



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room-2nd Floor Norbert Hill Center

July 18, 2018 9:00 a.m.

I. Call to Order and Approval of the Agenda

II. Minutes to be approved

1. June 20, 2018 LOC Meeting Minutes (pg. 2)

III. Current Business

1. Comprehensive Policy Governing Boards, Committees and Commissions Amendments (pg. 4)
2. Military Service Employee Protection Act Amendments (pg. 95)
3. Sanctions and Penalties Law (pg. 131)
4. Oneida Personnel Policies and Procedures Amendments (pg. 155)

IV. New Submissions

1. Budget Management and Control Law Amendments (pg. 224)

V. Additions

VI. Administrative Updates

1. Travel Report (pg. 226)
2. Legal Resource Center Law Rule No. 1 (pg. 243)
3. Petition: G. Powless – Oneida Personnel Commission Dissolution E-Poll (pg. 253)

VII. Executive Session

VIII. Recess/Adjourn



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Business Committee Conference Room-2nd Floor Norbert Hill Center

June 20, 2018

9:00 a.m.

Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III

Excused: Daniel Guzman King

Others Present: Brandon Wisneski, Clorissa Santiago, Jennifer Falck, Lee Cornelius, Bonnie Pigman

I. Call to Order and Approval of the Agenda

David P. Jordan called the June 20, 2018 Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster to adopt the agenda; seconded by Kirby Metoxen. Motion carried unanimously.

II. Minutes to be Approved (0:34-1:04)

1. May 16, 2018 LOC Minutes

Motion by Jennifer Webster to approve the June 06, 2018 LOC meeting minutes and forward to the Oneida Business Committee for consideration; seconded by Kirby Metoxen. Motion carried unanimously.

III. Current Business

1. Children's Code (:58-21:31)

Motion by Jennifer Webster to accept the Children's Code Implementation Quarterly Update and forward to the Oneida Business Committee for consideration; seconded by Kirby Metoxen. Motion carried unanimously.

2. Military Service Employee Protection Act Emergency Amendments (21:33-4:22)

Motion by Jennifer Webster to accept the legislative analysis for the Military Service Protection Act amendments and defer to a work meeting; seconded by Ernest Stevens III. Motion carried unanimously.

IV. New Submissions

V. Additions

VI. Administrative Updates

1. July 4, 2018 LOC Meeting

Motion by Jennifer Webster to approve the request to cancel the July 4, 2018 LOC meeting; seconded by Ernest Stevens III. Motion carried unanimously.



*note for the record: LRO will post cancellation and the next LOC meeting will be on July 18, 2018

VII. Executive Session

VIII. Adjourn

Motion by Ernest Stevens III to adjourn the June 20, 2018 Legislative Operating Committee meeting at 9:22 a.m.; seconded by Kirby Metoxen. Motion carried unanimously.



Legislative Operating Committee
July 18, 2018

Comprehensive Policy Governing Boards, Committees and Commissions Amendments

Submission Date: 9/6/17	Public Meetings: 6/21/18
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a Expires: n/a

Summary: *This item was carried over from the last two terms. Amendments were originally requested to: prohibit individuals from serving on multiple boards, committees and commissions at one time; set term limits; and prohibit Tribal employees from serving on tribal boards, committees and commissions.*

9/6/17 LOC: 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 Ernest Stevens III. Motion carried unanimously.

9/6/17: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Candice Skenandore, Maureen Perkins, Tani Thurner, Cathy Bachhuber. Drafting attorney provided an update on the status of Comprehensive Policy Governing Boards, Committees and Commissions amendments. Next steps will be: 1) pull the current draft back, 2) have work meetings with LOC for policy determinations, 3) conduct work meetings with boards, committees and commissions for input.

9/21/17: *Work Meeting.* Present: Jennifer Webster, Clorissa Santiago, Candice Skenandore, Jennifer Falck, Daniel Guzman King, Chad Wilson, Carol Silva, Gene Danforth, Mary Ann Krueheleg, Dakota Webster, Bonnie Pigman, Louis Powless, Lois Strong, Patricia Lassila, Raquel Hill, Laura Manthe, Lee Cornelius, Chaz Wheelock, Carol Elm. The purpose of this meeting was to collect input from members of boards, committees, and commissions on how to improve the currently effective law. Written comments will be accepted until October 11, 2017, and then all information will be compiled and brought back to the LOC.

10/2/17: *Work Meeting.* Present: Jennifer Webster, Clorissa Santiago, Candice Skenandore, Lee Cornelius, Stephen Webster, Brooke Duxtator. The purpose of this meeting was to collect input from the Oneida Nation Secretary's Office, and the Business Committee Support Office on how to improve the currently effective law.

10/27/17: *Work Meeting.* Present: Kirby Metoxen, Jennifer Webster, Cathy Bachhuber, Jennifer Falck, Daniel Guzman King, Candice Skenandore, Clorissa Santiago, Rosa Laster, Rae Skenandore. The purpose of this meeting was to go through the comments/suggestions collected from the boards, committees and commissions; BC Support Office and previous drafts to make policy considerations for the new proposed draft.

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

Work Meeting. Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Clorissa Santiago, Candice Skenandore, Jennifer Falck, Maureen Perkins, Rae Skenandore. The purpose of this meeting was to continue going through the comments/suggestions collected from the boards, committees and commissions; BC Support Office and previous drafts to make policy considerations for the new proposed draft.

2/2/18: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Rosa Laster, Cathy Bachhuber. The LOC reviewed and discussed the first draft. Drafting attorney will update law to reflect revisions discussed. A LOC work meeting to discuss stipends will be scheduled, as well as a work meeting with all boards, committees, and commissions to review first draft.

2/15/18: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Daniel Guzman King, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Rosa Laster, Cathy Bachhuber. The purpose of this meeting was to go over the current reality of stipends, and discuss how the LOC wants to proceed with stipends in the future, so that the resolution containing stipend information can be drafted. The conversation on stipends in regards to hearings will be continued at another work meeting, and the drafting attorney will begin drafting the resolution.

2/22/18: *Work Meeting.* Present: Jennifer Webster, Daniel Guzman King, Jennifer Falck, Clorissa Santiago, Dale Webster, Lois Strong, John Breuninger, Floyd Hill, Bonnie Pigman, Matt W. Denny, Vicki Cornelius, Raw Skenandore, Carol Silva, Brooke Doxtator, Carol L. Elm, Mark Powless, Dylan Benton, Maureen Perkins. The purpose of this meeting was to go over the members of the various boards, committees, and commissions opinion, comments, concerns, and suggestions on the proposed drafted amendments. The drafting attorney will take all comments and suggestions to the LOC for review and consideration.

3/2/18: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Clorissa Santiago, Brandon Wisneski, Laura Laitinen-Warren, Lisa Summers. The LOC reviewed and considered all comments received from the boards, committees, and commissions. The drafting attorney will make all revisions the LOC determined were necessary.

3/16/18: *Work Meeting:* Present: David P. Jordan, Jennifer Webster, Daniel Guzman, Ernest Stevens III, Clorissa Santiago, Brandon Wisneski, Cathy Bachhuber, Rosa Laster. LOC reviewed revisions made based on the last LOC work session and directed changes be made, and that the draft be e-pollled on March 21, 2018, so that the LOC may direct that the legislative analysis be completed.

3/21/18: *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Brooke Doxtator, Tony Doxtator, Victoria Krueger. The purpose of this work meeting was to discuss the requirement in the current draft that all BCC members have an official Oneida email, that is different than their employee email address, if applicable. The goal was to obtain an IT perspective on this issue from MIS, and to discuss the realities, challenges, and timelines this requirement will result in. The group will meet again to discuss this issue in a couple weeks, once the various MIS departments have an opportunity to meet further.

4/2/18 LOC: Motion by Daniel Guzman King to accept the draft of the Comprehensive Policy Governing Boards, Committees, and Commissions amendments and direct that a legislative analysis be completed; seconded by Jennifer Webster Motion Carried unanimously.

- 4/11/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Brooke Doxtator, Tony Doxtator, Stephen Webster, James Sommerfeldt, Jesse Kujawa, Chad Mrotek. The purpose of this work meeting was to discuss the questions and concerns regarding the provision of the law that says an email address must be provided to every BCC member, and discussion on how to implement this matter.
- 4/25/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Jennifer Falck. LRO staff met to review and discuss the legislative analysis.
- 5/2/18 LOC:** Motion by Ernest Stevens III to accept the legislative analysis and defer to a work meeting; seconded by Jennifer Webster. Motion carried.
- 5/2/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Jennifer Falck, David P. Jordan, Jennifer Webster, Ernest Stevens III. The LOC reviewed the legislative analysis and made policy considerations that the drafting attorney will now incorporate into the draft.
- 5/16/18 LOC:** Motion by Kirby Metoxen to approve the public meeting packet and forward the Comprehensive Policy Governing Boards, Committees, and Commissions amendments to a public meeting to be held on June 21, 2018; seconded by Daniel Guzman King. Motion carried unanimously.
- Subsequent motion by Kirby Metoxen to forward the Comprehensive Policy Governing Boards, Committees, and Commission amendments to the Finance Office for a fiscal analysis; seconded by Jennifer Webster. Motion carried unanimously.
- 6/6/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski. The purpose of this work meeting was to have the LOC review and discuss the drafted resolution determining stipend amounts for members of boards, committees, and commissions, and to determine a definition for stipends to be included in the law.
- 6/20/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Kirby Metoxen, Jennifer Falck, Clorissa Santiago, Brandon Wisneski. The purpose of this work meeting was to review and prepare for the upcoming public meeting.
- 6/21/18:** Public Meeting was held.
- 6/28/18:** Public Comment Period Closed.

Next Steps:

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



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney
DATE: July 18, 2018
RE: Comprehensive Policy Governing Boards, Committees, and Commissions
Amendments: Public Meeting Comment Review

On June 21, 2018, a public meeting was held regarding proposed amendments to the Comprehensive Policy Governing Boards, Committees and Commissions (“the Law”). This memorandum is submitted as a review of the oral and written comments received within the public meeting and public comment period.

Twenty-two (22) people attended the public meeting, with eight (8) individuals providing oral comments during the public meeting, and two (2) individuals submitting written comments during the public comment period. The Oneida Trust Enrollment Committee, Oneida Nation School Board, Oneida Nation Commission on Aging, Environmental Resource Board, and the Oneida Gaming Commission all had representation at the public meeting or during the public comment period.

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

Comment 1 – Application of the Law to the Oneida Business Committee:

105.1. Purpose and Policy

105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

(a) This law shall not apply to the Oneida Business Committee.

105.3. Definitions

105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(h) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation’s membership.

Bonnie Pigman (oral): Hi, I’m Bonnie Pigman, General Tribal Council Member, 5361. I’m wanting to talk about the Purpose and Policy, Line 7, which specifically states “This law shall not apply to the Oneida Business Committee.” I have a couple of questions and then some information and some things with the definitions. A question for me is why not? Where is it

defined that the OBC is not considered a committee. I haven't seen anything that says they are not a committee. Everybody calls you the Oneida Business Committee.

Bonnie Pigman (oral): Line 59, which is in the definitions. An entity reads, means a board, committee or commission created by GTC or the Business Committee whose members are appointed by the OBC or elected by the Nation's membership. How does the Business Committee not apply to this definition? Even the Constitution, Article III, Governing Body, Section 3 reads, the qualified voters of the Oneida Nation shall elect from among the enrolled Oneida Nation members aged 21 and over who physically reside within Brown and Outagamie Counties of Wisconsin, by secret ballot, a Chairman, Vice Chairman, Secretary, Treasurer and five council members who shall constitute the Oneida Business Committee. Again, committee and perform such duties as authorized by, may be authorized by General Tribal Council.

Response

The commenter questions why the Law does not apply to the Oneida Business Committee if the Oneida Business Committee fits the definition of an entity.

The Law defines an entity of the Nation as a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership. [1 O.C. 105.3-1(h)].

The commenter is correct in stating that the Oneida Business Committee does fit the description of an entity according to the definition provided by the Law, since the Oneida Business Committee was created by the General Tribal Council and elected by the Nation's membership pursuant to Article III, Section 3 of the Constitution and Bylaws of the Oneida Nation.

Although the Oneida Business Committee fits the definition for entity provided by the Law, it is important to note that it was never the intent to exempt the Oneida Business Committee based on whether or not the Oneida Business Committee meets the definition of entity. The Oneida Business Committee is exempted from this law because the purpose of the Law specifically excludes the Oneida Business Committee. [1 O.C. 105.1-1(a)].

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

- Who may run for office with the Oneida Business Committee (must be age twenty-one (21) or over and physically reside in either Brown or Outagamie Counties);
- How many members may sit on the Oneida Business Committee (overall nine (9) members);
- What officer positions must be held on the Oneida Business Committee (necessary to have a chairman, a vice chairman, a treasurer, and a secretary);

- What constitutes a quorum (a majority of the body including the chairman or vice chairman);
- How regular meetings will be established (by resolution of the Oneida Business Committee);
- Notice requirements for special meetings (three (3) day advance notice by the chairman to all members or upon written request of a majority of the Oneida Business Committee stating the time, place, and purpose of the special meeting);
- How vacancies are filled (General Tribal Council may at any regular special meeting fill any vacancies that occur on the Oneida Business Committee for an unexpired term);
- How Oneida Business Committee members are removed (at the discretion of the General Tribal Council by a two-thirds (2/3) majority vote at any regular or special meeting of the General Tribal Council pursuant to a duly adopted ordinance); and
- How often Oneida Business Committee members are elected (every three years in the month of July).

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

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

In recognition of the fact that the Oneida Business Committee is a constitutionally recognized extension of the General Tribal Council, and the fact that the standards and procedures regarding the Oneida Business Committee is already addressed by other legislative means, the Oneida Business Committee has been exempted from this Law.

There is no recommended revision based on this comment.

The LOC may consider whether the definition for entity should be clarified to explicitly state that the Oneida Business Committee is excluded, in addition to the section 105.1-1 of the Law which describes the purpose. A possible revision to the definition could be as follows:

- (h) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership, excluding the Oneida Business Committee.

LOC Consideration

Comment 2 – Creation of Initial Bylaws of a Board, Committee, or Commission:

105.4. Creation of an Entity

105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.

105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.

105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

Florence Petri (oral): Also, another one I have is, it says the Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity. Shouldn't the entity initiate those bylaws and then followed up by the Business Committee? That's my opinion. Thank you.

Response

The Law provides that when a new entity is created by either the Oneida Business Committee or the General Tribal Council, the Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity. [1 O.C. 105.4-3].

The commenter questions why the entity itself does not initiate those bylaws, and then obtain approval by the Oneida Business Committee.

The Oneida Business Committee is delegated the authority to draft the initial bylaws of an entity, because the entity is newly established, and would not have any members. The initial bylaws must be drafted by the Oneida Business Committee so that decisions such as how many members will serve on the entity, if the members will be elected or appointed, and what the qualifications for membership on the entity shall be, can be made in order for the vacancies on this new board, committee, or commission to be posted and filled. The Law provides requirements for what information shall be addressed in the bylaws. [1 O.C. 105.10-3].

Once individuals are elected or appointed to a new board, committee, or commission, it would be up to the discretion of that board, committee, or commission to revise the initial bylaws that were created by Oneida Business Committee. Any revisions to bylaws have to be done in accordance with the bylaws of the board, committee, or commission and shall be approved by the Oneida Business Committee, in addition to the General Tribal Council when applicable, prior to implementation of the bylaws. [1 O.C. 105.10-3(g)(1)].

There is no recommended revision based on this comment.

LOC Consideration

Comment 3 – Uniform Applications:

105.5. Applications

105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

(a) All applications shall include:

(1) a statement explaining the attendance requirements of section 105.12-3; and

(2) a section regarding disclosures of conflicts of interest.

(b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.

Lee Cornelius (oral): Our office went over this and we had some concerns and questions that we had. First is 105.5-1. We were wondering if we could make the packets just be uniform. Have a section in there basically for the background investigation, instead of having separate applications.

Response

The commenter suggests having the application to serve on a board, committee, or commission of the Nation be uniform, and include a section for background investigations on the general application instead of having a separate application.

Currently, only the Oneida Police Commission and the Oneida Gaming Commission require background investigations.

The Law requires the Oneida Business Committee to approve all applications to serve on a board, committee, or commission of the Nation, and this allows the Oneida Business Committee the ability to ensure that one uniform and consistent application is used for all boards, committees, or commissions of the Nation. [1 O.C. 105.5-1].

The Legislative Operating Committee previously decided to have an additional application form that would be required for those entities that require a background investigation instead of including the information for a background investigation on the main application, because the background investigation application shall include the applicant's social security number and any other information required for a background investigation. [1 O.C. 105.5-1(b)].

All applications will be delivered to every member of the Oneida Business Committee and the entity's Chairperson for review before appointment. [1 O.C. 105.7-1(a)(1)]. In an effort to keep social security numbers confidential and secure the Legislative Operating Committee decided to

keep the background investigation application separate from the general application. The Legislative Operating Committee has also specified through the Law that the background investigation application shall be solely used for the background investigation and not included in the application materials that are shared with the Oneida Business Committee, entity, and/or the Election Board. [1 O.C. 105.5-1(b)].

There is no recommended revision based on this comment.

The Legislative Operating Committee may determine if revisions should be made to allow for one application that includes information required for the background investigation, instead of having a separate background investigation application.

LOC Consideration

Comment 4 – Statement of Attendance Requirements on Applications:

105.5. Applications

105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

(a) All applications shall include:

(1) a statement explaining the attendance requirements of section 105.12-3; and

(2) a section regarding disclosures of conflicts of interest.

(b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.

Lee Cornelius (oral): 105.5-1. We're curious as to why the attendance requirements are due at the time of the application.

Response

The commenter questions why the Law requires the applications to include a statement explaining the attendance requirements for serving on a board, committee, or commission of the Nation. [1 O.C. 105.5-1(a)(1)]. The Law requires a statement that at least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report of that entity is an agenda item. [1 O.C. 105.12-3].

The Legislative Operating Committee determined that the a statement of the requirement of at least one (1) member of a board, committee, or commission be in attendance at the Oneida Business Committee meeting where the entity's quarterly report is on the agenda be included on the application so that an individual is made aware from the moment they turn in an application to serve on a board, committee, or commission of the Nation that there is the expectation that he or she might have to attend the Oneida Business Committee meeting on behalf of his or her board, committee, or commission.

There is no recommended revision based on this comment.

The Legislative Operating Committee may consider if the requirement to include a statement explaining the attendance requirements of section 105.12-3 should remain in the law.

LOC Consideration

Comment 5 – Conflict of Interest Disclosure on Applications:

105.5. Applications

105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

(a) All applications shall include:

(1) a statement explaining the attendance requirements of section 105.12-3; and

(2) a section regarding disclosures of conflicts of interest.

(b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.

Lee Cornelius (oral): 105.5-1. We're wondering if we could attach a conflict of interest right away to the application instead of having a separate section for that.

Response

The commenter suggests that the law be revised to allow for a conflict of interest disclosure form to be attached to the application instead of having a separate section within the application form which would address conflicts of interest.

The Legislative Operating Committee may consider if the law should be revised to allow for a conflict of interest disclosure form to be attached to the application instead of having a separate section within the application form which would address conflicts of interest.

LOC Consideration

Comment 6 – Conflict of Interest:

105.5. Applications

105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

(a) All applications shall include:

- (1) a statement explaining the attendance requirements of section 105.12-3;**
- and**
- (2) a section regarding disclosures of conflicts of interest.**

105.15. Conflicts of Interest

105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.

105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises, and update a conflict of interest disclosure form with the Nation's Secretary on an annual basis.

(a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action must be taken by the Nation regarding the status of the official.

105.15-3. Due to the potential for a real or perceived conflict of interest to exist, political appointees and legislative assistants shall not serve on an appointed or elected entity.

Lori Elm (oral): One of the other things I've seen was the conflict of interest. It was a little confusing for me because just this week in the mail or an e-mail I sent, we had to have all of our land commissioners sign a new conflict of interest, but when I was reading this it says then the application they are going to have a conflict of interest. So if they are going to have it on the application, the conflict of interest, couldn't there be some type of stipulation just put right on there, if you are elected that if you would, you know comply, or you would have to stay in compliance with the conflict of interest and if anything would change you have 30 days to report it to your board or to your, to the Secretary's office, just so then that needs so much paperwork.

Response

The Law does require that applications contain a section to allow for the disclosures of conflicts of interest. [1 O.C. 105.5-1(a)(2)]. Additionally the Law requires that members of boards, committees, and commissions comply with the Nation's laws and policies governing conflict of interest. [1 O.C. 105.15-1].

Both the Law, and the Nation's Conflict of Interest law require a member of a board, committee, or commission to update a conflict of interest disclosure form with the Nation's Secretary on an annual basis, as well as disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises. [1 O.C. 105.15-2, 2 O.C. 217.4-3(b)].

Therefore, the commenter's suggestion to not have an annual conflict of interest disclosure form, and simply use the conflict of interest disclosure on the application with language added that a person must disclose a future conflict of interest within a determined period of time, would be in violation of the provisions contained in this Law, as well as the Nation's Conflict of Interest law.

There is no recommended revision based on this comment.

LOC Consideration

Comment 7 – Application Deadlines:

105.5. Applications

105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date. Postmarked envelopes are accepted as filed if postmarked by the deadline date and received by the Business Committee Support Office within five (5) business days of the deadline.

105.5-3. Five (5) days after the posted deadline for filing applications the Business Committee Support Office shall notify all persons who have filed an application of the date his or her application was received and if his or her application met the deadline to be considered for the election or appointment.

Lee Cornelius (oral): 105.5-2. We want a, we were wondering if we could have a strict deadline of 4:30 instead of the mailing five days later. And if we do have the mailing five days later, can we have the verbiage changed that we will have more time than five days to get it to BC for consideration, because obviously that would be the same day.

Response

The commenter requests that the Law be revised to have a strict deadline of 4:30 p.m. on the day of the deadline date, instead of allowing for postmarked envelopes to be accepted as filed if postmarked by the deadline date and received by the Business Committee Support Office within five (5) business days of the deadline.

The Legislative Operating Committee did consider removing the allocation of a five (5) day period for postmarked envelopes, but ultimately decided to keep the five (5) day allocation in the law in recognition of the fact that there are people who would still utilize standard mail to send in an application. The Legislative Operating Committee did not want to limit one's ability to turn in an application to the Business Committee Support Office.

The LOC may make one of the following considerations:

1. Keep the Law as currently drafted and allow for postmarked envelopes to be accepted as filed if postmarked by the deadline date and received by the Business Committee Support Office within five (5) business days of the deadline; or
2. Revise the Law to have a strict deadline of 4:30 p.m. on the deadline date.

If the LOC determines that no revision to the Law is necessary, then the commenter requests that the language included in section 105.5-3 that states that five (5) days after the posted deadline for filing applications the Business Committee Support Office shall notify all persons who have filed an application of the date his or her application was received and if his or her application met the deadline to be considered for the election or appointment. The commenter makes this request to allow the Business Committee Support Office more time in processing applications within postmarked envelopes that might be received on that fifth (5th) day.

If the LOC determines that the five (5) day period for postmarked envelopes to be received by the Business Committee Support Office should remain in the law, then it is recommended that the time period for the Business Committee Support Office to notify all persons who have filed an application of the date his or her application was received provided for in section 105.5-3 be extended, as requested by the commenter.

LOC Consideration

Comment 8 – Effective Date of Vacancies:

105.6. Vacancies

105.6-2. A position on an entity shall be considered vacant in the following situations:

(a) *End of Term.* A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.

(1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.

Lee Cornelius (oral): We would like the end of terms for elected positions to be the end of July. We already have terminology in there that states that they can stay on until the next person takes

the oath, so we were wondering if we could end it on July 31st and just use that terminology and start with the new person.

Response

The commenter suggests that the end of terms for elected positions be specified and held consistent as the end of July.

Currently, the Law only states that a vacancy is effective as of 4:30 p.m. on the last day of the month in which the term ends, and does not provide any specific references to when those terms might end. [1 O.C. 105.6-2].

The LOC may consider if:

1. The Law should remain as currently drafted and stated that a vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.
2. The Law should be revised to specify that a vacancy for an elected position is effective as of 4:30 p.m. on July 31st that ends the term.

LOC Consideration

Comment 9 – Vacancies at the End of Term:

105.6. Vacancies

105.6-2. A position on an entity shall be considered vacant in the following situations:

(a) ***End of Term.*** A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.

(1) **Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.**

Chad Wilson (oral): Hi. So I just have a few things that I have a concern about. One thing I do like, board members staying in that way we have quorums, so I just want to put that out there. Back when Racquel was chair we weren't getting people elected and we were losing quorums, so by having a person stay in office until the next person takes their oath, I think that's a great change.

Response

The commenter commends the inclusion of section 105.6-2(a)(1) which allows for a member of a board, committee, or commission who's term has ended to remain in office until the member's

successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.

There is no recommended revision based on this comment.

LOC Consideration

Comment 10 – Vacancy due to Resignation:

105.6. Vacancies

105.6-2. A position on an entity shall be considered vacant in the following situations:

(d) Resignation. A resignation is effective upon:

(1) Deliverance of a letter to the Business Committee Support Office;

(A) Upon receipt of resignation, the Business Committee Support Office will notify the entity of the resignation;

(2) Deliverance of a letter to the Chairperson of the entity, or designee, or

(3) