

ONEIDA NATION PUBLIC MEETING NOTICE

Tuesday, January 7, 2020, 12:15 pm

Norbert Hill Center-Business Committee Conference Room
N7210 Seminary Rd., Oneida, Wisconsin

Find Public Meeting Materials at

[Oneida-nsn.gov/government/register/public meetings](http://Oneida-nsn.gov/government/register/public%20meetings)

Send Public Comments to

LOC@oneidanation.org

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920-869-4312



SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS LAW

The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected 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.

The Sanctions and Penalties for Elected Officials law will:

1. Set parameters for what behavior constitutes misconduct;
2. Describe how an individual can file a complaint against an elected official;
3. Provide that complaints against an elected official shall be handled by the Judiciary—Trial Court; and
4. Describe the potential sanctions and penalties that can be imposed upon elected officials found to have engaged in misconduct, and the factors that will be utilized to determine an appropriate sanction or penalty.

PUBLIC COMMENTS PERIOD CLOSSES TUESDAY, JANUARY 14, 2020

During the Public Comment Period, anyone may submit written comments. Comments may be submitted to the Oneida Nation Secretary's Office or the Legislative Reference Office in person, by U.S. mail, interoffice mail, or e-mail.

PROVIDING EFFECTIVE PUBLIC COMMENTS

Providing public comment is an important way to make your voice heard in decision making. Public comments can strengthen a decision or provide different perspectives. The Legislative Operating Committee wants to hear from you!



READ THE PUBLIC MEETING MATERIALS: Before you provide comments familiarize yourself with the legislation. A public meeting packet is made for every public meeting and it includes 1) a notice with the date, time, location, 2) a draft of the proposed legislation, and 3) a plain language review of the legislation and its impact on the Oneida Nation.



PREPARE YOUR COMMENTS: When you are familiar with the legislation, start to prepare comments. The LOC is responsible for reviewing every comment received. To get your message across effectively, frame your comment clearly and concisely. Here is an example of how to create an effective comment:

Least Effective Comment	More Effective Comment	Most Effective Comment
We need more accountability for our officials.	We need more strict fines in order to hold officials accountable.	The fine amount in section 120.7-2 (f) should be increased from \$2,500 to \$3,500.



SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Oneida Business Committee	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	To increase accountability among elected officials of the Nation, including members of the Oneida Business Committee. This new law creates a formal complaint process and allows for corrective actions against officials who engage in misconduct.		
Purpose	To establish a consistent set of sanctions and penalties that may be imposed upon elected officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official [120.1-1].		
Affected Entities	All elected officials of the Nation; Any enrolled tribal member or employee age 18 years and older who has knowledge that an official has committed misconduct; Oneida Business Committee; 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 within the Judiciary Law. This law does not apply to members of corporate boards. This law does not apply to appointed officials.		
Related Legislation	Rules of Civil Procedure; Rules of Appellate Procedure; Code of Ethics; Boards, Committees and Commissions Law; Garnishment Law; Per Capita law; and any of the Nation's laws and bylaws that may be violated by an official.		
Enforcement/Due Process	Sanctions and penalties against elected officials will be imposed by the Trial Court. Officials accused of misconduct have the right to be represented by an attorney or advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to appear at the hearing to answer the allegations and provide evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.		
Public Meeting	A public meeting for an earlier draft of this law was held on October 4, 2018. A 2 nd public meeting for the updated draft is scheduled for January 7, 2020.		
Fiscal Impact	A fiscal impact statement for an earlier draft of this law was prepared by the Finance Department on December 27, 2018. An updated fiscal analysis has not yet been requested.		

1 **SECTION 2. LEGISLATIVE DEVELOPMENT**

- 2 A. When an official of the Nation commits misconduct while in office, there are few remedies available
- 3 for the Nation to discipline that official. Currently, elected officials may be removed in accordance with
- 4 the Removal Law. However, there may be instances of misconduct that do not rise to the level of
- 5 removal. In these cases, other remedies such as verbal reprimands, fines, or suspensions may be more
- 6 appropriate.
- 7 B. This law creates a formal complaint process that gives tribal members, employees and entities an
- 8 opportunity to file complaints against elected officials while ensuring that due process rights for those

9 accused are protected. This law also creates a range of potential sanctions and penalties for officials
10 who violate the laws of the Nation or commit other forms of misconduct.

11 C. During the Special Election held on July 9, 2016, the following referendum question was approved by
12 a vote of 178 to 59: “Should the BC develop a law which provides for sanctions and due process for
13 elected officials?” The Election Law requires the Oneida Business Committee to present referendum
14 questions that receive a majority vote to the General Tribal Council (GTC) for discussion and action
15 [Election Law 1 O.C. 102.12-9(c)].

16 D. On March 17, 2019, the Legislative Operating Committee presented an earlier draft of the proposed
17 Sanctions and Penalties law to GTC for consideration. During this meeting, GTC directed that the
18 Sanctions and Penalties law be deferred for at least sixty (60) days for GTC to have additional time to
19 consider it and have input.

20 E. Between July and November of 2019, the LOC conducted additional outreach for the community
21 regarding the proposed Sanctions and Penalties law. This included outreach events in both Oneida and
22 Milwaukee, articles in the Kaliwihsaks, and opportunities to submit written comments. Based on input
23 received from community members during the various outreach efforts, as well as the discussion during
24 the March 17, 2019, GTC Meeting, the LOC determined that the draft should be revised. This revised
25 draft removes the Oneida Business Committee as a hearing body for complaints against appointed
26 officials by removing all references to appointed officials from the law. In addition, complaints will
27 now be filed only by enrolled tribal members or employees of the Nation aged 18 years or older.

28 F. This law will apply to elected officials of the Nation, including members of the following entities:

ELECTED BOARDS, COMMITTEES AND COMMISSIONS

- Oneida Business Committee
- Oneida Election Board
- Oneida Gaming Commission
- Oneida Land Claims Commission
- Oneida Land Commission
- Oneida Nation Commission on Aging (ONCOA)
- Oneida Nation School Board
- Trust Enrollment Committee
- GTC Legal Resource Center Advocates and Attorney

29 **This law does not apply to members of appointed boards, members of the Judiciary or corporate*
30 *entities of the Nation.*

31 **SECTION 3. CONSULTATION AND OUTREACH**

32 A. The Rules of Civil Procedure, Rules of Appellate Procedure, Judiciary Law, Code of Ethics, Open
33 Meetings and Open Records Law, and the Boards, Committees and Commissions Law were reviewed
34 in drafting this analysis. In addition, the following laws were reviewed in drafting this analysis:

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

- 42 **B.** The Business Committee Support Office, Records Management Department, Human Resources
43 Department and representatives from the following Boards, Committees and Commissions were
44 consulted in the development of this law and analysis:
- 45 ▪ Anna John Resident Centered Care Community Board (AJRCCC);
 - 46 ▪ Election Board;
 - 47 ▪ Environmental Resource Board (ERB);
 - 48 ▪ Gaming Commission;
 - 49 ▪ Land Commission;
 - 50 ▪ Police Commission;
 - 51 ▪ Pow-wow Committee;
 - 52 ▪ Trust Enrollment Committee;
 - 53 ▪ Oneida Nation Veterans Affairs Committee (ONVAC).
- 54 **C.** *Community Outreach Events.* In addition to the public meeting required by the LPA held on October
55 4, 2018, the LOC held the following outreach events on this legislation:
- 56 ▪ May 3, 2018: A community pot-luck meeting at Norbert Hill Center to gather community input
57 on this law.
 - 58 ▪ July 11, 2019: Community outreach event held prior to GTC meeting at Radisson Conference
59 Center.
 - 60 ▪ July 17, 2019: Community outreach held at Norbert Hill Center in Oneida.
 - 61 ▪ August 9, 2019: Community outreach held at Veteran’s Breakfast in Oneida.
 - 62 ▪ August 15, 2019: Community outreach held at Farmer’s Market in Oneida.
 - 63 ▪ October 7, 2019: Community outreach held at Elder Congregate Mealsite in Oneida.
 - 64 ▪ October 16, 2019: Community outreach held at SEOTS Building in Milwaukee.

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66 **SECTION 4. PROCESS**

- 67 **A.** Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- 68 **B.** The law was originally added to the Active Files List on October 15, 2014 and was carried over from
69 the previous term. The law was re-added to the Active Files List on September 6, 2017.
- 70 **C.** At the time this legislative analysis was developed, the following work meetings had been held
71 regarding the most recent efforts to develop this law and legislative analysis:
- 72 ▪ September 6, 2017: LOC work meeting.
 - 73 ▪ November 1, 2017: LOC work meeting with representatives from the following boards, committees
74 and commissions: Police Commission, Trust Enrollment Committee, Election Board, Land
75 Commission, Oneida Gaming Commission, Pow-wow Committee. All boards, committees and
76 committees were invited to attend this work meeting.
 - 77 ▪ December 6, 2017: LOC work meeting.
 - 78 ▪ March 9, 2018: LOC work meeting.
 - 79 ▪ May 3, 2018: Community pot-luck meeting with LOC, Oneida community members, BC Support
80 Office, and representatives from the following boards, committees and commissions: Police
81 Commission, ONVAC, ERB, AJRCCC, and Gaming Commission. All boards, committees and
82 commissions were invited to attend this meeting.
 - 83 ▪ May 11, 2018: LOC work meeting.
 - 84 ▪ July 9, 2018: Work meeting with BC Support Office.
 - 85 ▪ August 1, 2018: LOC work meeting.

- 86 ▪ October 17, 2018: LOC work meeting.
- 87 ▪ October 25, 2018: LOC work meeting.
- 88 ▪ December 20, 2018: Work meeting with Cultural Heritage.
- 89 ▪ January 2, 2019: LOC Work meeting.
- 90 ▪ January 24, 2019: LOC Work meeting.
- 91 ▪ February 4, 2019: LOC Work meeting.
- 92 ▪ February 6, 2019: LOC work meeting.
- 93 ▪ February 8, 2019: LOC work meeting.
- 94 ▪ February 14, 2019: LOC work meeting.
- 95 ▪ February 20, 2019: LOC work meeting.
- 96 ▪ March 1, 2019: LOC work meeting.
- 97 ▪ March 15, 2019: LOC work meeting.
- 98 ▪ March 20, 2019: LOC work meeting
- 99 ▪ March 28, 2019: LOC work meeting.
- 100 ▪ May 1, 2019: LOC work meeting.
- 101 ▪ June 13, 2019: LOC work meeting.
- 102 ▪ August 21, 2019: LOC work meeting.
- 103 ▪ October 16, 2019: LOC work meeting.
- 104 ▪ October 31, 2019: LOC work meeting.
- 105 ▪ November 6, 2019: LOC work meeting.
- 106 ▪ November 15, 2019: LOC work meeting.
- 107 ▪ November 20, 2019: LOC work meeting.
- 108 ▪ November 26, 2019: LOC work meeting.
- 109 ▪ December 2, 2019: LOC work meeting.

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111 **SECTION 5. CONTENTS OF THE LEGISLATION.**

112 **A. *What Qualifies as Misconduct.*** The Oneida Nation expects elected officials to uphold high ethical and
113 moral standards. Officials who engage in misconduct may be subject to sanctions and penalties. This
114 section describes what behaviors could be considered misconduct [120.4]. Under this law, the
115 definition of misconduct is very broad and includes any of the following:

- 116 ▪ Violating the Oneida Constitution or any law, policy or rule of the Oneida Nation.
 - 117 ○ Examples include the Code of Ethics and Conflict of Interest Law.
- 118 ▪ Violating the bylaws or standard operating procedures of the board the official serves on.
- 119 ▪ Being convicted of a felony under federal or Wisconsin law, or being convicted of a crime
120 elsewhere that would be considered a felony in the state of Wisconsin or the United States.
- 121 ▪ Any other activity that does not uphold the moral and ethical standards expected of the Nation's
122 officials.

123 **B. *Filing a Complaint.***

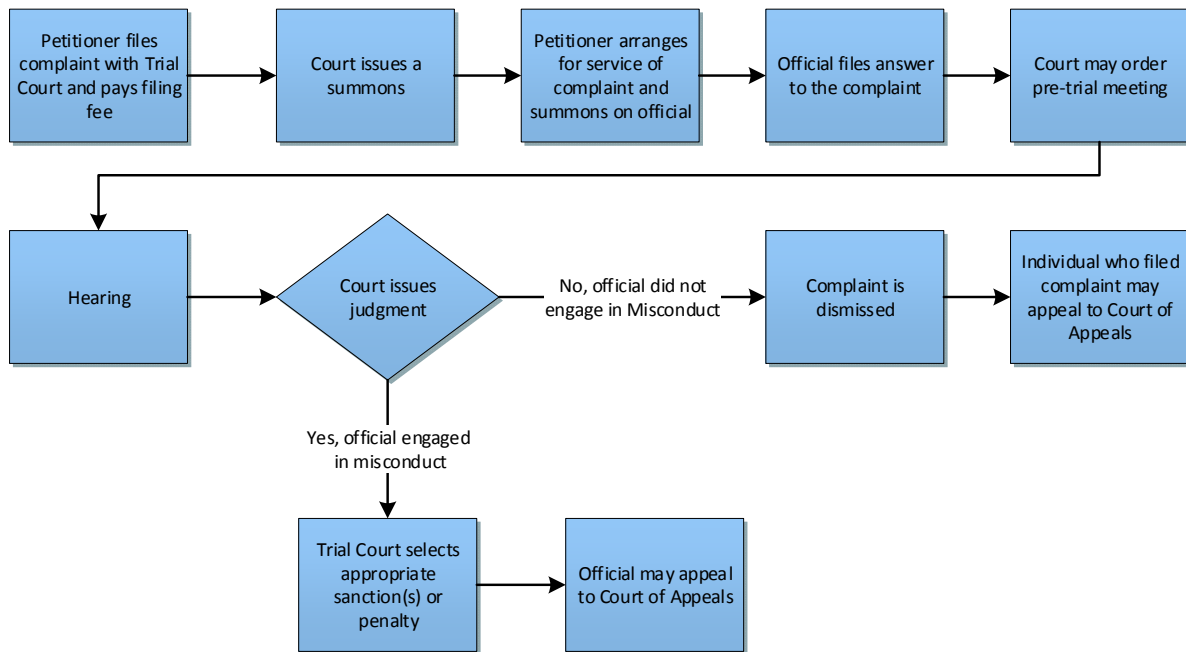
124 ▪ *Who Can File a Complaint?* Under this law, any enrolled member of the Nation or employee of the
125 Nation age 18 years or older can file a complaint, so long as they have knowledge or reason to
126 believe that an official has committed misconduct. Entities of the Nation, such as a board,
127 committee or commission, can also file complaints against elected officials.

128 ▪ *When to File Complaint?* The complaint must be filed within 90 days of when the alleged
129 misconduct occurred or was discovered [120.5-1 & 5-2].

- 130 ▪ *Contents of the Complaint.* Complaints must include the following information [120.5-3]:
- 131 ○ Information about the official, including the official’s name and the entity they serve on.
- 132 ○ Information about the alleged misconduct, including date, time, location and specific
- 133 details.
- 134 ○ The specific law, policy, rule or bylaw that the official violated.
- 135 ○ Information about any witnesses or others with knowledge of the violation.
- 136 ○ Contact information of the individual filing the complaint.
- 137 ○ Supporting documents and any other information required by the Rules of Civil Procedure
- 138 [8 O.C. 803.5-1].
- 139 ▪ *Where to File Complaints?* Complaints against elected officials are filed with the Trial Court, with
- 140 is located within the Oneida Judiciary [120.5-4].
- 141 ▪ *Retaliation.* Retaliation against someone who files a complaint or cooperates with a misconduct
- 142 investigation is not allowed [120.5-5].
- 143 **C. *Complaint Procedure.*** Complaints against elected officials, including members of the Oneida Business
- 144 Committee, will be heard by the Nation’s Trial Court [120.6-1]. The law outlines the process for how
- 145 the Judiciary will hear the complaint:
- 146 ▪ *Right to an Attorney or Advocate.* Any official who has been accused of misconduct has the right
- 147 to be represented by an attorney or an advocate, at their own expense [120.6-2].
- 148 ○ *Legal Resource Center.* The Legal Resource Center Law established an office to provide
- 149 legal advice and representation to Tribal members and employees in cases before the
- 150 Judiciary.
- 151 ▪ *Burden of Proof.* The burden of proof for allegations made under this law is “clear and convincing
- 152 evidence” [120.6-3]. This is the same standard the Nation uses in misconduct cases against judges
- 153 in the Oneida Judiciary [8 O.C. 801.12-6(c)].
- 154 ○ This means that the person filing the complaint must provide evidence “indicating that the
- 155 [allegation] to be proved is highly probably or reasonably certain” [Black’s Law
- 156 Dictionary]. This is a greater burden than “preponderance of the evidence,” the standard
- 157 in most civil trials, but less than evidence “beyond a reasonable doubt,” which is used for
- 158 criminal trials.
- 159 ▪ *Confidentiality.* All complaints against officials of the nation will be handled confidentially, with
- 160 hearings and proceedings regarding the complaint closed to the public. Records of the hearings will
- 161 be kept confidential. However, the final decision of the Judiciary and any sanctions and penalties
- 162 imposed against an official will be public information [120.6-4].
- 163 ○ *Judiciary Law.* The Judiciary Law states that proceedings of the court are open to the public
- 164 except for peacemaking, mediation, proceedings where the judge has safety or
- 165 confidentiality concerns, or “if expressly prohibited by law” [8 O.C. 801.4-4].
- 166 **D. *Hearings Under Rules of Civil Procedure.*** All hearings under this law must follow the Judiciary Rules
- 167 of Civil Procedure. The following is a brief overview of how a civil case is processed by the Trial Court
- 168 using the Rules of Civil Procedure. For more detailed information regarding the trial court process, see
- 169 the Judiciary Rules of Civil of Civil Procedure in the Nation’s Code of Laws.
- 170 ▪ *Petitioner Files a Complaint with the Trial Court and Pays Filing Fee.* The Trial Court has a
- 171 standard complaint form with instructions to fill out the complaint.
- 172 ○ *Complaint.* At the time this analysis was drafted, the Rules of Civil Procedure require the
- 173 complaint to include the full name and address of the plaintiff and defendant, why the

- 174 defendant is being sued, facts supporting each claim, why the trial court has jurisdiction,
175 specifically what relief is sought from the defendant, and a summons [*Oneida Judiciary*
176 *Rules of Civil Procedure 803.5-1*].
- 177 ○ *Filing Fee.* The Oneida Judiciary Trial Court currently charges a \$50 filing fee to file a
178 general civil case. However, individuals may request a fee waiver from the court for the
179 following reasons: unemployed, health/medical, or below poverty level.
 - 180 ○ *Summons:* A summons is a document ordering a defendant to appear before a judge. The
181 Trial Court has a standard summons form.
 - 182 ■ *Complaint and Summons are served on Official.* The complaint and summons must be delivered to
183 the elected official within 30 days after the complaint is filed. In addition, for complaints against
184 officials, notice must also be served to the Secretary’s office. The petitioner must provide proof to
185 the Court that the complaint and summons were delivered to the defendant within 10 days of
186 delivery. If proof of service is not completed, then the case will be dismissed [*Rules of Civil*
187 *Procedure 8 O.C. 803.5*].
 - 188 ■ *Official Files an Answer.* The official responds to the complaint by filing an answer. The official
189 can either admit to or deny the allegations made in the complaint and provide defenses to each
190 claim made in the complaint [*Rules of Civil Procedure 8 O.C. 803.7*].
 - 191 ■ *Pre-Trial Meeting.* A pre-trial meeting may be scheduled between the judge, petitioner and
192 defendant. The purpose for this meeting could include preparing for the trial, creating a plan
193 regarding discovery, or facilitating a settlement, such as peacemaking [*Rules of Civil Procedure*
194 *803.12*].
 - 195 ■ *Hearing.* Hearings are conducted in accordance with the Rules of Civil Procedure, which may
196 include opening statements, presentation of the parties’ cases, rebuttals and closing statements
197 [*Rules of Civil Procedure 8 O.C. 803.38*].
 - 198 ■ *Judgment.* If the Trial Court determines, by clear and convincing evidence, that there is enough
199 evidence to substantiate the allegations of misconduct by the official, then the Trial Court will
200 impose any sanctions and penalties that they deem appropriate. If the Trial Court does not find
201 there is clear and convincing evidence to support the allegations, the complaint will be dismissed
202 [*120.6-5*].
 - 203 ■ *Appeals.* Both the official accused of misconduct and the individual who filed the complaint have
204 the right to appeal the decision of the Trial Court to the Court of Appeals. The appeal must be filed
205 with the Court of Appeals in accordance with the Rules of Appellate Procedure [*120.6-6*].
 - 206 ○ *Timeline for Appeal.* Appeals of judgments of the Trial Court must be filed with the Court
207 of Appeals within 30 days after the judgment was rendered [*8 O.C 805.5-2(a)*].
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218 **Chart 2. Complaint Process Against Elected Officials – Overview of Rules of Civil Procedure.**
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222 **E. Sanctions and Penalties.** This law includes a list of sanctions and penalties that may be imposed on
223 an official for misconduct in office. The Trial Court is responsible for imposing sanctions on an elected
224 official. Officials may receive one or more of the following penalties. The Trial Court will select
225 whichever penalty it deems appropriate [120.7].

- 226 ■ *Conditional Penalties.* Sanctions and penalties may be imposed on a conditional basis. For
227 example, an official could be ordered to make a public apology and attend mandatory training, or
228 otherwise face suspension [120.7-4].
- 229 ■ *Failure to Comply.* If an official fails to comply with a sanction or penalty imposed against them,
230 that official can face additional sanctions as a result of additional misconduct complaints under this
231 law. An example would be an official failing to pay a fine, failing to attend mandatory training or
232 violating the terms of their suspension [120.7-6].

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Chart 3. List of Potential Sanctions and Penalties

- **Verbal Reprimand**
- **Public Apology**
- **Written Reprimand**
- **Suspension**
- **Restitution**
- **Fines**
- **Loss of Stipend**
- **Mandatory Training**
- **Removal, in accordance with Removal Law**

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- **Verbal Reprimand.** During a BC or GTC meeting, the Nation’s chairperson will read a statement describing the official’s misconduct. The chairperson will also state that the official’s behavior was unacceptable and direct the official not to engage in misconduct again [120.7-2(a)].
 - **Public Apology.** An official may be ordered to make a public apology at a BC or GTC meeting. The apology must include a description of the misconduct, a statement that the actions were wrong, a description of the harm caused by the misconduct, and a “clear and unambiguous” apology [120.7-2(b)].
 - **Written Reprimand.** The Judiciary Trial Court may publish a written reprimand in the Nation’s official media outlets. The Nation’s official media outlets are the Oneida Nation website and the Kalihwisaks newspaper [BC Resolution #03-22-17-B]. The written reprimand will include the same information as a verbal reprimand [120.7-2(c)].
 - **Suspension.** The Trial Court may suspend part-time officials for up to two (2) meetings. Full-time officials, such as members of the Business Committee or Gaming Commission, may be suspended for up to fifteen (15) business days. During a suspension, the official cannot attend meetings, trainings, or conferences. The official also cannot vote or perform work for the entity. In addition, the official cannot earn any stipends, salary or mileage during the suspension [120.7-2(d)].
 - **Multiple Suspensions on One Entity.** If multiple officials on the same entity are suspended at the same time, the suspensions must be imposed on a staggered basis so that the business of the Nation is not interrupted. For example, if multiple members of the Business Committee are suspended, each member will be suspended one at a time on a staggered basis [120.7-2(d)(3)].
 - **Restitution.** An official can be ordered to pay restitution, which means paying back any improperly received benefit, such as returning funds or paying to replace damaged property. The point of restitution is to make someone whole. [120.7-2(e)].
 - **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 \$2500 [120.7-2(f)].
 - **Fine Process.** All fines will be paid to the trial court and deposited into the Nation’s General Fund. Officials must pay their fine within 90 days after the fine is issued or upheld on final appeal. If the fine is not paid on time, the Nation may collect the money through garnishment or the official’s per capita payment.
 - **Community Service Alternative.** An official can complete community service to make up all or part of their fine. The rate earned for community service will be the Nation’s minimum wage, which is currently \$10.10 per hour. The Nation currently allows community service for fines issued in the Hunting, Fishing and Trapping Law [Hunting Fishing and Trapping 4 O.C. 406.10-5(a)].
 - **Loss of Stipend.** An official may lose their stipend for up to two (2) meetings. Members of elected boards may receive up to two (2) meeting stipends per month, so this could amount to the loss of one month’s stipends for a member of a board that meets twice monthly [Boards, Committees and Commissions law 1 O.C. 105.13-3(b)].
 - **Mandatory Training.** An official can be ordered to complete a mandatory training program to address their behavior. Examples include anger management or sexual harassment training [120.7-2(h)].

- 278 ▪ **Removal.** The Trial Court can recommend that the removal process be initiated for an official in
279 accordance with the Removal Law. However, this would only be a recommendation. The Removal
280 Law provides a strict process that must be followed to remove elected officials [120.7-2(i)].
- 281 ○ *Removal Law Process.* In order to remove an elected official, an eligible voter must file a
282 petition with the Secretary signed by at least 30% of the vote cast in the previous general
283 election. For example, the number of votes cast in the 2017 general election was 1612, so
284 the number of signatures needed to initiate removal is approximately 484. Then, the
285 Judiciary conducts a preliminary review to determine whether there is sufficient grounds
286 for removal. If so, the Judiciary holds a hearing. If the Judiciary determines that sufficient
287 grounds for removal has been proven, the findings are forwarded to the Nation's
288 Chairperson, who schedules a GTC meeting. At the GTC meeting, an elected official may
289 be removed from office after a 2/3 vote [Removal Law 1 O.C. 104].
- 290 **F. Factors in Determining Appropriate Sanction and/or Penalty.** The Trial Court may consider the
291 following when deciding which sanction or penalty to apply [120.7-3].
- 292 ▪ How severe the misconduct was, whether it was intentional, and how likely the official is to repeat
293 the misconduct.
- 294 ▪ The damage to the finances or reputation of the Nation, the entity, or any person or organization.
- 295 ▪ Whether the official has expressed remorse and is willing to take steps to correct the harm done.
- 296 ▪ Whether any prior complaints have been filed against the official. For example, whether this is the
297 first complaint against the official or represents a pattern of behavior.
- 298 **G. Civil Liability and Criminal Prosecution.** In addition to the sanctions and penalties in this law, an
299 official who commits misconduct may also experience other consequences. These include [120.7-5]:
- 300 ▪ Removal from office in accordance with the Removal law.
- 301 ▪ Criminal prosecution, if the official violated a criminal law. For example, criminal charges for theft
302 or violent acts.
- 303 ▪ Civil liability, in accordance with any applicable law of any jurisdiction. For example, a lawsuit for
304 damages.
- 305 ▪ Any other penalties listed in another law of the Oneida Nation.
- 306 ○ For example, a violation of the Computer Resources Ordinance may result in loss of access
307 to the Nation's computer resources [Computer Resources Ordinance 2 O.C. 215.9-1].
- 308 **H. Effect of Resignation by an Official.** If an official resigns from office after a complaint has been filed,
309 that complaint will still be investigated and sanctions and penalties may still be pursued. Resigning
310 from office does not end or prevent an investigation [120.8].
- 311 **I. Record of Conduct in Office.** A record of conduct for each official will be maintained by the BC
312 Support Office, which will include copies of complaints filed against the official, outcome of the
313 complaints, and any sanctions and penalties the official received. This record will be maintained for at
314 least seven (7) years [120.9].
- 315 ▪ *Public Access to Record of Conduct.* The record of conduct maintained by the BC Support Office
316 will only be made available for review to the Trial Court. The purpose of the record of conduct is
317 so that the Trial Court can review previous complaints against the official when determining a
318 potential sanction or penalty [120.6-4(b)].
- 319 ▪ *Public Access to BC & Trial Court Decisions.* However, the decisions of the Trial Court regarding
320 a complaint against an elected official and any sanctions and penalties imposed against an official
321 will be public information [120.6-4(c)].

322 **SECTION 6. EFFECT ON EXISTING LEGISLATION**

- 323 **A. *References to the Other Laws of the Nation:*** The following laws of the Nation are referenced in this
324 law. This law does not conflict with any of the referenced laws.
- 325 ▪ *Rules of Civil Procedure.* Complaints against an official shall be filed in accordance with the
326 Nation’s Trial Court in accordance with the Rules of Civil Procedure [120.5-4].
 - 327 ▪ *Rules of Appellate Procedure.* Appeals of the Trial Court’s decision shall be filed pursuant to the
328 Nation’s Rules of Appellate Procedure.
 - 329 ▪ *Garnishment Law.* If an official is ordered to pay a fine in accordance with this law and does not
330 pay according to the deadline, the Trial Court may seek to collect that fine through the Nation’s
331 garnishment process [120.7-2(f)(2)].
 - 332 ▪ *Per Capita Law.* If an official is ordered to pay a fine in accordance with this law and does not pay
333 according to the deadline, the Trial Court may seek to collect that fine through the Nation’s per
334 capita attachment process [120.7-2(f)(2)].
- 335

336 **SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS**

- 337 **A. *Due Process.*** Officials accused of misconduct have the right to be represented by an attorney or
338 advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to
339 appear at the investigatory hearing to answer the allegations, provide witness testimony, documents and
340 evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.
- 341

342 **SECTION 8. OTHER CONSIDERATIONS**

- 343 **A. *Complaints against Judiciary.*** The Judiciary Law already contains a process for reprimand,
344 suspension and removal of judges for willful misconduct in office. The complaint and hearing
345 procedure for complaints against judges can be found in the Judiciary law [Judiciary law 8 O.C.
346 801.12]. Therefore, the Judiciary is not included in this law.
- 347 **B. *Judiciary Conflicts of Interest.*** The Oneida Tribal Judiciary Canons of Judicial Conduct requires a
348 Judge to withdraw from any matter where the Judge has or could be perceived to have a conflict of
349 interest. Violating the Oneida Tribal Judiciary Canons of Judicial Conduct would be grounds for
350 reprimand under the Nation’s Judiciary law [Judiciary Canons of Judicial Conduct 8 O.C. 802.2-2].
- 351 **C. *Complaints Against Appointed Officials.*** This law applies to elected officials only. Appointed officials
352 are appointed by the Oneida Business Committee in accordance with the Boards, Committees and
353 Commissions law and serve at BC’s discretion. If an appointed official commits misconduct, the that
354 official’s board, committee or commission or a member of the BC may recommend termination of
355 appointment. A member of an appointed entity may have their appointment terminated by a 2/3 majority
356 vote of the Oneida Business Committee [Boards, Committees and Commissions 1 O.C. 105.7-4].
- 357 **D. *Code of Ethics.*** Most other tribal, municipal and state governments place sanctions and penalties within
358 their Code of Ethics law. This makes sense, as the Code of Ethics and Sanctions and Penalties are
359 closely related. The Code of Ethics is currently on the LOC’s Active Files List for potential
360 amendments. Updating the Code of Ethics would provide additional guidance to elected officials,
361 individuals filing complaints, and the Judiciary when they begin hearing complaints under this law.
- 362 **E. *Comparison to Other Nations.*** Research of other tribal nations and municipalities indicate that there
363 are many different processes for sanctions and penalties of public officials. There is no uniform standard

364 used by all tribal governments. Examples of other sanctions and penalties processes are provided for
365 information:

366
367

Chart 4. Sanctions and Penalties Process of other Tribal Nations

Tribe	Where Complaints Are Filed	Who Investigates or Hears the Complaint	Who Decides the Sanction or Penalty
Siletz	Tribal Council*	Ad Hoc Committee or Special Advisor appointed by Tribal Council*	Tribal Council*
Ho Chunk	Judiciary	Judiciary	President
Rosebud Sioux	Ethics Commission, appointed by Tribal Council*	Ethics Commission, appointed by Tribal Council*	Tribal Council*
Skokomish	Ethics Officer, appointed by Tribal Council*	Ethics Officer, appointed by Tribal Council*	Chairman

368 *Note that “Tribal Council” refers to an elected body similar to the Oneida Business Committee.
369

370 **F. Number of Potential Complaints.** Since the Nation currently has no formal sanctions and penalties
371 process, it is not possible to predict the number of complaints that may be filed against elected officials.

- 372 ▪ *Conclusion:* Given the uncertainty regarding the number of potential complaints, the Judiciary
373 should be prepared to potentially process a large number of complaints upon passage of this
374 law.

375 **G. Impact of Suspension on Full-Time Officials.** Members of the Oneida Business Committee and
376 Oneida Gaming Commission are full-time elected officials. Therefore, suspension of these officials
377 would impact salaries, benefits such as health insurance, and access to workplaces. The Human
378 Resources Department reports that they have a suspension procedure in place for employees of the
379 Nation, and that this procedure could be applied or modified for suspension of full-time officials.

- 380 ▪ *Conclusion:* Since notifications of suspension go to the BC Support Office, it is suggested that
381 the BC Support Office work with HRD to develop a process should suspensions of full-time
382 BC members or Gaming Commissioners occur.

383 **H. Rules of Civil Procedure.** Complaints filed in the Judiciary Trial Court must follow the Judiciary Rules
384 of Civil Procedure. At the time this analysis was drafted, the Judiciary Rules of Civil Procedure is on
385 the LOC’s Active Files List and may be amended in the future.

386 **I. Fiscal Impact.** Please refer to the fiscal impact statement for any fiscal impacts.

- 387 ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except
388 emergency legislation [*Legislative Procedures Act 1 O.C. 109.6-1*].
- 389 ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating
390 Committee and may be prepared by any agency who may receive funding if the legislation is
391 enacted; who may administer a program if the legislation is enacted; who may have financial
392 information concerning the subject matter of the legislation; or by the Finance Office, upon request
393 of the Legislative Operating Committee [*Legislative Procedures Act 1 O.C. 109.6-1(a and b)*].

394

Title 1. Government and Finances - Chapter 120

SANCTIONS AND PENALTIES

Kalihwahnila-t&= Okhale> Atatihwa>thlew@htu Kayanl^sla

Giving strength to the issues and Forgiving oneself for the issue at hand Laws

SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS

~~120.1. Purpose and Policy~~

~~120.2. Adoption, Amendment, Repeal~~

~~120.3. Definitions~~

~~120.4. Misconduct~~ 120.1. Purpose and Policy

120.2. Adoption, Amendment, Repeal

120.3. Definitions

120.4. Misconduct

120.5. Filing of a Complaint

120.6. Complaint Procedure

120.7. Sanctions and Penalties

120.8. Effect of Resignation by an Official

120.9. Record of Conduct in Office

120.5. Filing of a Complaint

120.6. Complaint Alleged Against an Appointed Official

120.7. Complaint Alleged Against an Elected Official

120.8. Sanctions and Penalties

120.9. Effect of Resignation by an Official

120.10. Record of Conduct in Office

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 penalties
4 that may be imposed upon elected ~~and appointed~~ officials of the Nation for misconduct in office
5 for the purpose of providing an opportunity for the official to take corrective action to address the
6 misconduct and promote accountability and improved performance of the official.

7 (a) This law applies to members of the Oneida Business Committee.

8 (b) This law does not apply to judges of the Oneida Nation Judiciary.

9 (c) This law does not apply to members of corporate entities of the Nation.

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

14 120.1-3. It is the intent of the Nation that all elected ~~and appointed~~ officials strive to exhibit and
15 uphold the Nation's core values of The Good Mind as expressed by On<yote>a=ka, which includes:

16 (a) Kahletsyal&sla. The heart felt encouragement of the best in each of us.

17 (b) Kanolukhw@sla. Compassion, caring, identity, and joy of being.

18 (c) Ka>nikuhli=y%. The openness of the good spirit and mind.

19 (d) Ka>tshatst^sla. The strength of belief and vision as a People.

20 (e) Kalihwi=y%. The use of the good words about ourselves, our Nation, and our future.

21 (f) Twahwahts\$lay<. All of us are family.

22 (g) Yukwats\$stay<. Our fire, our spirit within each one of us.

23

24 **120.2. Adoption, Amendment, Repeal**

25 120.2-1. This law was adopted by the General Tribal Council by resolution GTC-__-__-__-__.

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

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

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

33 120.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

34

35 **120.3. Definitions**

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

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

41 ~~(b) “Answer” means a formal written statement addressing the dispute on the merits~~
42 ~~and presents any defenses and counterclaims.~~

43 ~~(e)~~(a) “Business Committee Support Office” means the office that provides administrative
44 support for the Oneida Business Committee and various other governmental operations.

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

47 ~~(e)~~c) “Clear and convincing evidence” means that it is substantially more likely than not
48 that the facts presented are true.

49 ~~(f)~~d) “Complainant” means an individual who has made a complaint.

50 ~~(g)~~e) “Constitution” means the Constitution and By-Laws of the Oneida Nation.

51 ~~(h)~~f) “Court of Appeals” means the Court of Appeals of the Oneida Nation Judiciary.

52 ~~(i)~~g) “Entity” means a board, committee, commission, office, ~~unincorporated agency,~~ or
53 other group of the Nation an individual may be ~~appointed or~~ elected to serve a position on,
54 including the Oneida Business Committee.

55 ~~(j) “Frivolous” means a complaint without any reasonable basis or merit, that cannot be~~
56 ~~supported by a good faith argument. Most often frivolous complaints are intended to~~
57 ~~merely harass, delay, or embarrass the opposition.~~

58 ~~(k)~~(h) “Misconduct” means wrongful, improper or unlawful conduct or behavior.

59 ~~(l)~~i) “Nation” means the Oneida Nation.

60 ~~(m)~~j) “Official” means any person who is elected ~~or appointed~~ to serve a position for the
61 Nation, including, but not limited to, a position on a board, committee, commission, or
62 office of the Nation, including the Oneida Business Committee.

63 ~~(n)~~k) “Restitution” means compensation to an individual or entity for an injury, damage or
64 loss.

65 ~~(o)~~l) “Stipend” means the amount paid by the Oneida Nation to elected individuals serving
66 on boards, committees and commissions of the Nation to offset the expenses of being a
67 member on the board, committee or commission.

68 ~~(p)~~m) “Substantiate” means to find that the complaint or allegation in the complaint is valid
69 because there is clear and convincing evidence.

70 ~~(q)~~n) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the
71 judicial system that was established by Oneida General Tribal Council resolution GTC-01-
72 07-13-B, and then later authorized to administer the judicial authorities and responsibilities
73 of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

74

75 **120.4. Misconduct**

76 120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest
77 ethical and moral standard. High moral and ethical standards amongst officials of the Nation is
78 essential to the conduct of government.

79 120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which
80 constitutes misconduct. Misconduct includes:

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

88
89 **120.5. Filing of a Complaint**

90 120.5-1. *Who May File.* Any individual at least eighteen (18) years of age or older, ~~or~~ who is an
91 enrolled member of the Nation or an employee of the Nation, or an entity, who in good faith, has
92 knowledge or reason to believe that an official has committed misconduct, may file a written
93 complaint.

94 120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred,
95 or was discovered to have occurred, within the previous ninety (90) days.

96 120.5-3. *Contents of the Complaint.* The complaint alleging misconduct by an official shall
97 include the following information:

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

113 120.5-4. *Where to File.*

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

116 ~~(b) Elected Official.~~ Complaints against an ~~elected~~ official shall be filed with the Nation’s Trial
117 Court pursuant to the Nation’s Rules of Civil Procedure.

118 120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party
119 or witness to a complaint is prohibited. This protection shall also be afforded to any person offering
120 testimony or evidence or complying with directives authorized under this law. Retaliation shall
121 include any form of adverse or punitive action by, or caused by, any official.

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

126
127 **120.5-6. Complaint Procedure**

128 ~~120.6-1. *Jurisdiction of the Trial Court.* The Trial Court shall have jurisdiction to hear complaints~~
129 ~~of alleged misconduct of officials.~~

130 ~~120.6-2.~~ Any official who is the subject of a complaint has the right to be represented by an
131 attorney or advocate, at his or her own expense, for any actions or proceedings related to the
132 complaint.

133 ~~120.5-76-3. *Burden of Proof.* In a civil action against an official for misconduct, the complainant~~
134 ~~has the burden of proving by clear and convincing evidence that the official engaged in~~
135 ~~misconduct.~~

136 ~~120.6-4. *Confidentiality.* All complaints alleged against an official of the Nation shall be handled~~
137 ~~in a confidential manner.~~

138 (a) All hearings and/or proceedings related to a complaint shall be closed to the general
139 public.

140 (b) All records of hearings and/or proceedings shall not be subject to public review or
141 inspection. An official’s record of conduct shall only be made available for review ~~to the~~
142 ~~Oneida Business Committee and~~by the Trial Court.

143 (c) *Exception.* A decision of the Trial Court ~~or the Oneida Business Committee~~ regarding
144 a complaint alleged against an official, and any sanctions and/or penalties that are imposed
145 against an official, shall be public information.

146
147 ~~120.6-Complaints Alleged Against an Appointed Official~~

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

151 ~~120.6-2. *Receipt of Complaint.* Upon receiving a complaint, the Business Committee Support~~
152 ~~Office shall:~~

153 (a) ~~immediately forward copies of the complaint, including any supporting documentation,~~
154 ~~to:~~

155 (1) ~~all members of the Oneida Business Committee for review; and~~

156 (2) ~~the individual who is the subject of the complaint.~~

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

160 ~~120.6-3. *Mediation.* The complainant or the official who is the subject of the complaint shall have~~
161 ~~up to five (5) business days after the initial receipt of the complaint to contact the Business~~
162 ~~Committee Support Office and request mediation.~~

163 (a) ~~If both the complainant and the official who is the subject of the complaint agree to~~
164 ~~mediation, then the Business Committee Support Office shall schedule a mediation~~
165 ~~between the parties. The intent of this mediation meeting is to resolve the complaint prior~~
166 ~~to commencing an initial review.~~

167 ~~(b) The Business Committee Support Office shall utilize a trained mediator to facilitate~~
168 ~~the mediation meeting. Every mediator shall have at least twenty five (25) hours of~~
169 ~~mediation training or at least three (3) years of experience in dispute resolution.~~

170 ~~(c) The mediation shall occur before the investigatory hearing is scheduled to take place.~~

171 ~~(d) If a resolution is reached during mediation, the Oneida Business Committee shall be~~
172 ~~informed of the resolution before the initial review and the complaint shall be formally~~
173 ~~dismissed during the initial review.~~

174 ~~(e) If the matter is not resolved through mediation, the initial review shall occur as~~
175 ~~prescribed by this law.~~

176 ~~120.6 4. Answer to the Complaint.~~ The individual who is the subject of the complaint shall have
177 ~~ten (10) business days after receiving his or her copy of the complaint, to submit to the Business~~
178 ~~Committee Support Office a written answer setting forth any admission, denial, affirmative~~
179 ~~defense, or other relevant information upon which the official intends to rely during proceedings~~
180 ~~related to the complaint.~~

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

184 ~~120.6 5. Conflict of Interest.~~ An Oneida Business Committee member that has a conflict of
185 ~~interest in a complaint brought before the Oneida Business Committee, shall immediately recuse~~
186 ~~himself or herself and shall not participate in any portion of the complaint process.~~

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

189 ~~120.6 6. Initial Review.~~ The Oneida Business Committee shall perform an initial review of an
190 ~~allegation of misconduct on the part of an official. The purpose of the initial review shall be to~~
191 ~~determine whether the allegation made within the complaint has merit.~~

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

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

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

199 ~~(1) Upon a finding that the complaint has merit, the Oneida Business Committee~~
200 ~~shall schedule an investigatory hearing to consider the specific allegations~~
201 ~~identified in the complaint.~~

202 ~~(A) The investigatory hearing shall occur within thirty (30) business days~~
203 ~~after the initial review has concluded and shall take place during the~~
204 ~~executive session portion of the agenda of a regular or special meeting of~~
205 ~~the Oneida Business Committee.~~

206 ~~(2) Upon finding that a complaint has no merit, the Oneida Business Committee~~
207 ~~shall dismiss the complaint. The Oneida Business Committee shall send notice that~~
208 ~~the complaint was dismissed to the complainant and the official who is the subject~~
209 ~~of the complaint within five (5) business days.~~

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

213 ~~(i) a fine not to exceed five hundred dollars (\$500);~~

214 ~~(ii) prohibition from filing another complaint for a period of time~~
215 ~~not to exceed one (1) year; and/or~~

216 ~~(iii) a civil suit in the Nation's Trial Court brought by the official~~
217 ~~accused by the frivolous, false or malicious allegation.~~

218 ~~120.6-7. Notice of the Investigatory Hearing. The Business Committee Support Office shall~~
219 ~~provide the complainant, the official who is the subject of the complaint, and any other individual~~
220 ~~compelled to attend the hearing with written notice of the date and the time of the investigatory~~
221 ~~hearing at least ten (10) business days before the investigatory hearing.~~

222 ~~120.6-8. Investigatory Hearing. The purpose of the investigatory hearing is for the Oneida~~
223 ~~Business Committee to determine if there is enough evidence to substantiate the allegations of~~
224 ~~misconduct by clear and convincing evidence.~~

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

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

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

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

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

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

238 ~~120.6-9. Deliberation of the Oneida Business Committee. At the conclusion of the investigatory~~
239 ~~hearing, the Oneida Business Committee shall excuse everyone from executive session for the~~
240 ~~deliberation of the Oneida Business Committee. Prior to making a final determination as to~~
241 ~~whether to substantiate the complaint, the Oneida Business Committee shall:~~

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

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

246 ~~120.6-10. Determination by the Oneida Business Committee. After the investigatory hearing has~~
247 ~~concluded and the Oneida Business Committee has deliberated, the Oneida Business Committee~~
248 ~~shall in open session of a regular or special Oneida Business Committee meeting, by majority vote,~~
249 ~~declare whether the Oneida Business Committee has determined there is enough evidence to~~
250 ~~substantiate the allegations of misconduct by clear and convincing evidence.~~

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

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

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

259 ~~(1) the complainant,~~

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

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

~~120.6-11. 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 pursuant to the Nation's Rules of Appellate Procedure. 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.~~

120.7. Complaints Alleged Against an Elected Official

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

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

~~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.~~

~~120.7-4-6-6. Appeal. The complainant and the official who is the subject of the complaint shall both have the right to appeal the Trial Court's decision to the Court of Appeals pursuant to the Nation's Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Trial Court'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.~~

~~120.6-7-5. 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.~~

120.8-7. Sanctions and Penalties

~~120.8-7-1. 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.~~

~~120.8-7-2. 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.~~

306 (2) To impose the verbal reprimand, the presiding Oneida Business Committee
307 Chairperson, or another Oneida Business Committee member if the verbal
308 reprimand is imposed against the presiding Oneida Business Committee
309 Chairperson, shall read a statement that identifies:

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

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

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

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

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

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

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

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

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

327 (c) *Written Reprimand*. A written reprimand may be imposed on the official by publication
328 on the Nation’s official media outlets, as determined by the Oneida Business Committee.
329 ~~The Oneida Business Committee or the~~ The Trial Court may publish a written reprimand
330 which includes the information required for the verbal reprimand as stated in section
331 120.87-2(a)(2)(A)-(D).

332 (d) *Suspension*. An official may be suspended from performing his or her duties as an
333 official for a period of time not to exceed two (2) meetings, or fifteen (15) business days if
334 the official serves in a full-time capacity.

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

336 (A) attend meetings, trainings or any other event as part of the entity;

337 (B) attend conferences or other events on behalf of, or as a representative
338 of, the entity;

339 (C) vote or participate in any activities of the entity;

340 (D) perform work on behalf of the entity; or

341 (E) be eligible for any compensation, including regular pay, stipends, or
342 mileage reimbursement.

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

346 (3) If a suspension is imposed on multiple officials of the same entity at one time,
347 the ~~Oneida Business Committee or the~~ Trial Court shall impose the suspensions of
348 the officials on a staggered basis to avoid an interruption of the official business
349 and function of the entity.

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

353 (f) *Fines*. An official may be ordered to pay a fine not to exceed two thousand and five
354 hundred dollars (\$2,500).

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

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

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

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

363 (g) *Loss of Stipend*. An official may be ordered to forfeit a stipend for his or her service
364 on an entity not to exceed two (2) meetings.

365 (h) *Mandatory Participation in Training*. An official may be ordered to participate in and
366 complete a training class or program that will assist the official in addressing and
367 improving his or her behaviors and/or actions.

368 (1) The mandated training class or program may address a variety of topics
369 including, but not limited to, anger management, sexual harassment, or other
370 sensitivity training.

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

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

376 120.87-3. *Factors in Determining an Appropriate Sanction and/or Penalty*. When determining
377 the appropriate sanction or sanctions to impose, the ~~Oneida Business Committee or the~~ Trial Court
378 may consider all factors it deems relevant, including but not limited to:

379 (a) the seriousness or severity of the misconduct;

380 (b) whether the conduct was intentional or not;

381 (c) the likelihood of repetition;

382 (d) the extent of probable damage to the finances or reputation of the Nation, the
383 complainant, the entity, or to any other person or organization;

384 (e) whether the official or his or her family personally profited, financially or otherwise,
385 from the prohibited conduct;

386 (f) the official’s remorse, or

387 (g) the official’s willingness and ability to take steps to mitigate the harm caused by the
388 violation, and

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

391 120.87-4. The ~~Oneida Business Committee and/or the~~ Trial Court may impose a sanction and/or
392 penalty on a conditional basis, whereas compliance with a specific sanction and/or penalty shall
393 prevent the imposition of a more stringent or burdensome sanction and/or penalty.

394 120.87-5. The imposition of sanctions and/or penalties in accordance with this law does not
395 exempt an official from individual liability for the underlying misconduct, and does not limit any
396 penalties that may be imposed in accordance with other applicable laws. In addition to any
397 sanctions and penalties that may be imposed in accordance with this law, officials who commit
398 misconduct in office may be subject to other consequences; including but not limited to:

399 (a) removal in accordance with the Nation’s laws and/or policies governing removal, ~~if an~~
400 ~~electd official;~~;

401 (b) ~~termination of appointment by the Oneida Business Committee, if an appointed official;~~

402 ~~(e)~~ criminal prosecution, for misconduct that also violates applicable criminal law;

403 ~~(d)~~ civil liability, in accordance with the applicable law of any jurisdiction; and/or

404 ~~(e)~~ penalties for specific misconduct as authorized by any other law of the Nation.

405 120.87-6. An official who does not comply with a sanction and/or penalty that has been imposed
406 against him or her by ~~either the Oneida Business Committee or~~ the Trial Court may be subject to
407 the following:

408 (a) additional sanctions and/or penalties that result from a complaint of misconduct filed
409 in accordance with this Law based on the non-compliance;

410 ~~(b) termination of appointment by the Oneida Business Committee in accordance with the~~
411 ~~Nation’s laws and policies governing boards, committees, and commissions, if the official~~
412 ~~was appointed to his or her position; and/or~~

413 ~~(e)~~ removal in accordance with the Nation’s laws and policies governing removal, ~~if the~~
414 ~~official was elected to his or her position.~~

415
416 **120.98. Effect of Resignation by an Official**

417 120.98-1. The resignation of an official after a complaint has been filed against the official shall
418 not affect the status of the hearing and determination by ~~either the Oneida Business Committee~~
419 ~~or~~ the Trial Court.

420 120.98-2. An official who resigns may still be subject to sanctions and/or penalties at the discretion
421 of the ~~Oneida Business Committee or~~ Trial Court.

422
423 **120.10.9. Record of Conduct in Office**

424 120.109-1. The Business Committee Support Office shall maintain a record of conduct in office
425 for each official.

426 120.109-2. The record of conduct in office maintained for each official shall include, at a
427 minimum:

428 (a) a copy of each complaint filed against the official;

429 (b) recording and/or transcript from any hearings and/or proceedings;

430 (c) the outcome of the complaint, and

431 (d) any sanctions or penalties imposed upon an official.

432 120.109-3. The record of conduct in office for each official shall be maintained for a period of no
433 less than seven (7) years.

434
435 *End.*

436
437 _____
438 Adopted – GTC-__-__-__-__

Title 1. Government and Finances - Chapter 120
Kalihwahnila-t&= Okhale> Atatihwa>thlew@htu Kayanl^sla
Giving strength to the issues and Forgiving oneself for the issue at hand Laws
SANCTIONS AND PENALTIES FOR ELECTED OFFICIALS

120.1. Purpose and Policy
120.2. Adoption, Amendment, Repeal
120.3. Definitions
120.4. Misconduct
120.5. Filing of a Complaint

120.6. Complaint Procedure
120.7. Sanctions and Penalties
120.8. Effect of Resignation by an Official
120.9. Record of Conduct in Office

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 penalties
4 that may be imposed upon elected officials of the Nation for misconduct in office for the purpose
5 of providing an opportunity for the official to take corrective action to address the misconduct and
6 promote accountability and improved performance of the official.

- 7 (a) This law applies to members of the Oneida Business Committee.
8 (b) This law does not apply to judges of the Oneida Nation Judiciary.
9 (c) This law does not apply to members of corporate entities of the Nation.

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

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

- 15 (a) Kahletsyal&sla. The heart felt encouragement of the best in each of us.
16 (b) Kanolukhw@sla. Compassion, caring, identity, and joy of being.
17 (c) Ka>nikuhli=y%. The openness of the good spirit and mind.
18 (d) Ka>tshatst^sla. The strength of belief and vision as a People.
19 (e) Kalihwi=y%. The use of the good words about ourselves, our Nation, and our future.
20 (f) Twahwahts\$lay<. All of us are family.
21 (g) Yukwats\$stay<. 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 considered
29 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) “Business Committee Support Office” means the office that provides administrative
38 support for the Oneida Business Committee and various other governmental operations.
39 (b) “Business day” means Monday through Friday 8:00 a.m. – 4:30 p.m., excluding
40 holidays recognized by the Nation.
41 (c) “Clear and convincing evidence” means that it is substantially more likely than not that
42 the facts presented are true.
43 (d) “Complainant” means an individual who has made a complaint.
44 (e) “Constitution” means the Constitution and By-Laws of the Oneida Nation.
45 (f) “Court of Appeals” means the Court of Appeals of the Oneida Nation Judiciary.
46 (g) “Entity” means a board, committee, commission, office, or other group of the Nation
47 an individual may be elected to serve a position on, including the Oneida Business
48 Committee.
49 (h) “Misconduct” means wrongful, improper or unlawful conduct or behavior.
50 (i) “Nation” means the Oneida Nation.
51 (j) “Official” means any person who is elected to serve a position for the Nation, including,
52 but not limited to, a position on a board, committee, commission, or office of the Nation,
53 including the Oneida Business Committee.
54 (k) “Restitution” means compensation to an individual or entity for an injury, damage or
55 loss.
56 (l) “Stipend” means the amount paid by the Oneida Nation to elected individuals serving
57 on boards, committees and commissions of the Nation to offset the expenses of being a
58 member on the board, committee or commission.
59 (m) “Substantiate” means to find that the complaint or allegation in the complaint is valid
60 because there is clear and convincing evidence.
61 (n) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the
62 judicial system that was established by Oneida General Tribal Council resolution GTC-01-
63 07-13-B, and then later authorized to administer the judicial authorities and responsibilities
64 of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.
65

66 **120.4. Misconduct**

67 120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest
68 ethical and moral standard. High moral and ethical standards amongst officials of the Nation is
69 essential to the conduct of government.

70 120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which
71 constitutes misconduct. Misconduct includes:

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

80 **120.5. Filing of a Complaint**

81 120.5-1. *Who May File.* Any individual at least eighteen (18) years of age or older who is an
82 enrolled member of the Nation or an employee of the Nation, or an entity, who in good faith, has

83 knowledge or reason to believe that an official has committed misconduct, may file a written
84 complaint.

85 120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred,
86 or was discovered to have occurred, within the previous ninety (90) days.

87 120.5-3. *Contents of the Complaint.* The complaint alleging misconduct by an official shall
88 include the following information:

89 (a) The name(s) of the official alleged to have committed the misconduct;

90 (b) The entity or entities upon which the official serves;

91 (c) The specific date(s), time(s), and location(s) of the alleged misconduct;

92 (d) The specific details of the official’s misconduct;

93 (e) The specific provision of law, policy, rule, or bylaw of the Nation allegedly violated
94 by the official;

95 (f) Names of any witnesses of the alleged misconduct, or individuals who may have
96 knowledge pertinent to the alleged misconduct;

97 (g) The contact information for the person filing the complaint, which at minimum shall
98 include the person’s name, address, and telephone number;

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

101 (i) Any supporting documentation; and

102 (j) Any other information required by the Nation’s Rules of Civil Procedure.

103 120.5-4. *Where to File.* Complaints against an official shall be filed with the Nation’s Trial Court
104 pursuant to the Nation’s Rules of Civil Procedure.

105 120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party
106 or witness to a complaint is prohibited. This protection shall also be afforded to any person offering
107 testimony or evidence or complying with directives authorized under this law. Retaliation shall
108 include any form of adverse or punitive action by, or caused by, any official.

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

113

114 **120.6. Complaint Procedure**

115 120.6-1. *Jurisdiction of the Trial Court.* The Trial Court shall have jurisdiction to hear complaints
116 of alleged misconduct of officials.

117 120.6-2. Any official who is the subject of a complaint has the right to be represented by an
118 attorney or advocate, at his or her own expense, for any actions or proceedings related to the
119 complaint.

120 120.6-3. *Burden of Proof.* In a civil action against an official for misconduct, the complainant has
121 the burden of proving by clear and convincing evidence that the official engaged in misconduct.

122 120.6-4. *Confidentiality.* All complaints alleged against an official of the Nation shall be handled
123 in a confidential manner.

124 (a) All hearings and/or proceedings related to a complaint shall be closed to the general
125 public.

126 (b) All records of hearings and/or proceedings shall not be subject to public review or
127 inspection. An official’s record of conduct shall only be made available for review by the
128 Trial Court.

129 (c) *Exception.* A decision of the Trial Court regarding a complaint alleged against an
130 official, and any sanctions and/or penalties that are imposed against an official, shall be
131 public information.

132 120.6-5. *Determination of the Trial Court.* In making a final determination, the Trial Court shall
133 determine if there is enough evidence to substantiate the allegations of misconduct by the official
134 by clear and convincing evidence.

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

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

140 120.6-6. *Appeal.* The complainant and the official who is the subject of the complaint shall both
141 have the right to appeal the Trial Court’s decision to the Court of Appeals pursuant to the Nation’s
142 Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Trial
143 Court’s decision may only be overturned if the Court of Appeals determines that:

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

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

148 120.6-7. The Trial Court shall provide the Business Committee Support Office a copy of the
149 complaint and the determination of the Trial Court for the official’s record of conduct in office.

150

151 **120.7. Sanctions and Penalties**

152 120.7-1. A sanction or penalty, or any combination of sanctions and/or penalties, may be imposed
153 upon the Nation’s officials for misconduct in office, in accordance with this law.

154 120.7-2. Sanctions and penalties may include:

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

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

160 (2) To impose the verbal reprimand, the presiding Oneida Business Committee
161 Chairperson, or another Oneida Business Committee member if the verbal
162 reprimand is imposed against the presiding Oneida Business Committee
163 Chairperson, shall read a statement that identifies:

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

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

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

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

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

- 176 (1) identify the specific misconduct committed by the official;
177 (2) recognize that the official’s actions or inactions were wrong;
178 (3) identify the effects of the official’s misconduct; and
179 (4) include a clear and unambiguous apology from the official.
- 180 (c) *Written Reprimand*. A written reprimand may be imposed on the official by publication
181 on the Nation’s official media outlets, as determined by the Oneida Business Committee.
182 The Trial Court may publish a written reprimand which includes the information required
183 for the verbal reprimand as stated in section 120.7-2(a)(2)(A)-(D).
- 184 (d) *Suspension*. An official may be suspended from performing his or her duties as an
185 official for a period of time not to exceed two (2) meetings, or fifteen (15) business days if
186 the official serves in a full-time capacity.
- 187 (1) During a suspension, the official shall not:
- 188 (A) attend meetings, trainings or any other event as part of the entity;
189 (B) attend conferences or other events on behalf of, or as a representative
190 of, the entity;
191 (C) vote or participate in any activities of the entity;
192 (D) perform work on behalf of the entity; or
193 (E) be eligible for any compensation, including regular pay, stipends, or
194 mileage reimbursement.
- 195 (2) When an official is suspended, the Trial Court shall submit written notices to
196 both the official and to the Business Committee Support Office of the specific start
197 and end date of the suspension.
- 198 (3) If a suspension is imposed on multiple officials of the same entity at one time,
199 the Trial Court shall impose the suspensions of the officials on a staggered basis to
200 avoid an interruption of the official business and function of the entity.
- 201 (e) *Restitution*. An official may be ordered to pay restitution, which may include the
202 repayment of any improperly received benefit, or any other payment which is intended to
203 make another whole after suffering losses as a result of the official’s misconduct.
- 204 (f) *Fines*. An official may be ordered to pay a fine not to exceed two thousand and five
205 hundred dollars (\$2,500).
- 206 (1) Fines shall be paid to the Trial Court.
207 (2) Fines shall be paid within ninety (90) days after the order is issued or upheld
208 on final appeal, whichever is later. If the fine is not paid by this deadline, the Trial
209 Court may seek to collect the money owed through the Nation’s garnishment and/or
210 per capita attachment process.
211 (3) Money received from fines shall be deposited into the General Fund.
212 (4) Community service may be substituted for part or all of any fine at the minimum
213 wage rate of the Nation for each hour of community service.
- 214 (g) *Loss of Stipend*. An official may be ordered to forfeit a stipend for his or her service
215 on an entity not to exceed two (2) meetings.
- 216 (h) *Mandatory Participation in Training*. An official may be ordered to participate in and
217 complete a training class or program that will assist the official in addressing and
218 improving his or her behaviors and/or actions.
- 219 (1) The mandated training class or program may address a variety of topics
220 including, but not limited to, anger management, sexual harassment, or other
221 sensitivity training.

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

224 120.7-3. *Factors in Determining an Appropriate Sanction and/or Penalty*. When determining the
225 appropriate sanction or sanctions to impose, the Trial Court may consider all factors it deems
226 relevant, including but not limited to:

- 227 (a) the seriousness or severity of the misconduct;
- 228 (b) whether the conduct was intentional or not;
- 229 (c) the likelihood of repetition;
- 230 (d) the extent of probable damage to the finances or reputation of the Nation, the
231 complainant, the entity, or to any other person or organization;
- 232 (e) whether the official or his or her family personally profited, financially or otherwise,
233 from the prohibited conduct;
- 234 (f) the official’s remorse, or
- 235 (g) the official’s willingness and ability to take steps to mitigate the harm caused by the
236 violation, and
- 237 (h) any prior complaints filed, including any previous sanctions and penalties imposed
238 upon the official while serving on an entity.

239 120.7-4. The Trial Court may impose a sanction and/or penalty on a conditional basis, whereas
240 compliance with a specific sanction and/or penalty shall prevent the imposition of a more stringent
241 or burdensome sanction and/or penalty.

242 120.7-5. The imposition of sanctions and/or penalties in accordance with this law does not exempt
243 an official from individual liability for the underlying misconduct, and does not limit any penalties
244 that may be imposed in accordance with other applicable laws. In addition to any sanctions and
245 penalties that may be imposed in accordance with this law, officials who commit misconduct in
246 office may be subject to other consequences; including but not limited to:

- 247 (a) removal in accordance with the Nation’s laws and/or policies governing removal;
- 248 (b) criminal prosecution, for misconduct that also violates applicable criminal law;
- 249 (c) civil liability, in accordance with the applicable law of any jurisdiction; and/or
- 250 (d) penalties for specific misconduct as authorized by any other law of the Nation.

251 120.7-6. An official who does not comply with a sanction and/or penalty that has been imposed
252 against him or her by the Trial Court may be subject to the following:

- 253 (a) additional sanctions and/or penalties that result from a complaint of misconduct filed
254 in accordance with this Law based on the non-compliance;
- 255 (b) removal in accordance with the Nation’s laws and policies governing removal.

257 **120.8. Effect of Resignation by an Official**

258 120.8-1. The resignation of an official after a complaint has been filed against the official shall
259 not affect the status of the hearing and determination by the Trial Court.

260 120.8-2. An official who resigns may still be subject to sanctions and/or penalties at the discretion
261 of the Trial Court.

263 **120.9. Record of Conduct in Office**

264 120.9-1. The Business Committee Support Office shall maintain a record of conduct in office for
265 each official.

266 120.9-2. The record of conduct in office maintained for each official shall include, at a minimum:

- 267 (a) a copy of each complaint filed against the official;
- 268 (b) recording and/or transcript from any hearings and/or proceedings;

269 (c) the outcome of the complaint, and
270 (d) any sanctions or penalties imposed upon an official.
271 120.9-3. The record of conduct in office for each official shall be maintained for a period of no
272 less than seven (7) years.

273
274 *End.*

275
276 _____
277 Adopted – GTC- __-__-__-__