart 4 illustrates  
 244     some of the differences and similarities between the two laws:  
 245  
 246

**Chart 4. Comparison Between Employee Protection Policy and Whistleblower Policy.**

|   | <b>Employee Protection Policy (Current)</b>  | <b>Whistleblower Protection Law (Proposed)</b>   |
|---|--|--|
| <i>Defines and prohibits retaliation?</i>   | Yes.   | Yes.   |
| <i>Directs employees where and how to make their disclosures?</i>   | Yes, employees are directed to make their disclosures to one of the one of several appropriate agencies.   | Yes, employees are directed to make disclosures using the anonymous Fraud Hotline or to Internal Audit   |
| <i>Allows employees to report anonymously?</i>  | No, employees must disclose their identity in their written complaint.   | Yes, employees can choose to remain anonymous using the Fraud Hotline.   |
| <i>Provides employees with documentation (proof) that they made a disclosure?</i>                                       | Yes, employees receive a signed and dated receipt.   | Yes, employees will receive an incident number from the hotline or Internal Audit.   |
| <i>Employees may be granted a formal “protected status” from the agency after submitting their disclosure?</i>          | Yes, employees may be granted formal “protected status” from an agency if their disclosure is found to have merit.   | No, employees do not receive a formal designation of “protected status” from the agency.   |
| <i>Allows protected employees to skip a step in the complaint and grievance process if they are retaliated against?</i> | Yes, employees who have been granted protection may appeal directly to the Personnel Commission or Division Director if they feel they have been retaliated against. | No, if an employee feels they have been retaliated against, they must use the normal complaint and grievance process in the Personnel Policies and Procedures. |

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| <p><i>Employees who have been retaliated against can request a “protective order” from the Personnel Commission?</i></p> | <p>Yes, employees who have been granted protection and are later retaliated against may request a “protective order” directing HRD to monitor the actions of their supervisor.</p> | <p>No, employees cannot request a “protective order.” Employees will need to use the normal grievance process in the Personnel Policies and Procedures if they are retaliated against.</p> |
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- E. Comparison to other Tribal Nations.** A review of whistleblower protection laws from other tribal nations indicates that Whistleblower Laws are generally brief, one to two documents that include a few basic provisions. Some laws, such as those from Ho Chunk Nation and Seminole Nation, are only one paragraph long. The Whistleblower laws reviewed include the following core components:
- Ban on retaliation against employees for whistleblowing.
  - Direct employees where to make whistleblower disclosures. (For example: Attorney General, Human Resources Department, Office of Inspector General).
    - In Oneida’s proposed Whistleblower Law, employees will report their disclosures to the anonymous Fraud Hotline or to Internal Audit Department.
  - In addition, some whistleblower laws describe remedies for employees that have been retaliated against, such as job reinstatement, back pay for lost wages, and damages.
    - Oneida’s proposed Whistleblower Law directs employees to use the grievance process in the Personnel Policies and Procedures, which allows the Area Manager or Personnel Commission to overturn disciplinary actions, reinstate employees who have been terminated, and award back pay.
- F. Fraud Hotline.** A Fraud Hotline has been developed by the Internal Audit Department. The anonymous Fraud Hotline will be administered by a third-party vendor and available twenty-four hours per day, seven days per week. The purpose of the hotline is to provide a centralized, anonymous way to report issues of fraud, unlawful, unethical and other types of improper behavior. Callers to the hotline have the option to either remain anonymous or reveal their identity.
- **Hotline Process.** A report of the call will be generated by the third-party vendor, who will send the report to Internal Audit. Internal Audit will review all hotline reports and determine whether an investigation is needed. If necessary, Internal Audit will conduct a confidential investigation. Once Internal Audit’s investigation is complete, they will report their findings to the appropriate entity for further action, if necessary. For example, the findings could be reported to the Oneida Business Committee, Oneida Law Office, Human Resources Department, Oneida Police Department or other law enforcement agency, the Audit Committee, or any other entity of the Nation
  - **Hotline Implementation.** At the time this analysis was drafted, Internal Audit estimates that the Fraud Hotline will go live by the end of October 2018. In addition, Internal Audit reports that training will be conducted for all employees of the Nation followed by annual refresher trainings. At the time this analysis was drafted, it is expected that this training will be held in December 2018.
  - **Recommendation:** The LOC should consider consulting with HRD Training and Development and Internal Audit regarding the implementation date for this law and any additional training that may be necessary upon roll out.
- G. Whistleblower Law in Absence of Hotline.** This law has been drafted so that in the future, if the Fraud Hotline is ever eliminated or malfunctions, the Whistleblower Protection Law and the protections it provides will still function. For example, employees will still be able to submit their disclosures to Internal Audit, but will submit them in writing instead of to the hotline.
- H. Reference to Sanctions and Penalties.** This law references sanctions and penalties. The Legislative Operating Committee (LOC) is currently drafting a Sanctions and Penalties Law to increase accountability among elected and appointed officials of the Nation. Currently, the only reprimand

289 available for appointed and elected officials is termination of appointment or removal from office.  
290 However, there may be instances of misconduct that do not rise to the level of removal. In these cases,  
291 other sanctions such as verbal warnings, written warnings, suspension or fines may be more  
292 appropriate. The proposed Sanctions and Penalties law will create a formal complaint process and allow  
293 for corrective actions against officials who violate laws, bylaws and SOPs of the Nation. At the time  
294 this analysis was drafted, the LOC intends to present a Sanctions and Penalties Law to GTC for  
295 consideration once the draft is complete and all legislative requirements are met.  
296

297 *The LOC may want to consider the following policy considerations:*

298 **I. Current Protected Employees.** Based on data received from the Judiciary and Personnel Commission,  
299 there are a small number of employees who currently have protected status under the Employee  
300 Protection Policy. In addition, there may be at least one (1) employee-protection related case pending  
301 in the Judiciary. Therefore, the LOC should consider a grandfather clause to ensure that employees who  
302 have been granted protected status retain that protection upon the adoption of this law. The LOC may  
303 also want to ensure that any pending cases related to employee protection be allowed to proceed in the  
304 Judiciary.

305     ▪ **Recommendation:** Whether to insert a grandfather clause in the adoption resolution or law to  
306 ensure protected employees keep their protected status and to allow any pending cases to proceed  
307 in the Judiciary is a policy decision.

308 **J. Repeal of Employee Protection or Amendments to Employee Protection.** At the time this analysis was  
309 drafted, these amendments essentially rename and delete the entire Employee Protection Policy and  
310 replace it with a new Whistleblower Protection Law. Although the subject matter and the problem the  
311 laws attempt to solve are similar, the changes are substantial enough that the LOC may want to consider  
312 referring to Whistleblower Protection as a new law that repeals, rather than amends, the Employee  
313 Protection Policy.

314     ▪ **Recommendation:** Whether to describe the Whistleblower Protection Law as amendments to the  
315 Employee Protection Policy or as a new law that repeals Employee Protection Policy is a policy  
316 decision.

317 **K. Requirements for Protection.** In order for a whistleblowing employee to be protected under this law,  
318 the individual who retaliated against the employee must have been aware that the employee made a  
319 whistleblower disclosure. In addition, the action taken against the whistleblower must be retaliatory as  
320 a result of that disclosure. The LOC may want to consider the following regarding how these standards  
321 will be applied:

322     ▪ How an employee will prove that his or her supervisor was aware that they were a whistleblower,  
323 especially if the employee reported anonymously.

324     ▪ Could removing this requirement lead to supervisors being accused of retaliation when making  
325 routine disciplinary actions, unrelated to this law?

326     ▪ **Recommendation:** Whether to keep or modify these requirements is a policy decision.

327 **L. Ability to Skip Steps in Grievance Process.** One of the primary benefits of the employee protection  
328 process is that protected employees can skip steps in the standard complaint and grievance process. For  
329 disciplinary actions, employees can go straight to the Personnel Commission. For non-disciplinary  
330 actions, protected employees can go straight to their Division Director. The complaint process for non-  
331 disciplinary actions in the Personnel Policies and Procedures allows employees to go up to the Area  
332 Manager level, but no further.

333     ▪ **Recommendation.** Whether to allow employees to take non-disciplinary complaints in this law up  
334 to the Division Director level is a policy decision.  
335

336 **M.** Please refer to the fiscal impact statement for any fiscal impacts.

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## Legislative Operating Committee October 17, 2018

# Children's Code

|                                   |                               |
|-----------------------------------|-------------------------------|
| <b>Submission Date:</b> 9/17/14   | <b>Public Meeting:</b> 5/4/17 |
| <b>LOC Sponsor:</b> Kirby Metoxen | <b>Adopted:</b> 7/26/17       |

**Summary:** *The OBC adopted the Children's Code pursuant to BC Resolution 07-26-17-J and directed that the LOC 1) provide a final implementation plan to the OBC on 9/13/17; 2) provide the OBC with quarterly reports starting after 9/13/17; and 3) conduct a review 1 year after implementation. The Code will become effective 15 months after the adoption of the FY2018 Budget.*

**9/6/17 LOC:** Motion by Jennifer Webster to add Children's Code to the active files list with Kirby Metoxen as the sponsor; seconded by Ernest Stevens III. Motion carried unanimously.

Motion by Daniel Guzman King to accept the Children's Code Implementation Plan as information and forward to the Oneida Business Committee as information; seconded by Ernest Stevens III. Motion carried unanimously.

**9/7/17:** *Work Meeting.* Present: Clorissa Santiago, Candice Skenandore, Michelle Gordon, Jennifer Berg-Hargrove, Heather Lee, Tsyoshaht Delgado, George Skenandore, Veronica Bruesch. The purpose of this meeting was to continue drafting a proposed memorandum of understanding.

**9/12/17 OBC:** *Executive Session.* Children's Code Implementation Plan was discussed with the OBC during Executive Session.

**9/13/17 OBC:** Motion by Lisa Summers to accept the Children's Code Implementation Plan as information, seconded by Ernest Stevens III. Motion carried unanimously.

EXECUTIVE SESSION: Motion by Trish King to accept the update and changes as information, seconded by Ernest Stevens III. Motion carried unanimously.

EXECUTIVE SESSION: Motion by Lisa Summers to direct the negotiating team, composed of representatives from the Law Office, Governmental Services, and Intergovernmental Affairs & Communications, to begin negotiations with Outagamie County, seconded by Kirby Metoxen. Motion carried unanimously.

**9/19/17:** *Presentation and Meeting with Wisconsin Department of Children and Families Secretary Eloise Anderson.* Present: Eloise Anderson (Secretary of DCF), Brad Wassink (Assistant Deputy Secretary of DCF), Stephanie Lozano (DCF Tribal Liaison), Tehassi Hill, Patricia King, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Tana D. Aguirre, Nate King, Jennifer Falck, Candice Skenandore, Clorissa Santiago, Jennifer Berg-Hargrove, Heather Lee, George Skenandore, Tsyoshaht Delgado, Jennifer Hill-Kelly, Melinda Danforth, Jessica Wallenfang. Presentation of the Children's Code was given, followed by discussion.

**9/25/17:** *Work Meeting with OBC.* Present: Clorissa Santiago, Candice Skenandore, Jennifer Falck, David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Brandon Stevens, Tehassi Hill,

Melinda J. Danforth, Rosa Laster, Lisa Liggins, Laura Laitinen-Warren. Discussion was held regarding talking points regarding the Children's Code in relation to the FY 2018 Budget meeting.

**11/1/17 LOC:** Motion by Kirby Metoxen approve the 60 day active files list update and continue development of all the items on the active files list; seconded by Ernie Stevens III. Motion carried unanimously.

**12/20/17LOC:** Motion by Kirby Metoxen to approve the Children's Code Quarterly Update and forward to the Oneida Business Committee; seconded by Daniel Guzman King. Motion carried unanimously.

**12/27/17OBC:** Motion by David P. Jordan to accept the 1<sup>st</sup> quarter update regarding Children's Code, seconded by Jennifer Webster. Motion carried unanimously.

**1/2/18:** *Work Meeting.* Present: Clorissa Santiago, George Skenandore, Jennifer Berg-Hargrove, Tana D. Aguirre, Nate King, Michelle Gordon. The 161 Subcommittee met to discuss how to move the 161 agreement negotiations forward. Michelle has made contact with individuals from Brown County and is waiting for a reply, George has made contact with individuals from Outagamie County and is waiting for a reply. George and Michelle have decided on a date of January 15, 2018, to wait for replies, before Nate and Tana will step in and assist with contacting the counties. Michelle and Jennifer will work on further developing the MOA this week. 161 Subcommittee will meet again on February 6, 2018.

**2/6/18:** *Work Meeting.* Present: Clorissa Santiago, George Skenandore, Jennifer Berg-Hargrove, Tana D. Aguirre, Nate King, Michelle Gordon. The 161 Subcommittee met to provide updates on the progress of the 161s. A draft memorandum of understanding has been completed. An initial negotiation meeting has been scheduled with Outagamie County for February 7, 2018. The group is still waiting to hear back from Brown County, but will take more official action to set up a meeting with Brown County if we do not hear back from Brown County within the next 30 days. 161 group discussed the possibility of designing a transition plan with the counties to better outline the relationship for the first year of implementation. The next implementation goal will be to work on the memorandum of understanding with OPD.

**2/7/18:** 161 Subcommittee members, Michelle Gordon, George Skenandore, Jennifer Berg-Hargrove, met with representatives from Outagamie County to begin negotiations on the 161 Agreement and memorandum of understanding.

**3/16/18:** *Work Meeting:* Present: David P. Jordan, Jennifer Webster, Daniel Guzman, Ernest Stevens III, Clorissa Santiago, Brandon Wisneski, Cathy Bachhuber, Rosa Laster. LOC discussed the upcoming Children's Code quarterly update and some pressing concerns.

**3/21/18:** EPOLL Conducted for Children's Code Implementation Quarterly Update.

**3/28/18 OBC:** Motion by Jennifer Webster to accept the Children's Code Implementation quarterly update, seconded by David P. Jordan. Motion carried unanimously.

**4/2/18 LOC:** Motion by Daniel Guzman King to enter into the record [Children's Code Implementation quarterly update E-Poll]; seconded by Jennifer Webster. Motion carried unanimously.

**5/1/18:** *Work Meeting.* Present: Clorissa Santiago, George Skenandore, Jennifer Berg-Hargrove, Nate King. The 161 Subcommittee met to provide updates on the progress of the 161s and discuss the various challenges in the implementation of this law.

**6/20/18 LOC:** Motion by Jennifer Webster to accept the Children's Code Implementation Quarterly Update and forward to the Oneida Business Committee for consideration; seconded by Kirby Metoxen. Motion carried unanimously.

**6/27/18 OBC:** Motion by Kirby Metoxen to accept the Children's Code Implementation quarterly update, seconded by Lisa Summers. Motion carried unanimously.

Motion by Lisa Summers to send the Children's Code Implementation quarterly update to the July Business Committee Work Session to address the specific items that have been requested for the Business Committee to follow through with, seconded by Jennifer Webster. Motion carried unanimously.

**8/1/18:** *Work Meeting.* Present: Hon. Robert Collins II, Hon. Marcus Zielinski, Patricia Degrand, Katrina Mungo, Jennifer Berg-Hargrove, Heather Lee, Michelle Gordon, Mike Hoelt, Clorissa Santiago

Kristen Hooker. The purpose of this work meeting was to discuss in detail the progress of the implementation of the Children's Code.

**9/19/18 LOC:** Motion by Daniel Guzman King to accept the Children's Code Implementation Quarterly Update and forward to the Oneida Business Committee; seconded by Jennifer Webster. Motion carried unanimously.

**9/26/18 OBC:** Motion by David P. Jordan to accept the Children's Code Implementation quarterly update, seconded by Jennifer Webster. Motion carried.

**10/3/18:** *Work Meeting.* Present: Tehassi Hill, Brandon Stevens, Patricia King, Lisa Summers, David P. Jordan, Kirby Metoxen, Daniel Guzman, Jo Anne House, Jennifer Falck, Clorissa N. Santiago, Jennifer Berg-Hargrove, Michelle Gordon, Tsyoshaht Delgado, Hon. Rob Collins II, Katrina Mungo, Rhiannon Metoxen. The purpose of this work meeting was to discuss in detail the current status of the implementation of the Children's Code, and determine if the effective date of the Children's Code should be modified. The group determined the effective date of the Children's Code should be modified to October 1, 2019.

**Next Steps:**

- Accept the resolution titled, "Amending Resolution BC-07-26-17-J to Delay the Implementation of the Children's Code" and forward to the Oneida Business Committee for consideration

# Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

**BC Resolution # \_\_\_\_\_**

**Amending Resolution BC-07-26-17-J to Delay the Implementation of the Children’s Code**

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- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Oneida Business Committee adopted the Children’s Code through resolution BC-07-26-17-J; and
- WHEREAS,** resolution BC-07-26-17-J provided that the Children’s Code shall become effective four hundred and fifty-five (455) calendar days from the approval date of the Fiscal Year 2018 budget; and
- WHEREAS,** on October 8, 2017, the General Tribal Council adopted the Fiscal Year 2018 budget through resolution GTC-10-08-17-A; and
- WHEREAS,** the Children’s Code was then set to become effective on January 6, 2019; and
- WHEREAS,** the Nation’s Indian Child Welfare Department has worked diligently to employ appropriate staffing, providing training, develop procedures, standards and forms; and
- WHEREAS,** the Indian Child Welfare Department has worked diligently to negotiate 161 and other agreements with Brown and Outagamie Counties which have not been finalized; and
- WHEREAS,** the Indian Child Welfare Department has worked diligently to identify foster families, residential care facilities, and shelter care contracts which requires additional preparation prior to implementation; and
- WHEREAS,** implementation of the Children’s Code to provide appropriate oversight and protection for the Nation’s children requires careful, collaborative, consistent procedures; and
- WHEREAS,** resolution BC-07-26-17-J authorized the Oneida Business Committee to make such modifications and additions to the effective date and implementation plan as it deems necessary to implement the Children’s Code in accordance with the proposed timelines, and shall ensure that the Children’s Code does not become effective until all proper infrastructure is in place; and
- WHEREAS,** the Indian Child Welfare Department, Oneida Law Office, and Legislative Reference Office have provided a recommendation to delay implementation of the Children’s Code in order to finalize implementation preparation; and

47 **NOW THEREFORE BE IT RESOLVED**, that Oneida Business Committee resolution BC-07-26-17-J,  
48 Resolve #1, is hereby amended to change the date by which the Children's Code shall become effective  
49 from four hundred and fifty-five (455) calendar days from the approval date of the Fiscal Year 2018 Budget  
50 to October 1, 2019.



## **Statement of Effect**

*Amending Resolution BC-07-26-17-J to Delay the Implementation of the Children's Code*

### **Summary**

The resolution amends Oneida Business Committee resolution BC-07-26-17-J to change the date by which the Children's Code shall become effective from four hundred and fifty-five (455) calendar days from the approval date of the Fiscal Year 2018 Budget to October 1, 2019.

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office*  
*Date: October 11, 2018*

### **Analysis by the Legislative Reference Office**

The Oneida Business Committee adopted the Children's Code through resolution BC-07-26-17-J for the purpose of providing for the welfare, care, and protection of Oneida children through the preservation of the family unit, while recognizing that in some circumstances it may be in the child's best interest to not be reunited with his or her family. Furthermore, the Children's Code strengthens family life by assisting parents in fulfilling their responsibilities as well as facilitating the return of Oneida children to the jurisdiction of the Nation and acknowledging the customs and traditions of the Nation when raising an Oneida child.

Oneida Business Committee resolution BC-07-26-17-J provided that the Children's Code would become effective four hundred and fifty-five (455) calendar days from the approval date of the Fiscal Year 2018 budget. The General Tribal Council approved the Fiscal Year 2018 budget on October 8, 2017, through resolution GTC-10-08-17-A, thereby setting the effective date of the Children's Code to January 6, 2019.

Oneida Business Committee resolution BC-07-26-17-J also authorized the Oneida Business Committee to make such modifications and additions to the effective date and implementation plan as it deems necessary to implement the Children's Code in accordance with the proposed timelines, and shall ensure that the Children's Code does not become effective until all proper infrastructure is in place.

It has been identified that more time is needed to finalize the implementation of the Children's Code.

This resolution amends Oneida Business Committee resolution BC-07-26-17-J to change the date by which the Children's Code shall become effective from four hundred and fifty-five (455) calendar days from the approval date of the Fiscal Year 2018 Budget to October 1, 2019.

### **Conclusion**

Adoption of this resolution would not conflict with any of the Nation's laws.



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### AGENDA REQUEST FORM

- 1) Request Date: 10/10/18
- 2) Contact Person(s): Clorissa N. Santiago  
Dept: Legislative Reference Office  
Phone Number: (920) 869-4417 Email: LOC@oneidanaiton.org
- 3) Agenda Title: Petition: Dallas - Special Per Capita Payments and/or Options
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
On October 10, 2018, the Oneida Business Committee motioned to to  
direct the Legislative Reference Office to complete and submit the  
statement of effect regarding Petitioners Dallas re: Special Per Capita  
payment(s) and/or options

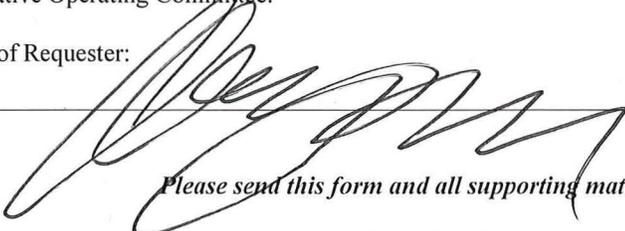
List any supporting materials included and submitted with the Agenda Request Form

- 1) \_\_\_\_\_ 3) \_\_\_\_\_
- 2) \_\_\_\_\_ 4) \_\_\_\_\_

- 5) Please list any laws, policies or resolutions that might be affected:  
\_\_\_\_\_
- 6) Please list all other departments or person(s) you have brought your concern to:  
\_\_\_\_\_
- 7) Do you consider this request urgent?     Yes     No  
If yes, please indicate why:  
Urgent in order to meet deadline for submission to Oneida Business Committee.

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester:



*Please send this form and all supporting materials to:*

**LOC@oneidanation.org**  
or  
**Legislative Operating Committee (LOC)**  
P.O. Box 365  
Oneida, WI 54155  
Phone 920-869-4376



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### AGENDA REQUEST FORM

- 1) Request Date: 10/10/18
- 2) Contact Person(s): Clorissa N. Santiago  
Dept: Legislative Reference Office  
Phone Number: (920) 869-4417 Email: LOC@oneidanaiton.org
- 3) Agenda Title: Petition: Cathy L. Metoxen - Oneida Youth Leadership Institute
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
On October 10, 2018, the Oneida Business Committee motioned to to  
direct the Legislative Reference Office to complete and submit the  
statement of effect regarding Petition: Cathy L. Metoxen - Oneida Youth  
Leadership Institute.

List any supporting materials included and submitted with the Agenda Request Form

- 1) \_\_\_\_\_ 3) \_\_\_\_\_
- 2) \_\_\_\_\_ 4) \_\_\_\_\_

- 5) Please list any laws, policies or resolutions that might be affected:  
\_\_\_\_\_
- 6) Please list all other departments or person(s) you have brought your concern to:  
\_\_\_\_\_
- 7) Do you consider this request urgent?  Yes  No  
If yes, please indicate why:  
Urgent in order to meet deadline for submission to Oneida Business Committee.

