



## **LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center

September 20, 2017 9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be approved**
  1. September 6, 2017 LOC Meeting Minutes (pg. 2)
- III. Current Business**
  1. Professional Conduct for Attorneys and Advocates (pg. 7)
  2. Petition: Vandehei-E-poll Process (pg. 40)
  3. Petition: Delgado-Land Trust Distribution (pg. 42)
  4. Petition: Dallas – 2017 Tri-Annual General Election (pg. 50)
  5. Landlord-Tenant Amendments (pg. 52)
- IV. New Submissions**
  1. Commerce Law (pg. 74)
- V. Additions**
- VI. Administrative Updates**
  1. Public Meeting SOP (pg. 76)
  2. Comprehensive Housing Division Resolution (pg. 79)
  3. ERB Hearing Authority Extension (pg. 83)
  4. 2014-2017 Close Out Letters (pg. 89)
  5. Legal Resource Center E-Poll (pg. 93)
  6. 2014-2017 End of Term Final Report (pg. 94)
  7. E-Poll SOP (pg. 107)
- VII. Executive Session**
- VIII. Recess/Adjourn**



**Oneida Nation**  
 Oneida Business Committee  
 Legislative Operating Committee  
 PO Box 365 • Oneida, WI 54155-0365  
[Oneida-nsn.gov](http://Oneida-nsn.gov)



## LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center

September 6, 2017

9:00 a.m.

**Present:** Jennifer Webster, David P. Jordan, Daniel Guzman King, Ernie Stevens III

**Excused:** Kirby Metoxen

**Others Present:** Candice Skenandore, Tani Thurner, Clorissa Santiago, Maureen Perkins, Jen Falck, Brandon Stevens, Lee Cornelius, Ed Delgado, Rhiannon Metoxen, Melinda Danforth, Terry Cornelius, Bonnie Pigman, Robert J. Collins, Jo Anne House

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

David P. Jordan called the September 6, 2017 Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster to adopt the agenda with the following changes:

- Delete of the Professional Conduct for Attorneys and Advocates law
- Move the Administrative Updates after the approval of the minutes
- Add items to the Active Files List as the first item under administrative updates; seconded by Ernie Stevens III. Motion carried unanimously.

### II. Minutes to be approved

#### 1. August 2, 2017 LOC Meeting Minute

Motion by Ernie Stevens III to approve the August 02, 2017 LOC meeting minutes; seconded by Jennifer Webster. Motion carried unanimously.

#### 2. August 11, 2017 LOC Meeting Minutes

Motion by Daniel Guzman King to approve the August 11, 2017 LOC meeting Minutes; seconded by Jennifer Webster. Motion Carried unanimously.

### III. Administrative Updates (2:56-19:16)

#### 1. Add Items to Active Files List

- a. Motion by Jennifer Webster to add Children's Code to the active files list with Kirby Metoxen as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.
- b. Motion by Jennifer Webster to add Corporate Law to the active files list with Ernie Stevens III and Daniel Guzman King as co-sponsors; seconded by Daniel Guzman King. Motion carried unanimously.
- c. Motion by Jennifer Webster to add GTC Meetings Law to the active files with Daniel Guzman King as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.

- d. Motion by Jennifer Webster to add Legal Resource Center Law to the active files list with Daniel Guzman King as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.
- e. Motion by Ernie 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.
- f. Motion by Ernie Stevens III to add Drug and Alcohol Free law for Officials to the active files list with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.
- g. Motion by Jennifer Webster to add Professional Conduct for Attorneys and Advocates to the active files list with David P. Jordan as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.
- h. Motion by Jennifer Webster to add Employment Law to the active files list with Kirby Metoxen as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.
- i. Motion by Daniel Guzman King to add Community Support Fund to the active files list with David P. Jordan as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.
- j. Motion by Ernie Stevens III to add Landlord-Tenant Law Amendment to the active files list with David P. Jordan as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.
- k. Motion by Jennifer Webster to add Comprehensive Policy Governing Boards, Committees, and Commissions Amendments to the active files list with Jennifer Webster as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.
- l. Motion by Daniel Guzman King to add Petition: Benton-Change Pre-employment Drug Testing to the active files list with Jennifer Webster as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.
- m. Motion by Daniel Guzman King to add Petition: Debraska – Health Care Board to the active files list with Jennifer Webster as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.
- n. Motion by Jennifer Webster to add Petition: Dallas – 2017 Tri-Annual General Election to the active files list with David P. Jordan as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.
- o. Motion by Ernie Stevens III to add Petition: Graham 2017 General Election to the active files list with David P. Jordan as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.
- p. Motion by Jennifer Webster to add Petition: Delgado – Trust Land Distribution to the active files list with Ernie Stevens III as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

- q. Motion by Ernie Stevens III to add Petition: Vandehei – E-polls to the active files list with Daniel Guzman King as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.
- r. Motion by Jennifer Webster to add Industrial Hemp Law to the active files list with Daniel Guzman King as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.
- s. Motion by Ernie Stevens III to add Criminal Code to the active files list with Daniel Guzman King as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.
- t. Motion by Daniel Guzman King to add Public Peace Law to the active files list with Jennifer Webster as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.
- u. Motion by Daniel Guzman King to add Tribal Traffic Code to the active files list with Ernie Stevens III as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.
- v. Motion by Daniel Guzman King to add Leasing Law to the active files list with Ernie Stevens III as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.
- w. Motion by Ernie Stevens III to add Code of Ethics Amendments to the active files list with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.
- x. Motion by Jennifer Webster to add Rules of Civil Procedure Amendments to the active files list with David P. Jordan as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.
- y. Motion by Daniel Guzman King to add Secured Transactions Law to the active files list with David P. Jordan as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.
- z. Motion by Ernie Stevens III to add Nonprofit Incorporation Law to the active files list with David P. Jordan as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.
- aa. Motion by Daniel Guzman King to add Research Protection Act to the active files list with Jennifer Webster as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.
- bb. Motion by Jennifer Webster to add Guardianship Law to the active files list with Kirby Metoxen as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.
- cc. Motion by Jennifer Webster to add Law Enforcement Ordinance Amendments – Conservation Officers to the active files list with Ernie Stevens III as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.
- dd. Motion by Jennifer Webster to add Personnel Commission Bylaws Amendments to the active files list with Kirby Metoxen as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.

- ee. Motion by Daniel Guzman King to add Election Board Bylaws Amendments to the active files list with Kirby Metoxen as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.
- ff. Motion by Ernie Stevens III to add Trust/Enrollments Bylaws Amendments to the active files list with Jennifer Webster as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.
- gg. Motion by Jennifer Webster to add Land Commission Bylaws Amendments to the active files list with David P. Jordan as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

**2. Oneida Nation Seal and Flag Rule #1 (20:39-23:46)**

Motion by Jennifer Webster to certify the Oneida Nation Seal and Flag Rule #1 and forward to the Oneida Business Committee for consideration of adoption; seconded by Ernie Stevens III. Motion carried unanimously.

**IV. Current Business**

**1. Legal Resource Center (24:07-24:29)**

Motion by Ernie Stevens III to approve the public meeting memorandum and send the Legal Resource Center Law to a work meeting; seconded by Daniel Guzman King. Motion carried unanimously.

**2. Professional Conduct for Attorneys and Advocates – deleted**

**3. Children’s Code (24:36-39:16)**

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 Ernie Stevens III. Motion carried unanimously.

**V. New Submissions**

**VI. Additions**

**1. ONVAC Bylaws Amendments (39:22-40:22)**

Motion by Daniel Guzman King to add the ONVAC Bylaws Amendments to the active files list as a low priority with Jennifer Webster as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.

**2. Petition: Dallas 2017 Tri –Annual General Election (40:24-42:39)**

Motion by Daniel Guzman King to add the Petition: Dallas 2017 Tri-Annual General Election to the active files list as a high priority with David P. Jordan as the sponsor; seconded by Jennifer Webster. Motion withdrawn.

Motion by Jennifer Webster to delete from the agenda; seconded by Daniel Guzman King. Motion carried unanimously.

*Note: this was already added to the active files list*

**3. Petition: Vandehei E-poll Process (40:24-42:39)**

Motion by Jennifer Webster to delete from the agenda; seconded by Daniel Guzman King. Motion carried unanimously.

*Note: this was already added to the active files list*

**4. Petition: Graham-2017 General Election (40:24-42:39)**

Motion by Jennifer Webster to delete from the agenda; seconded by Daniel Guzman King. Motion carried unanimously.

*Note: this was already added to the active files list*

**5. Hall of Fame (42:42-43:42)**

Motion by Daniel Guzman King to add the Hall of Fame Law to the active files list with Ernie Stevens III as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

Ernie Stevens III noted for the record: Given some community level initiatives somewhat related to this. That if it does become a conflict I will have to remove myself as the sponsor and will have to add someone else if that is still a priority at that time.

**VII. Executive Session**

**VIII. Adjourn**

Motion by Ernie Stevens III to adjourn the September 06, 2017 Legislative Operating Committee meeting at 9:44 a.m.; seconded by Daniel Guzman King. Motion carried unanimously.



Legislative Operating Committee  
September 20, 2017

# Professional Conduct for Attorneys and Advocates

<b>Submission Date:</b> 4/5/17	<b>Public Meeting:</b> 7/20/2017
<b>LOC Sponsor:</b> David P. Jordan	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This law establishes professional standards of conduct for attorneys and advocates practicing before the Judiciary.*

**4/5/17 LOC:** Motion by David P. Jordan to add the Professional Conduct for Attorneys and Advocates to the active files list as a high priority, with David P. Jordan as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

**6/21/17 LOC:** Motion by Fawn Billie to approve the public meeting packet and forward the Legal Resource Center law to a public meeting to be held on Thursday, July 20, 2017; seconded by David P. Jordan. Motion carried unanimously.

**7/20/17:** Public meeting held.

**8/2/17 LOC:** Motion by Tehassi Hill to accept the public meeting comments and comment review memo; seconded by Jennifer Webster. Motion carried unanimously.

Motion by Jennifer Webster to direct the LRO to prepare an adoption packet; seconded by David Jordan. Motion carried unanimously.

**9/6/17 LOC:** Motion by Jennifer Webster to add Professional Conduct for Attorneys and Advocates to the active files list with David P. Jordan as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

*LOC was to consider forwarding the adoption packet regarding the Professional Conduct for Attorneys and Advocates to the Oneida Business Committee for consideration; however, this item was deleted from the agenda. A fiscal impact statement was not available.*

**9/6/17:** *Work Meeting.* Present: Jenny Webster, Clorissa Santiago, Candice Skenandore, David P. Jordan, Maureen Perkins, Ernest Stevens III, and Tani Thurner. LOC is currently waiting for a fiscal impact statement from the Finance Office. When that is received, the LOC may approve an adoption packet and forward to the BC for consideration.

## Next Steps:

- Approve the public meeting memo with the LOC response.
- Review the redline draft of the law which incorporates the changes based on the public meeting comment.
- Approve the adoption packet and forward the Professional Conduct for Attorneys and Advocates law to the Oneida Business Committee for consideration.



Oneida Nation  
 Oneida Business Committee  
 Legislative Operating Committee  
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TO: Legislative Operating Committee (LOC) RJC  
 FROM: Robert J. Collins II, Staff Attorney, Oneida Law Office  
 DATE: September 20, 2017  
 RE: Professional Conduct for Attorneys and Advocates: Public Meeting Comment Review

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On July 20, 2017 a public meeting was held regarding the Professional Conduct for Attorneys and Advocates law (Law). This memorandum is submitted as a review of the oral and written comments that were presented at the public meeting and submitted within the public comment period.

### Comment 1.

**Hon. Gerald Hill and Hon. Denice Beans – written comment:** This is to bring your attention a provision that is problematic as drafted, specifically, 810.23-1., *"The Judiciary's Court of Appeals is granted jurisdiction to hear complaints filed regarding any disciplinary actions pertaining to this law."* This statement is in conflict with the mission and purpose of the Appellate Court. The scope of appellate review addresses formal hearing decisions of the Oneida Trial Court, the Family Court, and other original hearing bodies. Hearings based on this proposed law should be held in the Judiciary Trial Court and subject to review in the Court of Appeals. As presently drafted, 810.23-1. et seq. that pertain to hearing of complaints should be redrafted throughout to be consistent with the applicable Judiciary Law, Rules of Civil and Appellate Procedure.

**Response:** Section 810.23 of the Law was drafted using section 1-8(E) of the Judiciary's Rules of Admission as a guide. That rule states that "[i]f a complaint goes forward, a Chief Judge or Family Court Judge shall appoint three Judges to investigate and preside over disciplinary proceedings." Based on this comment and a review of sections 801.8-2(a)(1)-(3) of the Judiciary law, the law was revised so that disciplinary actions are heard by the Trial Court and the Court's decision may be reviewed by the Court of Appeals. The revised section reads as follows:

#### 810.23. Disciplinary Actions

810.23-1. The Judiciary's ~~Court of Appeals~~ Trial Court is granted jurisdiction to hear complaints filed regarding any disciplinary actions pertaining to this law.

810.23-2. Complaints of alleged violations of this law may be filed on behalf of the client with the ~~Court of Appeals~~ Trial Court or initiated by the Judiciary. All complaints shall be forwarded to the Chief Judge of the ~~Court of Appeals~~ Trial Court or his or her designee who may screen out and take no action on complaints which are determined to be frivolous or repetitive on their face. The Chief Judge or his or her designee shall communicate in writing any such decision with the complainant.



(a) The Chief Judge or his or her designee may take no action on an anonymous complaint other than fulfilling the requirements of the Nation's Anonymous Letters Policy.

810.23-3. If a complaint goes forward, the Chief Judge or his or her designee of the Court of Appeals shall appoint a three (3) judge panel assign a judge to preside over the disciplinary proceedings. Current or pro tem judges are eligible to be on the panel hear disciplinary matters.

(a) The party being accused of the disciplinary violation shall be given notice of a hearing and an opportunity to meaningfully respond to the allegations.

(b) The complainant also shall be given notice of any hearings and shall have the right to present evidence.

810.23-4. The three (3) judge panel judge can dismiss the complaint if it appears frivolous or if there is not enough evidence to substantiate the allegations by a preponderance of the evidence.

810.23-5. If there is enough evidence to substantiate the allegations by a preponderance of the evidence, the Court shall issue a written disciplinary order.

(a) The Court may opt to choose any combination of the following disciplinary methods:

(1) Private reprimand;

(2) Public reprimand through publication in the Nation's newspaper;

(3) Additional training requirements;

(4) Monetary fine not to exceed five thousand dollars (\$5,000); or

(5) Suspension or revocation of the right to practice before the Judiciary.

(b) The Judiciary Court may also forward their decision to an appropriate outside regulating authority in appropriate situations (e.g. to the State Bar of Wisconsin if counsel is an attorney licensed to practice in Wisconsin).

810.23-6. ~~All decisions made by the Court of Appeals under this section are final~~ Decisions of the Trial Court under this section may be appealed to the Court of Appeals.

**LOC Response:** The LOC agrees that section 810.23 shall be revised to authorize the Trial Court to hear complaints filed regarding any disciplinary actions pertaining to this law and that the decision of the Trial Court may be appealed to the Court of Appeals.

**Title 8. Judiciary - Chapter 810**  
**PROFESSIONAL CONDUCT FOR ATTORNEYS AND ADVOCATES**

**Tehatilihwaskénhas ahatihwakwalihsyúhake ahatihwatok/hake laotilihwá'ke**  
**The lawyers/advocates will always straighten for them to always of their affairs**  
**out the issues be certain**

810.1. Purpose and Policy  
810.2. Adoption, Amendment, Repeal  
810.3. Definitions  
810.4. Competence  
810.5. Scope of Representation  
810.6. Diligence  
810.7. Communication  
810.8. Fees  
810.9. Confidentiality  
810.10. Conflict of Interest  
810.11. Duties to Former Clients  
810.12. Former Judge, Mediator, or Peacemaker

810.13. Client with Diminished Capacity  
810.14. Declining or Terminating Representation  
810.15. Duties to Prospective Clients  
810.16. Role as Advisor  
810.17. Candor and Impartiality toward the Judiciary  
810.18. Fairness to Opposing Party and Counsel  
810.19. Counsel as Witness  
810.20. Admittance to Practice and Disciplinary Matters  
810.21. Misconduct  
810.22. Civil Actions for Negligence or Violation of Duty  
810.23. Disciplinary Actions

1

2 **810.1. Purpose and Policy**

3 810.1-1. *Purpose.* The purpose of this law is to govern the conduct of attorneys and advocates  
4 that are admitted to practice law before the Judiciary.

5 810.1-2. *Policy.* It is the policy of the Nation that the interests of all parties that appear before  
6 the Judiciary are protected. In pursuit of this interest, it is to the benefit of all parties that  
7 attorneys or advocates are subject to rules governing their professional conduct.

8

9 **810.2. Adoption, Amendment, Repeal**

10 810.2-1. This law was adopted by the Oneida Business Committee by resolution  
11 \_\_\_\_\_.

12 810.2-2. This law may be amended or repealed by the Oneida Business Committee and/or  
13 Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures  
14 Act.

15 810.2-3. Should a provision of this law or the application thereof to any person or circumstances  
16 be held as invalid, such invalidity shall not affect other provisions of this law which are  
17 considered to have legal force without the invalid portions.

18 810.2-4. Should a provision of this law or the application thereof to any person or circumstances  
19 be held as invalid, such invalidity shall not affect other provisions of this law which are  
20 considered to have legal force without the invalid portions.

21 810.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

22 810.2-6. Where precedent for any issue under this law has not been established by the Judiciary, the  
23 Judiciary and counsel may refer to established Wisconsin or federal case law precedent or laws for  
24 guidance. The Wisconsin State Law Library maintains a section on Legal Ethics and Professional  
25 Conduct located at <http://wilawlibrary.gov/topics/legalprof/malpractice.php>.

26

27 **810.3. Definitions**

28 810.3-1. This section shall govern the definitions of words and phrases used within this law. All  
29 words not defined herein shall be used in their ordinary and everyday sense.

30 (a) "Advocate" means a non-attorney advocate who is admitted to practice law and is  
31 presented to the Court as the representative or advisor to a party. "Advocate" shall not  
32 mean a domestic violence advocate present in court for the sole purpose of providing  
33 support **or a guardian ad litem.**

34 (b) “Attorney” means a person trained and licensed to represent another person in Court,  
35 to prepare documents, and to give advice or counsel on matters of law. “Attorney” shall  
36 not mean a guardian ad litem.

37 (c) “Counsel” means an attorney or advocate that is admitted to practice before the  
38 Judiciary.

39 ~~(d)~~ “(d) “Ex Parte” shall mean any contact with the Judge regarding a pending case where  
40 the opposing party has not received notice, is not present, and has not consented to the  
41 communication.

42 (e) “Judiciary” means the judicial system responsible for applying the laws of the Oneida  
43 Nation. The three branches, as identified in resolutions BC-05-08-13-A and GTC 01-07-  
44 13-B are the Family Court, Trial Court and ~~Appellate~~-Court of Appeals.

45 (ef) “Informed consent” means the agreement by a person to a proposed course of  
46 conduct after counsel has communicated adequate information and explanation about the  
47 material risks of and reasonably available alternatives to the proposed course of conduct.

48 (fg) “Preponderance of the evidence” means it is more likely than not that the facts  
49 presented are true.

50 (gh) “Prospective client” means a person who consults with counsel about the possibility  
51 of forming a client-counsel relationship.

52 (hi) “Pro Tem Judge” means a decision maker that is not currently seated on the  
53 Judiciary, but that is appointed on a temporary (*pro tempore*), case-by-case basis to hear  
54 and decide matters in professional conduct panels.

55 (ij) “Reasonable” or “reasonably” when used in relation to conduct by counsel means the  
56 conduct of a reasonably prudent and competent attorney or advocate.  
57

#### 58 **810.4. Competence**

59 810.4-1. Counsel shall provide competent representation to a client. Competent representation  
60 requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the  
61 representation.  
62

#### 63 **810.5. Scope of Representation**

64 810.5-1. A client develops a privileged relationship protected by section 810.9 of this law and  
65 section 804.8-2 of the Oneida Judiciary Rules of Evidence once they consult with counsel to  
66 obtain legal services or once counsel performs legal services for the client. Any professional  
67 opinion given by counsel without express disclosure negating a privileged relationship shall  
68 create a privileged client-counsel relationship.

69 810.5-2. Counsel shall abide by a client’s decisions concerning the objectives of representation  
70 and shall consult with the client as to the means by which they are to be pursued. Counsel may  
71 take such action on behalf of the client as is impliedly authorized to carry out the representation.

72 810.5-3. Counsel’s representation of a client, including representation by appointment, does not  
73 constitute an endorsement of the client’s political, economic, social or moral views or activities.

74 810.5-4. Counsel may limit the scope of representation if the limitation is reasonable under the  
75 circumstances and the client gives informed written consent.

76 810.5-5. Counsel shall not advise a client to engage, or assist a client, in conduct that counsel  
77 knows is criminal or fraudulent, but counsel may discuss the legal consequences of any proposed  
78 course of conduct with a client and may advise or assist a client to make a good faith effort to  
79 determine the validity, scope, meaning, or application of the law.  
80

81 **810.6. Diligence**

82 810.6-1. Counsel shall act with reasonable diligence and promptness in representing a client.

83

84 **810.7. Communication**

85 810.7-1. Counsel shall:

86 (a) Promptly inform the client of any decision or circumstance with respect to which the  
87 client's informed consent is required by this law;

88 (b) Reasonably consult with the client about the means by which the client's objectives  
89 are to be accomplished;

90 (c) Keep the client reasonably informed about the status of the matter;

91 (d) Promptly comply with reasonable requests by the client for information; and

92 (e) Consult with the client about any relevant limitations on counsel's conduct when  
93 counsel knows that the client expects assistance not permitted by this law or other laws or  
94 rules.

95 810.7-2. Counsel shall explain a matter to the extent reasonably necessary to permit the client to  
96 make informed decisions regarding the representation.

97

98 **810.8. Fees**

99 810.8-1. Counsel shall not make an agreement for, charge, or collect an unreasonable fee or an  
100 unreasonable amount for expenses. The factors to be considered in determining the  
101 reasonableness of a fee include the following:

102 (a) The time and labor required, the novelty and difficulty of the questions involved, and  
103 the skill required to perform the legal service properly;

104 (b) The likelihood, if apparent to the client, that the acceptance of the particular  
105 employment will ~~preclude~~prevent other employment by counsel;

106 (c) The fee customarily charged in the locality for similar legal services;

107 (d) The amount involved and the results obtained;

108 (e) The time limitations imposed by the client or by the circumstances;

109 (f) The nature and length of the professional relationship with the client; and

110 (g) The experience, reputation, and ability of the ~~lawyer~~attorney or ~~lawyers~~advocate  
111 performing the services.

112 810.8-2. The scope of the representation and the basis or rate of the fee and expenses for which  
113 the client will be responsible shall be communicated to the client in writing, before or within a  
114 reasonable time after commencing the representation. Any changes in the basis or rate of the fee  
115 or expenses shall also be communicated in writing to the client.

116 810.8-3. Counsel shall promptly respond to a client's request for information concerning fees  
117 and expenses.

118

119 **810.9. Confidentiality**

120 810.9-1. Counsel shall not reveal information relating to the representation of a client unless the  
121 client gives informed consent, except for disclosures that are impliedly authorized in order to  
122 carry out the representation.

123 810.9-2. Counsel shall reveal information relating to the representation of a client to the extent  
124 counsel reasonably believes necessary to prevent the client from committing a criminal or  
125 fraudulent act that counsel reasonably believes is likely to result in death or substantial bodily  
126 harm or in substantial injury to the financial interest or property of another.

127 810.9-3. Counsel may reveal information relating to the representation of a client to the extent  
128 counsel reasonably believes necessary:

- 129 (a) To prevent reasonably likely death or substantial bodily harm;
- 130 (b) To prevent, mitigate, or rectify substantial injury to the financial interests or property
- 131 of another that is reasonably certain to result or has resulted from the client's commission
- 132 of a crime or fraud in furtherance of which the client has used counsel's services;
- 133 (c) To secure legal advice about counsel's conduct under this law;
- 134 (d) To establish a claim or defense on behalf of counsel in a controversy between
- 135 counsel and the client, to establish a defense to an action seeking to deny admission to
- 136 practice before the Judiciary, or to respond to allegations in any proceeding concerning
- 137 counsel's representation of the client;
- 138 (e) To comply with other laws or court orders; or
- 139 (f) To detect and resolve conflicts of interest, but only if the revealed information would
- 140 not compromise the client-counsel privilege or otherwise prejudice the client.

141 810.9-4. Counsel shall make reasonable efforts to prevent the inadvertent or unauthorized  
142 disclosure of, or unauthorized access to, information relating to the representation of a client.

#### 144 **810.10. Conflict of Interest**

145 810.10-1. Counsel, except as provided in 810.10-2, shall not represent a client if the  
146 representation involves a conflict of interest. A conflict of interest exists if:

- 147 (a) The representation of one client will be directly adverse to another client; or
- 148 (b) There is a significant risk that the representation of one or more clients will be
- 149 **materially significantly** limited by counsel's responsibilities to another client, a former
- 150 client, a third person, or by a personal interest of counsel.

151 810.10-2. Notwithstanding the existence of a conflict of interest under 810.10-1, counsel may  
152 represent a client if:

- 153 (a) Counsel reasonably believes that counsel will be able to provide competent and
- 154 diligent representation to each affected client;
- 155 (b) The representation is not prohibited by law;
- 156 (c) The representation does not involve the assertion of a claim by one client against
- 157 another client represented by counsel in the same litigation or other proceeding before the
- 158 Judiciary; and
- 159 (d) Each affected client gives informed consent, confirmed in ~~a~~-writing signed by the
- 160 client.

161 810.10-3. Counsel shall not use information relating to representation of a client to the  
162 disadvantage of the client unless the client gives informed consent, except as permitted or  
163 required by this law.

164 810.10-4. Counsel shall not provide the client with any financial assistance pertaining to the  
165 matter for which counsel represents the client.

#### 167 **810.11. Duties to Former Clients**

168 810.11-1. Counsel who has formerly represented a client in a matter shall not thereafter represent  
169 another person in the same or a substantially related matter in which that person's interests are  
170 materially adverse to the interests of the former client unless the former client gives informed  
171 written consent.

#### 173 **810.12. Former Judge, Mediator or Peacemaker**

174 810.12-1. Counsel shall not represent anyone in connection with a matter in which counsel  
175 participated personally and substantially as a judge, mediator or peacemaker.

177 **810.13. Client with Diminished Capacity**

178 810.13-1. When a client's capacity to make adequately considered decisions in connection with  
179 a representation is diminished, whether because of minority, mental impairment, or for some  
180 other reason, counsel shall, as far as reasonably possible, maintain a normal client-counsel  
181 relationship with the client.

182 810.13-2. When counsel reasonably believes that the client has diminished capacity, counsel  
183 may request that the court appoint a guardian ad litem for the client.

184

185 **810.14. Declining or Terminating Representation**

186 810.14-1. Counsel shall not represent a client or, where representation has commenced, shall  
187 withdraw from the representation of a client if:

188 (a) The representation will result in a violation of this law or any other applicable law or  
189 rule governing professional conduct;

190 (b) Counsel's physical or mental condition ~~materially~~significantly impairs counsel's  
191 ability to represent the client; or

192 (c) Counsel is discharged.

193 810.14-2. Counsel may withdraw from representing a client if:

194 (a) Withdrawal can be accomplished without material adverse effect on the interests of  
195 the client;

196 (b) The client persists in a course of action involving counsel's services that counsel  
197 reasonably believes is criminal or fraudulent;

198 (c) The client has used the counsel's services to perpetrate a crime or fraud;

199 (d) The client insists upon taking action that counsel considers ~~repugnant~~unacceptable or  
200 with which counsel has a fundamental disagreement;

201 (e) The client fails substantially to fulfill an obligation to counsel regarding counsel's  
202 services and has been given reasonable warning that counsel will withdraw unless the  
203 obligation is fulfilled;

204 (f) The representation will result in an unreasonable financial burden on counsel or has  
205 been rendered unreasonably difficult by the client; or

206 (g) Other good cause for withdrawal exists.

207 810.14-3. Counsel must comply with applicable court rules requiring notice to or permission of  
208 the Judiciary when terminating a representation. When ordered to do so by the Judiciary,  
209 counsel shall continue representation notwithstanding good cause for terminating the  
210 representation.

211 810.14-4. Upon termination of representation, counsel shall take steps to the extent reasonably  
212 practicable to protect a client's interests, such as giving reasonable notice to the client, allowing  
213 time for seeking other counsel, surrendering papers and property to which the client is entitled  
214 and refunding any fees not earned.