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester:

*Please send this form and all supporting materials to:*

**LOC@oneidanation.org**  
or  
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Phone 920-869-4376





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## Memorandum

To: Tribal Action Plan Workgroup  
 From: TAP Subcommittee – Laws & Policy  
 Date: August 14, 2018  
 Re: Subcommittee Recommendation – Laws/Policy

On behalf of the Tribal Action Plan Subcommittee on Laws & Policy, we present to the TAP Workgroup leads our work for consideration to be forwarded to the Quality of Life for further action.

### **Background**

In November 2017, Councilman Daniel Guzman, OPD Officer Latsi Hill and BC Executive Assistant, Melinda J. Danforth agreed to lead the TAP Subcommittee that was given the responsibility to "create and amend the Nation's laws and policies to support the Tribal Action Plan. The subcommittee went to work in December 2017 and recruited a very good cross functional core team that included representatives from the Business Committee, Oneida Police Department, Governmental Services, Gaming Commission, Family Services, Legislative Operating Committee, Legislative Reference Office, Human Resources and Retail.

The subcommittee reviewed the tribal action plan and decided to gain more information thus held sessions with Family Services to understand the principles of trauma informed care and Cultural Heritage presented on the principles of the Great Law. The subcommittee then agreed upon a path to brainstorm and validate laws and policies that would be developed or amended that would ultimately support the initiatives contained within the Tribal Action Plan.

The subcommittee was given direction to present our work to the TAP workgroup leads for support and for the supported recommendations to be presented to the Quality of Life to issue directives.

### **Subcommittee Recommendations**

| Law/Policy | Justification/Discussion   | Impacted Areas  |
|------------|--|---|
| Curfew     | <ol style="list-style-type: none"> <li>1. Safety of the children</li> <li>2. Parent Accountability</li> <li>3. Green Bay curfew from 10 p.m. to 6 a.m. on weekdays</li> <li>4. Exemptions for work and school activities</li> <li>5. OPD Enforcement of</li> </ol> | OPD<br>Housing<br>Social Services<br>Judiciary<br>Community |

|  |  |   |
|--|--|---|
| <p>Note: Team requested stats from OPD on youth (17 yrs and younger) interactions after hours. Possibly obtain data from other police jurisdictions?</p> | <p>curfew</p> <ol style="list-style-type: none"> <li>6. What resources would be needed to implement a curfew?</li> <li>7. What would the process look like once a minor breaks curfew?</li> <li>8. Parent/child training in lieu of a fine. Or Community Service for child and fine for parent (consequences)</li> <li>9. Need a communications plan developed, if a curfew is established</li> </ol>  |   |
| <p>Truancy</p>   | <ol style="list-style-type: none"> <li>1. Parent/child accountability to attend school</li> <li>2. Parents not responding to school's phone calls, emails or letters regarding truancy</li> <li>3. Enforceability</li> <li>4. Incorporation of restorative justice practices for failure to comply with law (community service option, Rites of Passage, mental health counseling, parent/child training, etc... in lieu of fine)</li> </ol>   | <p>Community Schools<br/>Oneida Nation School Board<br/>Judiciary<br/>OPD<br/>Social Services<br/>Behavioral Health</p> |
| <p>Drug &amp; Alcohol Free Workplace Policy</p>  | <ol style="list-style-type: none"> <li>1. Policy is too lenient</li> <li>2. Total job loss after 3<sup>rd</sup> violation, feels we just wash our hands of the individual instead of getting them the help they need. Possibly send for mandatory rehab after 3<sup>rd</sup> violation.</li> <li>3. Accountable for actions</li> <li>4. Violation consequences are weak. Is EAP working?</li> <li>5. Incorporate more therapy/counseling when the law is violated</li> <li>6. Incorporate the law training in employee orientation</li> <li>7. Drug/Alcohol testing hours at Employee Health nursing are not conducive to all</li> </ol> | <p>Employee Base<br/>EAP<br/>Employee Health Nursing<br/>Behavioral Health</p>  |



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|  | <p>entities of the Nation. Idea to have EHN go to the sites instead of having the individual transported</p>  |   |
| <p>Random Drug Testing vs. Suspicion/Accident Based Testing</p>      | <ol style="list-style-type: none"> <li>1. What would the impact to the workforce be if this was implemented?</li> <li>2. Could be a means to get people the help they need. Could work in conjunction with the Drug &amp; Alcohol Free Workplace policy</li> <li>3. Since Oneida is a self-funded insured, could the cost of rehab and treatment be included in our insurance plan</li> </ol>   | <p>Employee Base<br/>                 Behavioral Health<br/>                 Employee Health Nursing<br/>                 EAP<br/>                 Risk Management</p>  |
| <p>Fitness Center Policy Re: Minors without parental supervision</p> | <ol style="list-style-type: none"> <li>1. Currently the Fitness Center has a policy for 12 yrs and younger that allows them to be at the Fitness Center for 2 hours unsupervised. This policy is enforced and concerned about what happens to the children when they are asked to leave the facility.</li> <li>2. Unsure if the children are going to a safe place, have food or access to a bathroom.</li> <li>3. Possible work out an arrangement between the Fitness Center and Transit to transport kids to Recreation</li> <li>4. Parent/child training??</li> <li>5. Update the policy</li> </ol> | <p>Fitness Center<br/>                 Community<br/>                 Recreation<br/>                 Transit<br/>                 YES</p>  |
| <p>Mandatory Employee Mental Health Check ups</p>                    | <ol style="list-style-type: none"> <li>1. Hard to ask for help, this would give the employee an opportunity to vent problems and ensure their mental well-being is being cared for</li> <li>2. Negative stigma around seeking or getting counseling</li> <li>3. Change thinking</li> </ol>  | <p>Behavioral Health<br/>                 Risk Management<br/>                 Employee Base<br/>                 HRD<br/>                 Community Health<br/>                 Cultural Wellness/Healing<br/>                 Social Services</p> |

|                                  |   |            |
|----------------------------------|---|------------|
|                                  | <ol style="list-style-type: none"> <li>4. Upon employment you could get a checkup and then annually after.</li> <li>5. Access to care is an issue, waiting too long for appointments already</li> <li>6. Tele-health a possible solution</li> <li>7. Are the mental health reports considered protected information?</li> <li>8. What are done with the results? Are they for the employee only, or supervisors? HIPPA rights?</li> <li>9. Could this be a part of HRA? Offer a point to participate</li> <li>10. Could Risk Management add a mental health component to the Tele-med line?</li> <li>11. This also touches upon "Fit for Duty" standards and related employment issues</li> </ol> |            |
| <p>HR Hiring Pre-assessments</p> | <ol style="list-style-type: none"> <li>1. Ability to assess the person's strengths and weaknesses prior to hiring and to see what is their actual job fit is so that a real career path is developed for that individual</li> <li>2. Example: If we have a student that wants to be a nurse, maybe they start at retail because of the flexibility of hours and the teaching of basic skills, then take advantage of the internships and then moves on to the next phase of their career path</li> </ol>  | <p>HRD</p> |
| <p>Fit for Duty Standards</p>    | <ol style="list-style-type: none"> <li>1. Ensuring that our</li> </ol>  | <p>HRD</p> |



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|  | <p>professional staffing is suited to perform their jobs, especially in sensitive areas such as behavioral health, health center, legal, court, etc.</p>   |  |
| <p>Per Capita Law<br/>                 **validation/quantitative analysis is key**</p> | <ol style="list-style-type: none"> <li>1. Testimony from individuals that are healing from addiction are indicating that when receiving a lump sum of money from the Nation (i.e. per capita and/or minors trust account payouts) these are trigger points for them to continue using or advance to more potent drugs</li> <li>2. Planning other distribution methods, timing of payouts, # of payouts</li> <li>3. Age change for minors trust to 25+</li> <li>4. Financial planning, investment planning and budgeting</li> <li>5. Drug testing to receive per cap/minor's trust money</li> </ol> |  |

***Challenges/Concerns of the Subcommittee:***

No quantitative analysis or data was gathered to substantially validate the information presented and the subcommittee felt that through the law making process, the appropriate data, analyses and information would be gathered that would guide the decision to develop and/or amend the laws and policies. However, the entities represented have used real life situations and/or issues and situations that have arisen in their experiences in their areas to develop these recommendations.

### *Other Significant Issues Identified*

1. Data sharing between Nation entities for purposes of holistic and case management approach
  - a. Issue: Confidentiality in sharing individual information between entities such as OPD, Behavioral Health & Health Center entities (AJRCCC, physicians, etc.)
  - b. Information obtained: Information was received from a training that it is critical for treatment and health providers/professionals, police officers and the court to share information/data and thus there is a HIPAA waiver that can be pursued

#### Solution possibilities:

- Gaining more information on the HIPAA waiver for case management purposes from the appropriate professionals from the Oneida Nation
  - Utilize the WI State/Tribal Relations Committee as vehicle to drive any state legislation that may need to change, if necessary
2. Health Center Missed Appointment Policy
    - a. Issue: The information and training received by the team suggests that individuals with addiction issues operate in a life of chaos. The expectation by the Nation for individuals in that predicament is not conducive and nor helps in situations associated with the behavior of the individuals with the current policy in place.

#### Solution possibilities:

- Health/Behavioral Health to review the missed appointment policy
3. Hours of Operations for Nation's facilities
    - a. Issue: Entities that provide on the ground services to our community are not available when needed the most. Recreation, gym availability, fitness center,
  4. HR: Job Description Requirements



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- a. Issue: Job postings contain requirements that are really not necessary. For example, why would we require AS400 experience when this is an outdated system and many companies have newer technology? Shouldn't we recognize that they are technologically capable of producing reports in particular software or offer internal training for our systems? Another example would be requiring a driver's license/insurance when the person may only have to drive 1 or 2 times a month or even in a year, or not at all.



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### AGENDA REQUEST FORM

- 1) Request Date: October 4, 2018
- 2) Contact Person(s): Krystal John  
Dept: Law Office  
Phone Number: 869-4327 Email: kjohn4@oneidation.org
- 3) Agenda Title: Request for Certification - Landlord-Tenant Rule #1 Amendments
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
Amendments to Landlord-Tenant Rule #1 in order to address the  
eligibility and selection.

List any supporting materials included and submitted with the Agenda Request Form

- 1) Certification Packet
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_
- 5) Please list any laws, policies or resolutions that might be affected:  
Landlord-Tenant law
- 6) Please list all other departments or person(s) you have brought your concern to:  
I have worked with CHD.
- 7) Do you consider this request urgent?     Yes     No  
If yes, please indicate why:  
\_\_\_\_\_

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester:  
Krystal L. John

Digitally signed by Krystal L. John  
DN: cn=Krystal L. John, o=Oneida Law Office, ou, email=kjohn4@oneidation.org, c=US  
Date: 2018.10.03 16:00:14 -05'00'

*Please send this form and all supporting materials to:*

**LOC@oneidation.org**  
*or*  
**Legislative Operating Committee (LOC)**  
P.O. Box 365  
Oneida, WI 54155  
Phone 920-869-4376



TO: Legislative Operating Committee (LOC)  
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney  
DATE: October 17, 2018  
RE: Certification of Amendments to Landlord Tenant Law Rule No. 1 – General Rental Program Eligibility, Selection, and Other Requirements

---

The Legislative Reference Office has reviewed the certification packet provided by the Comprehensive Housing Division and Oneida Land Commission for the amendments to the Landlord-Tenant Law Rule No. 1 – General Rental Program Eligibility, Selection, and Other Requirements (“the Rule”).

The Rule would become effective ten (10) business days after adoption by the Oneida Business Committee.

### **Administrative Record**

The certification packet contains all documentation required by the Administrative Rulemaking law for a complete administrative record.

The certification packet contains:

- A memorandum containing the Rule’s procedural timeline;
- Final draft of the Rule;
- Memorandum from CHD Division Director, Dana McLester, approving the Rule on October 3, 2018;
- Minutes from the May 30, 2018, Oneida Land Commission Meeting where the Rule was approved for public meeting (no changes were made as a result of the public meeting);
- Summary Report containing the statement of effect and financial analysis; and
- Public Meeting Notice as it appeared in the May 3, 2018 Kalihwisaks;
- Draft of the Rule that was presented at the public meeting;
- Public meeting sign in sheet;
- Public meeting transcript;
- No public comments were received during the public comment period so there is no public comment response memorandum.

### **Procedural Requirements**

The certification packet illustrates that the promulgation of the Rule complies with the procedural requirements contained in the Administrative Rulemaking law.

In accordance with the Administrative Rulemaking law:

- A public meeting notice for the Rule was published in the Kalihwisaks on June 7, 2018;

- A public meeting for the Rule was held on June 21, 2018;
- The public comment period was held open until June 28, 2018;
- The Rule was approved by the CHD on October 3, 2018, and approved by the Oneida Land Commission on May 30, 2018.

### **Rulemaking Authority**

The Rule did not exceed the rulemaking authority granted under the law for which the Rule is being promulgated.

### **Conclusion**

**Promulgation of the amendments to the Landlord Tenant Law Rule No. 1 – General Rental Program Eligibility, Selection, and Other Requirements complies with all requirements of the Administrative Rulemaking law.**



## MEMORANDUM

**TO:** Legislative Operating Committee

**FROM:** Krystal L. John, Staff Attorney

**DATE:** October 4, 2018

**SUBJECT:** Request for Certification of Procedural Compliance  
Landlord-Tenant Law Rule #1 – General Rental Program Eligibility, Selection and Other Requirements

---

The Comprehensive Housing Division (CHD) and the Oneida Land Commission are exercising their joint rulemaking authority to amend the General Rental Program Rule pursuant to the Landlord-Tenant law.

There was no attendance at the public meeting and no written comments were submitted. As such, there is no review memorandum of public comments submitted and there have been no revisions to the draft presented for public meeting.

| <b>Rulemaking Timeline</b>   |                       |
|--|-----------------------|
| <b>Required Action</b>   | <b>Date Completed</b> |
| Public Meeting notice for the rule is posted in the Kalihwisaks (see page 21) and on the Oneida Register | June 7, 2018          |
| Public Meeting held  | June 21, 2018         |
| Public Comment Period closed   | June 28, 2018         |

The following attachments are included for your review:

1. Landlord-Tenant Law Rule No. 1 – General Rental Program Eligibility, Selection and Other Requirements
2. CHD Director Approval
3. Oneida Land Commission Minutes approving Amendments
4. Summary Report
5. Financial Analysis
6. Statement of Effect
7. Copy of Public Meeting Published in the Kalihwisaks – Page 21 of the June 7, 2018 issue
8. Public Meeting Packet
9. Sign in sheet from the June 21, 2018 Public Meeting
10. Public meeting transcription from the June 21, 2018 Public Meeting

Following certification and Oneida Business Committee adoption, this rule shall become effective in ten (10) business days.

# **Landlord-Tenant Rule #1 – General Rental Program Eligibility, Selection and Other Requirements**



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## Title 6. Property and Land – Chapter 611

### LANDLORD-TENANT

#### Rule # 1 – General Rental Program Eligibility, Selection and Other Requirements

- 1.1. Purpose and Effective Date
- 1.2. Adoption and Authority
- 1.3. Definitions
- 1.4. Eligibility Requirements
- 1.5. Application Process and Waitlist
- 1.6. Tenant Selection
- 1.7. Security Deposits
- 1.8. Annual Inspection and Rental Agreement Renewal
- 1.9. Rental Agreement Cancellation

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#### 1.1. Purpose and Effective Date

1.1-1. *Purpose.* The purpose of this rule is to provide additional eligibility requirements, selection procedures and general requirements that govern the Comprehensive Housing Division's general rental programs that are not reserved for elders or low-income Tribal members.

1.1-2. *Delegation.* The Landlord-Tenant law delegated the Comprehensive Housing Division and Land Commission joint rulemaking authority pursuant to the Administrative Rulemaking law.

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#### 1.2. Adoption and Authority

1.2-1. This rule was jointly adopted by the Comprehensive Housing Division and Land Commission in accordance with the procedures of the Administrative Rulemaking law.

1.2-2. This rule may be amended or repealed by the joint approval of the Comprehensive Housing Division and Land Commission pursuant to the procedures set out in the Administrative Rulemaking law.

1.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule control.

1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Landlord-Tenant law.

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#### 1.3. Definitions

1.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

(a) "Comprehensive Housing Division" means the division within the Nation under the direction of the Comprehensive Housing Division Director which consists of all residential services offered by the Nation, including but not limited to, all rental programs, the rent-to-own program, and the residential sales and mortgages programs.

(b) "Landlord" means the Nation in its capacity to rent real property subject to a rental agreement.

(c) "Nation" means the Oneida Nation.

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48 (d) “Premises” means the property covered by a rental agreement, including not only the  
 49 real property and fixtures, but also any personal property furnished by the landlord  
 50 pursuant to a rental agreement.

51 (e) “Rental Agreement” means a written contract between a landlord and a tenant,  
 52 whereby the tenant is granted the right to use or occupy the premises for a residential  
 53 purpose for one (1) year or less.

54 (f) “Tenant” means the person granted the right to use or occupy a premise pursuant to a  
 55 rental agreement.

56 (g) “Security Deposit” means a payment made to the landlord by the tenant to ensure that  
 57 rent will be paid and other responsibilities of the rental agreement performed.  
 58

#### 59 **1.4. Eligibility Requirements**

60 1.4-1. *Tribal Member Status.* At least one (1) of the tenants named as a party to the rental  
 61 agreement is required to be a Tribal member.

62 1.4-2. *Debt to Income Ratio.* In order to be eligible for a rental agreement, applicants shall have  
 63 a maximum debt to income ratio of fifty percent (50%).

64 (a) Comprehensive Housing Division staff shall calculate the debt to income ratio by  
 65 dividing the applicant’s monthly debt by the applicant’s monthly income.

66 (b) For purposes of calculating income for the debt to income ratio, the Comprehensive  
 67 Housing Division staff:

68 (1) May not include child support payments;

69 (2) May not include education grants/scholarships;

70 (3) May not include medical bills; and

71 (3) Shall include per capita payments to the extent that receipt of per capita  
 72 payment may be verified for each of the five (5) years prior to rental application.

73 (A) For per capita payments paid by the Nation, the Comprehensive  
 74 Housing Division staff shall verify with the Trust Enrollment Department  
 75 that the applicant received the full eligible amount of the per capita  
 76 payments for each of the five (5) years prior to rental application.

77 (B) For per capita payments paid by other tribes the Comprehensive  
 78 Housing Division staff shall verify that the applicant received per capita  
 79 payments for each of the five (5) years prior to rental application using the  
 80 applicant’s tax return.

81 (C) When per capita payments qualify to be considered as part of the  
 82 income calculation, Comprehensive Housing Division staff shall use an  
 83 average to the payments the applicant received for the five (5) years prior  
 84 to rental application.

85 (4) Shall include any debts subject to a repayment agreement in accordance with  
 86 section 1.4-3.

87 1.4-3. *Outstanding Debts.* Applicants for a rental agreement may not have a past due balance  
 88 greater than two hundred dollars (\$200) owed to any utility provider and may not have any prior  
 89 debt owed to the Comprehensive Housing Division, unless:

90 (a) The applicants have entered a payment agreement related to said debts prior to  
 91 applying for the general rental program; and

92 (b) If the agreement is related to a utility debt, the agreement allows the applicant to  
 93 continue receiving utility services while paying the debt, including utility hook-up at a

94 new location.

95 1.4-4. *Prior Comprehensive Housing Division Eviction.* Applicants that have had a rental  
96 agreement with the Comprehensive Housing Division subject to an eviction and termination  
97 within two (2) years from the date of the application are not eligible to participate in the general  
98 rental program.

99 1.4-5. *Past Due Accounts.* Applicants for a rental agreement are ineligible if a review of the  
100 applicant's credit report reveals more than five (5) accounts that are past due and/or in  
101 collections, provided that medical bills may not be included in this consideration

102 1.4-6. *Pardon and Forgiveness.* A grant of a pardon or forgiveness pursuant to the Nation's  
103 Pardon and Forgiveness law may result in an otherwise ineligible tenant becoming eligible.

#### 104 **1.5. Application Process and Wait List**

105 1.5-1. *Applying.* Persons wishing to participate in the general rental program shall complete the  
106 Comprehensive Housing Division rental agreement application and any other required  
107 accompanying forms, including but not limited to, the employment verification form, a release  
108 authorization form and a housing needs/preference form. The Comprehensive Housing Division  
109 staff may not consider any applications for selection and/or placement on the wait list until the  
110 application and all accompanying forms are complete. Upon receipt of a completed application,  
111 including all supplementary forms, Comprehensive Housing Division staff shall date and time  
112 stamp the application. If, regardless of a complete application submittal, additional information  
113 is required to determine eligibility, the Comprehensive Housing Division staff shall request such  
114 information and maintain the application submittal date provided that the applicant responds to  
115 the information requests within the timeframe designated by the Comprehensive Housing  
116 Division.

117 (a) *Household Composition Form.* The Comprehensive Housing Division staff shall  
118 require applicants to complete a Household Composition Form which provides the full  
119 name, age and date of birth of each person contemplated to reside in rental unit. In order  
120 to verify such information, the Comprehensive Housing Division staff shall require that  
121 applicants submit a copy of a picture identification card for each adult contemplated to  
122 reside in the rental unit including a minimum of one tribal identification card.

123 (b) *Background Checks.* In order to ensure compliance with the eligibility requirements  
124 of the Landlord-Tenant law and these rules, Comprehensive Housing Division staff shall  
125 perform a background check on each adult in the household. Household adults are also  
126 subject to annual background checks upon annual rental agreement renewal pursuant to  
127 1.8-5 and as may be determined to be necessary to maintain the safety of the community  
128 by the Comprehensive Housing Division staff.

129 1.5-2. *Notification of Eligibility, Placement on the Wait List.* When Comprehensive Housing  
130 Division staff completes its review of an application and determines the applicant(s) eligible for  
131 the general rental program, the staff shall place the applicant on the waitlist and notice the  
132 applicant with a letter of placement on the waitlist as well as the required date for the annual  
133 application update.

134 1.5-3. *Notification of Ineligibility.* If review of a complete submitted application and/or annual  
135 renewal reveals that an applicant is ineligible to participate in the general rental program based  
136 on the Landlord-Tenant law and/or rules, the Comprehensive Housing Division staff shall notify  
137 the applicant of the cause of the ineligibility and how the applicant may become eligible in the  
138 future. At such time, Comprehensive Housing Division staff shall also inform the applicant of  
139 other housing opportunities offered by the Nation for which the applicant may be eligible, if

140 applicable.

141 1.5-4. *Required Application Updates.* Applicants on the wait list are required to update the  
142 application, at a minimum, annually, but also whenever information submitted on the application  
143 has changed. Applicants that fail to complete the application update within the allotted  
144 timeframe will be removed from the wait list and required to re-apply for future consideration.  
145 For any updated application that reveals an applicant has become ineligible, Comprehensive  
146 Housing Division staff shall remove the applicant from the wait list and provide the applicant  
147 notice of the cause for ineligibility.

148

## 149 **1.6. Tenant Selection**

150 1.6-1. *Pulling from the Waitlist When Units Become Available.* When a rental premise becomes  
151 available, the Comprehensive Housing Division staff shall preliminarily select a tenant based on  
152 the first applicant on the wait list in consideration of the applicant's noted housing  
153 needs/preferences. For example, if a one (1) bedroom unit becomes available and the first  
154 applicant on the waitlist has noted on his/her housing needs/preference form that they wish to be  
155 contacted only when a unit becomes available that is two (2) bedrooms or larger, Comprehensive  
156 Housing Division staff will skip over the first applicant and move on to the next applicant on the  
157 waitlist until an applicant is reached whose housing needs/preferences align with the available  
158 unit.

159 1.6-2. *Notice of Tenant Selection.* When an applicant is selected for a rental unit in accordance  
160 with this section, the Comprehensive Housing Division staff shall provide the applicant with  
161 notice of tenant selection. The notice, at a minimum, shall include the address of the rental  
162 premise, the required security deposit and monthly rent, and a requirement that the applicant  
163 respond within fifteen (15) calendar days to accept/reject the rental premise noting that the  
164 security deposit is due at the time of acceptance. Applicants that pay a security deposit and fail  
165 to complete the selection process to actually take occupancy forfeit the security deposit to the  
166 Comprehensive Housing Division as consideration for holding the unit. Comprehensive Housing  
167 Division shall return the security deposit to the applicant only in circumstances where the  
168 applicant is prevented from entering the rental agreement based on a loss of eligibility due to  
169 circumstances outside of the applicant's control (i.e. death of a Tribal member that made the  
170 household eligible for the general rental program).

171 (a) *Failure to Respond or Rejecting a Rental Premise.* If a rental premise is rejected,  
172 such rejection shall be submitted to the Comprehensive Housing Division in writing. An  
173 applicant who has rejected a unit will remain on the waitlist in his/her existing spot so  
174 long as the applicant does not request to be removed from the waitlist. If an applicant  
175 fails to respond to the notice, Comprehensive Housing Division staff shall remove the  
176 applicant from the wait list; in such circumstances the applicant may re-apply for the  
177 general rental program.

178 (b) *Accepting a Rental Premise.* In order for an applicant's acceptance of a rental  
179 premise to be complete, the applicant shall submit along with the acceptance a payment  
180 for the full security deposit. Prior to accepting a security deposit payment,  
181 Comprehensive Housing Department staff shall verify that the applicant remains eligible  
182 for the general rental program. Applicants that have accepted a rental premise from the  
183 general rental program have thirty (30) calendar days from the date of acceptance and  
184 payment of the security deposit to:

185 (1) Reconfirm that they remain eligible for the general rental program;

- 186 (2) Pay the first month's rent; and  
 187 (3) Execute the rental agreement and all required supplemental forms, provided  
 188 that the agreement may not be executed until (A) and (B) are complete.  
 189 (c) *Taking Occupancy.* The Comprehensive Housing Division shall provide the tenant  
 190 with keys to the rental premises upon execution of the rental agreement. As such time,  
 191 the Comprehensive Housing Division staff shall provide the tenant with a check-in sheet  
 192 and notice the tenant that he/she has seven (7) calendar days from the date the tenant  
 193 takes occupancy to complete the check-in sheet and submit it to the Comprehensive  
 194 Housing Division.

### 195 196 **1.7. Security Deposits**

197 1.7-1. *Standard Security Deposit.* The standard security deposit for a general rental unit shall  
 198 be equal to one (1) month's rent payment.

199 1.7-2. *Increased Security Deposit for Pets.* Tenants in the Comprehensive Housing Division's  
 200 general rental program may have pets<sup>1</sup> in accordance with the Domestic Animal Ordinance,  
 201 provided that an increased security deposit is required.

202 (a) The standard security deposit does not apply to tenants with pets. Comprehensive  
 203 Housing Division staff shall require that tenants with pets (excluding fish) pay a security  
 204 deposit that is equal to two (2) month's rent payments.

205 (b) In the event that a tenant wishes to acquire a pet after the rental agreement has been  
 206 signed, the tenant shall notify the Comprehensive Housing Division and shall pay the  
 207 difference between the increased security deposit for pets and the standard security  
 208 deposit.

### 209 210 **1.8. Annual Inspection and Rental Agreement Renewal**

211 1.8-1. *Scheduling Annual Inspections.* Comprehensive Housing Division staff shall schedule  
 212 tenants' annual inspections for a date that is within thirty (30) calendar days of the expiration of  
 213 the tenants' rental agreement.

214 1.8-2. *Inspection Checklist.* Comprehensive Housing Division staff completing the annual  
 215 inspection shall use the checklist that is approved by the Comprehensive Housing Division  
 216 director. Upon completion of the inspection, Comprehensive Housing Division staff shall  
 217 request that the tenant(s) sign the completed checklist.

218 1.8-3. *Inspection Findings.* In the event that an inspection reveals conditions that may affect the  
 219 health and safety of the tenant and/or the community or the integrity and condition of the rental  
 220 premises, the Comprehensive Housing Division shall implement a follow up schedule to ensure  
 221 the issue is adequately remedied. If the issue is not adequately remedied based on the schedule  
 222 determined by the Comprehensive Housing Division, termination and eviction may be necessary.

223 1.8-4. *Damages.* Tenants may be required to pay costs to repair any damages to the rental  
 224 premises discovered during the annual inspection. Payment for such costs must be received by  
 225 the Comprehensive Housing Division prior to signing a rental agreement renewal.

226 1.8-5. *Rental Agreement Renewal.* Each rental agreement is limited to a twelve (12) month  
 227 term. Tenants wishing to remain in the property are required to sign a renewal rental agreement  
 228 annually. The Comprehensive Housing Division may, in its discretion, decline renewal of a  
 229 rental agreement if it determines that the renewal is not in the best interest of the Nation. In the

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<sup>1</sup> For the purposes of this section, a service animal is not considered a pet and is not subject to the increased security deposit for pets.

230 event a tenant fails to enter a rental agreement renewal and has not vacated the rental premises  
231 within thirty (30) calendar days of the expiration of the rental agreement, the Comprehensive  
232 Housing Division shall initiate the eviction process pursuant to the Eviction and Termination  
233 law.

234

235 **1.9. Rental Agreement Cancellation**

236 1.9-1. *Two Week Notice Required.* Tenant wishing to cancel a rental agreement in the general  
237 rental program are requested to provide the Comprehensive Housing Division with a minimum  
238 of two (2) weeks of notice.

239 1.9-2. *Prorated Rent.* In the event of cancellation of a rental agreement, the Comprehensive  
240 Housing Division staff shall prorate the last month's rent payment requirement based upon the  
241 greater of the following:

242 (a) The number of calendar days the unit was occupied in the last month; or

243 (b) Two (2) weeks, which is the minimum allowable notice.

244 1.9-3. *Abandonment.* Where a tenant fails to provide notice of rental agreement cancellation  
245 and abandons the rental unit without notice to the Comprehensive Housing Division, the tenant  
246 shall be responsible for any costs that may accumulate until the Comprehensive Housing  
247 Division is able to terminate the rental agreement in accordance with the Eviction and  
248 Termination law.

249

250 *End.*

251

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252 Original effective date: 02-09-2017

253 Amendment effective date:

254

255

# **Comprehensive Housing Division and Oneida Land Commission Approvals**

## MEMORANDUM

**TO:** Legislative Operating Committee  
**FROM:** Dana McLestor, CHD Division Director   
**DATE:** October 3, 2018  
**RE:** Approval of Landlord-Tenant Rule #1 Amendments

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The Comprehensive Housing Division prepared the amendments to Landlord-Tenant Rule #1 and solicited comments through the public meeting process in accordance with the Administrative Rulemaking law with a Public Meeting held on June 21, 2018 for which the written comment period expired on June 28, 2018. No comments, oral or written, were received and as such there have been no revisions to the amendments presented for public comment. As the CHD Director, I hereby approve the attached amendments to Landlord-Tenant Rule #1 – General Rental Program Eligibility, Selection and Other Requirements and requested the Legislative Operating Committee review for certification of procedural compliance with the Administrative Rulemaking law.



**ONEIDA LAND COMMISSION MEETING MINUTES**  
**Land Management Conference Room**  
**May 30, 2018 5:00 p.m.**

- I. Called to Order** by Chairperson Rae Skenandore at 5:02 pm.  
**Present:** Chairperson Rae Skenandore, Vice Chairperson Racquel Hill, Secretary Julie Barton, Commissioners: Rebecca Webster and Mike Mousseau  
**Excused:** Jennifer Hill and Lloyd Powless  
**Others:** Sheila Huntington, Carla Clark, Lisa Rauschenbach, Scott Denny, Sue Doxtator, Louis Cottrell, Leanne Doxtater, Krystal John, Michelle Hill
- II. Adoption of Agenda - *Motion*** by Racquel Hill to approve the agenda with the following additions:  
 X.c.iii. – 02201802RES  
 X.c.iv – 05201801RES  
 X.e.i. – 05201801A  
 X.e.ii. – 05201802A  
 seconded by Rebecca Webster. Motion carried
- III. Reading of Minutes**
- a. 2018 03 05 Land Commission Meeting**  
*Motion* by Racquel Hill to approve; seconded by Michael Mousseau. Motion carried.
- b. 2018 03 12 Land Commission Meeting**  
*Motion* by Racquel Hill to approve; seconded by Michael Mousseau. Motion carried.
- c. 2018 03 20 Land Commission Meeting**  
*Motion* by Racquel Hill to approve; seconded by Michael Mousseau. Motion carried
- d. 2018 03 22 Land Commission Meeting**  
*Motion* by Racquel Hill to approve; seconded by Michael Mousseau. Motion carried
- IV. Tabled Business – None**
- V. Old Business**
- a. Quarterly Report**  
 Chair provided the report submitted for January – March 2018.  
*Motion* by Racquel Hill to accept as FYI; seconded by Julie Barton. Motion carried.
- VI. New Business**
- a. GTC Semi Annual Report**  
 Chair provided the 2018 semi-annual report. The stipend portion wasn't filled in correctly. Should have number of meetings not the total amount of stipends paid.

- Motion* by Michael Mousseau for retro approval with change to the number amounts of meetings; seconded by Julie Barton. Motion carried.
- b. Carol Metoxen Probate**  
*Motion* by Racquel Hill to approve contingent upon legal review; seconded by Michael Mousseau. Motion carried
- c. Agriculture Leasing Rule**  
*Motion* by Racquel Hill to first defer these back to Land Management and Community and Economic Development to work both on the Agriculture and Commercial leasing Rules and for Land to work with individual tribal farmers and to set a special meeting date for June 18<sup>th</sup> at 5:00 p.m. and to include TAP as first item on the agenda seconded by Julie. Motion carried.
- d. Commercial Leasing Rule**  
*Motion* by Racquel Hill to first defer these back to Land Management and Community and Economic Development to work both on the Agriculture and Commercial leasing Rules and for Land Management staff to work with individual Tribal farmers and to set a special meeting date for June 18<sup>th</sup> at 5:00 p.m. and to include TAP as first item on the agenda seconded by Julie. Motion carried.
- e. Conflict of Interest Forms**  
 Request received by BC Secretary for all individuals on any board, committee, or commission to complete and submit for each one serving on. This was FYI and no action needed.
- f. Advertising Rule**  
*Motion* by Rebecca Webster to approve the SOP for advertising homes for sale by owner; seconded by Michael Mousseau. Motion carried.
- g. Rule #1 General Rental Program**  
*Motion* by Rebecca Webster to request Comprehensive Housing Department to modify section 1.4-3 to allow for potential tenants to have an agreement with utility providers for amounts over \$200.00 provided the utility provider agrees to continue to provide service and in section 1.4-2 those amounts will be included in the debt to income ratio and to approve the public meeting date of June 21<sup>th</sup>; seconded by Racquel Hill. Motion carried.
- h. Rule #1 Mortgage Programs, Guidelines**  
*Motion* by Racquel Hill to modify Debt to Income Ratio section to require Land Management to bring the Debt to Income Ratio at a minimum every three years for Land Commission consideration and to be modified by resolution only and to change the circumstances related to medical for the different process to any unforeseen circumstances; seconded by Rebecca Webster. Motion carried
- i. Rule #1 Residential Leasing**

# **Summary Report, Financial Analysis & Statement of Effect**

## Summary Report for General Rental Program

Original effective date: 02/09/2017

Amendment effective date: TBD

**Name of rule:** General Rental Property Eligibility, Selection, and Other Requirements

**Name of law being interpreted:** Landlord-Tenant

**Rule number:** 1

**Other laws or rules that may be affected:** N/A

**Brief summary of the proposed amendments to the rule:** The purpose of these amendments to the rule is to:

- provide additional eligibility requirements related to outstanding debts owed to utility providers and the CHD;
- update the selection procedures so that applications are no longer required for each unit and move to a waitlist approach;
- Include provision related to abandonment of a rental premise.

**Statement of Effect:** Obtained after requesting from the Legislative Reference Office.

**Financial Analysis:** See Attached.

**Financial Analysis for Rule#1 General Rental Program Eligibility, Selection and Other Requirements Rule (Comprehensive Housing Division)**

| <b>Type of Cost</b>   | <b>Description/Comment</b>                   | <b>Dollar Amount</b> |
|---|--|----------------------|
| Start Up Costs  | Would be absorbed within the current budget. | \$0                  |
| Personnel   | N/A  | \$0                  |
| Office  | N/A  | \$0                  |
| Documentation Costs   | N/A  | \$0                  |
| Estimate of time necessary for an individual or agency to comply with the rule after implementation | One week.                                    | \$0                  |
| Other, please explain   | N/A  | \$0                  |
| Total Cost (Annual)   |  | \$0                  |



## Statement of Effect

### *Landlord-Tenant Rule No. 1 - General Rental Program Eligibility, Selection, and Other Requirements*

#### *Summary*

This rule provides additional eligibility requirements, selection procedures, and general requirements that govern the Comprehensive Housing Division's general rental programs that are not reserved for elders or low-income members of the Oneida Nation.

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office*

*Date: June 5, 2018*

#### *Analysis by the Legislative Reference Office*

The Landlord-Tenant law ("the Law") delegates joint administrative rulemaking authority to the Comprehensive Housing Division and the Oneida Land Commission as authorized by the Administrative Rulemaking law. The Law states that the Comprehensive Housing Division shall provide residential rental programs that provide housing for tribal members of the Nation, and requires that the Oneida Land Commission and the Comprehensive Housing Division jointly establish rules naming said programs and providing the specific requirements and regulations that apply to each program. [6 O.C. 611.4-1].

The Law then goes on to describe the minimum rental eligibility requirements and states that in order to be eligible for a rental agreement, one of the conditions the applicants shall meet are any eligibility requirements set by the rental program's rules. [6 O.C. 611.4-2]. The Oneida Land Commission and the Comprehensive Housing Division delegated joint responsibility for the development of rules governing the selection of applicants for the issuance of rental agreements. [6 O.C. 611.4-3].

Landlord-Tenant Law Rule No. 1 – General Rental Program Eligibility, Selection, and Other Requirements ("the Rule") was originally promulgated and made effective by the Oneida Land Commission and the Comprehensive Housing Division on February 9, 2017. The Rule provides additional eligibility requirements, selection procedures, and general requirements that govern the Comprehensive Housing Division's general rental programs that are not reserved for elders or low-income members of the Nation, including:

- Eligibility requirements [see Rule section 1.4];
- Application process and waitlist [see Rule section 1.5];
- Tenant selection [see Rule section 1.6];
- Security deposits [see Rule section 1.7];
- Annual inspection and rental agreement renewal [see Rule section 1.8]; and
- Rental agreement cancellation [see Rule section 1.9].

***Conclusion***

There are no legal bars to adopting the amendments to the Landlord-Tenant Law Rule No. 1 – General Rental Program Eligibility, Selection, and Other Requirements.

# **Public Meeting Notice & Public Meeting Packet**

## Funding available for outerwear

### ATTENTION PARENTS OF SCHOOL AGED CHILDREN

The Oneida Tribal TANF program has funding available this year to assist eligible families with clothing for school aged children. TANF will only assist with clothing (shoes/boots, winter jackets/snow pants) for eligible families. The amount of assistance this year will be \$200 per eligible child for regular Head Start enrolled children ages 3 and up, and other enrolled school aged students up to age 19. Please contact your school office now or education department office to obtain verification that your child is an enrolled student for the fall 2018-2019 school year. Caretakers of foster children, (including Guardianship-Subsidized Guardianship) and Kinship Care children need

only provide verification of the child's income if that is the only child/children that assistance is being requested for within the home.

The program will begin taking applications starting Monday June 11 through July 6, 2018 only at the reception desk at Economic Support Services located at 2640 West Point Road, Green Bay WI, in the west wing of the Social Services Building. Please budget and plan ahead now to prepare your children for the upcoming 2018-2019 school year. The TANF program will NOT assist with school supplies.

### ONEIDA TRIBAL TANF PROGRAM FEDERAL POVERTY LEVEL INCOME LIMITS & TANF PROGRAM ELIGIBILITY RULES

Household Size Monthly FPL @ 200% for TANF

School Assistance

One \$ 2,023

Two \$ 2,743

Three \$ 3,463

Four \$ 4,183

Five \$ 4,903

Six \$ 5,623

Seven \$ 6,343

Eight \$ 7,063

Nine \$ 7,783

Ten \$ 8,503

Each additional person add \$720

**NOTE:** For households with earned income, a 20% deduction off the total earned income is given when determining income eligibility. The program also disregards verified child support paid out as income as well as the first \$200 of child support received into the household when determining eligibility.



## NOTICE OF PUBLIC MEETING

TO BE HELD

June 21, 2018 at 2:00 P.M.

IN THE

OBC Conference Room  
2nd Floor Norbert Hill Center

In accordance with the Administrative Rulemaking Law, the Comprehensive Housing Division and the Oneida Land Commission are hosting this Public Meeting to gather feedback from the community regarding the following rule:

### Landlord-Tenant Rule No. 1 - General Rental Program Eligibility, Selection and Other Requirements

This is a proposal to amend the rule by:

- ◆ Placing a limit of the amount of past due debt that may be owed to a utility provider at \$200 and an impose an ineligibility period for applicants that have recently been evicted by the Nation;
- ◆ Changing the application and selection process to require selection from a wait list, similar to how the income-based program operates; and
- ◆ Clarifying that rent and other costs will accrue throughout the termination process when a tenant abandons a unit without notice to

To obtain copies of the Public Meeting documents for this proposal, please visit [www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings).

## PUBLIC COMMENT PERIOD OPEN UNTIL June 28, 2018

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to The Comprehensive Housing Division by U.S. mail, interoffice mail, e-mail or fax.

Comprehensive Housing Division  
2913 Commissioner Street, Oneida, WI 54155  
jhill@oneidationation.org  
Phone: 920-869-2227  
Fax: 920-869-2836

NOTICE OF  
**PUBLIC MEETING**

TO BE HELD

**June 21, 2018 at 2:00 P.M.**

IN THE

**OBC Conference Room**

**2nd Floor Norbert Hill Center**

**N7210 Seminary Road, Oneida, WI 54155**

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General Rental Program Eligibility, Selection and  
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- ◆ Changing the application and selection process to require selection from a wait list, similar to how the income-based program operates; and
- ◆ Clarifying that rent and other costs will accrue throughout the termination process when a tenant abandons a unit without notice to the Comprehensive Housing Division.

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**Comprehensive Housing Division**  
**2913 Commissioner Street, Oneida, WI 54155**  
**[jhill@oneidanation.org](mailto:jhill@oneidanation.org)**  
**Phone: 920-869-2227**  
**Fax: 920-869-2836**



8

## Title 6. Property and Land – Chapter 611

### LANDLORD-TENANT

#### Rule # 1 – General Rental Program Eligibility, Selection and Other Requirements

- 1.1. Purpose and Effective Date
- 1.2. Adoption and Authority
- 1.3. Definitions
- 1.4. Eligibility Requirements
- 1.5. [Advertisings, Application Period and Tenant Selection, Application Process and Waitlist](#)
- 1.6. Tenant Selection
- 1.7. Security Deposits
- 1.8. Annual Inspection and Rental Agreement Renewal
- 1.9. Rental Agreement Cancellation

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10  
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16

#### 1.1. Purpose and Effective Date

1.1-1. *Purpose.* The purpose of this rule is to provide additional eligibility requirements, selection procedures and general requirements that govern the Comprehensive Housing Division's general rental programs that are not reserved for elders or low-income Tribal members.

1.1-2. *Delegation.* The Landlord-Tenant law delegated the Comprehensive Housing Division and Land Commission joint rulemaking authority pursuant to the Administrative Rulemaking law.

25

#### 1.2. Adoption and Authority

1.2-1. This rule was jointly adopted by the Comprehensive Housing Division and Land Commission in accordance with the procedures of the Administrative Rulemaking law.

1.2-2. This rule may be amended or repealed by the joint approval of the Comprehensive Housing Division and Land Commission pursuant to the procedures set out in the Administrative Rulemaking law.

1.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule control.

1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Landlord-Tenant law.

39

#### 1.3. Definitions

1.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

(a) "Comprehensive Housing Division" means the division within the Nation under the direction of the Comprehensive Housing Division Director which consists of all residential services offered by the Nation, including but not limited to, all rental programs, the rent-to-own program, and the residential sales and mortgages programs.

46

47 | ~~means the entity responsible for housing matters specifically related to rental agreements~~  
 48 | ~~as defined by Oneida Business Committee Resolution.<sup>+</sup>~~

49 | (b) “Landlord” means the Nation in its capacity to rent real property subject to a rental  
 50 | agreement.

51 | (c) “Nation” means the Oneida Nation.

52 | (d) “Premises” means the property covered by a rental agreement, including not only the  
 53 | real property and fixtures, but also any personal property furnished by the landlord  
 54 | pursuant to a rental agreement.

55 | (e) “Rental Agreement” means a written contract between a landlord and a tenant,  
 56 | whereby the tenant is granted the right to use or occupy the premises for a residential  
 57 | purpose for one (1) year or less.

58 | (f) “Tenant” means the person granted the right to use or occupy a premises pursuant to a  
 59 | rental agreement.

60 | (g) “Security Deposit” means a payment made to the landlord by the tenant to ensure that  
 61 | rent will be paid and other responsibilities of the rental agreement performed.  
 62 |

#### 63 | **1.4. Eligibility Requirements**

64 | 1.4-1. *Tribal Member Status.* At least one (1) of the tenants named as a party to the rental  
 65 | agreement is required to be a Tribal member.

66 | 1.4-2. *Debt to Income Ratio.* In order to be eligible for a rental agreement, applicants shall have  
 67 | a maximum debt to income ratio of fifty percent (50%).

68 | (a) Comprehensive Housing Division staff shall calculate the debt to income ratio by  
 69 | dividing the applicant’s monthly debt by the applicant’s monthly income.

70 | (b) For purposes of calculating income for the debt to income ratio, the Comprehensive  
 71 | Housing Division staff:

72 | (1) May not include child support payments;

73 | (2) May not include education grants/scholarships;

74 | (3) May not include medical bills; and

75 | (3) Shall include per capita payments to the extent that receipt of per capita  
 76 | payment may be verified for each of the five (5) years prior to rental application.

77 | (A) For per capita payments paid by the Nation, the Comprehensive  
 78 | Housing Division staff shall verify with the Trust Enrollment Department  
 79 | that the applicant received the full eligible amount of the per capita  
 80 | payments for each of the five (5) years prior to rental application.

81 | (B) For per capita payments paid by other tribes the Comprehensive  
 82 | Housing Division staff shall verify that the applicant received per capita  
 83 | payments for each of the five (5) years prior to rental application using the  
 84 | applicant’s tax return.

85 | (C) When per capita payments qualify to be considered as part of the  
 86 | income calculation, Comprehensive Housing Division staff shall use an  
 87 | average to the payments the applicant received for the five (5) years prior  
 88 | to rental application.

---

<sup>+</sup> ~~See BC Resolution 10-12-16-D providing that for purposes of this law, the Comprehensive  
 Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing  
 Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services  
 program.~~

(4) Shall include any debts subject to a repayment agreement in accordance with section 1.4-3.

1.4-3. ~~Utility Bills~~Outstanding Debts. Applicants for a rental agreement may not have a past due balance greater than two hundred dollars (\$200) owed to any utility provider and may not have any prior debt owed to the Comprehensive Housing Division, unless:

(a) The applicants have entered a payment agreement related to said debts prior to applying for the general rental program; and

(b) If the agreement is related to a utility debt, the agreement allows the applicant to continue receiving utility services while paying the debt, including utility hook-up at a new location. ~~Applicants for a rental agreement may not have any outstanding balance owed to a utility provider.~~

1.4-4. Prior Comprehensive Housing Division Eviction. Applicants that have had a rental agreement with the Comprehensive Housing Division subject to an eviction and termination within two (2) years from the date of the application are not eligible to participate in the general rental program.

1.4-5. Past Due Accounts. Applicants for a rental agreement are ineligible if a review of the applicant's credit report reveals more than five (5) accounts that are past due and/or in collections, provided that medical bills may not be included in this consideration

1.4-6. Pardon and Forgiveness. A grant of a pardon or forgiveness pursuant to the Nation's Pardon and Forgiveness law may result in an otherwise ineligible tenant becoming eligible.

~~1.4-4. Past Due Accounts. Applicants for a rental agreement are ineligible if a review of the applicant's credit report reveals more than five (5) accounts that are past due and/or in collections, provided that medical bills may not be included in this consideration.~~

## **1.5. Advertisings, Application Period and Tenant Selection**

### **1.5-1. Application Process and Wait List**

1.5-1. Applying. Persons wishing to participate in the general rental program shall complete the Comprehensive Housing Division rental agreement application and any other required accompanying forms, including but not limited to, the employment verification form, a release authorization form and a housing needs/preference form. The Comprehensive Housing Division staff may not consider any applications for selection and/or placement on the wait list until the application and all accompanying forms are complete. Upon receipt of a completed application, including all supplementary forms, Comprehensive Housing Division staff shall date and time stamp the application. If, regardless of a complete application submittal, additional information is required to determine eligibility, the Comprehensive Housing Division staff shall request such information and maintain the application submittal date provided that the applicant responds to the information requests within the timeframe designated by the Comprehensive Housing Division.

(a) Household Composition Form. The Comprehensive Housing Division staff shall require applicants to complete a Household Composition Form which provides the full name, age and date of birth of each person contemplated to reside in rental unit. In order to verify such information, the Comprehensive Housing Division staff shall require that applicants submit a copy of a picture identification card for each adult contemplated to reside in the rental unit including a minimum of one tribal identification card.

(b) Background Checks. In order to ensure compliance with the eligibility requirements of the Landlord-Tenant law and these rules, Comprehensive Housing Division staff shall

135 perform a background check on each adult in the household. Household adults are also  
136 subject to annual background checks upon annual rental agreement renewal pursuant to  
137 1.8-5 and as may be determined to be necessary to maintain the safety of the community  
138 by the Comprehensive Housing Division staff.

139 1.5-2. *Notification of Eligibility, Placement on the Wait List.* When Comprehensive Housing  
140 Division staff completes its review of an application and determines the applicant(s) eligible for  
141 the general rental program, the staff shall place the applicant on the waitlist and notice the  
142 applicant with a letter of placement on the waitlist as well as the required date for the annual  
143 application update.

144 1.5-3. *Notification of Ineligibility.* If review of a complete submitted application and/or annual  
145 renewal reveals that an applicant is ineligible to participate in the general rental program based  
146 on the Landlord-Tenant law and/or rules, the Comprehensive Housing Division staff shall notify  
147 the applicant of the cause of the ineligibility and how the applicant may become eligible in the  
148 future. At such time, Comprehensive Housing Division staff shall also inform the applicant of  
149 other housing opportunities offered by the Nation for which the applicant may be eligible, if  
150 applicable.

151 1.5-4. *Required Application Updates.* Applicants on the wait list are required to update the  
152 application, at a minimum, annually, but also whenever information submitted on the application  
153 has changed. Applicants that fail to complete the application update within the allotted  
154 timeframe will be removed from the wait list and required to re-apply for future consideration.  
155 For any updated application that reveals an applicant has become ineligible, Comprehensive  
156 Housing Division staff shall remove the applicant from the wait list and provide the applicant  
157 notice of the cause for ineligibility.

## 158 **1.6. Tenant Selection**

160 1.6-1. *Pulling from the Waitlist When Units Become Available.* When a rental premise becomes  
161 available, the Comprehensive Housing Division staff shall preliminarily select a tenant based on  
162 the first applicant on the wait list in consideration of the applicant's noted housing  
163 needs/preferences. For example, if a one (1) bedroom unit becomes available and the first  
164 applicant on the waitlist has noted on his/her housing needs/preference form that they wish to be  
165 contacted only when a unit becomes available that is two (2) bedrooms or larger, Comprehensive  
166 Housing Division staff will skip over the first applicant and move on to the next applicant on the  
167 waitlist until an applicant is reached whose housing needs/preferences align with the available  
168 unit.

169 1.6-2. *Notice of Tenant Selection.* When an applicant is selected for a rental unit in accordance  
170 with this section, the Comprehensive Housing Division staff shall provide the applicant with  
171 notice of tenant selection. The notice, at a minimum, shall include the address of the rental  
172 premise, the required security deposit and monthly rent, and a requirement that the applicant  
173 respond within fifteen (15) calendar days to accept/reject the rental premise noting that the  
174 security deposit is due at the time of acceptance. Applicants that pay a security deposit and fail  
175 to complete the selection process to actually take occupancy forfeit the security deposit to the  
176 Comprehensive Housing Division as consideration for holding the unit. Comprehensive Housing  
177 Division shall return the security deposit to the applicant only in circumstances where the  
178 applicant is prevented from entering the rental agreement based on a loss of eligibility due to  
179 circumstances outside of the applicant's control (i.e. death of a Tribal member that made the  
180 household eligible for the general rental program).

181 (a) Failure to Respond or Rejecting a Rental Premise. If a rental premise is rejected,  
 182 such rejection shall be submitted to the Comprehensive Housing Division in writing. An  
 183 applicant who has rejected a unit will remain on the waitlist in his/her existing spot so  
 184 long as the applicant does not request to be removed from the waitlist. If an applicant  
 185 fails to respond to the notice, Comprehensive Housing Division staff shall remove the  
 186 applicant from the wait list; in such circumstances the applicant may re-apply for the  
 187 general rental program.

188 (b) Accepting a Rental Premise. In order for an applicant's acceptance of a rental  
 189 premise to be complete, the applicant shall submit along with the acceptance a payment  
 190 for the full security deposit. Prior to accepting a security deposit payment,  
 191 Comprehensive Housing Department staff shall verify that the applicant remains eligible  
 192 for the general rental program. Applicants that have accepted a rental premise from the  
 193 general rental program have thirty (30) calendar days from the date of acceptance and  
 194 payment of the security deposit to:

195 (1) Reconfirm that they remain eligible for the general rental program;

196 (2) Pay the first month's rent; and

197 (3) Execute the rental agreement and all required supplemental forms, provided  
 198 that the agreement may not be executed until (A) and (B) are complete.

199 (c) Taking Occupancy. The Comprehensive Housing Division shall provide the tenant  
 200 with keys to the rental premises upon execution of the rental agreement. As such time,  
 201 the Comprehensive Housing Division staff shall provide the tenant with a check-in sheet  
 202 and notice the tenant that he/she has seven (7) calendar days from the date the tenant  
 203 takes occupancy to complete the check-in sheet and submit it to the Comprehensive  
 204 Housing Division.

205  
 206 ~~Advertising.~~ The Comprehensive Housing Division shall advertise all properties for rent in its  
 207 general rental program both on the Nation's website and at the Comprehensive Housing  
 208 Division.

209 ~~(a) The Comprehensive Housing Division shall list the monthly rent for the property on the~~  
 210 ~~advertisement with a note that the security deposit required is equal to one (1) month's rent~~  
 211 ~~payment.~~

212 ~~(b) The Comprehensive Housing Division shall provide the showing dates and application~~  
 213 ~~period in the advertisement.~~

214 ~~1.5-2. Application Period.~~ When the Comprehensive Housing Division offers a property for  
 215 rent in its general rental program, it shall set an application period during which rental  
 216 applications may be submitted at the Bay Bank drop box. The Comprehensive Housing Division  
 217 may extend the application period by providing notice of the extension both on the Nation's  
 218 website, Bay Bank and the Comprehensive Housing Division. The Comprehensive Housing  
 219 Division shall disqualify rental applications received outside of the application period.

220 ~~(a) Tribal members wishing to rent a property in the Comprehensive Housing Division's~~  
 221 ~~general rental program may submit a rental application at the Bay Bank drop box, in person,~~  
 222 ~~using the rental application form available on the Nation's website and at the Comprehensive~~  
 223 ~~Housing Division, which includes any requirements for supplemental information required to~~  
 224 ~~verify eligibility. Rental applications submitted using any form other than the Nation will be~~  
 225 ~~considered ineligible by the Comprehensive Housing Division.~~

226 ~~(b) Prior to accepting a rental application for the drop box, Bay Bank staff shall date and~~

time stamp all rental applications upon receipt. In the event that multiple parties arrive at the same time to submit a rental application (i.e. if parties are waiting to submit prior to business hours), Bay Bank staff shall determine the order of receipt through a lottery system in which each party receives a number by chance. Bay Bank staff shall number the offers having the same date and time stamps by from lowest drawn number to highest drawn number.

(c) Comprehensive Housing Division staff may not collect the rental applications until the business day immediately following the close of the application period.

~~1.5.3. Tenant Selection. Upon receipt of submitted rental applications, Comprehensive Housing Division staff shall determine which applicants are eligible and select a tenant based on the eligible rental application that was received earliest based on the date and time stamp.~~

### **1.67. Security Deposits**

~~1.67-1. Standard Security Deposit. Prior to providing a selected tenant with keys to the property, Comprehensive Housing Division staff shall ensure that the~~ The standard security deposit for a general rental unit shall be equal to one (1) month's rent payment ~~has been paid by the tenant.~~

1.67-2. Increased Security Deposit for Pets. Tenants in the Comprehensive Housing Division's general rental program may have pets<sup>2</sup> in accordance with the Domestic Animal Ordinance, provided that an increased security deposit is required.

(a) The standard security deposit does not apply to tenants with pets. Comprehensive Housing Division staff shall require that tenants with pets (excluding fish) pay a security deposit that is equal to two (2) month's rent payments.

(b) In the event that a tenant wishes to acquire a pet after the rental agreement has been signed, the tenant shall notify the Comprehensive Housing Division and shall pay the difference between the increased security deposit for pets and the standard security deposit.

### **1.78. Annual Inspection and Rental Agreement Renewal**

1.78-1. Scheduling Annual Inspections. Comprehensive Housing Division staff shall schedule tenants' annual inspections for a date that is within thirty (30) calendar days of the expiration of the tenants' rental agreement.

1.78-2. Inspection Checklist. Comprehensive Housing Division staff completing the annual inspection shall use the checklist that is approved by the Comprehensive Housing Division director. Upon completion of the inspection, Comprehensive Housing Division staff shall request that the tenant(s) sign the completed checklist.

1.78-3. Inspection Findings. In the event that an inspection reveals conditions that may affect the health and safety of the tenant and/or the community or the integrity and condition of the rental premises, the Comprehensive Housing Division shall implement a follow up schedule to ensure the issue is adequately remedied. If the issue is not adequately remedied based on the schedule determined by the Comprehensive Housing Division, termination and eviction may be necessary.

1.78-4. Damages. Tenants may be required to pay costs to repair any damages to the rental premises discovered during the annual inspection. Payment for such costs must be received by the Comprehensive Housing Division prior to signing a rental agreement renewal.

1.78-5. Rental Agreement Renewal. Each rental agreement is limited to a twelve (12) month term. Tenants wishing to remain in the property are required to sign a renewal rental agreement

<sup>2</sup> For the purposes of this section, a service animal is not considered a pet and is not subject to the increased security deposit for pets.

271 annually. The Comprehensive Housing Division may, in its discretion, decline renewal of a  
 272 rental agreement if it determines that the renewal is not in the best interest of the Nation. In the  
 273 event a tenant fails to enter a rental agreement renewal and has not vacated the rental premises  
 274 within thirty (30) calendar days of the expiration of the rental agreement, the Comprehensive  
 275 Housing Division shall initiate the eviction process pursuant to the Eviction and Termination  
 276 law.

277

278 **1.89. Rental Agreement Cancellation**

279 **1.89-1. Two Week Notice Required.** Tenant wishing to cancel a rental agreement in the general  
 280 rental program are requested to provide the Comprehensive Housing Division with a minimum  
 281 of two (2) weeks of notice.

282 **1.89-2. Prorated Rent.** In the event of cancellation of a rental agreement, the Comprehensive  
 283 Housing Division staff shall prorate the last month's rent payment requirement based upon the  
 284 greater of the following:

285 (a) The number of calendar days the unit was occupied in the last month; or

286 (b) Two (2) weeks, which is the minimum allowable notice.

287 1.9-3. Abandonment. Where a tenant fails to provide notice of rental agreement cancellation  
 288 and abandons the rental unit without notice to the Comprehensive Housing Division, the tenant  
 289 shall be responsible for any costs that may accumulate until the Comprehensive Housing  
 290 Division is able to terminate the rental agreement in accordance with the Eviction and  
 291 Termination law.

292

293 *End.*

294

295 Original effective date: 02-09-2017

296 Amendment effective date:

297

298

## Summary Report for General Rental Program

Original effective date: 02/09/2017

Amendment effective date: TBD

**Name of rule:** General Rental Property Eligibility, Selection, and Other Requirements

**Name of law being interpreted:** Landlord-Tenant

**Rule number:** 1

**Other laws or rules that may be affected:** N/A

**Brief summary of the proposed amendments to the rule:** The purpose of these amendments to the rule is to:

- provide additional eligibility requirements related to outstanding debts owed to utility providers and the CHD;
- update the selection procedures so that applications are no longer required for each unit and move to a waitlist approach;
- Include provision related to abandonment of a rental premise.

**Statement of Effect:** Obtained after requesting from the Legislative Reference Office.

**Financial Analysis:** See Attached.



## Statement of Effect

### *Landlord-Tenant Rule No. 1 - General Rental Program Eligibility, Selection, and Other Requirements*

#### *Summary*

This rule provides additional eligibility requirements, selection procedures, and general requirements that govern the Comprehensive Housing Division's general rental programs that are not reserved for elders or low-income members of the Oneida Nation.

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office*

*Date: June 5, 2018*

#### *Analysis by the Legislative Reference Office*

The Landlord-Tenant law ("the Law") delegates joint administrative rulemaking authority to the Comprehensive Housing Division and the Oneida Land Commission as authorized by the Administrative Rulemaking law. The Law states that the Comprehensive Housing Division shall provide residential rental programs that provide housing for tribal members of the Nation, and requires that the Oneida Land Commission and the Comprehensive Housing Division jointly establish rules naming said programs and providing the specific requirements and regulations that apply to each program. [6 O.C. 611.4-1].

The Law then goes on to describe the minimum rental eligibility requirements and states that in order to be eligible for a rental agreement, one of the conditions the applicants shall meet are any eligibility requirements set by the rental program's rules. [6 O.C. 611.4-2]. The Oneida Land Commission and the Comprehensive Housing Division delegated joint responsibility for the development of rules governing the selection of applicants for the issuance of rental agreements. [6 O.C. 611.4-3].

Landlord-Tenant Law Rule No. 1 – General Rental Program Eligibility, Selection, and Other Requirements ("the Rule") was originally promulgated and made effective by the Oneida Land Commission and the Comprehensive Housing Division on February 9, 2017. The Rule provides additional eligibility requirements, selection procedures, and general requirements that govern the Comprehensive Housing Division's general rental programs that are not reserved for elders or low-income members of the Nation, including:

- Eligibility requirements [see Rule section 1.4];
- Application process and waitlist [see Rule section 1.5];
- Tenant selection [see Rule section 1.6];
- Security deposits [see Rule section 1.7];
- Annual inspection and rental agreement renewal [see Rule section 1.8]; and
- Rental agreement cancellation [see Rule section 1.9].

***Conclusion***

There are no legal bars to adopting the amendments to the Landlord-Tenant Law Rule No. 1 – General Rental Program Eligibility, Selection, and Other Requirements.

**Financial Analysis for Rule#1 General Rental Program Eligibility, Selection and Other Requirements Rule (Comprehensive Housing Division)**

| <b>Type of Cost</b>   | <b>Description/Comment</b>                   | <b>Dollar Amount</b> |
|---|--|----------------------|
| Start Up Costs  | Would be absorbed within the current budget. | \$0                  |
| Personnel   | N/A  | \$0                  |
| Office  | N/A  | \$0                  |
| Documentation Costs   | N/A  | \$0                  |
| Estimate of time necessary for an individual or agency to comply with the rule after implementation | One week.                                    | \$0                  |
| Other, please explain   | N/A  | \$0                  |
| Total Cost (Annual)   |  | \$0                  |

# **Public Meeting Sign-In Sheet & Transcript**



**PUBLIC MEETING hosted by  
 Oneida Comprehensive Housing Division and Oneida Land Commission  
 Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
 June 21, 2018 2:00 p.m.**

**Amendments to Landlord-Tenant Rule No. 1 – General Rental Program Eligibility, Selection  
 and Other Requirements  
 PUBLIC MEETING SIGN IN SHEET**

|     | Name: (Print clearly) | Email Address / Phone # | Department/ Roll#/<br>Board, Committee or<br>Commission | Oral<br>Testimony<br>(Y) or (N) |
|-----|-----------------------|-------------------------|---|---------------------------------|
| 1.  |                       |                         |   |                                 |
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| 11. |                       |                         |   |                                 |
| 12. |                       |                         |   |                                 |

**Comprehensive Housing Division  
Public Meeting**

**Landlord Tenant Rule No. 1 – General Rental Program Eligibility, Selection and Other Requirements**

Business Committee Conference Room-2nd Floor Norbert Hill Center

June 21, 2018 2:00 p.m.

**Present:**

- Dana McLester – Division Director
- Scott Denny - Area Manager for Residential Rentals & Outreach
- Tina Skenandore – Resident Services Specialist for General Rentals

**Scott Denny:** Good afternoon. The time is 2:00 p.m. and today's date is June 21, 2018 I will now call the public meeting for the Landlord Tenant Rule No. 1 – General Rental Program Eligibility, Selection and Other Requirements to order. The Comprehensive Housing Division is hosting this public meeting to gather feedback from the community regarding this rule.

All persons who wish to present oral testimony will need to register on the sign-in sheet at the back of the room. Written comments may be submitted to the Comprehensive Housing Division, by U.S. mail, interoffice mail, email or fax as provided on the public meeting notice. These comments must be received by close of business on June 28, 2018. In attendance from the Comprehensive Housing Division is: Dana McLester – Division Director, Scott Denny - Area Manager for Residential Rentals & Outreach, Tina Skenandore – Resident Services Specialist for General Rentals

We will begin today's public meeting for Landlord Tenant Rule No. 1 – General Rental Program Eligibility, Selection and Other Requirements.

This rule identifies:

- Placing a limit of the amount of past due debt that may be owed to a utility provider at \$200 and an impose an ineligibility period for applicants that have recently been evicted by the Nation;
- Changing the application and selection process to require selection from a wait list, similar to how the income-based program operates; and
- Clarifying that rent and other costs will accrue throughout the termination process when a tenant abandons a unit without notice to the Comprehensive Housing Division.

**Scott Denny:** With there being no speakers registered, the public meeting for Rule No. 1 – General Rental Program Eligibility, Selection and Other Requirements is now closed at 2:30 p.m. Thank you.

**-End of Meeting-**

# October 2018

October 2018

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|    | 1  | 2  | 3  | 4  | 5  | 6  |
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November 2018

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| 24 | 25 | 26 | 27 | 28 | 29 | 30 |

| SUNDAY                       | MONDAY | TUESDAY   | WEDNESDAY  | THURSDAY   | FRIDAY | SATURDAY |
|------------------------------|--------|---|--|--|--------|----------|
| Sep 30                       | Oct 1  | 2   | 3<br>9:00am LOC Meeting (BC_Conf_Room) - LOC                             | 4<br>12:15pm PUBLIC MEETING: Sanctions and Penalties Law<br>12:15pm Sanctions and Penalties Public | 5      | 6        |
| 7                            | 8      | 9   | 10   | 11   | 12     | 13       |
| 14                           | 15     | 16<br>3:00pm LOC Prep (BC_Exec_Conf_Room) - LOC | 17<br>9:00am LOC Meeting (BC_Conf_Room) - LOC                            | 18   | 19     | 20       |
| 21                           | 22     | 23  | 24   | 25<br>9:00am FW: LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago                       | 26     | 27       |
| 28<br>10:00am GTC (Radisson) | 29     | 30  | 31<br>9:00am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago | Nov 1  | 2      | 3        |

# November 2018

November 2018

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December 2018

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| 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | 31 |    |    |    |    |    |

| SUNDAY                      | MONDAY | TUESDAY   | WEDNESDAY                                     | THURSDAY  | FRIDAY   | SATURDAY |
|-----------------------------|--------|---|---|---|--|----------|
| Oct 28                      | 29     | 30  | 31  | Nov 1   | 2  | 3        |
| 4                           | 5      | 6   | 7<br>9:00am LOC Meeting (BC_Conf_Room) - LOC  | 8<br>12:15pm PUBLIC MEETING: Election Law Amendments (BC_Conf_Room;) - Clorissa N. Santiago | 9  | 10       |
| 11                          | 12     | 13  | 14  | 15  | 16<br>9:00am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago | 17       |
| 18                          | 19     | 20<br>3:00pm LOC Prep (BC_Exec_Conf_Room) - LOC | 21<br>9:00am LOC Meeting (BC_Conf_Room) - LOC | 22  | 23   | 24       |
| 25<br>6:00pm GTC (Radisson) | 26     | 27  | 28  | 29  | 30<br>9:00am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago | Dec 1    |