215

216 **810.15. Duties to Prospective Clients**

217 810.15-1. Even when no client-counsel relationship ensues, counsel who has learned  
218 information from a prospective client shall not use or reveal that information learned in the  
219 consultation, unless:

220 (a) The affected client and/or the prospective client have given informed written consent;  
221 or

222 (b) Counsel who received the information took reasonable measures to avoid exposure to  
223 more disqualifying information that was reasonably necessary to determine whether to  
224 represent the prospective client.

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**810.16. Role as Advisor**

810.16-1. In representing a client, counsel shall exercise independent professional judgment and render candid advice. In rendering advice, counsel may refer not only to law but to other considerations such as moral, economic, social, cultural, and political factors that may be relevant to the client’s situation.

810.16-2. In representing a client, counsel shall not:

- (a) Knowingly advance a claim or defense that is unwarranted under existing law, except that counsel may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law;
- (b) Knowingly advance a factual position unless there is a basis for doing so that is not frivolous; or
- (c) File an action, assert a position, conduct a defense, delay a trial, or take other actions on behalf of the client when counsel knows or when it is obvious that such an action would serve merely to harass or maliciously injure another.

810.16-3. In the course of representing a client, counsel shall not knowingly:

- (a) Make a false statement of material fact or law to a third person; or
- (b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

**810.17. Candor and Impartiality toward the Judiciary**

810.17-1. Counsel shall not knowingly:

- (a) Make a false statement of fact or law to the Judiciary or fail to correct a false statement of material fact or law previously made to the Judiciary by counsel;
- (b) Fail to disclose to the Judiciary legal authority in the controlling jurisdiction known to the ~~lawyer~~attorney or advocate to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (c) Offer evidence that counsel knows to be false. If counsel, counsel’s client, or a witness called by counsel has offered material evidence and counsel comes to know of its falsity, counsel shall take reasonable remedial measures, including, if necessary, disclosure to the Judiciary. Counsel may refuse to offer evidence believed to be false.

810.17-2. Counsel shall not:

- (a) Seek to influence a judge, juror, or other court official;
- (b) Communicate ex parte with a judge during the proceedings unless authorized to do so by law or court order or for scheduling purposes, if permitted by the court; or
- (c) Engage in conduct intended to disrupt the Judiciary.

**810.18. Fairness to Opposing Party and Counsel**

810.18-1. Counsel shall not:

- (a) Unlawfully obstruct another party’s access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. Counsel shall not advise or assist another person to do any such act;
- (b) Falsify evidence, advise, or assist a witness to testify falsely;
- (c) Knowingly disobey an obligation under any applicable law or rule, except for open refusal based on an assertion that no valid obligation exists;
- (d) In pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party; or

272 (e) In trial, allude to any matter that counsel does not reasonably believe is relevant or  
273 that will not be supported by admissible evidence.

274 810.18-2. In representing a client, counsel shall not communicate about the subject of the  
275 representation with a person counsel knows to be represented by another attorney or advocate in  
276 the matter unless counsel has the consent of the other attorney or advocate or is authorized to do  
277 so by law or a court order.

278 810.18-3. In dealing on behalf of a client with a person who is not represented by an attorney or  
279 advocate, counsel shall inform such person of counsel's role in the matter. When counsel knows  
280 or reasonably should know that the unrepresented person misunderstands counsel's role in the  
281 matter, counsel shall make reasonable efforts to correct this misunderstanding. Counsel shall not  
282 give legal advice to an unrepresented person other than the advice to secure counsel.

283

#### 284 **810.19. Counsel as Witness**

285 810.19-1. Counsel shall not act as an attorney or advocate at a trial in which counsel is likely to  
286 be a necessary witness unless:

- 287 (a) The testimony relates to the nature and value of legal services rendered in the case; or  
288 (b) Disqualification of counsel would work substantial hardship on the client.

289

#### 290 **810.20. Admittance to Practice and Disciplinary Matters**

291 810.20-1. Counsel shall comply with the Judiciary's Rules of Admission to Practice.

292 810.20-2. An applicant for admission to practice or counsel in connection with a disciplinary  
293 matter, shall not:

- 294 (a) Knowingly make a false statement of material fact; or  
295 (b) Fail to disclose a fact necessary to correct a ~~misapprehension~~mistake known by the  
296 person to have arisen in the matter, or knowingly fail to respond to a lawful demand for  
297 information from an admissions or disciplinary authority.

298

#### 299 **810.21. Misconduct**

300 810.21-1. It is professional misconduct for counsel to:

- 301 (a) Violate or attempt to violate this law, knowingly assist or induce another to do so, or  
302 do so through the acts of another;  
303 (b) Commit a criminal act that reflects adversely on counsel's honesty, trustworthiness,  
304 or fitness as counsel in other respects unless such criminal activity has been pardoned or  
305 forgiven;  
306 (c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation unless  
307 such conduct is pardoned or forgiven;  
308 (d) State or imply an ability to influence improperly a tribal or government agency or  
309 official or to achieve results by means that violate any applicable law or rule;  
310 (e) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable  
311 canons of judicial conduct or other law or rule;  
312 (f) Violate the counsel's oath given to the Judiciary; or  
313 (g) Fail to cooperate in the investigation of a complaint filed with the Judiciary.

314

#### 315 **810.22. Civil Actions for Negligence or Violation of Duty**

316 810.22-1. A client alleging that counsel was negligent or violated a duty under this law may  
317 initiate a civil action by filing a complaint with the Judiciary's Trial Court.

318 810.22-2. In a civil action against counsel for negligence or violation of duty, the client has the  
319 burden of proving all of the following:



- 320 (a) A client-counsel relationship existed;  
321 (b) That counsel committed acts that were negligent or in violation of duty under this  
322 law;  
323 (c) That the client suffered actual damages;  
324 (d) That the negligence or violation of duty was the proximate direct cause of the  
325 damages; and  
326 (e) That, but for the negligence or violation of duty on counsel, the client would have  
327 been successful in the prosecution or defense of the case.

328 810.22-3. In making a final determination, the Court shall consider what a particular counsel did  
329 or failed to do and what a reasonable or prudent counsel would do in the same circumstance.

330 810.22-4. If there is enough evidence to substantiate the allegations by a preponderance of the  
331 evidence, the Court shall issue a written order awarding monetary damages to the client not to  
332 exceed five thousand dollars (\$5,000).

333 810.22-5. Decisions of the Trial Court under this section may be appealed to the Court of  
334 Appeals.

335

### 336 **810.23. Disciplinary Actions**

337 810.23-1. The Judiciary's Trial Court of Appeals is granted jurisdiction to hear complaints filed  
338 regarding any disciplinary actions pertaining to this law.

339 810.23-2. Complaints of alleged violations of this law may be filed on behalf of the client with  
340 the Trial Court of Appeals or initiated by the Judiciary. All complaints shall be forwarded to the  
341 Chief Judge of the Trial Court of Appeals or his or her designee who may screen out and take no  
342 action on complaints which are determined to be frivolous or repetitive on their face. The Chief  
343 Judge or his or her designee shall communicate in writing any such decision with the  
344 complainant.

345 (a) The Chief Judge or his or her designee may take no action on an anonymous  
346 complaint other than fulfilling the requirements of the Nation's Anonymous Letters  
347 Policy.

348 810.23-3. If a complaint goes forward, the Chief Judge of the Court of Appeals or his or her  
349 designee shall appoint assign a three (3)-judge panel to preside over the disciplinary proceedings.  
350 Current or pro tem judges are eligible to be on the panel hear disciplinary matters.

351 (a) The party being accused of the disciplinary violation shall be given notice of a  
352 hearing and an opportunity to meaningfully respond to the allegations.

353 (b) The complainant also shall be given notice of any hearings and shall have the right to  
354 present evidence.

355 810.23-4. The three (3)-judge panel can dismiss the complaint if it appears frivolous or if there is  
356 not enough evidence to substantiate the allegations by a preponderance of the evidence.

357 810.23-5. If there is enough evidence to substantiate the allegations by a preponderance of the  
358 evidence, the Court shall issue a written disciplinary order.

359 (a) The Court may opt to choose any combination of the following disciplinary methods:

- 360 (1) Private reprimand;  
361 (2) Public reprimand through publication in the Nation's newspaper;  
362 (3) Additional training requirements;  
363 (4) Monetary fine not to exceed five thousand dollars (\$5,000); or  
364 (5) Suspension or revocation of the right to practice before the Judiciary.

365 (b) The Judiciary Court may also forward their decision to an appropriate outside  
366 regulating authority in appropriate situations (e.g. to the State Bar of Wisconsin if  
367 counsel is an attorney licensed to practice in Wisconsin).

368 | 810.23-6. ~~All decisions made by~~ Decisions of the Trial Court ~~of Appeals~~ under this section are  
369 | ~~final~~ appealed to the Court of Appeals.

370 | *End.*

371 | \_\_\_\_\_

372 | \_\_\_\_\_

373 | Adopted: \_\_\_\_\_



Oneida Nation  
 Oneida Business Committee  
 Legislative Operating Committee  
 PO Box 365 • Oneida, WI 54155-0365  
 Oneida-nsn.gov



TO: Oneida Business Committee (OBC)  
 FROM: David P. Jordan, LOC Chairperson *DJ*  
 DATE: September 27, 2017  
 RE: Professional Conduct for Attorneys and Advocates

---

Please find attached the following for your consideration regarding the Professional Conduct for Attorneys and Advocates law:

1. Resolution: Professional Conduct for Attorneys and Advocates
2. Statement of Effect: Professional Conduct for Attorneys and Advocates
3. Professional Conduct for Attorneys and Advocates (legislative analysis)
4. Professional Conduct for Attorneys and Advocates (clean copy)
5. Professional Conduct for Attorneys and Advocates (fiscal impact statement)

#### *Overview*

The attached resolution would adopt the Professional Conduct for Attorneys and Advocates law (Law). The Law governs the professional conduct of attorneys and advocates that appear before the Judiciary and provides clients with an understanding of the level of service to be expected from counsel who represent them before the Judiciary.

On May 1, 2015, the Judiciary adopted Rules of Admission which state that Wisconsin Supreme Court Rule 20, Rules of Professional Conduct, governs profession conduct. As the Wisconsin Supreme Court Rule does not apply to a court where lay advocates are admitted to practice, the Law creates rules that are specific to the current operation of the Judiciary to ensure clients are receiving adequate representation. The Law addresses a number of topics including but not limited to: competence, scope of representation, diligence, fees, confidentiality, conflict of interest, and candor and impartiality toward the Judiciary. The Law also identifies what a client can do if they allege that counsel has acted negligently or in violation of a duty and directs the Judiciary when complaints are filed regarding any disciplinary actions pertaining to the Law.

On July 20, 2017, the LOC held a public meeting on the Law pursuant to the Legislative Procedures Act [See *Legislative Procedures Act, 1 O.C. 109.8*. The public meeting comment period regarding the Law closed on July 27, 2017. The Legislative Operating Committee considered the public comments on August 2, 2017, and necessary revisions were incorporated in the Law. This Law will become effective ten (10) business days after the date of adoption of the resolution as identified in section 109.9-3 of the Legislative Procedures Act. The anticipated effective date will be Wednesday, September 27, 2017.

#### **Requested Action**

Approve Resolution: Professional Conduct for Attorneys and Advocates

**BC Resolution # \_\_\_\_\_**  
**Professional Conduct for Attorneys and Advocates**

1  
2  
3  
4 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe  
5 recognized by the laws of the United States of America; and  
6

7 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation;  
8 and  
9

10 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV,  
11 Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal  
12 Council; and  
13

14 **WHEREAS,** the Oneida General Tribal Council created the Judiciary through Resolution GTC-  
15 01-07-13-B and the Oneida Business Committee created the Family Court  
16 through Resolution BC-05-08-13-A; and  
17

18 **WHEREAS,** the Oneida Judiciary Rules of Civil Procedure allows a party to be represented by  
19 an attorney or advocate that is admitted to practice law before the Judiciary; and  
20

21 **WHEREAS,** the Oneida Judiciary Rules of Admission adopted Wisconsin Supreme Court Rule  
22 20, Rules of Professional Conduct for Attorneys; and  
23

24 **WHEREAS,** the proposed Law would create rules governing the professional conduct both of  
25 attorneys and advocates that are specific to the Oneida Judiciary to ensure clients  
26 are receiving adequate representation including provisions regarding recourse for  
27 inadequate services rendered by practicing attorneys and advocates; and  
28

29 **WHEREAS,** a public meeting was held on July 20, 2017, in accordance with the Legislative  
30 Procedures Act and the comments that were received were considered on August  
31 2, 2017.  
32

33 **NOW THEREFORE BE IT RESOLVED,** that the Professional Conduct for Attorneys and  
34 Advocates law is hereby adopted.  
35  
36  
37  
38



**Statement of Effect**  
*Professional Conduct for Attorneys and Advocates*

**Summary**

This Resolution adopts the Professional Conduct for Attorneys and Advocates law (Law) that governs the conduct of attorneys and advocates that are admitted to practice law before the Judiciary.

*Submitted by: Robert J. Collins II, Staff Attorney, Oneida Law Office.*

**Analysis by the Legislative Reference Office**

This Resolution adopts the Law which governs the professional conduct of attorneys and advocates that appear before the Judiciary and provides clients with an understanding of the level of service to be expected from attorneys and advocates who represent them before the Judiciary.

The Oneida General Tribal Council created the Judiciary through GTC Resolution 01-07-13-B and the Oneida Business Committee created the Oneida Family Court, which is a branch of the Judiciary, through BC Resolution 05-08-13-A. The Judiciary is governed by the Oneida Judiciary Rules of Civil Procedure and other laws which allow a party to be represented by an attorney or advocate that is admitted to practice law before the Judiciary. The Oneida Judiciary Rules of Admission adopted Wisconsin Supreme Court Rule 20, Rules of Professional Conduct, to address professional conduct.

As the Wisconsin Supreme Court Rule does not apply to a court where lay advocates are admitted to practice law, the proposed Law creates rules that are specific to the Oneida Judiciary to ensure clients are receiving adequate representation. The Law addresses a number of topics including but not limited to: competence, scope of representation, diligence, fees, confidentiality, conflict of interest, and candor and impartiality toward the Judiciary. The Law also identifies what a client can do if they allege that counsel has acted negligently or in violation of a duty and directs the Judiciary when complaints are filed regarding any disciplinary actions pertaining to the Law.

On July 20, 2017, the Legislative Operating Committee held a public meeting pursuant to the Legislative Procedures Act. The public meeting comment period regarding the Law closed on July 27, 2017. The Legislative Operating Committee considered the public comments on August 2, 2017, and necessary revisions were incorporated in the Law. In accordance with the Legislative Procedures Act, this Law will become effective ten (10) business days after the date of adoption of the Resolution.

**Conclusion**

Adoption of this Resolution would not conflict with any of the Nation's laws.



# Professional Conduct for Attorneys and Advocates Legislative Analysis

## SECTION 1. BACKGROUND

REQUESTER: GTC Directive	SPONSOR: David P. Jordan	DRAFTER: Robert J. Collins	ANALYST: Maureen Perkins
<b>Intent of the Law</b>	The intent of this law is to establish rules governing the professional conduct of attorneys and advocates (counsel) who appear before the Judiciary in order to protect the interests of all parties <i>[see 810.1-2]</i> .		
<b>Purpose</b>	To govern the conduct of attorneys and advocates (counsel) that are admitted to practice law before the Judiciary <i>[see 810.1-1]</i> .		
<b>Affected Entities</b>	Judiciary, Legal Resource Center, attorneys and advocates who are admitted to practice before the Judiciary		
<b>Affected Legislation</b>	Legal Resource Center (law), Oneida Judiciary Rules of Evidence, Cannons of Judicial Conduct, Anonymous Letters Policy, Oneida Judiciary Rules of Admission, Oneida Rules of Professional Conduct for Attorneys		
<b>Enforcement/Due Process</b>	A client alleging that counsel was negligent or violated a duty under this law may initiate a civil action by filing a complaint with the Judiciary’s Trial Court <i>[see 810.22-1]</i> . Decisions of the Trial Court under this section may be appealed to the Court of Appeals <i>[see 810.22-5]</i> . The Judiciary’s Trial Court is granted jurisdiction to hear complaints filed regarding any disciplinary actions pertaining to this law <i>[see 810.23-1]</i> . Decisions of the Trial Court are appealed to the Court of Appeals <i>[see 810.23-6]</i> .		
<b>Public Meeting</b>	A public meeting was held July 20, 2017. Comments were considered by the LOC on August 2, 2017 and directed changes are reflected in this draft.		

## SECTION 2. LEGISLATIVE DEVELOPMENT

- A. This law governs the conduct of attorneys and advocates who are admitted and practice before the Judiciary *[see 810.1-1]*. This includes both attorneys and advocates elected to serve in the Legal Resource Center as well as attorneys and advocates who represent clients outside of the center. Domestic violence advocates guardian ad litem are not included in the definition of advocate.
- B. This law benefits the interests of all parties that appear before the Judiciary by subjecting attorneys and advocates to rules governing their professional conduct.

## SECTION 3. CONSULTATION

- A. The Oneida Business Committee and the Oneida Judiciary were consulted about the contents of this legislation.
- B. The laws and rules pertaining to the Judiciary were consulted in the drafting of this legislation.

## SECTION 4. PROCESS

- A. This law is following the correct legislative process.
- B. This law was added to the Active Files List on 4/5/17 and a public meeting was held 07/20/17. Comments were considered by the LOC on August 2, 2017 and directed changes are reflected in this draft.

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

20 **A. Competence**

- 21 • Counsel (attorney or advocate) is expected to provide representation that is backed by legal  
22 knowledge, skill, thoroughness and preparation *[see 810.4]*.

23 **Scope of Representation**

- 24 • Relationships between a client and counsel are considered privileged once legal services are  
25 obtained or performed.  
26 • Counsel will abide by decisions of the client regarding representation.  
27 • Counsel’s representation does not constitute endorsement of the client.  
28 • Counsel may limit the scope of representation with client’s informed consent.  
29 • Counsel will not advise or assist the client in criminal or fraudulent conduct *[see 810.5]*.

30 **Diligence**

- 31 • Careful, persistent and immediate work is expected of counsel *[see 810.6]*

32 **Communication**

- 33 • Counsel is expected to *[see 810.7]*:  
34 ○ let the client know when informed consent is required by law.  
35 ○ consult with the client regarding the possible strategies that can be used in Court.  
36 ○ keep the client informed of the status of their case and any decisions that need to be  
37 made, as well as complying with requests by the client for information.  
38 ○ let the client know when their expectations are beyond what is permitted by law.  
39 ○ explain the case to the client so that they understand the decisions regarding  
40 representation.

41 **Fees**

- 42 • Fees must be reasonable considering *[see 810.8-1]*:  
43 ○ time and labor required, difficulty of the case, and the skill required.  
44 ○ the likelihood that acceptance of the case will prevent counsel from accepting other cases.  
45 ○ the price of local legal services.  
46 ○ time limitations.  
47 ○ the nature and length of the professional relationship with the client.  
48 ○ the experience, reputation and ability of counsel.  
49 • The scope of representation and the basis or rate of the fee and expenses must be provided to the  
50 client in writing before or close after beginning representation. Any changes must be  
51 communicated in writing *[see 810.8-2]*.  
52 • Counsel must immediately respond to a client’s request for information regarding fees *[see 810.8-*  
53 *3]*.

54 **Confidentiality**

- 55 • Information related to the representation of a client is confidential except as necessary to provide  
56 representation *[see 810.9-1]*.  
57 • Counsel must reveal information to any party they feel is appropriate related to the representation  
58 of a client to prevent the client from committing a criminal or fraudulent act that is likely to result  
59 in death or substantial bodily harm or injury to the financial interest or property of another *[see*  
60 *810.9-2]*.

- 61 • Counsel may reveal information to any party they feel is appropriate related to the representation  
62 of a client to the extent counsel reasonably believes necessary *[see 810.9-3]*:  
63 ○ To secure legal advice about counsel’s conduct under this law  
64 ○ To establish a claim or defense regarding a controversy between client and counsel  
65 ○ To establish a defense to an action seeking to deny admission to practice before the  
66 Judiciary  
67 ○ To respond to allegations in any proceeding regarding counsel’s representation of the  
68 client  
69 ○ To comply with other laws or court orders  
70 ○ To detect and resolve conflicts of interest, but only if the revealed information would not  
71 compromise the client-counsel privilege or prejudice the client  
72 • Counsel must make reasonable effort to prevent the accidental disclosure or access to client’s  
73 information *[see 810.9-4]*.

74 **Conflict of Interest**

- 75 • Counsel cannot represent a client if representation will negatively affect another client or if  
76 representation will be limited by counsel’s responsibilities to another client, a former client, a  
77 third person or by a personal interest of counsel *[see 810.10-1]*.  
78 • Counsel may represent a client if *[see 810.10-2]*:  
79 ○ they are able to provide competent and immediate representation to each affected client  
80 ○ representation is not prohibited by law  
81 ○ representation does not involve a claim by one client against another represented by  
82 counsel in any proceeding before the Judiciary  
83 ○ each affected client gives written informed consent  
84 • Counsel cannot use information related to the representation of a client to their disadvantage  
85 without written consent except as permitted or required by this law *[see 810.10-3]*.  
86 • Counsel cannot provide the client with any financial assistance related to the representation *[see*  
87 *810.10-4]*

88 **Duties to Former Clients**

- 89 • Counsel cannot represent a client in the same or related matter as a previous client if it is  
90 significantly conflicting to the interests of the former client unless the former client gives  
91 informed consent *[see 810.11]*.

92 **Former Judge, Mediator or Peacemaker**

- 93 • Counsel cannot represent anyone in connection to a case where counsel participated as a judge,  
94 mediator or peacemaker *[see 810.12]*.

95 **Client with Diminished Capacity**

- 96 • Counsel must maintain a normal client-counsel relationship with a client with diminished  
97 capacity and may request a guardian ad litem for the client *[see 810.13]*.

98 **Declining or Terminating Representation**

- 99 • Counsel must decline or withdraw representation if this law is violated, counsel’s physical or  
100 mental condition significantly impairs their ability to represent the client, or counsel is discharged  
101 *[see 810.14-1]*.  
102 • Counsel may withdraw representation of a client if *[see 810.14-2]*:  
103 ○ it does not affect the interests of the client,  
104 ○ the client insists on a course of action that is criminal or fraudulent,



- 105 ○ the client uses counsels services to commit a crime or fraud,
- 106 ○ the client insists on action that counsel considers distasteful or disagrees with,
- 107 ○ the client fails to fulfill an obligation to counsel and has been given reasonable warning
- 108 that counsel will withdraw unless obligation is met,
- 109 ○ the representation will result in an unreasonable financial burden on counsel, or
- 110 ○ other good cause for withdrawal exists.
- 111 • Counsel must follow established notice requirements when terminating representation and must
- 112 continue representation if ordered to do so by the Judiciary [*see 810.14-3*].
- 113 • Counsel must protect client’s interests upon terminating representation [*see 810.14-4*].

114 **Duties to Prospective Clients**

- 115 • Counsel must keep information confidential even if a client-counsel relationship does not exist
- 116 unless the client has given written informed consent otherwise or reasonable measures were taken
- 117 to avoid exposure to disqualifying information in determining expected services [*see 810.15*].

118 **Role as Advisor**

- 119 • Counsel may not:
  - 120 ○ knowingly advance a claim outside existing law unless the claim can be supported by
  - 121 good faith argument for an extension, modification or reversal of existing law
  - 122 ○ advance frivolous positions, or
  - 123 ○ injure another with court actions [*see 810.16-2*].
- 124 • Counsel cannot make false statements to a third person or fail to disclose facts to a third person
- 125 when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client [*see*
- 126 *810.16-3*].

127 **Candor and Impartiality toward the Judiciary**

- 128 • Counsel cannot knowingly [*see 810.17-2*]:
  - 129 ○ make or fail to correct false statements previously made to the Judiciary
  - 130 ○ fail to disclose to the Judiciary legal authority in the controlling jurisdiction known to be
  - 131 adverse to the client and not disclosed by opposing counsel
  - 132 ○ offer or fail to correct evidence presented to the Judiciary known to be false.
- 133 • Counsel cannot [*see 810.17-2*]:
  - 134 ○ influence a judge, juror or other court official
  - 135 ○ communicate one sided with a judge during proceeding unless authorized by law or court
  - 136 order or for scheduling purposes if permitted by the court
  - 137 ○ disrupt the Judiciary

138 **Fairness to Opposing Party and Counsel**

- 139 • Counsel cannot [*see 810.18*]:
  - 140 ○ Obstruct access to evidence by another party or destroy evidence or advise or assist
  - 141 another to do so
  - 142 ○ Falsify evidence or advise a witness to provide false testimony
  - 143 ○ Knowingly disobey an obligation established by law or rule, except for open refusal
  - 144 based on an assertion that an obligation doesn’t exist
  - 145 ○ Make frivolous discovery requests or fail to comply with discovery requests of opposing
  - 146 party
  - 147 ○ Allude to any matter not reasonably relevant or supported by admissible evidence

- 148 • Counsel cannot communicate about the representation with a person counsel knows is represented  
149 by an attorney or advocate unless counsel has consent of the other counsel or is authorized to do  
150 so by law or court order [see 810.18-2].
- 151 • Counsel must inform others not represented by an attorney or advocate of their role in  
152 representation and correct misunderstandings regarding representation. Counsel cannot give legal  
153 advice except to secure counsel [see 810.18-3].

#### 154 **Counsel as Witness**

- 155 • Counsel cannot provide representation at a trial where they are likely to be called as a witness  
156 unless [see 810.19]:
- 157 ○ The testimony relates to the legal services rendered in the case, or
  - 158 ○ Not doing so would cause hardship for the client.

#### 159 **Admittance to Practice and Disciplinary Matters**

- 160 • Counsel must comply with the Judiciary's Rules of Admission to Practice [See Judiciary  
161 Website] and cannot knowingly make false statements or fail to disclose a fact necessary to  
162 correct a mistake or fail to respond for a demand for information regarding admission [see  
163 810.20].

#### 164 **Misconduct**

- 165 • It is professional misconduct for counsel to [see 810.21]:
- 166 ○ Violate or assist or encourage another to violate this law
  - 167 ○ Commit a criminal act unless act has been pardoned
  - 168 ○ Engage in dishonest, fraudulent, deceitful or misrepresentative behavior unless pardoned
  - 169 ○ State or imply an ability to influence a tribal or governmental official to achieve results
  - 170 ○ Violate counsel's oath to Judiciary
  - 171 ○ Fail to cooperate in an investigation of a complaint filed with the Judiciary

#### 172 **Civil Actions for Negligence or Violation of Duty**

- 173 • A client alleging negligence by counsel can file a complaint with the Nation's Trial Court and  
174 must prove the following [see 810.22]:
- 175 ○ A client-counsel relationship existed
  - 176 ○ Counsel committed acts that were negligent or violated their duty under the law
  - 177 ○ The client suffered actual damages
  - 178 ○ The negligence or violation of duty was the main reason for the damages
  - 179 ○ That the client would have been successful if not for the counsel's negligence
- 180 • The Trial Court will consider the merits of the client's case and if allegations are substantiated the  
181 court may issue a written order awarding monetary damages not to exceed five thousand dollars  
182 (\$5,000) [see 810.22-3 and 810.22-4].
- 183 • Decisions of the Trial Court are appealable to the Court of Appeals.

#### 184 **Disciplinary Actions**

- 185 • The Trial Court is granted jurisdiction to hear any complaints filed regarding disciplinary actions  
186 [see 810.23-1].
- 187 • The Chief Judge of the Trial Court or his or her designee will screen out or take no action on  
188 complaints that are frivolous and communicate decisions regarding appeals in writing [see  
189 810.23-2].
- 190 • Anonymous complaints will be handled according to the Anonymous Letters Policy.

- 191           ○ Anonymous complaints received shall be summarized and forwarded in a confidential  
192 manner to the Chief of the Oneida Police Department. The summary must include who  
193 received the information, the day, date, and time of receipt and the information received.  
194           *[see Anonymous Letters Policy O.C. 307.4-1].*
- 195       • Complaints that move forward will be assigned a judge by the Chief Judge of the Trial Court or  
196 his or her designee to preside. The party being accused must receive notice of a hearing and  
197 have a chance to respond to the allegations and the complainant must also receive notice of the  
198 hearing in order to present their evidence *[see 801.23-3]*. The case can be dismissed if there is  
199 not sufficient evidence to substantiate the allegation *[see 810.23-4]*. The presiding judge will  
200 determine the disciplinary methods if allegations are substantiated. Outside regulating authority  
201 will receive the decision if appropriate *[see 810.23-5]*.
  - 202       • Decisions of the Trial Court under this section are appealable to the Court of Appeals *[see*  
203 *810.23-6]*.
- 204 **B.** This legislation is written as simply as the subject matter allows.  
205

## 206 **SECTION 6. INTENT**

- 207 **A.** The purpose of the law is clearly intended to govern the conduct of attorneys and advocates who are  
208 admitted to practice before the Judiciary.
- 209 **B.** This legislation applies to attorneys and advocates who practice before the Judiciary; as well as their  
210 clients who have an established set of guidelines to ensure they are receiving adequate representation  
211 and a process to follow regarding recourse for inadequate services rendered by practicing attorneys or  
212 advocates.  
213

## 214 **SECTION 7. EFFECT ON EXISTING LEGISLATION**

- 215 **A.** This law does not impact or conflict with any existing laws of the Nation. The following are laws of  
216 the Nation are related legislation:
- 217       • Anonymous Letters Policy
    - 218           ○ The law will follow the Anonymous Letter Policy with respect to complaints that are  
219 filed anonymously. The Chief Judge may take no action on an anonymous complaint  
220 other than fulfilling the requirements of the Nation's Anonymous Letters Policy *[see*  
221 *810.23-2(a)]*.
- 222 Attorneys and advocates admitted to practice before the Judiciary shall act in accordance with all  
223 existing laws and rules of the Nation that establish guidelines for attorneys and advocates including:
- 224       • The Rules of Civil Procedure *[see Chapter 803]*
    - 225           ○ Establishes the role and responsibilities of attorneys and advocates in civil proceedings
  - 226       • The Rules of Appellate Procedure *[see chapter 805]*
    - 227           ○ Establishes the role and responsibilities of attorneys and advocates in appellate  
228 proceedings.
  - 229       • Oneida Judiciary Rules of Evidence *[see Chapter 804]*
    - 230           ○ Establishes the attorney-client and advocate-client relationship
  - 231       • Divorce, Annulment, Legal Separation *[see Chapter 702]*
    - 232           ○ Establishes the role and responsibilities of an attorney or advocate representing a party in  
233 divorce, annulment, or legal separation proceedings.

- 234 • Judiciary Rules of Admission [*See Judiciary Website*]  
235 ○ Establishes minimum requirements for admission to practice before the Judiciary and to  
236 regulate those admitted to practice.

237  
238 **B.** There are not any conflicts with existing laws of the Nation.  
239

240 **SECTION 8. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR**  
241 **OBLIGATIONS**

242 **A.** This law codifies the Oneida Judiciary Rules of Professional Conduct; a modified version of  
243 Wisconsin Supreme Court Rule 20, Rules of Professional Conduct for Attorneys that is applicable to  
244 the Judiciary [*see Judiciary website*]. The Wisconsin Supreme Court rules do not apply to lay  
245 advocates.

246 **B.** This law clearly establishes the expectations of attorneys and advocates who practice before the  
247 Judiciary and provides clients with an understanding of the level of service to be expected from  
248 attorneys and advocates who represent them before the Judiciary.  
249

250 **SECTION 9. ENFORCEMENT**

251 **A.** A client alleging that counsel was negligent or violated a duty under this law may initiate a civil action  
252 by filing a complaint with the Judiciary's Trial Court [*see 810.22-1*]. Decisions of the Trial Court  
253 under this section may be appealed to the Court of Appeals [*see 810.22-5*]. The Judiciary's Trial  
254 Court is granted jurisdiction to hear complaints filed regarding any disciplinary actions pertaining to  
255 this law [*see 810.23-1*]. Decisions of the Trial Court under this section are appealed to the Court of  
256 Appeals [*see 810.23-6*].

257 **B.** The law will be enforced utilizing existing human resources.  
258

259 **SECTION 10. ACCOUNTABILITY**

260 **A.** The Judiciary is accountable for implementation and operation of this law.

261 **B.** There are no annual or other reporting requirements to the GTC.  
262  
263

264

**Title 8. Judiciary - Chapter 810**  
**PROFESSIONAL CONDUCT FOR ATTORNEYS AND ADVOCATES**  
**Téhatilhwaskénhas ahatihwakwalihsyúhake ahatihwatok/hake laotilhwá'ke**  
*The lawyers/advocates will always straighten out the issues for them to always of their affairs be certain*

810.1. Purpose and Policy	810.13. Client with Diminished Capacity
810.2. Adoption, Amendment, Repeal	810.14. Declining or Terminating Representation
810.3. Definitions	810.15. Duties to Prospective Clients
810.4. Competence	810.16. Role as Advisor
810.5. Scope of Representation	810.17. Candor and Impartiality toward the Judiciary
810.6. Diligence	810.18. Fairness to Opposing Party and Counsel
810.7. Communication	810.19. Counsel as Witness
810.8. Fees	810.20. Admittance to Practice and Disciplinary Matters
810.9. Confidentiality	810.21. Misconduct
810.10. Conflict of Interest	810.22. Civil Actions for Negligence or Violation of Duty
810.11. Duties to Former Clients	810.23. Disciplinary Actions
810.12. Former Judge, Mediator, or Peacemaker	

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1  
2 **810.1. Purpose and Policy**  
3 810.1-1. *Purpose.* The purpose of this law is to govern the conduct of attorneys and advocates  
4 that are admitted to practice law before the Judiciary.  
5 810.1-2. *Policy.* It is the policy of the Nation that the interests of all parties that appear before  
6 the Judiciary are protected. In pursuit of this interest, it is to the benefit of all parties that  
7 attorneys or advocates are subject to rules governing their professional conduct.  
8

9 **810.2. Adoption, Amendment, Repeal**  
10 810.2-1. This law was adopted by the Oneida Business Committee by resolution  
11 \_\_\_\_\_.  
12 810.2-2. This law may be amended or repealed by the Oneida Business Committee and/or  
13 Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures  
14 Act.  
15 810.2-3. Should a provision of this law or the application thereof to any person or circumstances  
16 be held as invalid, such invalidity shall not affect other provisions of this law which are  
17 considered to have legal force without the invalid portions.  
18 810.2-4. Should a provision of this law or the application thereof to any person or circumstances  
19 be held as invalid, such invalidity shall not affect other provisions of this law which are  
20 considered to have legal force without the invalid portions.  
21 810.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.  
22 810.2-6. Where precedent for any issue under this law has not been established by the Judiciary, the  
23 Judiciary and counsel may refer to established Wisconsin or federal case law precedent or laws for  
24 guidance. The Wisconsin State Law Library maintains a section on Legal Ethics and Professional  
25 Conduct located at <http://wilawlibrary.gov/topics/legalprof/malpractice.php>.  
26

27 **810.3. Definitions**  
28 810.3-1. This section shall govern the definitions of words and phrases used within this law. All  
29 words not defined herein shall be used in their ordinary and everyday sense.  
30 (a) “Advocate” means a non-attorney advocate who is admitted to practice law and is  
31 presented to the Court as the representative or advisor to a party. “Advocate” shall not  
32 mean a domestic violence advocate present in court for the sole purpose of providing  
33 support or a guardian ad litem.

34 (b) “Attorney” means a person trained and licensed to represent another person in Court,  
35 to prepare documents, and to give advice or counsel on matters of law. “Attorney” shall  
36 not mean a guardian ad litem.

37 (c) “Counsel” means an attorney or advocate that is admitted to practice before the  
38 Judiciary.

39 (d) “Ex Parte” shall mean any contact with the Judge regarding a pending case where the  
40 opposing party has not received notice, is not present, and has not consented to the  
41 communication.

42 (e) “Judiciary” means the judicial system responsible for applying the laws of the Oneida  
43 Nation. The three branches, as identified in resolutions BC-05-08-13-A and GTC 01-07-  
44 13-B are the Family Court, Trial Court and Court of Appeals.

45 (f) “Informed consent” means the agreement by a person to a proposed course of conduct  
46 after counsel has communicated adequate information and explanation about the material  
47 risks of and reasonably available alternatives to the proposed course of conduct.

48 (g) “Preponderance of the evidence” means it is more likely than not that the facts  
49 presented are true.

50 (h) “Prospective client” means a person who consults with counsel about the possibility  
51 of forming a client-counsel relationship.

52 (i) “Pro Tem Judge” means a decision maker that is not currently seated on the Judiciary,  
53 but that is appointed on a temporary (*pro tempore*), case-by-case basis to hear and decide  
54 matters in professional conduct panels.

55 (j) “Reasonable” or “reasonably” when used in relation to conduct by counsel means the  
56 conduct of a reasonably prudent and competent attorney or advocate.  
57

#### 58 **810.4. Competence**

59 810.4-1. Counsel shall provide competent representation to a client. Competent representation  
60 requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the  
61 representation.  
62

#### 63 **810.5. Scope of Representation**

64 810.5-1. A client develops a privileged relationship protected by section 810.9 of this law and  
65 section 804.8-2 of the Oneida Judiciary Rules of Evidence once they consult with counsel to  
66 obtain legal services or once counsel performs legal services for the client. Any professional  
67 opinion given by counsel without express disclosure negating a privileged relationship shall  
68 create a privileged client-counsel relationship.

69 810.5-2. Counsel shall abide by a client’s decisions concerning the objectives of representation  
70 and shall consult with the client as to the means by which they are to be pursued. Counsel may  
71 take such action on behalf of the client as is impliedly authorized to carry out the representation.

72 810.5-3. Counsel’s representation of a client, including representation by appointment, does not  
73 constitute an endorsement of the client’s political, economic, social or moral views or activities.

74 810.5-4. Counsel may limit the scope of representation if the limitation is reasonable under the  
75 circumstances and the client gives informed written consent.

76 810.5-5. Counsel shall not advise a client to engage, or assist a client, in conduct that counsel  
77 knows is criminal or fraudulent, but counsel may discuss the legal consequences of any proposed  
78 course of conduct with a client and may advise or assist a client to make a good faith effort to  
79 determine the validity, scope, meaning, or application of the law.  
80

81 **810.6. Diligence**

82 810.6-1. Counsel shall act with reasonable diligence and promptness in representing a client.  
83

84 **810.7. Communication**

85 810.7-1. Counsel shall:

- 86 (a) Promptly inform the client of any decision or circumstance with respect to which the
- 87 client's informed consent is required by this law;
- 88 (b) Reasonably consult with the client about the means by which the client's objectives
- 89 are to be accomplished;
- 90 (c) Keep the client reasonably informed about the status of the matter;
- 91 (d) Promptly comply with reasonable requests by the client for information; and
- 92 (e) Consult with the client about any relevant limitations on counsel's conduct when
- 93 counsel knows that the client expects assistance not permitted by this law or other laws or
- 94 rules.

95 810.7-2. Counsel shall explain a matter to the extent reasonably necessary to permit the client to  
96 make informed decisions regarding the representation.  
97

98 **810.8. Fees**

99 810.8-1. Counsel shall not make an agreement for, charge, or collect an unreasonable fee or an  
100 unreasonable amount for expenses. The factors to be considered in determining the  
101 reasonableness of a fee include the following:

- 102 (a) The time and labor required, the novelty and difficulty of the questions involved, and
- 103 the skill required to perform the legal service properly;
- 104 (b) The likelihood, if apparent to the client, that the acceptance of the particular
- 105 employment will prevent other employment by counsel;
- 106 (c) The fee customarily charged in the locality for similar legal services;
- 107 (d) The amount involved and the results obtained;
- 108 (e) The time limitations imposed by the client or by the circumstances;
- 109 (f) The nature and length of the professional relationship with the client; and
- 110 (g) The experience, reputation, and ability of the attorney or advocate performing the
- 111 services.

112 810.8-2. The scope of the representation and the basis or rate of the fee and expenses for which  
113 the client will be responsible shall be communicated to the client in writing, before or within a  
114 reasonable time after commencing the representation. Any changes in the basis or rate of the fee  
115 or expenses shall also be communicated in writing to the client.

116 810.8-3. Counsel shall promptly respond to a client's request for information concerning fees  
117 and expenses.  
118

119 **810.9. Confidentiality**

120 810.9-1. Counsel shall not reveal information relating to the representation of a client unless the  
121 client gives informed consent, except for disclosures that are impliedly authorized in order to  
122 carry out the representation.

123 810.9-2. Counsel shall reveal information relating to the representation of a client to the extent  
124 counsel reasonably believes necessary to prevent the client from committing a criminal or  
125 fraudulent act that counsel reasonably believes is likely to result in death or substantial bodily  
126 harm or in substantial injury to the financial interest or property of another.

127 810.9-3. Counsel may reveal information relating to the representation of a client to the extent  
128 counsel reasonably believes necessary:

- 129 (a) To prevent reasonably likely death or substantial bodily harm;  
130 (b) To prevent, mitigate, or rectify substantial injury to the financial interests or property  
131 of another that is reasonably certain to result or has resulted from the client's commission  
132 of a crime or fraud in furtherance of which the client has used counsel's services;  
133 (c) To secure legal advice about counsel's conduct under this law;  
134 (d) To establish a claim or defense on behalf of counsel in a controversy between  
135 counsel and the client, to establish a defense to an action seeking to deny admission to  
136 practice before the Judiciary, or to respond to allegations in any proceeding concerning  
137 counsel's representation of the client;  
138 (e) To comply with other laws or court orders; or  
139 (f) To detect and resolve conflicts of interest, but only if the revealed information would  
140 not compromise the client-counsel privilege or otherwise prejudice the client.

141 810.9-4. Counsel shall make reasonable efforts to prevent the inadvertent or unauthorized  
142 disclosure of, or unauthorized access to, information relating to the representation of a client.  
143

#### 144 **810.10. Conflict of Interest**

145 810.10-1. Counsel, except as provided in 810.10-2, shall not represent a client if the  
146 representation involves a conflict of interest. A conflict of interest exists if:

- 147 (a) The representation of one client will be directly adverse to another client; or  
148 (b) There is a significant risk that the representation of one or more clients will be  
149 significantly limited by counsel's responsibilities to another client, a former client, a third  
150 person, or by a personal interest of counsel.

151 810.10-2. Notwithstanding the existence of a conflict of interest under 810.10-1, counsel may  
152 represent a client if:

- 153 (a) Counsel reasonably believes that counsel will be able to provide competent and  
154 diligent representation to each affected client;  
155 (b) The representation is not prohibited by law;  
156 (c) The representation does not involve the assertion of a claim by one client against  
157 another client represented by counsel in the same litigation or other proceeding before the  
158 Judiciary; and  
159 (d) Each affected client gives informed consent, confirmed in writing signed by the  
160 client.

161 810.10-3. Counsel shall not use information relating to representation of a client to the  
162 disadvantage of the client unless the client gives informed consent, except as permitted or  
163 required by this law.

164 810.10-4. Counsel shall not provide the client with any financial assistance pertaining to the  
165 matter for which counsel represents the client.  
166

#### 167 **810.11. Duties to Former Clients**

168 810.11-1. Counsel who has formerly represented a client in a matter shall not thereafter represent  
169 another person in the same or a substantially related matter in which that person's interests are  
170 materially adverse to the interests of the former client unless the former client gives informed  
171 written consent.  
172

#### 173 **810.12. Former Judge, Mediator or Peacemaker**

174 810.12-1. Counsel shall not represent anyone in connection with a matter in which counsel  
175 participated personally and substantially as a judge, mediator or peacemaker.  
176



177 **810.13. Client with Diminished Capacity**

178 810.13-1. When a client's capacity to make adequately considered decisions in connection with  
179 a representation is diminished, whether because of minority, mental impairment, or for some  
180 other reason, counsel shall, as far as reasonably possible, maintain a normal client-counsel  
181 relationship with the client.

182 810.13-2. When counsel reasonably believes that the client has diminished capacity, counsel  
183 may request that the court appoint a guardian ad litem for the client.

184

185 **810.14. Declining or Terminating Representation**

186 810.14-1. Counsel shall not represent a client or, where representation has commenced, shall  
187 withdraw from the representation of a client if:

188 (a) The representation will result in a violation of this law or any other applicable law or  
189 rule governing professional conduct;

190 (b) Counsel's physical or mental condition significantly impairs counsel's ability to  
191 represent the client; or

192 (c) Counsel is discharged.

193 810.14-2. Counsel may withdraw from representing a client if:

194 (a) Withdrawal can be accomplished without material adverse effect on the interests of  
195 the client;

196 (b) The client persists in a course of action involving counsel's services that counsel  
197 reasonably believes is criminal or fraudulent;

198 (c) The client has used the counsel's services to perpetrate a crime or fraud;

199 (d) The client insists upon taking action that counsel considers unacceptable or with  
200 which counsel has a fundamental disagreement;

201 (e) The client fails substantially to fulfill an obligation to counsel regarding counsel's  
202 services and has been given reasonable warning that counsel will withdraw unless the  
203 obligation is fulfilled;

204 (f) The representation will result in an unreasonable financial burden on counsel or has  
205 been rendered unreasonably difficult by the client; or

206 (g) Other good cause for withdrawal exists.

207 810.14-3. Counsel must comply with applicable court rules requiring notice to or permission of  
208 the Judiciary when terminating a representation. When ordered to do so by the Judiciary,  
209 counsel shall continue representation notwithstanding good cause for terminating the  
210 representation.

211 810.14-4. Upon termination of representation, counsel shall take steps to the extent reasonably  
212 practicable to protect a client's interests, such as giving reasonable notice to the client, allowing  
213 time for seeking other counsel, surrendering papers and property to which the client is entitled  
214 and refunding any fees not earned.

215

216 **810.15. Duties to Prospective Clients**

217 810.15-1. Even when no client-counsel relationship ensues, counsel who has learned  
218 information from a prospective client shall not use or reveal that information learned in the  
219 consultation, unless:

220 (a) The affected client and/or the prospective client have given informed written consent;  
221 or

222 (b) Counsel who received the information took reasonable measures to avoid exposure to  
223 more disqualifying information that was reasonably necessary to determine whether to  
224 represent the prospective client.

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**810.16. Role as Advisor**

810.16-1. In representing a client, counsel shall exercise independent professional judgment and render candid advice. In rendering advice, counsel may refer not only to law but to other considerations such as moral, economic, social, cultural, and political factors that may be relevant to the client’s situation.

810.16-2. In representing a client, counsel shall not:

- (a) Knowingly advance a claim or defense that is unwarranted under existing law, except that counsel may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law;
- (b) Knowingly advance a factual position unless there is a basis for doing so that is not frivolous; or
- (c) File an action, assert a position, conduct a defense, delay a trial, or take other actions on behalf of the client when counsel knows or when it is obvious that such an action would serve merely to harass or maliciously injure another.

810.16-3. In the course of representing a client, counsel shall not knowingly:

- (a) Make a false statement of material fact or law to a third person; or
- (b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

**810.17. Candor and Impartiality toward the Judiciary**

810.17-1. Counsel shall not knowingly:

- (a) Make a false statement of fact or law to the Judiciary or fail to correct a false statement of material fact or law previously made to the Judiciary by counsel;
- (b) Fail to disclose to the Judiciary legal authority in the controlling jurisdiction known to the attorney or advocate to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (c) Offer evidence that counsel knows to be false. If counsel, counsel’s client, or a witness called by counsel has offered material evidence and counsel comes to know of its falsity, counsel shall take reasonable remedial measures, including, if necessary, disclosure to the Judiciary. Counsel may refuse to offer evidence believed to be false.

810.17-2. Counsel shall not:

- (a) Seek to influence a judge, juror, or other court official;
- (b) Communicate ex parte with a judge during the proceedings unless authorized to do so by law or court order or for scheduling purposes, if permitted by the court; or
- (c) Engage in conduct intended to disrupt the Judiciary.

**810.18. Fairness to Opposing Party and Counsel**

810.18-1. Counsel shall not:

- (a) Unlawfully obstruct another party’s access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. Counsel shall not advise or assist another person to do any such act;
- (b) Falsify evidence, advise, or assist a witness to testify falsely;
- (c) Knowingly disobey an obligation under any applicable law or rule, except for open refusal based on an assertion that no valid obligation exists;
- (d) In pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party; or

272 (e) In trial, allude to any matter that counsel does not reasonably believe is relevant or  
273 that will not be supported by admissible evidence.

274 810.18-2. In representing a client, counsel shall not communicate about the subject of the  
275 representation with a person counsel knows to be represented by another attorney or advocate in  
276 the matter unless counsel has the consent of the other attorney or advocate or is authorized to do  
277 so by law or a court order.

278 810.18-3. In dealing on behalf of a client with a person who is not represented by an attorney or  
279 advocate, counsel shall inform such person of counsel's role in the matter. When counsel knows  
280 or reasonably should know that the unrepresented person misunderstands counsel's role in the  
281 matter, counsel shall make reasonable efforts to correct this misunderstanding. Counsel shall not  
282 give legal advice to an unrepresented person other than the advice to secure counsel.

283

#### 284 **810.19. Counsel as Witness**

285 810.19-1. Counsel shall not act as an attorney or advocate at a trial in which counsel is likely to  
286 be a necessary witness unless:

- 287 (a) The testimony relates to the nature and value of legal services rendered in the case; or  
288 (b) Disqualification of counsel would work substantial hardship on the client.

289

#### 290 **810.20. Admittance to Practice and Disciplinary Matters**

291 810.20-1. Counsel shall comply with the Judiciary's Rules of Admission to Practice.

292 810.20-2. An applicant for admission to practice or counsel in connection with a disciplinary  
293 matter, shall not:

- 294 (a) Knowingly make a false statement of material fact; or  
295 (b) Fail to disclose a fact necessary to correct a mistake known by the person to have  
296 arisen in the matter, or knowingly fail to respond to a lawful demand for information  
297 from an admissions or disciplinary authority.

298

#### 299 **810.21. Misconduct**

300 810.21-1. It is professional misconduct for counsel to:

- 301 (a) Violate or attempt to violate this law, knowingly assist or induce another to do so, or  
302 do so through the acts of another;  
303 (b) Commit a criminal act that reflects adversely on counsel's honesty, trustworthiness,  
304 or fitness as counsel in other respects unless such criminal activity has been pardoned or  
305 forgiven;  
306 (c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation unless  
307 such conduct is pardoned or forgiven;  
308 (d) State or imply an ability to influence improperly a tribal or government agency or  
309 official or to achieve results by means that violate any applicable law or rule;  
310 (e) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable  
311 canons of judicial conduct or other law or rule;  
312 (f) Violate the counsel's oath given to the Judiciary; or  
313 (g) Fail to cooperate in the investigation of a complaint filed with the Judiciary.

314

#### 315 **810.22. Civil Actions for Negligence or Violation of Duty**

316 810.22-1. A client alleging that counsel was negligent or violated a duty under this law may  
317 initiate a civil action by filing a complaint with the Judiciary's Trial Court.

318 810.22-2. In a civil action against counsel for negligence or violation of duty, the client has the  
319 burden of proving all of the following:

- 320 (a) A client-counsel relationship existed;  
321 (b) That counsel committed acts that were negligent or in violation of duty under this  
322 law;  
323 (c) That the client suffered actual damages;  
324 (d) That the negligence or violation of duty was the direct cause of the damages; and  
325 (e) That, but for the negligence or violation of duty on counsel, the client would have  
326 been successful in the prosecution or defense of the case.

327 810.22-3. In making a final determination, the Court shall consider what a particular counsel did  
328 or failed to do and what a reasonable or prudent counsel would do in the same circumstance.

329 810.22-4. If there is enough evidence to substantiate the allegations by a preponderance of the  
330 evidence, the Court shall issue a written order awarding monetary damages to the client not to  
331 exceed five thousand dollars (\$5,000).

332 810.22-5. Decisions of the Trial Court under this section may be appealed to the Court of  
333 Appeals.

334

### 335 **810.23. Disciplinary Actions**

336 810.23-1. The Judiciary's Trial Court is granted jurisdiction to hear complaints filed regarding  
337 any disciplinary actions pertaining to this law.

338 810.23-2. Complaints of alleged violations of this law may be filed on behalf of the client with  
339 the Trial Court or initiated by the Judiciary. All complaints shall be forwarded to the Chief  
340 Judge of the Trial Court or his or her designee who may screen out and take no action on  
341 complaints which are determined to be frivolous or repetitive on their face. The Chief Judge or  
342 his or her designee shall communicate in writing any such decision with the complainant.

343 (a) The Chief Judge or his or her designee may take no action on an anonymous  
344 complaint other than fulfilling the requirements of the Nation's Anonymous Letters  
345 Policy.

346 810.23-3. If a complaint goes forward, the Chief Judge or his or her designee shall assign a  
347 judge to preside over the disciplinary proceedings. Current or pro tem judges are eligible to hear  
348 disciplinary matters.

349 (a) The party being accused of the disciplinary violation shall be given notice of a  
350 hearing and an opportunity to meaningfully respond to the allegations.

351 (b) The complainant also shall be given notice of any hearings and shall have the right to  
352 present evidence.

353 810.23-4. The judge can dismiss the complaint if it appears frivolous or if there is not enough  
354 evidence to substantiate the allegations by a preponderance of the evidence.

355 810.23-5. If there is enough evidence to substantiate the allegations by a preponderance of the  
356 evidence, the Court shall issue a written disciplinary order.

357 (a) The Court may opt to choose any combination of the following disciplinary methods:

358 (1) Private reprimand;

359 (2) Public reprimand through publication in the Nation's newspaper;

360 (3) Additional training requirements;

361 (4) Monetary fine not to exceed five thousand dollars (\$5,000); or

362 (5) Suspension or revocation of the right to practice before the Judiciary.

363 (b) The Court may also forward their decision to an appropriate outside regulating  
364 authority in appropriate situations (e.g. to the State Bar of Wisconsin if counsel is an  
365 attorney licensed to practice in Wisconsin).

366 810.23-6. Decisions of the Trial Court under this section are appealed to the Court of Appeals.

367 *End.*



# MEMORANDUM

DATE: September 13, 2017  
 FROM: RaLinda Ninham-Lamberies, Assistant Chief Financial Officer  
 TO: Larry Barton, Chief Financial Officer  
 RE: **Financial Impact of the Professional Conduct Law**

## I. Estimated Fiscal Impact Summary

<b>Law:</b> Professional Conduct		Draft 7
<b>Implementing Agency</b>	Oneida Judiciary	
<b>Estimated time to comply</b>	30 days after approval to provide appropriate notice	
<b>Estimated Impact</b>	<b>Current Fiscal Year</b>	<b>10 Year Estimate*</b>
<b>Total Estimated Fiscal Impact</b>	<b>\$0</b>	<b>\$0</b>
<b>Revenue and cost considerations</b>	Establishment of fees	
<b>Uncertainties and Unknowns</b>	Number of clients, fees collected, collection method	

## II. Background

### A. Legislative History

This is a new law. The Public Meeting was held on July 20<sup>th</sup>, 2017.

### B. Summary of Content

The legislation governs the conduct of attorneys and advocates that are admitted to practice law before the Judiciary and includes the following;

1. Requires counsel to provide competent representation.

2. Defines the scope, diligence, and communication expected from advocates & attorneys.
3. Sets criteria and requirements for fees.
4. Sets expectations of confidentiality, establishes when a conflict of interest arises and when circumstances require a client's consent.
5. Establishes duties to former clients as well as to their former role of Judge, Mediator or Peacemaker.
6. Defines terms to the representation of a client with diminished capacity and defines when and how counsel may decline or terminate representation.
7. Defines duties to prospective clients, counsel's role as advisor, and expectations of candor and impartiality toward the Judiciary.
8. Requires fairness to the opposing party and counsel, prohibits acting as witness and counsel for the same trial, and sets criteria for admittance to practice and disciplinary matters.
9. Lastly, the Law defines what is considered misconduct, civil actions for negligence or violation of duty and disciplinary actions.

**C. Methodology and Assumptions**

1. A "Fiscal Impact Statement" means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.
2. Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.
3. The analysis was completed based on the information provided as of the date of this memo.

**II. Agency**

The Professional Conduct for Attorneys and Advocates law states that the attorney and advocate must be admitted to practice law before the Judiciary. To be admitted to practice, advocates must follow the Rules of Admission. The Rules of Admission state the following;

**A.** The Judiciary hereby adopts Wisconsin Supreme Court Rule 20, Rules of Professional Conduct for Attorneys (the Professional Conduct for Attorneys and Advocates law will require this provision to be deleted from the Rules of Admission).

**B.** All individuals admitted to practice before the Judiciary, including lay advocates, shall be governed by the Oneida Rules of Professional Conduct for Attorneys.

The Law allows for civil actions for negligence or violation of duty and disciplinary actions including the award of monetary damages to the client not to exceed five thousand dollars (\$5,000). For advocates and attorneys employed by the Legal Resource Center, these awards maybe be covered under the Professional Liability insurance for the Nation. An increase in claims for the Nation, would lead to an increase in cost for this coverage.

The law gives specific criteria for establishing fees for legal services. Finance was informed that the Legal Resource Center would perform legal services free of charge; however the filing fees would be the responsibility of the prospective client. The Legal Resource Center law does not reference waiving or adjusting fees based on income; however, the fees and costs reference are from outside sources the Legal Resource Center does not control. The court does provide an application for a waiver of filing fees based on an individual's financial circumstances.

### **III. Financial Impact**

No fiscal impact.

### **IV. Recommendation**

Finance does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.



Legislative Operating Committee  
September 20, 2017

# Petition: Vandehei – Business Committee E-Polls

<b>Submission Date:</b> 7/26/17	<b>Public Meeting:</b> n/a
<b>LOC Sponsor:</b> Daniel Guzman King	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This petition calls for a special GTC meeting to be held to consider eliminating or modifying e-polls conducted by the Business Committee to include the General Tribal Council.*

**7/27/17 OBC:** Motion by Tehassi Hill to acknowledge receipt of the petition submitted Frank Vandehei regarding the E-Poll process, seconded by David Jordan. Motion carried unanimously.

Motion by Tehassi Hill to send the verified petition to the Law, Finance, Legislative Reference, and Direct Report Offices' for legal financial, legislative, and administrative analyses, seconded by Fawn Billie. Motion carried unanimously.

Motion by Tehassi Hill to direct the Law, Finance, and Legislative Reference Office to submit their analyses to the Tribal Secretary within sixty (60) days with a progress report to be submitted within forty-five (45) days, seconded by David Jordan. Motion carried unanimously.

Motion by Tehassi Hill to direct the Direct Report Offices to submit administrative analyses to Tribal Secretary within thirty (30) days, seconded by David Jordan. Motion carried unanimously.

**9/6/17 LOC:** Motion by Ernest Stevens III to add Petition: Vandehei – E-polls to the active files list with Daniel Guzman-King as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

**Next Steps:**

- Approve the forty-five (45) day update for Petition: Vandehei – Business Committee E-Polls and forward to the Oneida Business Committee.





**Oneida Nation**  
Oneida Business Committee  
Legislative Operating Committee  
PO Box 365 • Oneida, WI 54155-0365  
Oneida-nsn.gov



**TO:** Oneida Business Committee  
**FROM:** David P. Jordan, LOC Chairperson *DJ*  
**DATE:** September 13, 2017  
**RE:** Petition: Vandehei - Business Committee E-Polls

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On June 29, 2017, a petition was submitted to the Business Committee Support Office by Frank Vandehei which calls for a special GTC meeting to be held to consider eliminating or modifying e-polls conducted by the Business Committee to include the General Tribal Council.

On August 9, 2017, the Oneida Business Committee (OBC) accepted the verified petition submitted by Frank Vandehei and requested that the Legislative Reference Office (LRO) complete a legislative analysis within sixty (60) days and that a progress report be submitted within forty-five (45) days. This memorandum serves as the requested progress report.

The LRO has completed research regarding the Petition and will present the completed legislative analysis to the OBC within the sixty (60) day timeframe as directed.



Legislative Operating Committee  
September 20, 2017

# Petition: Delgado – Trust Land Distribution

<b>Submission Date:</b> 7/26/17	<b>Public Meetings:</b> n/a
<b>LOC Sponsor:</b> Ernest Stevens III	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This petition includes a resolution that directs that at least 25 parcels of Oneida trust land be made available for individual home building initiatives by the end of FY18. Adult Tribal member applicants would be given 50-yr leases for the parcels on a first come first serve basis and that the applicant be given 18 months to acquire financing with an additional 6 months to schedule for construction.*

**6/21/17 LOC:** Motion by David P. Jordan to Add Petition: Delgado Trust Land Distribution to the active files list with Brandon Stevens sponsor and accept the statement of effect regarding Petition: Delgado- Trust Land Distribution and forward to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

**6/28/17 OBC:** Motion by Lisa Summers to defer the remaining agenda items to the July 12, 2017, regular Business Committee meeting, seconded by Tehassi Hill. Motion carried unanimously.

**7/12/17 OBC:** Motion by Lisa Summers to adopt the agenda with the following changes: [Delete General Tribal Council item XII.C.01. Accept legislative analysis regarding Petitioner Edward Delgado: Trust Land Distribution; and to move XII.E. Approve the August 14, 2017, to the top of the agenda], seconded by Jennifer Webster. Motion carried unanimously:

**7/26/17 OBC:** Motion by Tehassi Hill to acknowledge receipt of the petition submitted by Edward Delgado regarding Trust Land Distribution, seconded by Fawn Billie. Motion carried unanimously.

Motion by Tehassi Hill to send the verified petition to the Law, Finance, Legislative Reference, and Direct Report Offices' for legal financial, legislative, and administrative analyses, seconded by Trish King. Motion carried unanimously.

Motion by Tehassi Hill to direct the Law, Finance, and Legislative Reference Office to submit their analyses to the Tribal Secretary within sixty (60) days with a progress report to be submitted within forty-five (45) days, with a reminder of the July 7, 2017, GTC directive that GTC petitions “submitted to the Tribal Secretary’s Office shall be processed and a GTC meeting be convened with 120 calendar days of receipt by the Tribal Secretary’s Office”, seconded by Fawn Billie. Motion carried unanimously.

Motion by Tehassi Hill to direct the Direct Report Offices to submit administrative analyses to Tribal Secretary within thirty (30) days, seconded by Fawn Billie. Motion carried unanimously.

**9/6/17 LOC:** Motion by Jennifer Webster to add Petition: Delgado – Trust Land Distribution to the active files list with Ernie Stevens III as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

**Next Steps:**

- Approve the statement of effect and forward to the Oneida Business Committee for consideration



## Statement of Effect

### *Petition: Delgado - Trust Land Distribution*

#### *Summary*

This petition finds that the Nation has “thousands of vacant acres of trust land” and is asking GTC to direct that at least 25 parcels of Oneida trust land be made available for individual home building initiatives by the end of Fiscal Year 2018.

The petition is seeking to grant adult Oneida Tribal member applicants 50-year leases for the parcels, on a first-come, first-serve basis. After an applicant is granted a parcel, s/he must be given 18 months to acquire the financing, if needed, and an additional 6 months to be “scheduled for construction” for his/her contractor.

The petition/resolution states that the underlying spirit of this request is to ensure that the granting of trust land will not be determined by how rich or how poor an applicant is, but instead depends on when s/he applies and whether s/he can acquire the necessary financing in a reasonable amount of time.

*Submitted by: Tani Thurner, Staff Attorney, Legislative Reference Office*

#### *Analysis by the Legislative Reference Office*

This resolution is asking for the GTC to approve the attached Trust Land Distribution Petition “or a variation thereof,” and states that all signatories have had an opportunity to read the dated and signed petition.

Attached to the petition is a document titled the “Trust Land Distribution Petition.” This petition/resolution makes various findings relating to the history of the Nation’s land base, including that the Nation now owns approximately 25,000 acres of Reservation land, of which roughly 5,000 acres are in held in federal trust “and therefore tax exempt.” The petition/resolution also finds that:

- In 2016 the GTC was told there was a home building program with land made available, but the “vast majority” of Oneida people applying for land to build their homes on, have been denied.
- Most Oneida people are left with very limited and unnecessarily overly expensive home ownership options, “in spite of the Nation owning thousands of vacant acres of trust land”, and
- The Oneida people deserve better.

The petition is asking for GTC to direct that at least 25 “parcels” of trust land be made available for adult Tribal members, for 50-year leases, by the end of Fiscal Year 2018 (which ends September 30, 2018) for individual home building initiatives. The following requirements would apply for those parcels:

- Only one application accepted per “immediate nuclear family.”
- After receiving a parcel, the applicant must be given 18 months to acquire any needed financing, and then 6 more months to be “scheduled for construction.”

- Applications cannot be accepted until after notice for a parcel has been published in at least 3 issues of the Kalihwisaks.
- Applications must be accepted on a first-come first-serve basis.
- Every applicant must pay a \$250 refundable application fee within 10 days after the application is filed, and as long as it is paid within 10 days it will not interfere with the applicant's first-come first-serve status.
- If not granted a parcel, the applicant may receive a refund of the application fee or may choose to let it stand and be "granted priority the next time trust land is available."
- The Land Commission and OBC must "happily work together" to establish rules on how to make this petition work for the Oneida people.

#### *Lease Payments*

The petition/resolution does not identify the actual lease payments that lessees would be required to pay. The petitioner, Ed Delgado, was contacted and he stated that the intent is that lessors would pay the same lease fees that currently apply for residential leases on trust lands.

Currently, the lease rate is \$1 per year for a 50-year residential lease; as long as a Tribal member is on the lease. If there is only a non-member on the lease, it rises to \$1500/year; however if the lessee is enrolled in another native nation or if Oneida tribal member minors live in the home; the lease rate is reduced to \$500/year.

#### **Existing Oneida Laws - Application**

Although not identified in the petition/resolution, the petitioner also stated that the intent of the petition is that all existing laws and other requirements that apply to the leasing of Tribal trust land, would also apply to govern these leases sought by the petition.

As discussed below, the Nation has adopted a new Leasing law which will enable the Nation to lease out Oneida trust land without needing to have the Secretary of the US Department of Interior (the DOI) approve each individual lease. However, that new Leasing law must be approved by the DOI before it can go into effect, and the Nation is currently waiting for approval. Until the new Leasing Law goes into effect, the Real Property law includes some provisions which govern the leasing of Trust lands – those provisions are incorporated into the Real Property Law by Resolution BC-2-8-17-A. (They are not actually written into the Real Property Law, they are listed in the resolution.)

#### *Real Property Law*

The Real Property Law, with the leasing requirements incorporated through BC Resolution #2-8-17-A, states that "Commercial, Agricultural and Residential Leases of tribal trust land are available, with preference given to Oneida tribal citizens and programs." [601.9-2]. The provisions incorporated into the Real Property law would apply to the leases sought by the petitioner. They include:

- All leasing of Tribal land must be processed through the Division of Land Management (DOLM). [601.9-1]
- All leases must identify certain responsibilities of the lessee and the lessor (the Nation is the lessor) for matters such as: possession, use, and maintenance of the premises; improvements, security deposits, etc. [601.9-3]

- A leasehold interest cannot be assigned or otherwise encumbered without approval and recording through procedures established by DOLM. Assignments of leasehold interests for the purpose of financing must be processed and recorded at the appropriate office by DOLM. [601.9-4]
- If the lessee defaults on an approved encumbrance and it reaches the point of sale or foreclosure, DOLM has the right to correct the default. When this happens, the lessee will be subject to further proceedings, which may lead to termination of the lease, loss of improvements, a revised payment schedule, and/or garnishment of the lessee's wages to pay the remainder of the default. [601.9-5]

### *Leasing Law*

The Leasing law, which will go into effect 30 days after it is approved by the DOI, states that it applies to all of the Nation's trust land, and governs all residential leases executed by the Nation; so it would govern the leases sought by the petitioner, which the petition/resolution refers to as "individual home building initiatives" (i.e. residential leases).

There is one potential conflict between the Leasing law and this petition/resolution: the petition/resolution states that the OBC and Land Commission must "happily work together" to establish rules on how to make this petition work for the Oneida people. However, 602.3-1(q) of the Leasing law identifies rules as requirements enacted jointly by the DOLM and the Land Commission:

1. If this is interpreted as giving the OBC and Land Commission joint rulemaking authority, this would create a conflict when the Leasing law goes into effect, giving the Land Commission and DOLM joint rulemaking authority. Delegation of joint rulemaking authority will need to be accomplished through the adoption or amendment of law. The Administrative Rulemaking Law states that only agencies with rulemaking authority can promulgate rules. "Rulemaking Authority" is defined as the delegation of authority to Authorized Agencies found in the Tribe's laws [...] which allows Authorized Agencies to implement, interpret and/or enforce a law of the Tribe. [106.3-1(g)] If the intent of this petition/resolution is to grant joint rulemaking authority to the OBC, then that rulemaking authority should be delegated within a law, not within a resolution.
2. If this is interpreted as recognizing that the OBC and the Oneida Land Commission have a heightened responsibility to ensure that rules are developed that support this petition; and if the intent is still that DOLM and the Land Commission would have joint rulemaking authority (the OBC is already required to adopt all rules); then there is no conflict, but this intent should be more clearly indicated in any directives given by GTC.

### *Zoning & Shoreland Protection and Building Laws*

The Nation's Zoning and Shoreland Protection Law (*hereinafter*: "Zoning law") governs all Tribal lands held in trust, so it would govern trust lands leased under this petition.

The Zoning law divides the Reservation into 11 types of districts, including four types of residential districts – Single Family (R-1), Two-Family (R-2), and low-density and high-density multi-family (R-3 and R-4). [605.7-1]

If parcels of land are made available for the leases requested by this petition/resolution; then those parcels should be provided in residential districts – otherwise, the parcels will have to be re-zoned or the Land Commission would have to grant a variance to allow a home to be built.

The Zoning Law provides that “any interested person” may request that property be re-zoned. [605.5-6]

When building a residence on leased Trust land, lessees would be subject to all of the requirements identified in the Zoning law. Further, the Zoning Law prohibits permits from being issued unless the building plans, including the site plan, if applicable, are compliant with the Building Code. [605.6-8]. This means that all lessees are subject to the requirements of both laws.

The Zoning Law also identifies a list of various public nuisance violations; and lessees would be subject to those restrictions as well – this includes various restrictions relating to outdoor and exterior storage, storage of vehicles and hazardous materials; waste disposal; noise; vibrations; various types of emissions; discharging toxic or noxious matter, weeds and rank growth; building exteriors, and other public nuisances. [605.6-12]

*Home Building Opportunity (HBO) Program Standard Operating Procedures*

As noted above, the petitioner has indicated that the intent is that these land leases are to follow the Nation’s existing processes for leasing Tribal trust land. However, this petition/resolution is requesting some things that appear to conflict with the processes that are currently in place for leasing trust land for home building opportunities.

There are currently three Standard Operating Procedures (SOPs) which were authored by, and approved by, the Real Estate Services department on October 14, 2013;<sup>1</sup> which govern the Home Building Opportunity (HBO) Process. The HBO process is the “a process which enrolled members [...] are offered vacant parcels subject to Residential Land Lease with the intent to build a permanent and full-time residence.” The three HBO SOPs include the HBO Application Process, the HBO Advertising Process, and the HBO Parcel Request Process.

Some of the requirements identified in the petition conflict with the HBO SOPs. The primary differences are that the HBO SOPs require specific steps to be taken prior to a land contract being awarded, as shown below.

**Applicant Qualifications - and how is an applicant selected and offered a lease for an available vacant parcel?**

<b>The Petition/Resolution Process:</b>	<b>The Current HBO SOP requirements:</b>
To apply, the applicant must be an adult enrolled Oneida Tribal member.	To apply, the applicant must submit a pre-qualifying letter from a financial institution with their application, as well as a signed letter of intent.
The first applicant to apply is awarded the land lease.	The highest-scoring applicant is sent an offer letter. S/he then has 10 business days to accept and return it.
Then, s/he has 18 months to acquire any needed financing, and then she has an additional 6 months to be scheduled for construction by his/her contractor.	Within 60 days after submitting the accepted offer letter, the applicant must submit a builder's contract and formal loan commitment from a financial institution.

<sup>1</sup> The HBO SOPs reviewed in this Statement of Effect do not comply with the Administrative Rulemaking Law. The law, in section 106.4-4, permits existing SOPs to be acknowledged and published as Rules. The Division of Land Management has identified its intent to revise the HBO SOPs and submit them to be grandfathered under this section of the Administrative Rulemaking Law. The analysis conducted in this SOE is contingent upon that grandfathering action occurring in order to validate the requirements in the HBO SOPs.

	<p>Then the lease must be submitted to the next OLC meeting for approval.</p> <p>If approved by the OLC, <u>then</u> the applicant can enter into the land lease.</p>
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As these processes show, the petitioner is seeking to have leases awarded to Tribal members, who then have two years to acquire financing and be scheduled for construction. If they are unsuccessful in doing so, the land lease may be revoked after those two years. By comparison, under the current HBO process, the applicant must prove they are pre-qualified for financing at the time they apply for the land lease; and after they are offered the lease, they must submit a builder's contract and formal loan commitment within 60 days.

In addition to the standard lease awarding process, there are additional conflicts between what the petitioner is seeking and the current HBO processes that are followed:

- The petition seeks to have notice of vacant parcels published in at least 3 issues of the Kalihwisaks before applications will be accepted (the Kalihwisaks publishes twice a month). By comparison, the HBO SOPs require notice of the parcel to be advertised for at least 30 days in the Kalihwisaks, and on the DOLM website, the intranet, and in the DOLM front desk ad booklet.
- The petition only allows one application for a parcel per “immediate nuclear family”. The HBO SOPs do not limit how many applications can come from the same household.
- The petition seeks an \$250 application fee. The HBO SOPs do not mention any fees.
- The petition seeks to have land leases awarded on a first-come first-serve basis to applicants. By comparison, the HBO SOPs require the HBO team to use a scoring system where the highest scoring applicant is offered the lease first.
- Under the petition, if the applicant is not given a lease on a parcel s/he applied for, then s/he can either receive a refund of the application fee or let the application fee stand and be granted priority the next time trust land is available. It is not clear what “granted priority” would mean, though. If this means that the applicant would automatically be offered a land lease on the next parcel; it is not clear why notice of that next parcel would need to be published.
- The petition is silent as to what happens if the applicant already owns a home when they are offered a land lease on vacant land. Under the HBO SOPs, the applicant is required to sell their current home within 120 days after returning the accepted offer letter, (extensions can be granted, up to 12 months, maximum). Otherwise, the vacant land offer is voided and the offer is made to the next applicant. If this happens, the applicant cannot reapply for that same parcel for six months, or unless s/he can prove that their home was sold.

The HBO SOPs also require applicants to follow the “Build & Occupy Process” to comply with their home building. This is an internal process, defined as “A list of steps outlined to identify the process to obtain a residential land lease, and build on the vacant parcel.” Since the petitioner has stated that all existing laws and processes would apply, applicants/lessees would be required to follow that existing process as well.



### ***Conclusion***

Adoption of this petition/resolution would create some conflicts with the existing HBO process SOPs, and may create conflict with the rulemaking authority delegated in the Leasing Law. Before adopting this resolution/petition or approving any of the actions sought by the petitioner:

- The conflicts between the existing HBO rules and the requirements sought by the petitioner should be addressed.
- General Tribal Council should determine what happens to the security deposit paid by a person who is then awarded a lease.
- General Tribal Council should establish whether this petition delegates joint rulemaking authority to the OBC and the Land Commission, or whether the intent is for rulemaking authority to remain jointly with the Land Commission and DOLM; as it would be established in the Leasing Law.

Further, at the time this analysis was prepared, the HBO SOPs are not currently compliant with the Administrative Rulemaking Law. In order to become compliant and remain in effect, those SOPs should be processed and presented to the Legislative Operating Committee for acknowledgment and publication as a rule in accordance with the requirements of that law.



Legislative Operating Committee  
September 20, 2017

# Petition: Dallas – 2017 Tri-Annual General Election

<b>Submission Date:</b> 7/26/17	<b>Public Meetings:</b> n/a
<b>LOC Sponsor:</b> David P. Jordan	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This petition seeks to call a GTC meeting to review, discuss, and nullify the entire 2017 Oneida Tri-annual General Election held on Saturday, July 8, 2017 and to have GTC set a date and time to conduct a new election.*

**7/26/17 OBC:** Motion by Brandon Stevens to acknowledge receipt of the petition submitted by Linda Dallas regarding the 2017 Tri-Annual Election, seconded by Trish King. Motion carried unanimously.

Motion by Trish King to send the verified petition to the Law, Finance, Legislative Reference, and Direct Report Offices' for legal financial, legislative, and administrative analyses, seconded by Tehassi Hill. Motion carried unanimously.

Motion by Tehassi Hill to direct the Law, Finance, and Legislative Reference Office to submit their analyses to the Tribal Secretary within sixty (60) days with a progress report to be submitted within forty-five (45) days, seconded by Fawn Billie. Motion carried unanimously.

Motion by Tehassi Hill to direct the Direct Report Offices to submit administrative analyses to Tribal Secretary within thirty (30) days, seconded by Brandon Stevens. Motion carried unanimously.

**9/6/17 LOC:** Motion by Jennifer Webster to add Petition: Dallas – 2017 Tri-Annual General Election to the active files list with David P. Jordan as the sponsor; seconded by Ernie Stevens III. Motion carried unanimously.

Motion by Daniel Guzman King to add the Petition: Dallas 2017 Tri-Annual General Election to the active files list as a high priority with David P. Jordan as the sponsor; seconded by Jennifer Webster. Motion withdrawn.

Motion by Jennifer Webster to delete from the agenda; seconded by Daniel Guzman King. Motion carried unanimously.

*Note: this was already added to the active files list*

**Next Steps:**

- Accept the 45-day update memo and forward to the Oneida Business Committee



**Oneida Nation**  
Oneida Business Committee  
Legislative Operating Committee  
PO Box 365 • Oneida, WI 54155-0365  
Oneida-nsn.gov



**TO:** Oneida Business Committee  
**FROM:** David P. Jordan, LOC Chairperson *DS*  
**DATE:** September 27, 2017  
**RE:** Petition: Dallas – 2017 Tri-Annual General Election

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On July 26, 2017, the Oneida Business Committee (OBC) accepted the verified petition submitted by Linda Dallas regarding the 2017 Tri-Annual General Election and requested that the Legislative Reference Office (LRO) complete a legislative analysis within sixty (60) days and that a progress report be submitted within forty-five (45) days. This memorandum serves as the requested progress report.

The LRO is completing research regarding the petition and will submit a completed legislative analysis to the OBC for the October 11, 2017 OBC meeting. If you have any questions, please let me know.



Legislative Operating Committee  
September 20, 2017

# Landlord-Tenant Amendments

<b>Submission Date:</b> 12/21/16	<b>Public Meeting:</b> 6/5/17
<b>LOC Sponsor:</b> David P. Jordan	<b>Emergency Enacted:</b> 01/25/17 <b>Emergency Extended:</b> 07/26/17 <b>Expires:</b> 01/26/18

**Summary:** *Emergency amendments are requested to allow Oneida Housing Authority’s Rent-to-Own program to fit within the confines of the Law. Currently, the Law applies to rental agreements which are contracts where the tenant is granted the right to use or occupy the premises for a residential purpose for one year or less. Amendments will revise the definition of “rental agreement” to allow for longer than one year when the contract is on a rent-to-own basis.*

**12/21/16 LOC:** Motion by David P. Jordan to add the Landlord-Tenant Law Emergency Amendments to the Active Files list with David Jordan as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

**1/18/17 LOC:** Motion by Jennifer Webster to approve the emergency amendments adoption packet and forward the Landlord-Tenant Emergency Amendments to the Oneida Business Committee for consideration; seconded by David P. Jordan. Motion carried unanimously.

**1/25/17 OBC:** OBC adopts Landlord-Tenant Law Emergency Amendments through BC-01-25-17-C.

**2/1/17 LOC:** Motion by Jennifer Webster to direct the Finance Department to complete a fiscal impact statement by February 15, 2017 and to approve the public meeting packet, including the fiscal impact statement when completed, and forward the Landlord-Tenant law amendments to a public meeting to be held on March 2, 2017; seconded by Tehassi Hill. Motion carried unanimously.

**3/1/17 LOC:** Motion by Tehassi Hill to accept the February 22, 2017 e-poll which cancelled the March 2, 2017 Landlord-Tenant Public Meeting into the record; seconded by Fawn Billie. Motion carried unanimously.

**4/19/17 LOC:** Motion by Jennifer Webster to accept the Landlord-Tenant permanent amendments draft and request a legislative analysis due back May 3, 2017; seconded by Fawn Billie. Motion carried unanimously.

**5/3/17 LOC:** Motion by Tehassi Hill to approve the public meeting packet and forward the Landlord-Tenant permanent amendments to a public meeting to be held on June 5, 2017 and to forward to the Finance Department for a fiscal analysis due back to the Legislative Reference Office on June 2, 2017; seconded by Fawn Billie. Motion carried unanimously.

- 6/5/17:** Public Meeting held.
- 6/21/17 LOC:** Motion by David P. Jordan to accept the public meeting comments and memorandum and forward the Landlord-Tenant amendments adoption packet to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.
- 6/28/17 OBC:** Motion by Brandon Stevens to adopt resolution Landlord-Tenant (Law) Amendments, seconded by Fawn Billie. Motion withdrawn.  
Motion by Lisa Summers to defer the resolution entitled Landlord-Tenant (Law) Amendments to the next Business Committee work meeting, seconded by Jennifer Webster. Motion carried unanimously.
- 7/19/17 LOC:** Motion by David P. Jordan to approve the emergency amendments extension adoption packet and forward the Landlord-Tenant Emergency Amendments Extension Resolution to the Oneida Business Committee for their consideration; seconded by Jennifer Webster. Motion carried unanimously.
- Noted for the record: This item extends the existing adoption of emergency amendments for an additional six months.*
- 7/26/17 OBC:** Motion by Brandon Stevens to adopt resolution # 07-26-17-I Landlord-Tenant Emergency Amendments, seconded by David Jordan. Motion carried unanimously.
- 8/04/17:** OBC Work Meeting Held. Present: Treasurer Trish King, Councilmembers Fawn Billie, Tehassi Hill, David Jordan, and Brandon Stevens. Others Present: Danelle Wilson, Ernie Stevens, Krystal John, Jennifer Falck, Daniel Guzman, Cathy Bachhuber
- Adopt resolution entitled Landlord-Tenant (Law) Amendments.** The BC supported two policy amendments regarding surviving non-members: (1) A surviving non-member can stay in the rent to own program and convey to an Oneida child(ren) or convert the agreement to a rental unit as long as there is an Oneida child in the home; and (2) A surviving non-member may have up to six months from the date of a death or the remainder of the existing lease (maximum of 12 months), whichever is longer before being required to vacate.
- 9/6/17 LOC:** Motion by Ernie Stevens III to add Landlord-Tenant Law Amendment to the active files list with David P. Jordan as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.
- 9/6/17:** *Work Meeting.* Present: Jenny Webster, Clorissa Santiago, Candice Skenandore, David P. Jordan, Maureen Perkins, Ernest Stevens III, and Tani Turner. The group agreed to 1) to update the draft based on decisions made in August in a BC work meeting, 2) update the legislative analysis, and 3) bring a public meeting packet for approval to the 9/20/217 LOC meeting.

**Next Steps:**

- Approve the public meeting packet and forward for an October 19, 2017 public meeting.
- Request a fiscal analysis be submitted to the LRO by October 18, 2017.

NOTICE OF

# PUBLIC MEETING

TO BE HELD

**MONDAY, OCTOBER 19th at 12:15 p.m.**

IN THE

**OBC CONFERENCE ROOM****(2<sup>nd</sup> FLOOR—NORBERT HILL CENTER)**

In accordance with the Legislative Procedures Act, the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal.

## TOPIC: LANDLORD TENANT AMENDMENTS

**This is a proposal to amend the Landlord-Tenant law which would:**

- ◆ Permanently adopt an emergency amendment to the Landlord-Tenant law which modified the definition of “rental agreement” so that the Oneida Housing Authority’s Rent-to-Own Program is included;
- ◆ Include additional limitations on minimum rental eligibility requirements for the income-based rental program which do not allow consideration of prior evictions and debt owed from outside the Nation except for past due utility debts in excess of \$200; and
- ◆ Amend the provisions related to a non-Tribal member tenant’s ability to remain in the rental agreement upon the death of a qualifying Tribal member tenant where one (1) tenant in the household is required to be a Tribal member.

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit

**[www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings)**

or contact the Legislative Reference Office.

## PUBLIC COMMENT PERIOD OPEN UNTIL OCTOBER 26, 2017

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 Tribal Secretary’s Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

**Legislative Reference Office**  
**PO Box 365 Oneida, WI 54155**  
**LOC@oneidation.org**  
**Phone: (920) 869-4376 or (800) 236-2214**  
**Fax: (920) 869-4040**



# Landlord-Tenant Permanent Amendments Legislative Analysis

## SECTION 1. BACKGROUND

REQUESTER: Krystal L. John	SPONSOR: David P. Jordan	DRAFTER: Krystal L. John	ANALYST: Maureen Perkins
<b>Intent of Proposed Amendments</b>	The current amendments are proposed by the Oneida Law Office in consultation with the Oneida Housing Authority in order to ensure the rent-to-own rental agreements are covered by the law. A provision was added regarding non-Tribal tenants in rent-to-own agreements when the qualified Oneida tenant becomes deceased. Additionally minimum eligibility requirements were added under the proposed amendments as directed by Oneida Business Committee Resolution 3-22-17-C.		
<b>Purpose of the Law</b>	To provide mechanisms for protecting the rights of the landlords and tenants within the reservation <i>[see 611.1-1]</i> .		
<b>Affected Entities</b>	Comprehensive Housing Division (Oneida Housing Authority, Division of Land Management and Elder Services), Land Commission, Oneida Tribal members, their spouses and occupants who rent and occupy premises under this law.		
<b>Affected Legislation</b>	Eviction and Termination, Administrative Rulemaking, Building Code, Zoning and Shoreline Protection Ordinance, Pardon and Forgiveness, and Real Property		
<b>Enforcement/Due Process</b>	The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law and/or a rental agreement <i>[see 611.10-1]</i> .		
<b>Public Meeting</b>	A public meeting was held 6/5/17.		

## SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The current amendments permanently adopt the emergency amendments adopted by resolution 1-25-17-C to clarify the current law to specifically allow rent-to-own rental agreements to last longer than one year *[see 611.3-1(e)]*.
- B. Additional amendments were included as detailed below.

## SECTION 3. CONSULTATION

- A. The Oneida Housing Authority and the Oneida Law Office recognized that the current law does not cover the rent-to-own programs because these are rental agreements that last longer than one year.
- B. The OBC has decided that it is in the best interest of Oneida families to ensure that any current or future rules developed to govern the income based rental program do not consider debt owed or evictions from entities other than the Comprehensive Housing Division or past due utility accounts of less than \$200 as part of the selection criteria. This is a policy decision of the OBC.
- C. The OBC also decided that non-Tribal members in rent-to-own agreements have the option to stay in the agreement if they sign an agreement indicating the premises and the rent-to-own agreement will be transferred to their child who is an enrolled Tribal member upon turning 18 or immediately to an adult child if the qualified Tribal member tenant becomes deceased.
- D. These changes do not require additional research.

## SECTION 4. PROCESS

- 21 A. This amendment to the law permanently adopts the emergency amendment adopted by resolutions  
22 BC-1-25-17-C and BC-07-26-17-I and includes additional provisions directed by the OBC. This is  
23 the correct legislative process.
- 24 C. The emergency amendments were added to the Active Files List on December 21, 2016, and were  
25 adopted by resolution BC-1-25-17-C and adopted by emergency extension by resolution BC-07-26-  
26 17-I and expire 01-26-18.
- 27 D. The current amendments permanently adopt the emergency amendments and include the additional  
28 provision related to the minimum eligibility requirements [*see 611.4-2(f)(1) and (2)*], prior evictions  
29 and debt owed from outside the Nation are not considered other than past due utility bills in excess of  
30 \$200 [*see 611.4-2 (f) (1) and (2)*] and provisions related to non-Tribal member tenants that have the  
31 option to remain in the rent-to-own agreement if they have a child who is a Tribal member and agree  
32 to convey the property to the child upon turning 18 or immediately transfer the premises and the rent-  
33 to-own agreement to an adult child who is a Tribal member if the qualifying Tribal member becomes  
34 deceased prior to completing the rent-to-own agreement [*see 611.9-4(b)*]. A public meeting was held  
35 6/5/17 and an additional public meeting is proposed for 10/19/2017.  
36

## 37 SECTION 5. CONTENTS OF THE PROPOSED AMENDMENTS

- 38 A. The term for “rental agreements” is restricted to one year or less in the adopted Landlord-Tenant law.  
39 This definition excludes rent-to-own contracts which are longer than one (1) year. The amendment  
40 ensures rent to own contracts are covered by the definition of rental agreements by expanding the  
41 definition to include rent to own contracts which are for terms longer than one year [*see 611.3-1(e)*].
- 42 B. A definition for Tribal member was added to the law [*see 611.3-1(i)*].
- 43 C. Minimum rental eligibility requirements were added relating to rules developed for the income-based  
44 rental program which prohibits considering debt owed to or evictions from entities other than the  
45 Comprehensive Housing Division but allows consideration of past due debt owed to utility providers  
46 over two hundred dollars (\$200) [*see 611.4-2 (f) (1) and (2)*].
- 47 D. If a deceased tenant is a Tribal member whose death results in a non-Tribal member tenant’s  
48 ineligibility for the rental agreement, the non-Tribal member tenant may remain in the premises:
- 49 • If a standard rental agreement (not a rent-to-own agreement), any extension beyond the  
50 original term of agreement requires an amendment or limited term rental agreement which  
51 covers the term of the extension and the extension may be for a maximum of 6 months [*see*  
52 *611.9-4(a)*].
  - 53 • If the rental agreement was on a rent-to-own basis and the non-Tribal member tenant has no  
54 Tribal member children, the non-Tribal member tenant may remain in the premises for a  
55 maximum of 6 months from the date of the Tribal member’s death. In this case, the rent-to-  
56 own agreement will be terminated upon the tenant’s ineligibility to remain in the rent-to-own  
57 agreement and a new rental agreement, which may be a limited term rental agreement, will be  
58 executed. The landlord will pay the remaining co-tenant all equity the tenants have accrued  
59 according to the rental agreement [*see 611.9-4(b)*].
  - 60 • If the non-Tribal member tenant has a child who is a Tribal member living in the premises,  
61 the non-Tribal member tenant may remain in the rent-to-own agreement as long as they sign  
62 an agreement indicating that the premises and the rent-to-own agreement will be transferred  
63 to the Tribal member child upon turning 18. If the non-Tribal member tenant has an adult  
64 Tribal member child, the rent-to-own agreement may be immediately transferred to that child



- 65 upon the qualifying Tribal member's death and upon the adult Tribal member agreeing to live  
66 in the premises [see 611.9-4(b)].
- 67 • If the non-Tribal member tenant either has no Tribal member children or declines to enter  
68 into the agreement transferring the rent-to-own agreement to the Tribal member child, the  
69 rent-to-own agreement will be terminated upon the tenant's ineligibility to remain in the rent-  
70 to-own program and a limited term rental agreement will be executed [see 611.9-4(b)(1)].
  - 71 • Where a landlord is terminating a rent-to-own agreement, the landlord shall pay the  
72 remaining co-tenant all equity the tenants have accrued in accordance with the rental  
73 agreement [see 611.9-4(b)(2)].
- 74

75 **SECTION 6. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR**  
76 **OBLIGATIONS**

- 77 A. The proposed amendments will permanently ensure the Landlord-Tenant law covers existing rent-to-  
78 own rental agreements and future rent-to-own rental agreements and ensures Tribal members who  
79 enter into these rental agreements have the same due process and other rights as all other rental  
80 agreements under the Landlord-Tenant law.
- 81 B. The amendments ensure that prior evictions and debt from outside the Nation are not considered other  
82 than past due debt owed to a utility provider over two hundred dollars (\$200).
- 83 C. The amendments ensure that non-Tribal member co-tenants in rent-to-own rental agreements are paid  
84 the equity that has accumulated in the property due to the fact that they are no longer eligible to remain  
85 in the rental agreement. Additionally, the amendments allow non-Tribal member tenants to remain in  
86 a rent-to-own agreement when the qualifying Tribal member tenant dies if they agree to transfer the  
87 premises and the rent-to-own agreement to an adult Tribal member child or a minor Tribal member  
88 child upon turning 18 years of age.
- 89

90 **SECTION 7. OTHER CONSIDERATIONS**

- 91 A. The Landlord-Tenant law was adopted on October 12, 2016 and became effective on February 9,  
92 2017. The emergency amendments to the Landlord-Tenant law were adopted on January 25, 2017,  
93 became effective February 9, 2017 and were extended through January 26, 2018. The current  
94 proposed amendments permanently adopt these emergency amendments and add the provisions  
95 related to debt owed, prior evictions and rental agreements related to non-Tribal member co-tenants  
96 who are no longer eligible for the rental agreement when the eligible Tribal member tenant dies.
- 97
- 98
- 99

100

**Title 6. Property and Land- Chapter 611**

**LANDLORD-TENANT**

**Tsi> Yuhw<tsyaw@ku Aolihw@ke**

*where it bound to the earth - issues*

6	611.1.	Purpose and Policy	11	611.6.	Rights and Duties of Landlords and Tenants
7	611.2.	Adoption, Amendment, Repeal	12	611.7.	Domestic Abuse Protections
8	611.3.	Definitions	13	611.8.	Sex Offender Registry
9	611.4.	Rental Programs	14	611.9.	Termination of Tenancy at Death of Tenant
10	611.5.	Rental Agreement Documents	15	611.10.	Landlord or Tenant Actions
17			16		

**611.1. Purpose and Policy**

611.1-1. *Purpose.* The purpose of this law is to provide mechanisms for protecting the rights of the landlords and tenants of the Nation’s rental programs.

611.1-2. *Policy.* It is the Nation’s policy to provide a fair process to all landlords and tenants of the Nation’s rental programs that preserves the peace, harmony, safety, health, general welfare and the Nation’s resources.

**611.2. Adoption, Amendment, Repeal**

611.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-12-16-C and thereafter amended by resolution \_\_\_\_\_.

611.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

611.2-3. 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.

611.2-4. 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.

611.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

**611.3. Definitions**

611.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Comprehensive Housing Division” means the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution.<sup>1</sup>

(b) “Landlord” means the Nation in its capacity to rent real property subject to a rental agreement.

(c) “Nation” means the Oneida Nation.

<sup>1</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.

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, provided that the term may be longer than one (1) year in  
54 circumstances where the contract is on a rent-to-own basis.

55 (f) "Reservation" means all property within the exterior boundaries of the reservation of  
56 the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566,  
57 and any lands added thereto pursuant to federal law.

58 (g) "Rule" means a set of requirements, including citation fees and penalty schedules,  
59 enacted jointly by the Land Commission and the Comprehensive Housing Division in  
60 accordance with the Administrative Rulemaking law based on authority delegated in this  
61 law in order to implement, interpret and/or enforce this law, provided that where such  
62 requirements relate solely to premises administered pursuant to federal funding, the  
63 Comprehensive Housing Division has sole authority.

64 (h) "Tenant" means the person granted the right to use or occupy a premises pursuant to a  
65 rental agreement.

66 (i) "Tribal member" means an individual who is an enrolled member of the Nation.

67 (j) "Security Deposit" means a payment made to the landlord by the tenant to ensure that  
68 rent will be paid and other responsibilities of the rental agreement performed.

#### 69 70 **611.4. Rental Programs**

71 611.4-1. *Available Rental Programs.* Consistent with available funds, the Comprehensive  
72 Housing Division shall provide residential rental programs for providing housing to the  
73 following types of tenants and the Oneida Land Commission and the Comprehensive Housing  
74 Division shall jointly establish rules naming said programs and providing the specific  
75 requirements and regulations that apply to each program:

76 (a) Elder tribal members;

77 (b) Low-income Oneida tribal members and families; and

78 (c) Tribal members in general.

79 611.4-2. *Minimum Rental Eligibility Requirements.* In order to be eligible for a rental  
80 agreement, applicants shall meet the following conditions:

81 (a) Be eighteen (18) years of age at the time of the application;

82 (b) Have no felony or drug convictions within the past two (2) years from the date of  
83 application, provided that a pardon or forgiveness received pursuant to the Pardon and  
84 Forgiveness law may provide an exception to this condition;

85 (c) Meet the local governments' laws' requirements regarding residency restrictions for  
86 convicted sex offenders;

87 (d) Meet the income requirements for entering the rental agreement as determined by the  
88 rental program's governing rules;

89 (e) Not hold a residential lease with the Nation; and

90 (f) Meet any other eligibility requirements set by the rental program's rules, which may  
91 not be less strict than this law, but may be stricter than this law, provided that rules  
92 developed for low-income Tribal members and families:

93 (1) May not contain eligibility requirements that consider debt owed or evictions  
94 from entities other than the Comprehensive Housing Division; but

(2) May contain eligibility requirements that consider debt owed to utility providers, provided that eligibility may not be denied for any debt owed to a utility provider with a past due balance of less than two hundred dollars (\$200).

611.4-3. *Tenant Selection.* The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of rental agreements.

### **611.5. Rental Agreement Documents**

611.5-1. *Severability of Rental Agreement Provisions.* The provisions of a rental agreement are severable. If any provision of a rental agreement is void or unenforceable by reason of any law, rule, regulation, or judicial order, the invalidity or unenforceability of that provision does not affect other provisions of the rental agreement that can be given effect without the invalid or unenforceable provision.

611.5-2. *Requirements of Rental Agreements and Terminations.* A rental agreement or termination of a rental agreement is not enforceable unless it meets the requirements of this law and is in writing.

(a) All rental agreements shall:

(1) Set forth the amount of rent or other consideration provided in exchange for the ability to use/occupy the premises;

(2) Set forth the required amount of security deposit and require payment of the security deposit prior to the tenant(s) taking use/occupancy of the premises;

(3) Set the time of commencement and expiration of the rental agreement;

(4) Provide a reasonably definite description of the premises;

(5) State that nothing in the agreement may be considered a waiver of the Nation's sovereign immunity, provided that tenants may seek enforcement of a rental agreement or dispute an action taken pursuant to a rental agreement with the Oneida Judiciary; and

(6) Be signed by both the landlord and the tenant(s) prior to the tenant(s) taking use/occupancy of the premises;

(A) The rental agreement is not required to be signed by all adults using/occupying the premises, provided that the rights and responsibilities contained in the rental agreement do not extend to persons that are not named as tenants in the rental agreement.

(B) Unless legally separated, if a tenant(s) is married, the landlord shall require that each spouse sign the rental agreement.

(b) Any provision of a rental agreement that does any of the following is void and unenforceable.

(1) Allows a landlord to do or threaten to do any of the following because a tenant has contacted an entity for law enforcement services, health services or safety services:

(A) Increase rent;

(B) Decrease services;

(C) Bring an action for eviction pursuant to the Eviction and Termination law; and/or

(D) Refuse to renew a rental agreement.

140 (2) Except as otherwise provided in this law in regards to domestic abuse,  
141 authorizes the eviction or exclusion of a tenant from the premises other than  
142 through the process described in the Eviction and Termination law.

143 (3) Requires the tenant to pay attorney's fees or costs incurred by the landlord in  
144 any legal action or dispute arising under the rental agreement except as supported  
145 by a court order.

146 (4) States that the landlord is not liable for property damage or personal injury  
147 caused by negligent acts or omissions of the landlord. This subsection does not  
148 affect ordinary maintenance obligations of a tenant under 611.6-3(b) or assumed  
149 by a tenant under a rental agreement or other written agreement between the  
150 landlord and the tenant.

151 (5) Imposes liability on the tenant for any of the following:

152 (A) Personal injury arising from causes clearly beyond the tenant's control.

153 (B) Property damage caused by natural disasters or by persons other than  
154 the tenant or the tenant's guests or invitees. This subsection does not  
155 affect ordinary maintenance obligations of a tenant under 611.6-3(b) or  
156 assumed by a tenant under a rental agreement or other written agreement  
157 between the landlord and the tenant.

158 (6) Waives any obligation on the part of the landlord to deliver the premises in a  
159 fit and habitable condition or to maintain the premises during the tenant's  
160 tenancy.

161 (7) Allows for periodic tenancy, which for the purposes of this section means  
162 when a tenant uses/occupies a premises without an effective and valid rental  
163 agreement by paying rent on a periodic basis including, but not limited to, day-to-  
164 day, week-to-week and month-to-month.

165 611.5-3. *Assignment of Rental Agreements Not Permitted.* Assignments of rental agreements  
166 are not permitted under any circumstances.

## 167 **611.6. Rights and Duties of Landlords and Tenants**

168 611.6-1. This section governs the rights and duties of the landlord and tenant in the absence of  
169 any inconsistent provision found in a valid rental agreement.

170 611.6-2. *Disposition of Personal Property Left by the Tenant.* If the tenant moves from or is  
171 evicted from the premises and leaves personal property, the landlord may presume that the tenant  
172 has abandoned the personal property and may dispose of said property in any manner that the  
173 landlord, in his or her sole discretion, determines is appropriate, provided that:

174 (a) The landlord shall hold personal property for a minimum of five (5) business days  
175 and the tenant may retrieve said personal property by contacting the landlord.

176 (b) The landlord shall keep a written log of the date and the work time that the Nation's  
177 staff expends storing and/or removing personal property and/or removing/disposing of  
178 debris left at the property after the expiration of the timeframe provided in the order to  
179 vacate.

180 (c) The Land Commission and the Comprehensive Housing Division shall jointly create  
181 rules further governing the disposition of personal property.

182 611.6-3. *Repairs; Untenability.* This section applies to all leases if there is no contrary  
183 provision in writing signed by both parties.

184 (a) *Duties of the Landlord.*

186 (1) Except for repairs made necessary by the negligence of, or improper use of the  
187 premises by the tenant, the landlord has a duty to do all of the following:

188 (A) Keep in a reasonable state of repair portions of the premises over  
189 which the landlord maintains control.

190 (B) Keep in a reasonable state of repair all equipment under the landlord's  
191 control necessary to supply services that the landlord has expressly or  
192 impliedly agreed to furnish to the tenant, such as heat, water, elevator, or  
193 air conditioning.

194 (C) Make all necessary structural repairs.

195 (D) Except as provided in section 611.6-3(b)(2), repair or replace any  
196 plumbing, electrical wiring, machinery, or equipment furnished with the  
197 premises and no longer in reasonable working condition.

198 (E) Comply with any laws or rules of the Nation that are applicable to the  
199 premises.

200 (2) If the premises are part of a building where other parts are occupied by one (1)  
201 or more other tenants, negligence or improper use by one (1) tenant does not  
202 relieve the landlord from the landlord's duty to make repairs as provided in 611.6-  
203 3(a)(1), provided that the landlord may require the responsible tenant to pay for  
204 such repairs.

205 (3) A landlord shall disclose to a prospective tenant, before entering into a rental  
206 agreement with or accepting any earnest money or security deposit from the  
207 prospective tenant, any violation of either the Building Code of the Oneida Nation  
208 or the Zoning and Shoreland Protection Ordinance if all of the following apply:

209 (A) The landlord has actual knowledge of the violation;

210 (B) The violation affects the dwelling unit that is the subject of the  
211 prospective rental agreement or a common area of the premises;

212 (C) The violation presents a significant threat to the prospective tenant's  
213 health or safety; and

214 (D) The violation has not yet been corrected but the landlord shall correct  
215 the violation prior to the tenant taking occupancy of the premises.

216 (4) If the premises are damaged by fire, water or other casualty, not the result of  
217 the negligence or intentional act of the landlord, this subsection is inapplicable  
218 and either section 611.6-3(b) or (c) governs.

219 (5) The landlord is responsible for all required pest control to keep the premises  
220 in a safe and healthy condition, provided that where an infestation has occurred  
221 due to the acts or inaction of the tenant the pest control costs may be assessed  
222 against the tenant.

223 (b) *Duties of the Tenant.*

224 (1) If the premises are damaged, including by an infestation of insects or other  
225 pests, due to the acts or inaction of the tenant, the landlord may elect to allow the  
226 tenant to remediate or repair the damage and restore the appearance of the  
227 premises by redecorating. However, the landlord may elect to undertake the  
228 remediation, repair, or redecoration, and in such case the tenant shall reimburse  
229 the landlord for the reasonable cost thereof; the cost to the landlord is presumed  
230 reasonable unless proven otherwise by the tenant.

231 (2) The tenant shall keep plumbing, electrical wiring, machinery and equipment  
232 furnished with the premises in reasonable working order.

- 233 (3) Tenants shall comply with all laws and rules of the Nation.
- 234 (c) *Untenability.* If the premises become untenable because of damage by fire, water or  
235 other casualty or because of any condition hazardous to health, or if there is a substantial  
236 violation of section 611.6-3(a) materially affecting the health or safety of the tenant, the  
237 tenant may move from the premises unless the landlord promptly repairs, rebuilds or  
238 eliminates the health hazard or the substantial violation of 611.6-3(a) materially affecting  
239 the health or safety of the tenant.
- 240 (1) The tenant may also move and terminate the rental agreement if the  
241 inconvenience to the tenant by reason of the nature and period of repair,  
242 rebuilding or elimination would impose undue hardship on the tenant.
- 243 (2) If the tenant remains in possession, the landlord shall decrease rent for each  
244 month to the extent the tenant is deprived of the full normal use of the premises.  
245 The Land Commission and the Comprehensive Housing Division shall jointly  
246 develop rules governing how and when rent is decreased pursuant to this section.  
247 This subsection does not authorize rent to be withheld in full, if the tenant remains  
248 in possession.
- 249 (3) If the tenant justifiably moves out under this subsection, the tenant is not  
250 liable for rent after the premises become untenable and the landlord shall repay  
251 any rent paid in advance apportioned to the period after the premises become  
252 untenable. This subsection is inapplicable if the damage or condition is caused by  
253 negligence or improper use by the tenant.
- 254 (d) *Check-in sheet.* Landlords shall provide all new tenants with a check-in sheet when  
255 the tenant commences his or her occupancy of the premises that the tenant may use to  
256 make comments, if any, about the condition of the premises. The landlord shall provide  
257 the tenant with seven (7) days from the date the tenant commences his or her occupancy  
258 to complete the check-in sheet and return it to the landlord. The landlord is not required  
259 to provide the check-in sheet to a tenant upon renewal of a rental agreement.
- 260 (e) *Notice to Enter Required.* The landlord shall provide twenty-four (24) hour written  
261 notice prior to entering the tenant's premises where notice is required to either be  
262 personally served to the tenant or posted on the premises. A landlord is exempt from this  
263 notice requirement in the case of an emergency welfare check. The basis of a welfare  
264 check may include, but is not limited to the following:
- 265 (1) The landlord believes the tenant's or a child's wellbeing may be in jeopardy  
266 based on reports of child abuse or neglect, medical concerns, suspicious activity  
267 or other reported information;
- 268 (2) The landlord suspects the tenant has abandoned the premises; and/or
- 269 (3) The landlord receives notice that the premise's utilities have been  
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- 271 (f) *Acts of tenant not to affect rights of landlord.* No act of a tenant in acknowledging as  
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- 274 (g) *Annual Inspection Required.* In the event the tenant renews the rental agreement for  
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277 **611.7. Domestic Abuse Protections**

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280 and, if the tenant is unmarried, allow the tenant to modify the rental agreement to remove the  
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- 282 (a) An injunction order under Wis. Stat. 813.12(4) protecting the tenant from a co-tenant;
- 283 (b) An injunction order under Wis. Stat. 813.122 protecting a child of the tenant from a  
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- 289 (d) A condition of release under Wis. Ch. 969 ordering the co-tenant not to contact the  
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- 291 (e) A criminal complaint alleging that the co-tenant sexually assaulted the tenant or a  
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### 307 **611.8. Sex Offender Registry**

308 611.8-1. Should a tenant request information about whether any other tenants are required to  
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### 314 **611.9. Termination of Tenancy at Death of Tenant**

315 611.9-1. If a tenant dies, his or her tenancy is terminated on the earlier of the following:

- 316 (a) Sixty (60) days after the landlord receives notice, is advised, or otherwise becomes  
317 aware of the tenant's death;
- 318 (b) The expiration of the term of the rental agreement.

319 611.9-2. The deceased tenant or his or her estate is not liable for any rent after the termination  
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322 family member has no liability.

323 611.9-3. Nothing in this section relieves another adult tenant of the deceased tenant's premises  
324 from any obligation under a rental agreement or any other liability to the landlord.



325 611.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer  
326 eligible for a rental agreement based on Tribal member status, the non-Tribal member tenant  
327 may remain in the premises as follows:

328 (a) If subject to a standard rental agreement (i.e. not on a rent-to-own basis), the non-  
329 Tribal member tenant may remain in the premises for the longer of either the duration of  
330 the rental agreement or six (6) months from the date of the Tribal member tenant's death.  
331 Any extension beyond the original term of the agreement requires an amendment or  
332 limited term rental agreement which covers the term of the extension.

333 (b) If the rental agreement was on a rent-to-own basis, the remaining non-Tribal member  
334 tenant may remain in the premises for a maximum of six (6) months from the date of the  
335 Tribal member tenant's death unless the non-Tribal member tenant has a child that is a  
336 Tribal member. In the event the non-Tribal member tenant has a Tribal member child,  
337 the non-Tribal member tenant may remain in the premises under the rent-to-own  
338 agreement so long as the non-Tribal member tenant either transfer the premises and the  
339 rent-to-own agreement to an adult Tribal member child who agrees to live in the premises  
340 or signs an agreement indicating that the premises and the rent-to-own agreement shall be  
341 transferred to a minor Tribal member child when the child is eighteen (18) years old.  
342 Should the non-Tribal member tenant be eligible for conveyance of the premises prior to  
343 the Tribal member child's eighteenth (18<sup>th</sup>) birthday, the rent-to-own agreement shall be  
344 extended at no additional cost to the tenant and conveyance postponed until the Tribal  
345 member child reaches eighteen (18) years of age and the rent-to-own agreement is  
346 transferred to the child.

347 (1) In the event the non-Tribal member tenant either has no children living in the  
348 premises that are Tribal members or declines to the enter the agreement  
349 transferring the rent-to-own agreement to a Tribal member child, the rent-to-own  
350 agreement shall be terminated upon the tenant's ineligibility to remain in the rent-  
351 to-own program and a limited term rental agreement shall be executed.

352 (2) Where a landlord is so terminating a rental agreement entered on a rent-to-  
353 own basis, the landlord shall pay the remaining co-tenant all equity the tenants  
354 may have accrued in accordance with the rental agreement.  
355

356 **611.10. Landlord or Tenant Actions**

357 611.10-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding  
358 actions taken pursuant to this law and/or a rental agreement.

359 611.10-2. No administrative hearing body, including a board, committee or commission, is  
360 authorized to hear a complaint regarding actions taken pursuant to this law and/or a rental  
361 agreement.

362 611.10-3. The landlord is the Comprehensive Housing Division in regards to taking actions  
363 authorized under this law and complaints filed with the Oneida Judiciary shall name the  
364 Comprehensive Housing Division and the specific program.  
365

366 *End.*  
367

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368 Adopted – BC-10-12-16-C  
369 Emergency Amended – BC-01-25-17-C  
370 Emergency Extension – BC-07-26-17-I

**Title 6. Property and Land- Chapter 611**

**LANDLORD-TENANT**

**Tsi> Yuhw<tsyaw@ku Aolihw@ke**

*where it bound to the earth - issues*

6	611.1.	Purpose and Policy	11	611.6.	Rights and Duties of Landlords and Tenants
7	611.2.	Adoption, Amendment, Repeal	12	611.7.	Domestic Abuse Protections
8	611.3.	Definitions	13	611.8.	Sex Offender Registry
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10	611.5.	Rental Agreement Documents	15	611.10.	Landlord or Tenant Actions
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**611.1. Purpose and Policy**

611.1-1. *Purpose.* The purpose of this law is to provide mechanisms for protecting the rights of the landlords and tenants of the Nation's rental programs.

611.1-2. *Policy.* It is the Nation's policy to provide a fair process to all landlords and tenants of the Nation's rental programs that preserves the peace, harmony, safety, health, general welfare and the Nation's resources.

**611.2. Adoption, Amendment, Repeal**

611.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-12-16-~~C~~ and thereafter amended by resolution.

611.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

611.2-3. 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.

611.2-4. 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.

611.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

**611.3. Definitions**

611.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Comprehensive Housing Division" means the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution.<sup>1</sup>

(b) "Landlord" means the Nation in its capacity to rent real property subject to a rental agreement.

(c) "Nation" means the Oneida Nation.

<sup>1</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.

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, provided that the term may be longer than one (1) year in  
54 circumstances where the contract is on a rent-to-own basis.

55 (f) “Reservation” means all property within the exterior boundaries of the reservation of  
56 the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida 7 Stat. 566,  
57 and any lands added thereto pursuant to federal law.

58 (g) “Rule” means a set of requirements, including citation fees and penalty schedules,  
59 enacted jointly by the Land Commission and the Comprehensive Housing Division in  
60 accordance with the Administrative Rulemaking law based on authority delegated in this  
61 law in order to implement, interpret and/or enforce this law, provided that where such  
62 requirements relate solely to premises administered pursuant to federal funding, the  
63 Comprehensive Housing Division has sole authority.

64 (h) “Tenant” means the person granted the right to use or occupy a premises pursuant to a  
65 rental agreement.

66 ~~(i)~~ “(i) “Tribal member” means an individual who is an enrolled member of the Nation.

67 (j) “Security Deposit” means a payment made to the landlord by the tenant to ensure that  
68 rent will be paid and other responsibilities of the rental agreement performed.

#### 70 **611.4. Rental Programs**

71 611.4-1. *Available Rental Programs.* Consistent with available funds, the Comprehensive  
72 Housing Division shall provide residential rental programs for providing housing to the  
73 following types of tenants and the Oneida Land Commission and the Comprehensive Housing  
74 Division shall jointly establish rules naming said programs and providing the specific  
75 requirements and regulations that apply to each program:

- 76 (a) Elder tribal members;
- 77 (b) Low-income Oneida tribal members and families; and
- 78 (c) Tribal members in general.

79 611.4-2. *Minimum Rental Eligibility Requirements.* In order to be eligible for a rental  
80 agreement, applicants shall meet the following conditions:

- 81 (a) Be eighteen (18) years of age at the time of the application;
- 82 (b) Have no felony or drug convictions within the past two (2) years from the date of  
83 application, provided that a pardon or forgiveness received pursuant to the Pardon and  
84 Forgiveness law may provide an exception to this condition;
- 85 (c) Meet the local governments’ laws’ requirements regarding residency restrictions for  
86 convicted sex offenders;
- 87 (d) Meet the income requirements for entering the rental agreement as determined by the  
88 rental program’s governing rules;
- 89 (e) Not hold a residential lease with the Nation; and
- 90 (f) Meet any other eligibility requirements set by the rental program’s rules, which may  
91 not be less strict than this law, but may be stricter than this law-, provided that rules  
92 developed for low-income Tribal members and families:

93 (1) May not contain eligibility requirements that consider debt owed or evictions  
94 from entities other than the Comprehensive Housing Division; but

(2) May contain eligibility requirements that consider debt owed to utility providers, provided that eligibility may not be denied for any debt owed to a utility provider with a past due balance of less than two hundred dollars (\$200).

611.4-3. *Tenant Selection.* The Land Commission and the Comprehensive Housing Division shall jointly develop rules governing the selection of applicants for the issuance of rental agreements.

### **611.5. Rental Agreement Documents**

611.5-1. *Severability of Rental Agreement Provisions.* The provisions of a rental agreement are severable. If any provision of a rental agreement is void or unenforceable by reason of any law, rule, regulation, or judicial order, the invalidity or unenforceability of that provision does not affect other provisions of the rental agreement that can be given effect without the invalid or unenforceable provision.

611.5-2. *Requirements of Rental Agreements and Terminations.* A rental agreement or termination of a rental agreement is not enforceable unless it meets the requirements of this law and is in writing.

(a) All rental agreements shall:

(1) Set forth the amount of rent or other consideration provided in exchange for the ability to use/occupy the premises;

(2) Set forth the required amount of security deposit and require payment of the security deposit prior to the tenant(s) taking use/occupancy of the premises;

(3) Set the time of commencement and expiration of the rental agreement;

(4) Provide a reasonably definite description of the premises;

(5) State that nothing in the agreement may be considered a waiver of the Nation's sovereign immunity, provided that tenants may seek enforcement of a rental agreement or dispute an action taken pursuant to a rental agreement with the Oneida Judiciary; and

(6) Be signed by both the landlord and the tenant(s) prior to the tenant(s) taking use/occupancy of the premises;

(A) The rental agreement is not required to be signed by all adults using/occupying the premises, provided that the rights and responsibilities contained in the rental agreement do not extend to persons that are not named as tenants in the rental agreement.

(B) Unless legally separated, if a tenant(s) is married, the landlord shall require that each spouse sign the rental agreement.

(b) Any provision of a rental agreement that does any of the following is void and unenforceable.

(1) Allows a landlord to do or threaten to do any of the following because a tenant has contacted an entity for law enforcement services, health services or safety services:

(A) Increase rent;

(B) Decrease services;

(C) Bring an action for eviction pursuant to the Eviction and Termination law; and/or

(D) Refuse to renew a rental agreement.

- 140 (2) Except as otherwise provided in this law in regards to domestic abuse,  
141 authorizes the eviction or exclusion of a tenant from the premises other than  
142 through the process described in the Eviction and Termination law.  
143 (3) Requires the tenant to pay attorney's fees or costs incurred by the landlord in  
144 any legal action or dispute arising under the rental agreement except as supported  
145 by a court order.  
146 (4) States that the landlord is not liable for property damage or personal injury  
147 caused by negligent acts or omissions of the landlord. This subsection does not  
148 affect ordinary maintenance obligations of a tenant under 611.6-3(b) or assumed  
149 by a tenant under a rental agreement or other written agreement between the  
150 landlord and the tenant.  
151 (5) Imposes liability on the tenant for any of the following:  
152 (A) Personal injury arising from causes clearly beyond the tenant's control.  
153 (B) Property damage caused by natural disasters or by persons other than  
154 the tenant or the tenant's guests or invitees. This subsection does not  
155 affect ordinary maintenance obligations of a tenant under 611.6-3(b) or  
156 assumed by a tenant under a rental agreement or other written agreement  
157 between the landlord and the tenant.  
158 (6) Waives any obligation on the part of the landlord to deliver the premises in a  
159 fit and habitable condition or to maintain the premises during the tenant's  
160 tenancy.  
161 (7) Allows for periodic tenancy, which for the purposes of this section means  
162 when a tenant uses/occupies a premises without an effective and valid rental  
163 agreement by paying rent on a periodic basis including, but not limited to, day-to-  
164 day, week-to-week and month-to-month.

165 611.5-3. *Assignment of Rental Agreements Not Permitted.* Assignments of rental agreements  
166 are not permitted under any circumstances.  
167

## 168 **611.6. Rights and Duties of Landlords and Tenants**

169 611.6-1. This section governs the rights and duties of the landlord and tenant in the absence of  
170 any inconsistent provision found in a valid rental agreement.

171 611.6-2. *Disposition of Personal Property Left by the Tenant.* If the tenant moves from or is  
172 evicted from the premises and leaves personal property, the landlord may presume that the tenant  
173 has abandoned the personal property and may dispose of said property in any manner that the  
174 landlord, in his or her sole discretion, determines is appropriate, provided that:

175 (a) The landlord shall hold personal property for a minimum of five (5) business days  
176 and the tenant may retrieve said personal property by contacting the landlord.

177 (b) The landlord shall keep a written log of the date and the work time that the Nation's  
178 staff expends storing and/or removing personal property and/or removing/disposing of  
179 debris left at the property after the expiration of the timeframe provided in the order to  
180 vacate.

181 (c) The Land Commission and the Comprehensive Housing Division shall jointly create  
182 rules further governing the disposition of personal property.

183 611.6-3. *Repairs; Untenability.* This section applies to all leases if there is no contrary  
184 provision in writing signed by both parties.

185 (a) *Duties of the Landlord.*

- 186 (1) Except for repairs made necessary by the negligence of, or improper use of the  
187 premises by the tenant, the landlord has a duty to do all of the following:  
188 (A) Keep in a reasonable state of repair portions of the premises over  
189 which the landlord maintains control.  
190 (B) Keep in a reasonable state of repair all equipment under the landlord's  
191 control necessary to supply services that the landlord has expressly or  
192 impliedly agreed to furnish to the tenant, such as heat, water, elevator, or  
193 air conditioning.  
194 (C) Make all necessary structural repairs.  
195 (D) Except as provided in section 611.6-3(b)(2), repair or replace any  
196 plumbing, electrical wiring, machinery, or equipment furnished with the  
197 premises and no longer in reasonable working condition.  
198 (E) Comply with any laws or rules of the Nation that are applicable to the  
199 premises.
- 200 (2) If the premises are part of a building where other parts are occupied by one (1)  
201 or more other tenants, negligence or improper use by one (1) tenant does not  
202 relieve the landlord from the landlord's duty to make repairs as provided in 611.6-  
203 3(a)(1), provided that the landlord may require the responsible tenant to pay for  
204 such repairs.
- 205 (3) A landlord shall disclose to a prospective tenant, before entering into a rental  
206 agreement with or accepting any earnest money or security deposit from the  
207 prospective tenant, any violation of either the Building Code of the Oneida Nation  
208 or the Zoning and Shoreland Protection Ordinance if all of the following apply:  
209 (A) The landlord has actual knowledge of the violation;  
210 (B) The violation affects the dwelling unit that is the subject of the  
211 prospective rental agreement or a common area of the premises;  
212 (C) The violation presents a significant threat to the prospective tenant's  
213 health or safety; and  
214 (D) The violation has not yet been corrected but the landlord shall correct  
215 the violation prior to the tenant taking occupancy of the premises.
- 216 (4) If the premises are damaged by fire, water or other casualty, not the result of  
217 the negligence or intentional act of the landlord, this subsection is inapplicable  
218 and either section 611.6-3(b) or (c) governs.
- 219 (5) The landlord is responsible for all required pest control to keep the premises  
220 in a safe and healthy condition, provided that where an infestation has occurred  
221 due to the acts or inaction of the tenant the pest control costs may be assessed  
222 against the tenant.

223 (b) *Duties of the Tenant.*

- 224 (1) If the premises are damaged, including by an infestation of insects or other  
225 pests, due to the acts or inaction of the tenant, the landlord may elect to allow the  
226 tenant to remediate or repair the damage and restore the appearance of the  
227 premises by redecorating. However, the landlord may elect to undertake the  
228 remediation, repair, or redecoration, and in such case the tenant shall reimburse  
229 the landlord for the reasonable cost thereof; the cost to the landlord is presumed  
230 reasonable unless proven otherwise by the tenant.
- 231 (2) The tenant shall keep plumbing, electrical wiring, machinery and equipment  
232 furnished with the premises in reasonable working order.

- 233 (3) Tenants shall comply with all laws and rules of the Nation.
- 234 (c) *Untenability.* If the premises become untenable because of damage by fire, water or
- 235 other casualty or because of any condition hazardous to health, or if there is a substantial
- 236 violation of section 611.6-3(a) materially affecting the health or safety of the tenant, the
- 237 tenant may move from the premises unless the landlord promptly repairs, rebuilds or
- 238 eliminates the health hazard or the substantial violation of 611.6-3(a) materially affecting
- 239 the health or safety of the tenant.
- 240 (1) The tenant may also move and terminate the rental agreement if the
- 241 inconvenience to the tenant by reason of the nature and period of repair,
- 242 rebuilding or elimination would impose undue hardship on the tenant.
- 243 (2) If the tenant remains in possession, the landlord shall decrease rent for each
- 244 month to the extent the tenant is deprived of the full normal use of the premises.
- 245 The Land Commission and the Comprehensive Housing Division shall jointly
- 246 develop rules governing how and when rent is decreased pursuant to this section.
- 247 This subsection does not authorize rent to be withheld in full, if the tenant remains
- 248 in possession.
- 249 (3) If the tenant justifiably moves out under this subsection, the tenant is not
- 250 liable for rent after the premises become untenable and the landlord shall repay
- 251 any rent paid in advance apportioned to the period after the premises become
- 252 untenable. This subsection is inapplicable if the damage or condition is caused by
- 253 negligence or improper use by the tenant.
- 254 (d) *Check-in sheet.* Landlords shall provide all new tenants with a check-in sheet when
- 255 the tenant commences his or her occupancy of the premises that the tenant may use to
- 256 make comments, if any, about the condition of the premises. The landlord shall provide
- 257 the tenant with seven (7) days from the date the tenant commences his or her occupancy
- 258 to complete the check-in sheet and return it to the landlord. The landlord is not required
- 259 to provide the check-in sheet to a tenant upon renewal of a rental agreement.
- 260 (e) *Notice to Enter Required.* The landlord shall provide twenty-four (24) hour written
- 261 notice prior to entering the tenant's premises where notice is required to either be
- 262 personally served to the tenant or posted on the premises. A landlord is exempt from this
- 263 notice requirement in the case of an emergency welfare check. The basis of a welfare
- 264 check may include, but is not limited to the following:
- 265 (1) The landlord believes the tenant's or a child's wellbeing may be in jeopardy
- 266 based on reports of child abuse or neglect, medical concerns, suspicious activity
- 267 or other reported information;
- 268 (2) The landlord suspects the tenant has abandoned the premises; and/or
- 269 (3) The landlord receives notice that the premise's utilities have been
- 270 disconnected.
- 271 (f) *Acts of tenant not to affect rights of landlord.* No act of a tenant in acknowledging as
- 272 landlord a person other than the tenant's original landlord can prejudice the right of the
- 273 original landlord to possession of the premises.
- 274 (g) *Annual Inspection Required.* In the event the tenant renews the rental agreement for
- 275 additional terms, the landlord shall, at a minimum, inspect the premises once annually.
- 276

277 **611.7. Domestic Abuse Protections**

278 611.7-1. If a tenant notices the landlord of domestic abuse with of any of the following

279 documentation, regardless of marital status, the landlord shall change the locks to the premises

280 and, if the tenant is unmarried, allow the tenant to modify the rental agreement to remove the  
281 domestic abuser:

- 282 (a) An injunction order under Wis. Stat. 813.12(4) protecting the tenant from a co-tenant;
- 283 (b) An injunction order under Wis. Stat. 813.122 protecting a child of the tenant from a  
284 co-tenant;
- 285 (c) An injunction order under Wis. Stat. 813.125(4) protecting the tenant or child of the  
286 tenant from a co-tenant, based on the co-tenant's engaging in an act that would constitute  
287 sexual assault under Wis. Stat. 940.225, 948.02 or 948.025, or stalking under Wis. Stat.  
288 940.32, or attempting or threatening to do the same;
- 289 (d) A condition of release under Wis. Ch. 969 ordering the co-tenant not to contact the  
290 tenant;
- 291 (e) A criminal complaint alleging that the co-tenant sexually assaulted the tenant or a  
292 child of the tenant under Wis. Stat. 940.225, 948.02 or 948.025;
- 293 (f) A criminal complaint alleging that the co-tenant stalked the tenant or a child of the  
294 tenant under Wis. Stat. 940.32; or
- 295 (g) A criminal complaint that was filed against the co-tenant as a result of the co-tenant  
296 being arrested for committing a domestic abuse offense against the tenant under Wis.  
297 Stat. 968.075.

298 611.7-2. If a tenant is no longer eligible to maintain the rental agreement upon removing a co-  
299 tenant domestic abuser from the rental agreement, the landlord shall permit the tenant to remain  
300 on the premises for the longer of either the duration of the rental agreement or ninety (90) days  
301 from the date the rental agreement is modified. If the latter applies, in addition to removing the  
302 co-tenant that is the domestic abuser, the landlord shall also revise the rental agreement to extend  
303 its duration.

304 611.7-3. The Eviction and Termination law provides tenants that are victims of domestic abuse  
305 with a defense to eviction should the abusers actions be the cause for eviction.  
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### 307 **611.8. Sex Offender Registry**

308 611.8-1. Should a tenant request information about whether any other tenants are required to  
309 register as a sex offender, the landlord shall provide the tenant with written notice that he or she  
310 may obtain information about the sex offender registry and persons registered within the registry  
311 by contacting the department of corrections. The landlord shall include in such notice the  
312 appropriate telephone number and internet site of the department of corrections.  
313

### 314 **611.9. Termination of Tenancy at Death of Tenant**

315 611.9-1. If a tenant dies, his or her tenancy is terminated on the earlier of the following:

- 316 (a) Sixty (60) days after the landlord receives notice, is advised, or otherwise becomes  
317 aware of the tenant's death;
- 318 (b) The expiration of the term of the rental agreement.

319 611.9-2. The deceased tenant or his or her estate is not liable for any rent after the termination  
320 of his or her tenancy. A landlord may not contact or communicate with a member of the  
321 deceased tenant's family for the purpose of obtaining from the family member rent for which the  
322 family member has no liability.

323 611.9-3. Nothing in this section relieves another adult tenant of the deceased tenant's premises  
324 from any obligation under a rental agreement or any other liability to the landlord.



325 611.9-4. If the deceased tenant is a Tribal member whose death renders a co-tenant no longer  
326 eligible for a rental agreement; based on Tribal member status, the non-Tribal member tenant  
327 may remain in the premises as follows:

328 (a) If subject to a standard rental agreement (i.e. not on a rent-to-own basis), the non-  
329 Tribal member tenant may remain in the premises for the longer of either the duration of  
330 the rental agreement or ~~ninety (90) days~~ six (6) months from the date of the Tribal  
331 member tenant's death. ~~If Any extension beyond the latter applies,~~ original term of the  
332 landlord shall revise the agreement requires an amendment or limited term rental  
333 agreement to extend its duration, which covers the term of the extension.

334 (b) If the rental agreement was on a rent-to-own basis, the remaining non-Tribal member  
335 tenant may remain in the premises for a maximum of six (6) months from the date of the  
336 Tribal member tenant's death unless the non-Tribal member tenant has a child that is a  
337 Tribal member. In the event the non-Tribal member tenant has a Tribal member child,  
338 the non-Tribal member tenant may remain in the premises under the rent-to-own  
339 agreement so long as the non-Tribal member tenant either transfer the premises and the  
340 rent-to-own agreement to an adult Tribal member child who agrees to live in the premises  
341 or signs an agreement indicating that the premises and the rent-to-own agreement shall be  
342 transferred to a minor Tribal member child when the child is eighteen (18) years old.  
343 Should the non-Tribal member tenant be eligible for conveyance of the premises prior to  
344 the Tribal member child's eighteenth (18<sup>th</sup>) birthday, the rent-to-own agreement shall be  
345 extended at no additional cost to the tenant and conveyance postponed until the Tribal  
346 member child reaches eighteen (18) years of age and the rent-to-own agreement is  
347 transferred to the child.

348 (1) In the event the non-Tribal member tenant either has no children living in the  
349 premises that are Tribal members or declines to the enter the agreement  
350 transferring the rent-to-own agreement to a Tribal member child, the rent-to-own  
351 agreement shall be terminated upon the tenant's ineligibility to remain in the rent-  
352 to-own program and a limited term rental agreement shall be executed.

353 (2) Where a landlord is so terminating a rental agreement entered on a rent-to-  
354 own basis, the landlord shall pay the remaining co-tenant all equity the tenants  
355 may have accrued in accordance with the rental agreement.

356  
357 **611.10. Landlord or Tenant Actions**

358 611.10-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding  
359 actions taken pursuant to this law and/or a rental agreement.

360 611.10-2. No administrative hearing body, including a board, committee or commission, is  
361 authorized to hear a complaint regarding actions taken pursuant to this law and/or a rental  
362 agreement.

363 611.10-3. The landlord is the Comprehensive Housing Division in regards to taking actions  
364 authorized under this law and complaints filed with the Oneida Judiciary shall name the  
365 Comprehensive Housing Division and the specific program.

366  
367 *End.*

368  
369 

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Adopted – BC-10-12-16-C  
370 Emergency Amended – BC-01-25-17-C  
371 Emergency Extension – BC-07-26-17-1



Oneida Nation  
Oneida Business Committee  
Legislative Operating Committee  
PO Box 365 • Oneida, WI 54155-0365  
Oneida-nsn.gov



### AGENDA REQUEST FORM

- 1) Request Date: August 31, 2017
- 2) Contact Person(s): Treasurer Patricia King  
Dept: Oneida Business Committee  
Phone Number: ext. 4462 Email: tking@oneidanation.org
- 3) Agenda Title: Codification of Oneida Commerce Law
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
See attached memo

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:  
Title 5. Business
- 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:  
Need to implement business diversification strategies

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



Oneida Nation  
Oneida Business Committee  
PO Box 365 • Oneida, WI 54155-0365  
oneida-nsn.gov



## *Office of the Treasurer*

### *Memorandum*

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To: Legislative Operating Committee  
From: Trish King, Treasurer *TJK*  
Date: August 24, 2017  
Re: Codification of Oneida Commerce Law

This is a formal request to the Legislative Operating Committee to place high priority on the codification of an Oneida Commerce system of positive law.

The Oneida Constitution was amended through a secretarial election, where amendments were approved June 16, 2015.

On March 19, 2017, General Tribal Council affirmed constitutional authority designated to the Oneida Judiciary. (G.T.C. Resolution #03-19-17-A)

Therefore, now is time due to a clear concern not only with justice but also with fact that all commercial transactions to occur into the next seven generations will be economically enforceable.

Commerce and banking rules should be designed to serve the public and private purposes, and protect the inherent sovereignty of the Oneida Nation. The rules written within the codification process will serve as a historiography and evidence of our Oneida Nation as a continuous government fulfilling our responsibilities and working toward sustainability.

Therefore, I respectfully encourage the L.O.C. to place a high priority on the codification of Oneida Commerce law which may include Corporate Law, Universal Commercial Code, Security Transactions Law, Consumer protection, Contract law, Environmental law, to name a few.

Yaw^ko for your time and assistance in this matter.

**LEGISLATIVE REFERENCE OFFICE  
STANDARD OPERATING PROCEDURE**



**Title: Public Meeting SOP**  
**Origination Date: January 4, 2017**  
**Revision Date: N/A**  
**Author: LRO**  
**Approvals:**

---

David P. Jordan, LOC Chair

Date

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Jennifer Falck, LRO Director

Date

**1.0 PURPOSE.** To formalize the public meeting process. Public meetings are required for all legislation except for emergency legislation.

**2.0 DEFINITIONS**

**2.1 “LOC” means the Legislative Operating Committee.**

**2.2 “LRO” means the Oneida Legislative Reference Office.**

**2.3 “OBC” means the Oneida Business Committee.**

**3.0 REQUIREMENTS**

3.1 The Legislative Procedures Act contains requirements related to public meetings.

3.1.1 The public meeting notice, legislation, legislative analysis and fiscal analysis, if available, shall be made publically available for a minimum of 10 business days before a public meeting is held.

3.1.1.1 On the Oneida Register

3.1.1.2 Electronically provided to all managers and directors

3.1.1.3 The public meeting notice only shall be published in the Kalihwisaks or other Tribal publication of similar distribution.

3.1.2 The public meeting shall presided over by at least one LOC member.

3.1.3 All persons who present oral testimony at a public meeting shall register.

3.1.4 The presiding LOC member may impose a time limit of no less than five (5) minutes for oral testimony. If a time limit is imposed, it must be identified prior to the start of the public meeting and shall be imposed consistently.

3.1.5 The public comment period shall remain open for no less than five (5) business days after the public meeting is held.

**4.0 LOC ACCEPTANCE**

4.1 LOC officially approves the public meeting packet through formal motion at an LOC meeting.

4.1.1 The LOC shall approve the contents of the public meeting packet as they will appear:

4.1.1.1 On the Oneida Register

4.1.1.2 Electronically provided to all managers and directors

4.1.1.3 Published in the Kalihwisaks or other Tribal publication of

similar distribution.

4.2 LOC directs the LRO to schedule a public meeting.

## **5.0 PUBLIC MEETING NOTICE AND PACKET**

5.1 The drafting attorney shall be responsible for preparing the public meeting notice and assembling the public meeting packet; unless the LRO Director assigns a different staff member.

5.2 The drafting attorney shall obtain review of the public meeting packet from the LRO staff before the public meeting packet is presented to the LOC.

5.3 Each item in the public meeting packet shall be saved in the specific active file folder for the item (G:\LOC\WP\Active Files) as well as the public meeting folder (G:\LOC\WP\Public Meetings).

## **6.0 ONEIDA REGISTER**

6.1 The drafting attorney shall be responsible for ensuring the public meeting packet is posted to the Oneida Register once the packet is approved by the LOC. The drafting attorney shall ensure the packet is posted at least ten (10) business days prior to the scheduled public meeting to meet the requirements set out in the Legislative Procedures Act.

6.2 The drafting attorney shall verify that the public meeting packet was accurately posted to the Oneida Register in time to meet the ten (10) business day notice requirement.

## **7.0 KALIHWISAKS**

7.1 The drafting attorney shall ensure the public meeting notice only is received and verified by Kalihwisaks staff for print in the specific issue to meet the ten (10) business day notice requirement.

7.2 After publication of the Kalihwisaks, the drafting attorney shall verify the public meeting notice was included in the specific edition of the Kalihwisaks needed to meet the ten (10) business day notice requirement.

## **8.0 ELECTRONIC NOTICE TO MANAGERS AND DIRECTORS**

8.1 The drafting attorney will electronically send the public meeting packet to the LOC meeting packet list (G:\LOC\WP\2014-2017 Active Files List\Contacts) and any individuals listed as contacts under the particular item identified in the active files list as an appointment at least ten (10) business days prior to the public meeting.

8.2 The appointment notice shall include language that identifies why the recipient is receiving the notice and direct that the manager or director forward the notice to any employee that may have special knowledge or expertise on the legislation.

8.2.1 For example, "The Legislative Procedures Act requires that all managers or directors shall be electronically provided notice at least ten business days prior to a public meeting. The Legislative Procedures Act requires all appropriate managers or directors to direct employees who have special knowledge or expertise on legislation to provide comments during the public comment period [See Legislative Procedures Act 16.8-2 (a) & 16.8-4 (a)]."

**9.0 PUBLIC MEETING COMMENT MEMO**

9.1 The drafting attorney shall compile all comments received orally and in writing in a public meeting comment memo. The memo shall provide responses and objective recommendations and alternatives, when pertinent, for changes to the law for the LOC to consider. Public comments shall:

9.1.1 Be accepted by the LOC for at least five (5) business days after the public meeting is held.

9.1.2 Be formally presented to and accepted by official motion at an LOC meeting.

9.1.3 Be fully considered by the LOC in an LOC meeting or work meeting.

**10.0 DIRECTED CHANGES**

10.1 The drafting attorney shall make appropriate changes to the law as directed by the LOC.

**11.0 SUBSTANTIAL CHANGE**

11.1 Changes deemed to be substantial by the LOC will require an additional public meeting. In this case, the law cycles back through the public meeting process beginning at 4.0 of this SOP.

**12.0 LAW CONSIDERATION**

12.1 Once all changes have been made and accepted by LOC with no additional public meeting requirements, the LOC directs the LRO to prepare an adoption packet. The adoption packet is formally accepted by the LOC in an LOC meeting and forwarded to the Oneida Business Committee for consideration.

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**TO:** Legislative Operating Committee  
**FROM:** Clorissa N. Santiago, Legislative Staff Attorney  
**DATE:** September 20, 2017  
**RE:** Defining Comprehensive Housing Division: Landlord-Tenant law, Eviction and Termination law, and the Mortgage and Foreclosure law

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The Landlord-Tenant law, the Eviction and Termination law, and the Mortgage and Foreclosure law allow the definition for Comprehensive Housing Division to be defined by Oneida Business Committee resolution.

This Resolution updates the definition for the Comprehensive Housing Division for the purposes of the Landlord-Tenant law, the Eviction and Termination law, and the Mortgage and Foreclosure law as the division within the Oneida 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.

Phone: (920)869-2214



Oneida, WI 54155

**BC Resolution # \_\_\_\_\_**

**Defining Comprehensive Housing Division: Landlord-Tenant law, Eviction and Termination law, and the Mortgage and Foreclosure law**

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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 Landlord-Tenant law with resolution BC-10-12-16-C (and emergency amendments to Landlord-Tenant law with resolutions BC-01-25-17-C and BC-07-26-17-I), adopted the Eviction and Termination law with resolution BC-10-12-16-A, and adopted the Mortgage and Foreclosure law with resolution BC-08-10-16-K; and
- WHEREAS,** the Landlord Tenant law, Eviction and Termination law, and Mortgage and Foreclosure law all assign responsibilities and authorities, including rulemaking authority, to the Comprehensive Housing Division; and
- WHEREAS,** the Landlord-Tenant law defines the Comprehensive Housing Division as the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution; and
- WHEREAS,** Oneida Business Committee resolution BC-10-12-16-D defined the Comprehensive Housing Division for the purposes of the Landlord-Tenant law as 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; and
- WHEREAS,** the Eviction and Termination law defines the Comprehensive Housing Division as the entity responsible for housing matters specifically related to contracts governed by this law as defined by Oneida Business Committee Resolution; and
- WHEREAS,** Oneida Business Committee resolution BC-10-12-16-B defined the Comprehensive Housing Division for the purposes of the Eviction and Termination law as Division of Land Management for general residential contracts, the Oneida Housing Authority for income-based residential contracts and Elder Services for residential contracts through the Elder Services program; and
- WHEREAS,** the Mortgage and Foreclosure law defines the Comprehensive Housing Division as the entity responsible for housing matters specifically related to mortgages and foreclosures as defined by Oneida Business Committee Resolution; and



52 **WHEREAS,** Oneida Business Committee resolution BC-08-10-16-L defined the Comprehensive  
53 Housing Division for the purposes of the Mortgage and Foreclosure law as the Division of  
54 Land Management; and  
55

56 **WHEREAS,** when the Oneida Business Committee adopted resolutions BC-10-12-16-D, BC-10-12-  
57 16-B, and BC-08-10-16-L the reorganization and creation of the Comprehensive Housing  
58 Division was still under development and not currently active; and  
59

60 **WHEREAS,** as of October 1, 2017, the Comprehensive Housing Division reorganization will be active  
61 and complete encompassing all housing and residential services matters into one central  
62 division.  
63

64 **NOW THEREFORE BE IT RESOLVED,** that for the purposes of the Landlord-Tenant law, the Eviction  
65 and Termination law, and the Mortgage and Foreclosure law the Oneida Business Committee hereby  
66 defines the Comprehensive Housing Division as the division within the Oneida Nation under the direction  
67 of the Comprehensive Housing Division Director which consists of all residential services offered by the  
68 Nation, including but not limited to, all rental programs, the rent-to-own program, and the residential sales  
69 and mortgages programs.  
70

71 **NOW THEREFORE BE IT FURTHER RESOLVED,** that the footnote contained in the Landlord-Tenant  
72 law adopted by resolution BC-10-12-16-C referencing the definition found in resolution BC-10-12-16-D,  
73 the footnote contained in the Eviction and Termination law adopted by resolution BC-10-12-16-A  
74 referencing the definition found in resolution BC-10-12-16-B, and the footnote contained in the Mortgage  
75 and Foreclosure law adopted by resolution BC-08-10-16-K referencing the definition found in resolution  
76 BC-08-10-16-L, will all be updated to reference this resolution.  
77

78 **NOW THEREFORE BE IT FINALLY RESOLVED,** that the above definition of Comprehensive Housing  
79 Division is effective for the purposes of the Landlord-Tenant law, the Eviction and Termination law, and  
80 the Mortgage and Foreclosure law October 1, 2017.  
81



### **Statement of Effect**

*Defining Comprehensive Housing Division: Landlord-Tenant law, Eviction and Termination law, and the Mortgage and Foreclosure law*

### **Summary**

This Resolution revises the definition of Comprehensive Housing Division in the Landlord-Tenant law, Eviction and Termination law, and the Mortgage and Foreclosure law.

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office  
September 15, 2017*

### **Analysis by the Legislative Reference Office**

This Resolution defines the Comprehensive Housing Division for the purposes of the Landlord-Tenant law, the Eviction and Termination law, and the Mortgage and Foreclosure law as the division within the Oneida 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.

This Resolution also revises the footnote contained in the Landlord-Tenant law adopted by resolution BC-10-12-16-C referencing the definition found in resolution BC-10-12-16-D, the footnote contained in the Eviction and Termination law adopted by resolution BC-10-12-16-A referencing the definition found in resolution BC-10-12-16-B, and the footnote contained in the Mortgage and Foreclosure law adopted by resolution BC-08-10-16-K referencing the definition found in resolution BC-08-10-16-L, to reference the definition found in this resolution this resolution. Revisions to footnotes are not required to following the Legislative Procedures Act.

### **Conclusion**

Adoption of this Resolution would not conflict with any of the Nation's laws.

# Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

**BC Resolution # \_\_\_\_\_**  
**Extension of the Effective Date of Amendments to Various Laws –**  
**Environmental Resource Board Hearing Body Authority Transfer to Judiciary**

- 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,** On July 26, 2017, as part of an effort to standardize and streamline all of the Nation's hearing responsibilities; the Oneida Business Committee adopted amendments to various laws of the Nation which transfer the Environmental Resource Board's original hearing body authority and responsibilities to the Oneida Judiciary, including:
- Well Abandonment Law Amendments (BC#7-26-17-A)
  - Tribal Environmental Response Law Amendments (BC#7-26-17-B)
  - On-Site Waste Disposal Law Amendments (BC#7-26-17-C)
  - Public Use of Tribal Land Law Amendments (BC#7-26-17-D)
  - All-Terrain Vehicle Law Amendments (BC#7-26-17-E)
  - Hunting, Fishing and Trapping law amendments (BC#7-26-17-F) (these amendments also clarify the law's Jurisdiction section)
  - Water Resources Ordinance amendments (BC#7-26-17-G); and
- WHEREAS,** the amendments to the laws identified above are scheduled to become effective on October 1, 2017; and
- WHEREAS,** the Environmental Resource Board has had various problems preparing for implementation, and has requested additional time before these amendments become effective.

**NOW THEREFORE BE IT RESOLVED,** the effective date of the amendments to the Well Abandonment law; Tribal Environmental Response law, On-Site Waste Disposal Ordinance, Public Use of Tribal Land law, All-Terrain Vehicle law, Hunting, Fishing and Trapping law and Water Resources Ordinance; as stated in those resolutions adopted on July 26, 2017, is hereby extended from October 1, 2017 to January 1, 2018.



## **Statement of Effect**

### *Extension of the Effective Date of Amendments to Various Laws – Environmental Resource Board Hearing Body Authority Transfer to Judiciary*

#### **Summary**

This resolution extends the effective date of amendments to various laws of the Nation, which transfer hearing body authority from the Environmental Resource Board to the Oneida Judiciary.

*Submitted by: Tani Thurner, Staff Attorney, Legislative Reference Office*

#### **Analysis by the Legislative Reference Office**

This resolution extends the effective date of the amendments for various laws, which were adopted by the Oneida Business Committee and scheduled to become effective on October 1, 2017, including:

- Well Abandonment Law Amendments (BC#7-26-17-A)
- Tribal Environmental Response Law Amendments (BC#7-26-17-B)
- On-Site Waste Disposal Law Amendments (BC#7-26-17-C)
- Public Use of Tribal Land Law Amendments (BC#7-26-17-D)
- All-Terrain Vehicle Law Amendments (BC#7-26-17-E)
- Hunting, Fishing and Trapping Law Amendments (BC#7-26-17-F)
- Water Resources Ordinance Amendments (BC#7-26-17-G).

On July 26, 2017, the Oneida Business Committee adopted amendments to each of the laws listed above, which would transfer Environmental Resource Board's original hearing body authority and responsibilities to the Oneida Judiciary. The Hunting, Fishing and Trapping law amendments also clarify the law's "Jurisdiction" section." The adopting resolutions stated that these amendments would go into effect on October 1, 2017.

However, this resolution states that the Environmental Resource Board has had various problems preparing for implementation, and has requested additional time before the amendments to these laws go into effect. This resolution would extend the effective date an additional three months, so that the laws, as amended, would become effective on January 1, 2018, instead of on October 1, 2017.

#### **Conclusion**

Adoption of this resolution does not conflict with any of the Nation's laws.

Phone: (920)869-2214



Oneida, WI 54155

**BC Resolution # \_\_\_\_\_**  
**Reinstating the Oneida Tribal Regulation of Domestic Animals Ordinance on an Emergency Basis,  
and Delaying the Effective Date of the Domestic Animals law**

- 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,** on June 28, 2017, the Oneida Business Committee adopted amendments to the Domestic Animals law (formerly the Oneida Tribal Regulation of Domestic Animals Ordinance) through the adoption of OBC Resolution #6-28-17-B; and
- WHEREAS,** one of the primary changes made to the law is to transfer hearing body authority from the Environmental Resources Board to the Judiciary; and
- WHEREAS,** the Environmental Resource Board has had various problems preparing for implementation, and has requested additional time to ensure hearing body authority is properly transferred to the Judiciary; and
- WHEREAS,** the Conservation Department has not yet implemented the amended law or issued any citations under that law; and
- WHEREAS,** section 109.9-5 of the Legislative Procedures Act (LPA) authorizes the Oneida Business Committee to temporarily enact an emergency law where necessary for the immediate preservation of the public health, safety, or general welfare of the reservation population and the enactment or amendment of legislation is required sooner than would be possible through the standard legislative process; and
- WHEREAS,** the Oneida Business Committee has determined that it is necessary for the immediate preservation of the public health and safety of the reservation population to postpone implementation of the Domestic Animals law, as adopted by OBC Resolution #6-28-17-B until such time as it can be fully enforced as written.

**NOW THEREFORE BE IT RESOLVED,** that the effective date of the Domestic Animals law, as adopted by OBC Resolution #6-28-17-B, shall be postponed until January 1, 2018.

**NOW THEREFORE BE IT FURTHER RESOLVED,** that the Oneida Tribal Regulation of Domestic Animals Ordinance, as adopted by OBC Resolution #6-22-11-G, shall resume effect immediately on an emergency basis; and shall remain in effect until January 1, 2018.

**NOW THEREFORE BE IT FURTHER RESOLVED**, that the Environmental Resource Board shall proceed with the process of transferring hearing body authority to the Judiciary; and ensure that the transfer is completed by January 1, 2018, when the Domestic Animals law resumes effect.

**NOW THEREFORE BE IT FINALLY RESOLVED**, that the Environmental Resource Board shall submit a progress report to the Oneida Business Committee at the first (1<sup>st</sup>) regular OBC meeting in December of 2017, identifying the steps taken to transfer hearing body authority as of that date, and identifying any steps remaining, including but not limited to, any potential issues and assistance that may be needed to ensure the above deadline is met.



## Statement of Effect

*Reinstating the Oneida Tribal Regulation of Domestic Animals Ordinance on an Emergency Basis, and Delaying the Effective Date of the Domestic Animals law*

### *Summary*

This resolution would delay the effective date of the Domestic Animals law, and reinstate the Tribal Regulation of Domestic Animals Ordinance on an emergency basis until January 1, 2018, so that the Environmental Resource Board has time to complete the steps necessary to transfer its hearing body authority to the Judiciary.

*Submitted by: Tani Thurner, Staff Attorney, Legislative Reference Office  
Date: September 19, 2017*

### *Analysis by the Legislative Reference Office*

During the 2014-2017 term, the Oneida Business Committee (OBC) began the process of transferring the Environmental Resource Board's (ERB's) hearing body authority to the Judiciary. There were several laws that each delegated hearing body authority to ERB, and those laws were all amended to transfer ERB's hearing body authority over to the Nation's Judicial system.

One such law that was amended was the Tribal Regulation of Domestic Animals Ordinance. On June 28, 2017, through OBC Resolution #6-28-17-B; the OBC adopted amendments that re-named that law as the Domestic Animals law, and which made several different changes to the law, including transferring ERB's hearing body authority to the Judiciary. The amended law went into effect immediately.

However, ERB has had some difficulties with preparing for implementation – i.e. completing the transfer of hearing body authority over to the Judiciary. Therefore, ERB has requested additional time before the amended law goes into effect.

In order to ensure that ERB has enough time to complete the transfer of hearing body authority over to the Judiciary, this resolution would:

- Delay the effective date of the Domestic Animals law, so that it would stop being effective, and instead would go into effect on January 1, 2018.
- Immediately reinstate the previous Oneida Tribal Regulation of Domestic Animals Ordinance, as adopted by BC #6-22-11-G; on an emergency basis, meaning it would become effective immediately and would remain in effect until January 1, 2018.
- Direct ERB to proceed with the process of transferring hearing body authority to the Judiciary, and to ensure that the transfer is completed by January 1, 2018, when the Domestic Animals law goes into effect.

The Conservation Department has not yet implemented the amended law or issued any citations under it; so it does not appear that any person or entity would be affected if the effective date is postponed and the previous law resumes being in effect.

The resolution also requires ERB to submit a progress report to the OBC at the first regular OBC meeting in December. In that progress report, ERB must identify:

- The steps that ERB has taken to transfer its hearing body authority, and
- Any steps that remain to be taken; along with any potential issues or assistance that may be needed to ensure the January 1, 2018 deadline is met.

***Conclusion***

This resolution does not conflict with any of the Nation's laws.





TO: Michelle Gordon, Oneida Law Office  
Carole Liggins, Oneida Trust Enrollment Committee  
FROM: David P. Jordan, Legislative Operating Committee Chair *DS*  
DATE: September 1, 2017  
RE: Removal Law Amendments

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On December 3, 2014, the Oneida Law Office and Trust Enrollment Committee Chair jointly submitted a request to the Legislative Operating Committee (LOC), seeking amendments to the Removal Law to simplify the removal process and allow for a less costly method of removing elected officials from office.

On December 17, 2014 the LOC added this item to the Active Files List for the 2014-2017 term. This item was not completed prior to the end of the term.

The new LOC has reviewed this item and determined that the requested actions are being addressed in other legislative proposals which are currently being processed; specifically a new Sanctions and Penalties law and amendments to the Comprehensive Policy Governing Boards, Committees and Commissions. Because the requested changes are being addressed in other legislation; the LOC has determined that it will not be taking up this item at this time.

A request to continue processing this item may be submitted to the LOC at any time. In accordance with section 109.5 of the Legislative Procedures Act, any interested person may submit a written request to the Legislative Reference Office for legislation. Upon receiving such a request, the LOC is required to review the request at its next duly called meeting. For more information about how to re-submit a request, please contact the Legislative Reference Office at (920) 869-4376 or by e-mail at [LOC@Oneidanation.org](mailto:LOC@Oneidanation.org).

If you have any questions, please let me know.



**Oneida Nation**  
Oneida Business Committee  
Legislative Operating Committee  
PO Box 365 • Oneida, WI 54115-0365  
Oneida-nsn.gov



TO: Trish King, OBC Treasurer  
FROM: David P. Jordan, Legislative Operating Committee Chair *DJ*  
DATE: September 1, 2017  
RE: Legislative Request - Severance Law

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On October 21, 2015, the Legislative Operating Committee (LOC) added a proposed Severance Law to the Active Files List for the 2014-2017 term. Submitted by Treasurer Trish King, this legislative proposal was a request to develop, and permanently adopt, a Severance law which would provide a process for offering severance agreements to Tribal employees when the financial conditions of the Tribe warrant a need to reduce the workforce.

The item was not completed prior to the end of the term. As the 2017-2020 term begins, the LOC has determined that it will not take up the item at this time. A request to continue processing this item may be submitted to the LOC at any time. In accordance with section 109.5 of the Legislative Procedures Act, any interested person may submit a written request to the Legislative Reference Office for legislation. Upon receiving a request, the LOC is required to review the request at its next duly called meeting. For more information about how to re-submit a request, please contact the Legislative Reference Office at (920) 869-4376 or by e-mail at [LOC@Oneidanation.org](mailto:LOC@Oneidanation.org).

If you have any questions, please let me know.



Oneida Nation  
 Oneida Business Committee  
 Legislative Operating Committee  
 PO Box 365 • Oneida, WI 54115-0365  
 Oneida-nsn.gov



TO: Oneida Business Committee  
 FROM: David P. Jordan, Legislative Operating Committee Chair *DJ*  
 DATE: September 1, 2017  
 RE: Active Files List Items

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On August 30, 2017, the Legislative Operating Committee (LOC) met to review the Active Files List (AFL) from the 2014-2017 term, and to determine which legislative items the LOC would continue to process during the 2017-2020 term. Ultimately, the LOC decided to continue processing all but six of the legislative items remaining from last term's AFL. The following six items will not be added to the AFL at this time:

- **Whistleblower law.** On January 27, 2012, at the request of then-councilman Vince DelaRosa, the LOC added this proposal for a new Whistleblower law to the AFL. This item was then carried over into the 2014-2017 term. The LOC has determined that the current Employee Protection law already addresses the protection of whistleblowers, and so the proposed law is therefore not necessary.
- **Compliance and Enforcement law.** Originally added to the AFL on August 19, 2015, the intent of this law was to establish a centralized entity responsible for overseeing compliance with Tribal law; reviewing existing legislation and presenting recommendations to the LOC, and tracking OBC and GTC directives and regularly reporting on the progress of those directives. However, the LOC has determined that these responsibilities are already being handled by other entities.
- **Severance Law.** This item was added to the AFL on October 21, 2015 at the request of the Treasurer, who was initially seeking adoption of a Severance law on an emergency basis. On November 18, 2015, the LOC determined that this item no longer needed to be processed for emergency adoption. Later discussions regarding this item resulted in a determination that it may be more appropriate to revisit this item once the nation's proposed re-organization project is complete.
- **Removal Law Amendments.** Originally added to the AFL on December 17, 2014, proposed amendments were requested to make the process of removing an elected official less cumbersome, and possibly identifying disciplinary measures that could be taken against elected officials for misconduct that fell short of warranting removal from office; and establishing a process to address situations where an elected official no longer meets the qualifications for the office s/he holds. However, these changes are being addressed in other legislative items the LOC is currently working on; and the LOC has determined that the Removal law will not need to be amended to effect those changes.
- **Higher Education Scholarship.** This item was added to the AFL on October 15, 2014, when the OBC directed the LOC to look at codifying the rules/handbook used by the Higher Education Department to determine how Higher Education funding is allocated. It was determined that other priority items should be worked on at this time, as the Higher Education Department follows the Rulemaking process to develop these rules.

- **Independent Contractor (law) Amendments.** On October 12, 2016, the Oneida Business Committee deferred an issue to the Legislative Operating Committee (LOC) to develop policies and solutions. The specific issue was the need to clarify/reiterate, in Tribal law, that Indian Preference does not supersede the Independent Contractor Policy (now a law) – meaning that Tribal employees and businesses owned by Tribal employees cannot provide services to the Nation as an independent contractor, if the services to be provided by the independent contractor are related to the services performed by the Tribal employee. In order to address this issue, on January 4, 2017, the LOC added the Independent Contractor Policy to the Active Files List (AFL), in order to process amendments. However, upon further review, it was determined that the necessary revisions would need to be made to the Conflict of Interest law, instead of to the Independent Contractor Policy. Because the issue is being addressed through revisions to a different law, the LOC has determined that it will not be taking up this item (Independent Contractor Policy Amendments) for the 2017-2020 term.

A request to continue processing any of these items may be submitted to the LOC at any time. In accordance with section 109.5 of the Legislative Procedures Act, any interested person may submit a written request to the Legislative Reference Office for legislation. Upon receiving such a request, the LOC is required to review the request at its next duly called meeting. For more information about how to re-submit a request, please contact the Legislative Reference Office at (920) 869-4376 or by e-mail at [LOC@Oneidanation.org](mailto:LOC@Oneidanation.org).

If you have any questions, please let me know.

**From:** Jennifer A. Falck

**Sent:** Thursday, September 7, 2017 2:22:19 PM

**To:** David P. Jordan; Leyne C. Orosco; Kirby W. Metoxen; Rosa J. Laster; Jennifer A. Webster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth

**Subject:** Legal Resource Center E-POLL

**Good Afternoon-**

You will find attached the adoption packet for the Legal Resource Center. Please reply with either **APPROVE** or **DISAPPROVE** to send the packet to the Oneida Business Committee for consideration on September 13, 2017.

Thank You-

From: Jennifer A. Webster Sent: Thu 9/7/2017 2:23 PM  
To: Jennifer A. Falck; David P. Jordan; Leyne C. Orosco; Kirby W. Metoxen; Rosa J. Laster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth  
Cc:  
Subject: RE: Legal Resource Center E-POLL

Approve,  
Jenny

From: David P. Jordan Sent: Thu 9/7/2017 2:24 PM  
To: Jennifer A. Falck; Leyne C. Orosco; Kirby W. Metoxen; Rosa J. Laster; Jennifer A. Webster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth  
Cc: David P. Jordan  
Subject: RE: Legal Resource Center E-POLL

Approve.

From: Ernest L. Stevens Sent: Thu 9/7/2017 2:30 PM  
To: Jennifer A. Falck; David P. Jordan; Leyne C. Orosco; Kirby W. Metoxen; Rosa J. Laster; Jennifer A. Webster; Jessica L. Wallenfang; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth  
Cc:  
Subject: Re: Legal Resource Center E-POLL

Approving

From: Daniel P. Guzman Sent: Thu 9/7/2017 2:56 PM  
To: Jennifer A. Falck  
Cc:  
Subject: Re: Legal Resource Center E-POLL

Approve

From: Kirby W. Metoxen Sent: Thu 9/7/2017 10:22 PM  
To: David P. Jordan; Leyne C. Orosco; Rosa J. Laster; Jennifer A. Webster; Jessica L. Wallenfang; Ernest L. Stevens; Cathy L. Bachhuber; Daniel P. Guzman; Melinda J. Danforth; Jennifer A. Falck  
Cc:  
Subject: Re: Legal Resource Center E-POLL

I approve



**Oneida Nation**  
 Oneida Business Committee  
 Legislative Operating Committee  
 PO Box 365 • Oneida, WI 54155-0365  
 Oneida-nsn.gov



**TO:** Oneida Business Committee  
**FROM:** David P. Jordan, LOC Chairperson *DS*  
**DATE:** September 5, 2017  
**RE:** LOC End of Term Report

## Executive Summary

During the 2014-2017 term, the Legislative Operating Committee (LOC) took on several legislative and administrative items. This report details the LOC's activities, and is based on information from the term's active files list (AFL), which is used to track the LOC's work.

You will find information that provides detail about the legislative proposals processed, as well as comparisons to previous legislative terms. Attached are materials which provide more information and summarize other efforts and accomplishments of the LOC.

A total of 42 new laws were proposed. The LOC adopted 11 of those proposals into law. Twenty of the proposals remained incomplete at the end of the term, and 11 were removed from the AFL based on time, resources, and priorities. The LOC worked on 98 legislative items, and 50 non-legislative items, for a total of 148 items. Non-legislative items included; amending bylaws, certifying rules, processing General Tribal Council (GTC) petitions, approving SOP's for the Legislative Reference Office (LRO), etc.

This report provides data from previous terms. The information should not be used to compare one legislative term to the next. Each term differs in priorities and legislative climate. Staffing and available resources also impact what work is completed and how long each item takes. The data can be used to develop a larger historical perspective of legislation that the Oneida Nation has worked on.

<b>New Law</b>	
New laws adopted	11
New law placed onto AFL and incomplete at end of term	20
New laws placed onto AFL and later removed	11
Total	42
<b>Amendments</b>	
Amendments adopted	35
Amendments placed onto AFL and incomplete at end of term	7
Amendments placed onto AFL and later removed	4
Total	46
<b>Miscellaneous Legislative Items Completed</b>	4
<b>Total legislative items</b>	<b>92</b>
<b>Non-Legislative Items</b>	
Bylaw Amendments for Boards, Committees, and Commissions	2
Certified Rules	11

GTC Petitions Processed (or Processing)	24
Administrative Items	3
Legislative Reference Office Administrative Items	10
<b>Total non-legislative items</b>	<b>50</b>
<b>Total legislative and non-legislative items during term</b>	<b>142</b>

Chart 1. illustrates the total number of legislative items per term for the previous three terms. It also indicates how many of the items were completed and how many were not completed. The completion rate for 2008-11 was 58%, for 2011-14 it was 54%, and for 2014-17 the completion rate was 53%. The average length of time it took to complete a new law for this term was 653 days. The average length of time to complete amendments was 328 days.

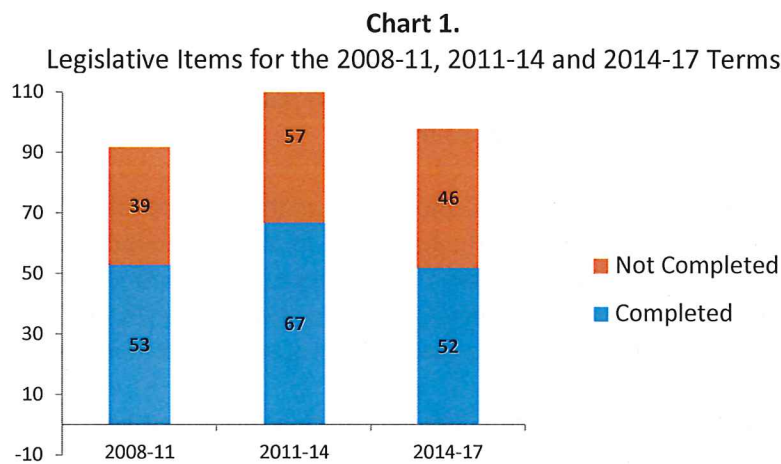
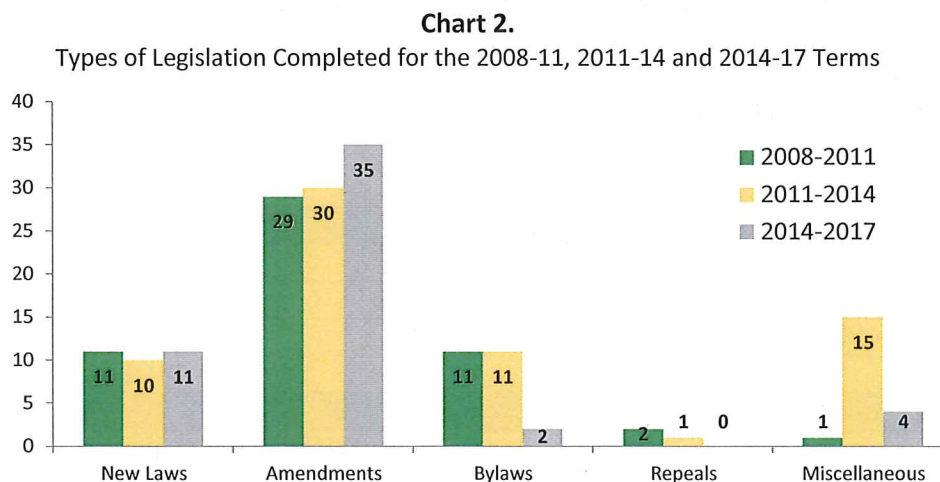


Chart 2. is a breakdown of the types of legislation completed. The average number of new laws adopted in the past three terms is 10.6, and the average number of laws that have been amended is 31.3.



**Oneida Code of Laws**

The Oneida Code of Laws currently contains 102 laws. One of those laws has been adopted on an emergency basis, and four laws have not yet gone into effect.

One of the major efforts this term was to overhaul and reorganize the Code of Laws. The Code of Laws has been divided into nine “Titles” - and each law is a chapter within a title. The titles are:

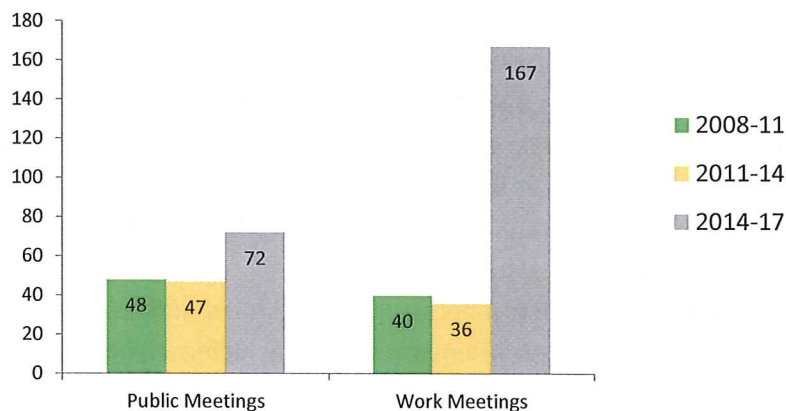
- |   |                                     |
|---|-------------------------------------|
| Title 1—Government and Finances         | Title 6—Property and Land           |
| Title 2—Employment                      | Title 7—Children, Elders and Family |
| Title 3—Health and Public Safety        | Title 8—Judicial System             |
| Title 4—Environment & Natural Resources | Title 9—Education                   |
| Title 5 – Business                      |                                     |

**Public Meetings & Work Meetings**

One of the LOC’s goals this term was to increase involvement with the tribal membership and various departments during the legislative development process. Public meetings are required by law, and are designed to collect comment on proposed legislation from the community. Work meetings are usually held with the LOC and tribal departments that may be impacted by proposed legislation.

The LOC held 72 public meetings for legislative proposals (see Attachment B for more information). The 2008-2011 LOC held 47 public meetings, and 48 public meetings were held in the 2011-2014 term. Over 167 work meetings were held this term to discuss policy with tribal members and tribal departments. The Children’s Code held over 36 work meetings with the public, tribal departments, and tribal entities. The previous two terms logged 36 and 40 work meetings respectively.

**Chart 3.**  
Meetings held for the 2008-11, 2011-14 and 2014-17 terms



**Emergency Legislation**





When the health, safety, or welfare of the Nation is of concern, the Legislative Procedures Act allows laws or amendments to laws to be adopted by the Oneida Business Committee on an emergency basis. Emergency laws are adopted for six months, and may be extended one time for an additional six months. If the new law or amended law is not adopted permanently after that time, the legislation expires or is no longer effective.

The Oneida Business Committee (OBC) adopted 13 items on an emergency basis, and extended 5 of those items for an additional 6 months. Nine of those were replaced by the adoption of permanent amendments. Three emergency-adopted items expired without permanent amendments/adoptions. There are currently two emergency laws in effect;

1. **Legal Resource Center Law:** On May 24, 2017, the OBC adopted this law on an emergency basis in response to a General Tribal Council motion to establish an office that would provide legal services to tribal members by having the individuals elected in the July 2017 General Election. The emergency adoption is set to expire on November 24, 2017. The 2017-2020 LOC has taken this item up and will move forward with permanent adoption.
2. **Landlord-Tenant Law:** The OBC adopted emergency amendments to this law on January 25, 2017. They were extended, and will now expire on February 9, 2018, unless permanently adopted. The 2017-2020 LOC has taken this item up and will move forward with permanent adoption.

### Oneida Register

The Oneida Register is the web page where all the LOC's work can be found. The web link is located at <https://oneida-nsn.gov/register/>. The Legislative Procedures Act (LPA) requires that the LOC maintain the Oneida Register. The LPA and the Administrative Rulemaking Law identify what must be published on the Oneida Register, including notice of public meetings, public meeting materials, and any adopted rules.

Information found on the Oneida Register includes;

- **Oneida Code of Laws:** all the laws and certified rules.
- **Public Meetings Page:** notice of upcoming public meetings and public comment periods for legislative proposals and rules. This page also includes links to the public meeting materials for all public meetings held during the term. The LOC has also begun publishing the public comment memos for legislative public meetings. This provides browsers to read every comment received for a legislative proposal, as well as the LOC's response to each comment.
- **Legislative Actions Page:** a chronological list of all formal actions taken by the OBC and/or GTC to adopt, amend, or repeal tribal law.
- **Administrative Rulemaking:** a list of all certified rules, and a subpage that provides guidance for authorized agencies as they promulgate rules, including a handbook and templates developed by the Legislative Reference Office.
- **Featured Legislation:** provides detailed information about a specific legislative effort. Currently, this page is highlighting the proposed Employment Law, containing videos from past and current OBC members, links to drafts of the law, and other information.

### Rules and Rule Certification

On February 24, 2016, the OBC adopted the Administrative Rulemaking Law. Under the law, entities are delegated specific rulemaking authority, and provided a process to create rules. An important element to this process is the requirement to provide the public with an opportunity to submit comments.

Following the adoption of this law, the Legislative Reference Office developed materials to assist entities with preparing rules, and provide assistance to entities as they develop rules. On August 9, 2017, the OBC adopted amendments to the Administrative Rulemaking Law that require;

- Rules be approved by the OBC before they go into effect.
- Revised requirements whereby an existing rule could be “grandfathered in” and remain effective without requiring certification.

### Closing Remarks

In an effort to increase participation and information sharing, the LOC implemented an additional step for public meeting comments. Historically, public comment memos have been drafted in response to public meeting comments- but have not included any detail as to the LOC’s decision regarding a specific comment. Early in 2017, the LOC began including information that reflects their consideration of a specific public comment. This information includes the day the LOC discussed the public comment and if or how the LOC changed the draft law based on the comment. Once finalized, that memo is posted to the Oneida Register- and anyone can read what comments were made, when the LOC discussed the comment, and their response to the comment.

A primary goal for the 2017-2020 term will be to increase participation in our legislative process. We plan to use social media, technology, and community events to collect thoughts and feedback from the public. We are also committed to ensuring that all the departments and experts that should be part of the process are involved.

The 2014-2017 legislative term was successful. Important legislative work was completed that aligns with the Oneida Nation’s vision “A Nation of strong families built on Tsi ʔNiyukwaliho TÁ and a strong economy”. The 2017-2020 LOC will continue to focus on improving public participation and important legislative efforts.

Supplemental information is attached to this report. Please contact me with any questions you may have.

Yawáko.

**Attachment A.** Brief Summary of Each Item Completed in 2014-2017 Legislative Term

**Attachment B.** Summary of 72 Public Meetings Held in 2014-2017 Legislative Term

**Attachment A**  
**Brief Summary of Each Completed Item in 2014-2017 Legislative Term**

**Administrative Procedures Act (APA) Amendments**

With the adoption of the Judiciary Law, the APA was set to be repealed as of March 1, 2015; but that repeal would have left various tribal hearing bodies without any rules to govern their hearings. Instead of repealing the law, a revised APA was adopted by the OBC on February 24, 2016 to ensure those lower hearing bodies continued to have rules in effect for their hearings.

**Administrative Procedures Act Repeal (Misc. item)**

When GTC approved amendments to the APA and the adoption of the LPA on January 7, 2013, part of the APA was repealed, and the intent was to repeal the rest of the APA when the Appeals Commission was dissolved on March 1, 2015. Ultimately, the APA was not repealed, but was amended.

**Administrative Rulemaking (New Law)**

On February 24, 2016, the OBC adopted a new Administrative Rulemaking law, which establishes a consistent process for the adoption of administrative rules by tribal agencies that have been granted rulemaking authority under other tribal laws.

**Administrative Rulemaking Amendments**

On August 9, 2017, the OBC adopted amendments to the law that:

- Clarify that rules do not conflict or supersede a law, policy, or rule of the Nation or OBC or GTC resolutions
- Add a grandfather clause that allows for current and existing standard operating procedures and policies to remain in effect in some situations, if certain requirements are met.
- Revise notice and public meeting requirements.
- Provide a time limitation for when an authorized agency must submit a proposed rule for certification to the LOC after the public comment period has expired.
- Require the OBC to adopt rules, instead of just requiring rules to be certified by the LOC.
- Clarify what requirements the LOC must ensure are met before certification of the proposed rule.

- Require an authorized agency to conduct a review of each adopted rule every two years after the rule is adopted.

**All-Terrain Vehicle Law – Amendments**

On July 26, 2017, the OBC adopted amendments to the law which transferred the Environmental Resource Board's hearing body authority to the Judiciary.

**Audit Committee Bylaws Amendments**

The Audit Committee previously operated under a charter. The charter was revised into bylaws to ensure consistency with all other entities and standing committees. These revised bylaws were approved by the OBC on January 27, 2016.

**Audit Law Amendments**

On August 9, 2017, the OBC adopted amendments to this law that update the law and provide greater detail regarding the audit process, including:

- Clarifying:
  - the roles and responsibilities related to the internal audit process
  - the difference between an internal and external audit
  - the process for reviewing internal and external audit reports
- Identifying:
  - the primary authority responsible when an internal audit is initiated
  - who can require and enforce management response and action as a result of audit findings
- Enabling management to request a consultation with the Audit Committee to discuss any concerns an entity may have before finalizing an audit report
- Capturing additional functions and purposes of an audit aside from protecting the Nation's assets.

**Back Pay Law Amendments**

On October 26, 2016 the OBC adopted amendments to:

- Expand the health insurance covered by the Nation during the back pay period to include other insurance benefits such as long-term disability, short-term disability, dental, vision, and life insurance.
- Require a reinstated employee to authorize

Purchased Referred Care to retroactively recover funds from the employee's insurance provider if Purchased Referred Care services were provided to the employee during the back pay period.

- Update the calculation of an employee's back pay award when a fractional week is included in the back pay period.

#### **Business Committee Meetings (New Law)**

On July 26, 2017 the OBC adopted this new law, which identifies how the OBC will carry out its responsibilities to conduct the business of the Nation as delegated to the OBC under the Nation's Constitution by the GTC.

#### **Budget Management and Control (New Law)**

On February 8, 2017, the OBC adopted this new law to provide consistent requirements for the tribal budget process, establish a procedural framework, and address oversight of tribal expenditures.

#### **Cemetery Law Amendments**

On July 26, 2017, the OBC adopted amendments to the Cemetery law which correct the name of the Cemetery and update various provisions, including who is responsible for the cemetery's maintenance.

#### **Child Care Department Consumer Complaint (new law)**

On August 9, 2017, the OBC adopted this new law, after a GTC petition was submitted to mandate the OBC review, amend, and implement a new complaint process for consumers of the Oneida Child Care Department (Department). This new law:

- Provides processes for filing complaints against the Department, investigating complaints, determining the severity of a complaint, and appealing investigation outcomes.
- Describes the role/responsibilities of a complaint coordinator
- Describes the types of complaints that may be alleged against the Department.
- Discusses how video surveillance for the Child Care Department will be managed
- Provides requirements for employee self-reporting and mandatory reporting to the OBC
- Requires the development of a parent-teacher organization
- Establishes means for enforcement of this law.

#### **Children's Code (New Law)**

On July 26, 2017 the OBC adopted this new law, which recognizes the authority of the Oneida Nation to exercise sovereignty and self-determination by setting forth procedures to provide for the welfare, care, and protection of Oneida children through the preservation of the family unit, allowing the Nation to exercise jurisdiction over children who are in need of protection or services so that the Nation can ensure that child welfare matters involving Oneida children are handled on the Reservation where more family members and Oneida foster homes are located and the traditions and culture of the Nation can be better preserved. This law details the roles and responsibilities of those entities involved in child welfare matters, and the processes which will be followed by the Oneida Family Court, including:

- The roles of the Nation's Indian Child Welfare Department
- The order of placement preferences to be followed when it is necessary to place a child outside of the home under this law
- The process and procedures for a child in need of protection or services proceeding.
- The processes and procedures for adoption, termination of parental rights, and for guardianship for certain children in need of protection or services proceedings.

The adopting resolution also amends the Nation's Indian Child Welfare Act Policy.

#### **Community Support Fund Amendments**

On January 11, 2017, the OBC adopted amendments to this law which:

- Clarify that the Fund is a fund of last resort.
- Require applicants to submit additional documentation when requesting assistance from the Fund.
- Remove provisions related to cost-sharing.
- Delegate administrative rulemaking authority to the Social Services Area (or designee), to promulgate additional rules governing the administration of the Community Support Fund.
- Revise the listed categories of things that funding can and cannot be provided for.
- Add timelines and additional details to the appeal process.
- Require case managers to provide a written follow-up for all contact with an applicant.

**Conflict of Interest Amendments (I)**

This law was amended on February 8, 2017, in response to HUD Site Monitoring Review Finding #1.

The amendments:

- Expand the definition of “conflict of interest”
- Clarify and expand who the Law applies to, so the Law is consistent in its application
- Delegate responsibility to maintain, collect, and distribute conflict of interest disclosure forms to the Nation’s Human Resource Department (HRD) for employees, and the Office of the Nation’s Secretary for officials and political appointees
- Add penalties for failure to disclose a conflict of interest for elected officials, officers, and political appointees.
- Clarify that when a supervisor is provided with credible evidence that an employee failed to disclose a conflict of interest, that employee will be placed on investigative leave, except this Law requires the investigation be completed within 7 days, instead of the previous 15 days.
- Identify Prohibited Activities Resulting from a Disclosed Conflict of Interest.
- Require the Nation’s entities to create standard operating procedures and/or work standards that outline further prohibited activities resulting from a disclosed conflict of interest, and identify ways to alleviate conflicts of interest so that a person is not prohibited from participating in normal activities.

**Conflict of Interest Amendments (II)**

The OBC adopted additional amendments to the law on June 28, 2017 to:

- establish measures and processes to mitigate the potential for organizational conflicts of interest when any of the Nation’s businesses compete to contract with the Nation;
- Add definitions for “contractor” and “organizational conflict of interest”; and
- Add a section regarding employees who contract with the Nation as independent contractors.

**Domestic Animals Law Amendments**

On June 28, 2017, the OBC adopted amendments to the law which are intended to protect community members from disease, set minimum standards for treatment of animals, prohibit certain animals from being brought on the Reservation, regulate livestock, and establish consequences for damages caused by domestic animals.

**Drug & Alcohol Free Workplace Amendments**

On April 12, 2017, the OBC adopted amendments to this law (which were first adopted on an emergency basis) to comply with a change in Federal OSHA regulations. The amendments:

- No longer require all employees to submit to mandatory drug and alcohol testing immediately following a work-related accident.
- Clarify that the law applies to all employees when operating a vehicle owned or rented by the Nation in addition to during working hours and when on-call.
- Clarify that a supervisor’s decision made in regard to reasonable suspicion drug and alcohol testing of an employee is final and non-appealable
- Clarify how diluted drug test results will be handled.

**Election Law Amendments**

On April 23, 2017, GTC adopted amendments to the Election Law to ensure it reflects the 2015 Oneida Tribal Constitutional Amendments.

**Endowment Fund Amendments**

On April 12, 2017, the OBC adopted amendments to identify that authorization in a resolution creating an endowment is the equivalent of authority delegated by law, as identified in the Administrative Rulemaking law, for the purposes of developing rules.

**Eviction and Termination (New Law)**

On October 12, 2016, the OBC adopted this new law which creates a streamlined eviction process and identifies the rights and responsibilities of all parties involved. This law applies to leases held pursuant to the Leasing Law and the Landlord-Tenant Law.

**Furlough Policy (New Law)**

Adopted in prior terms on an emergency basis, the OBC adopted a permanent Furlough Policy on November 10, 2015. This new law establishes a process allowing tribal employees to be furloughed as a cost-containment measure.

**Garnishment Law Amendments**

On July 27, 2016, the OBC adopted amendments which enable the Judiciary to include interest when a garnishment is ordered.

**Hunting, Fishing and Trapping Law Amendments (I)**

On January 25, 2017, the OBC adopted amendments to the law to update and streamline it; removing various requirements from the Law, instead authorizing ERB and the Conservation Department to establish those requirements through the administrative rulemaking process; so that the law does not need to be amended as frequently in the future.

**Hunting, Fishing Trapping Amendments (II)**

On July 26, 2017, the OBC adopted amendments which transferred the Environmental Resource Board's hearing body authority to the Judiciary.

**Investigative Leave Policy Amendments**

On June 24, 2015, the OBC adopted amendments which deleted a provision that prohibited the use of investigative leave when a complaint is filed; and that reduce the time period of an investigation from 30 days to 15 days.

**Judiciary Law/Transition Plan Emergency Amendments (Miscellaneous Item)**

Emergency amendments were adopted by resolution to reduce the number of Trial Court judges and increase the number of Family Court judges, in order to reduce the existing case load.

**Landlord-Tenant (New Law)**

On October 12, 2016, the OBC adopted this new law that establishes the roles and responsibilities of the tribe as landlord, in residential leases lasting one year or less.

**Marriage Law Amendments (I)**

On May 27, 2015, the OBC adopted amendments to the Marriage law to allow for same-sex marriage.

**Marriage Law Amendments (II)**

On May 25, 2016, the OBC adopted additional amendments that allow for the standard waiting period between applying for a license and solemnizing the marriage to be waived; to provide for an administrative fee for amending an application after it has been submitted, and to establish rulemaking authority.

**Mortgage and Foreclosure Law (New Law)**

On August 10, 2016, the OBC adopted this new law establishing how the tribe deals with mortgages and foreclosures relating to tribal land.

**Motor Vehicle Registration Amendments**

On April 22, 2015, the OBC adopted amendments to remove the registration prices from the law so they could be established by rule instead. Additional amendments were also made to update the law, which had not been updated since 1999.

**Oneida Appeals Commission References Removal (Miscellaneous item)**

The LOC amended various laws and policies to replace references to the Oneida Appeals Commission with references to the Oneida Judiciary, in accordance with a GTC directive.

**Oneida Nation Gaming Ordinance (ONGO) Amendments**

After minor amendments were made to ONGO to replace references to the Oneida Appeals Commission with references to the Judiciary, the adopted amendments were submitted to National Indian Gaming Commission (NIGC) for approval. NIGC returned the proposed amendments with three additional amendments that needed to be made, and then later provided additional feedback which resulted in additional changes. The OBC adopted the amended law on September 9, 2015.

**Oneida Seal and Flag (New Law)**

On January 11, 2017, the OBC adopted the Oneida Seal and Flag Law. This law was developed after the Oneida Nation Veterans Affairs Committee received complaints about how the tribal flag is displayed. The law also establishes standard protocols for displaying a flag and for those with flag responsibilities, and identifies who has authority to lower a flag to half-staff.

**On-Site Waste Disposal Amendments**

On July 26, 2017, the OBC adopted amendments to the law which transferred the Environmental Resource Board's hearing body authority to the Judiciary.

**Per Capita law Amendments**

On February 22, 2017, the OBC adopted amendments based on requests from the Trust Enrollment Department to address various issues, including modifying the frequency of form requirements in elder distributions, and incorporating fees for stop payments and closed bank accounts.

### **Personnel Policies Re: Job Duties and Work Assignments (Emergency only – Miscellaneous Item)**

On September 24, 2014, as a short-term cost-saving measure, the OBC adopted emergency amendments to the Personnel Policies and Procedures, enabling employees to perform job duties outside of their regular assignments. The emergency amendments expired on March 24, 2015, and were not renewed.

### **Pow-wow Committee Bylaws Amendments**

On April 22, 2015, the OBC approved amendments to the Pow-Wow Committee Bylaws which;

- Require a committee member to be a member of a federally-recognized Indian tribe and have Pow-wow knowledge through experience coordinating or participating in a Pow-wow or experience coordinating a community event.
- Require Committee members to follow the Tribe's Code of Ethics and address absences from Committee meetings.

### **Public Use of Tribal Land Amendments (I)**

On December 10, 2014, the OBC adopted amendments to this law to allow Tribal employees who are not Tribal members, and non-Tribal contractors, to access some land that the Law had designated as restricted to Tribal members only.

### **Public Use of Tribal Land Amendments (II)**

On January 13, 2016, the OBC adopted additional amendments which specifically allow the Environmental Resource Board to prescribe permissible and/or prohibited uses for tribal land designated as Oneida Community/Tribal Member/Open Access.

### **Public Use of Tribal Land Amendments (III)**

On July 26, 2017 the OBC adopted amendments to the law which transferred the Environmental Resource Board's hearing body authority to the Judiciary.

### **Real Property Law Amendments (I)**

On May 13, 2015 the OBC adopted amendments to the leasing section of the Real Property law, to ensure consistency with the proposed Leasing Law.

### **Real Property law Amendments (II)**

On February 8, 2017, the OBC adopted amendments that updated the law and removed existing provisions

so that they could instead be established in other laws, such as the new Mortgage and Foreclosure law.

### **Rules of Appellate Procedure Amendments**

On March 25, 2015, the OBC adopted amendments to this law to streamline and improve the appeals process. The amendments:

- Create new definitions and correct inadvertent omissions
- Add a section which requires an Initial Review be conducted by three members of the Court when a Notice of Appeal is filed.
- Allow tracked U.S. or private mail to be used for service
- Clarify Clerk responsibilities regarding the certification of records.
- Increase the time for the Court to complete a case from 120 days to 180 days.
- Give the Court flexibility to allow parties to cite cases during oral argument, even if those cases have not been cited in a brief.

### **Tribal Environmental Response Amendments**

On July 26, 2017, the OBC adopted amendments to the law which transferred the Environmental Resource Board's hearing body authority to the Judiciary. Various other updates were made as well.

### **Tobacco Ordinance Amendments**

On January 25, 2017 the OBC adopted amendments to this law that:

- Remove the requirement that all employees be enrolled members of the Oneida Nation; allowing Oneida Retail locations to employ persons not enrolled in the Nation.
- Replace the term "tobacco outlet" with "Oneida retail location."
- Update the language and format to ensure compliance with drafting style and formatting requirements.

### **Vehicle Driver Certification and Fleet Management Law Amendments**

The OBC adopted this law on June 28, 2017. The law replaces the previous Vehicle Driver Certification and Fleet Management Policies; updating the requirements of both. The law governs the use of Tribal vehicles, and the use of personal vehicles while on Tribal business, for Tribal employees, officials and volunteers.

**Vendor Licensing Law Amendments**

On October 12, 2016, the OBC adopted amendments that update the law and remove various administrative requirements; and more clearly identify the Licensing Department's administrative rulemaking authority.

**Water Resources Amendments**

On July 26, 2017, the OBC adopted amendments to this law which transferred the Environmental Resource Board's hearing body authority to the Judiciary.

**Well Abandonment Amendments**

On July 26, 2017, the OBC adopted amendments to this law which transferred the Environmental Resource Board's hearing body authority to the Judiciary.

**Workplace Violence (New Law)**

On June 28, 2017, the OBC adopted this new law which is intended to provide a safe and secure environment for employees to work and for conducting business by establishing procedures for addressing workplace violence incidents.



**Attachment B.**  
**Summary of 36 Public Meeting Days Held in 2014-2017 Legislative Term**

*By the end of the 2014-2017 term, 172 people attended 36 public meeting days\*. A public meeting day can include one or several topics, as indicated by color in the table. Attendance is measured by how many people register on the sign-in sheet during the public meeting day. There were 72 items discussed at the public meeting days. The average number of attendants per meeting day was 4.8.*

#	Public Meeting Day	Name of Legislative Item	# Attended
1	7/20/17	Professional Conduct for Attorneys and Advocates	0
2	7/20/17	Legal Resource Center	"
3	6/29/17	Administrative Rulemaking Amendments	1
4	6/29/17	Child Care Department Consumer Complaint Policy	"
5	6/29/17	GTC Meetings Law	"
6	6/29/17	Comprehensive Policy Governing BCCs	"
7	6/26/17	Administrative Rulemaking Amendments	0
8	6/26/17	Child Care Department Consumer Complaint Policy	"
9	6/26/17	GTC Meetings Law	"
10	6/26/17	Comprehensive Policy Governing BCCs	"
11	6/15/17	ATV Law—ERB HBA Amendments	3
12	6/15/17	Tribal Environmental Response Amendments	"
13	6/15/17	Hunting, Fishing Trapping Law Amendments	"
14	6/15/17	Public Use of Tribal Land Amendments	"
15	6/15/17	Water Resources Ordinance Amendments	"
16	6/15/17	Well Abandonment Law Amendments	"
17	6/15/17	On-Site Waste Disposal Amendments	"
18	6/5/17	Landlord-Tenant Amendments	1
19	6/5/17	Domestic Animals Ordinance Amendments	"
20	6/5/17	Conflict of Interest Amendments	"
21	6/5/17	Audit Law Amendments	"
22	6/5/17	Vehicle Driver Certification and Fleet Management	"
23	5/18/17	Oneida Business Committee meetings law	3
24	5/18/17	Workplace Violence law	"
25	5/4/17	Child Welfare Law (Children's Code)	19
26	3/30/17	Independent Contractor Policy Amendments	11
27	3/30/17	Cemetery Law Amendments	"
28	3/2/17	Drug and Alcohol-Free Workplace Amendments	3
29	2/16/17	Endowments Law Amendments	7
30	1/3/17	Conflict of Interest Amendments	0
31	12/29/16	Oneida Business Committee Meetings Law	3
32	12/15/16	Budget Management & Control	12
33	12/15/16	Hunting, Fishing, Trapping Amendments	"
34	12/15/16	Tobacco Law Amendments	"
35	12/15/16	Per Capita Law Amendments	"
36	12/1/16	Real Property Law Amendments	0
37	12/1/16	Seal and Flag Law	0
38	11/3/16	Community Support Fund Amendments	4

39	10/20/16	Real Property Law	1
40	9/15/16	Election Law Amendments	0
41	8/4/2016	Eviction & Termination Law	1
42	7/21/2016	Landlord-Tenant Law	1
43	7/21/2016	Vendor Licensing Law Amendments	"
44	6/30/2016	Mortgage & Foreclosure Law	1
45	6/16/2016	Per Capita Law Amendments	6
46	6/3/2016	Garnishment Law Amendments	5
47	5/19/2016	Per Capita Law Amendments	6
48	5/19/2016	Leasing Law Amendments	"
49	5/19/2016	Fitness for Duty Amendments	"
50	5/5/2016	Back Pay Policy Amendments	0
51	3/31/2016	Employment Law	13
52	3/17/2016	Marriage Law Amendments	0
53	2/18/2016	Garnishment Law Amendments	6
54	1/7/2016	Administrative Procedures Act Amendments	1
55	1/7/2016	Comprehensive Policy Amendments	"
56	1/7/2016	Administrative Rulemaking Law	"
57	10/29/2015	Higher Education Scholarship Policy	23
58	10/29/2015	Community Support Fund Policy Amendments	"
59	10/29/2015	Removal Law Amendments	"
60	10/29/2015	Public Use of Tribal Land Law Amendments	"
61	10/1/2015	Oneida Flag Policy	5
62	7/30/2015	Oneida Nation Gaming Ordinance Amendments	8
63	4/30/2015	Removal Law Amendments	6
64	4/30/2015	Investigative Leave Policy Amendments	"
65	4/2/2015	Real Property Law Amendments	0
66	4/2/2015	Leasing Law	"
67	4/2/2015	Marriage Law Amendments	"
68	2/19/2015	Motor Vehicle Registration Law Amendments	2
69	2/19/2015	New Law: Vehicle Driver & Fleet Management	"
70	2/5/2015	Rules of Appellate Procedure Amendments	12
71	2/5/2015	Furlough Policy	"
72	11/6/2014	Public Use of Tribal Land Amendments	1
		<b>Total Participants</b>	<b>172</b>
		<b>Average Number of Participants/Meeting Day</b>	<b>4.8</b>

**LEGISLATIVE REFERENCE OFFICE  
STANDARD OPERATING PROCEDURE**



**Title: E-Poll SOP**  
**Origination Date: September 20, 2017**  
**Revision Date: N/A**  
**Author: LRO**  
**Approvals:**

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David P. Jordan, LOC Chair

Date

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Jennifer Falck, LRO Director

Date

## **1.0 PURPOSE**

- 1.1 Standardize how electronic voting is conducted by the Legislative Operating Committee.
- 1.2 The Legislative Operating Committee recognizes that action may be required that cannot wait for the next available Legislative Operating Committee agenda and electronic polling may be required to approve such items.

## **2.0 DEFINITIONS**

- 2.1 *E-poll* means the act of an e-mail delivered to the Legislative Operating Committee, seeking a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the Legislative Operating Committee.
- 2.2 *Legislative Reference Office (LRO)* means the support office for the Legislative Operating Committee, whose staff is responsible for carrying out law drafting and administrative duties in support of the Legislative Operating Committee.
- 2.3 *E-poll request* means the official request for an electronic vote by the Legislative Operating Committee.

## **3.0 CONDUCTING AN A-POLL**

- 3.1 After the Legislative Operating Committee directs the LRO Director to conduct an e-poll, the LRO Director, or designee, shall e-mail the e-poll to all members of the Legislative Operating Committee, including a copy to each Legislative Operating Committee member's Legislative Assistant.
- 3.2 E-poll requests shall be sent only under the e-mail address of Legislative Operating Committee (LOC) and no other party. E-Polls for Legislative Operating Committee action sent under other email(s) will not be accepted, nor considered valid. The e-poll's email message shall include the following information;
  - 3.1.1 The email subject line shall begin with "E-poll Request:" and include a short title describing the purpose of the request.
  - 3.1.2 The body of the e-poll request shall contain the following elements.

- 3.1.2.1 An executive summary of the reason for the request and why the request cannot be presented at the next available Legislative Operating Committee meeting.
  - 3.1.2.2 A proposed motion which shall be in bold and identified in a separate paragraph by the words “Requested Action”.
  - 3.1.2.3 All attachments, in \*.pdf format, which are necessary to fully understand the request being made.
  - 3.1.2.4 A deadline date for a response to be returned from the LRO Director, or designee, regarding the results of the e-poll which shall be in bold and identified in a separate paragraph by the words “Deadline for Response:”.
- 3.3 E-poll requests shall be open for response not less than one (1) hour and no more than twenty four (24) hours.
- 3.3.1 The time frame for responses shall be determined by the LRO Director, or designee, based on urgency, scheduling, and any other pertinent factors.
- 3.4 The LRO Director, or designee, shall monitor all responses and deadline dates for responses.

#### **4.0 RESPONSE TO E-POLL REQUEST AND PLACEMENT ON LEGISLATIVE OPERATING COMMITTEE AGENDA**

- 4.1 A response from a Legislative Operating Committee member shall be valid if received from the work e-mail of the member, if received from the personal e-mail of the member if such e-mail is on file with the Legislative Reference Office for such purposes, or if received from the official mobile phone number of the member. No response from unknown e-mails or e-mails from Executive Assistants shall be accepted.
- 4.2 An e-poll request must receive at least three responses from Legislative Operating Committee members in order to be an official vote.
- 4.2.1 E-polls that receive at least three supporting votes by the deadline are considered to be approved.
  - 4.2.2 E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support as provided for in Robert’s Rules of Order, p. 34 et seq. and result in a denied request.
  - 4.2.3 E-polls that result in a denied request may be reconsidered by the Legislative Operating Committee at the next available meeting as

provided for in Robert's Rules of Order, Rule 37.

- 4.3 Both approved and denied e-poll requests shall be placed on the next Legislative Operating Committee agenda to be entered into the record. The agenda item shall contain the following information:
  - 4.3.1 Original e-poll request and all supporting documentation.
  - 4.3.2 A summary of the e-poll results identifying each Legislative Operating Committee member and their response.
  - 4.3.3 A copy of any comment by a Legislative Operating Committee member if comments are made beyond a vote.
- 4.4 Legislative Operating Committee members are encouraged to respond to all Legislative Operating Committee members with their vote.

# September 2017

September 2017

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

October 2017

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
	<b>Aug 27</b>	<b>28</b>	<b>29</b>	<b>30</b>	<b>31</b>	<b>Sep 1</b>	<b>2</b>
Aug 27 - Sep 2							
	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>
Sep 3 - 9			3:00pm 4:30pm LOC Prep (BC_Exec_Conf_Room) - LOC  3:00pm 4:30pm LOC Prep (BC_Exec_Conf_Room) - LO	9:00am 3:00pm LOC (BC_Conf_Room) - LOC			
	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>
Sep 10 - 16				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)			
	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>	<b>23</b>
Sep 17 - 23	1:00pm 5:00pm GTC Meeting (Radisson)	12:30pm 4:30pm HR Laws Meeting 1:00pm 3:00pm LOC Prep (BC_Exec_Conf_Room) - LOC		9:00am 3:00pm FW: September 20 LOC RESCHEDULED (BC_Conf_Room) - Jennifer A. Fa			
	<b>24</b>	<b>25</b>	<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>
Sep 24 - 30				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)			

# October 2017

October 2017

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

November 2017

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
Oct 1 - 7	<b>Oct 1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>
			3:00pm 4:30pm LOC Prep (BC_Exec_Con 3:00pm 4:30pm LOC Prep (BC_Exec_Con 3:00pm 4:30pm LOC Prep (BC_Conf_Ro	9:00am 3:00pm LOC (BC_Conf_Ro om) - LOC			
Oct 8 - 14	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>
				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)			
Oct 15 - 21	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>
			3:00pm 4:30pm LOC Prep (BC_Conf_Ro 3:00pm 4:30pm LOC Prep (BC_Exec_Con 3:00pm 4:30pm LOC Prep (BC_Exec_Con				
Oct 22 - 28	<b>22</b>	<b>23</b>	<b>24</b>	<b>25</b>	<b>26</b>	<b>27</b>	<b>28</b>
				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)			
Oct 29 - Nov 4	<b>29</b>	<b>30</b>	<b>31</b>	<b>Nov 1</b>	<b>2</b>	<b>3</b>	<b>4</b>
			3:00pm 4:30pm LOC Prep (BC_Conf_Ro om) - LOC				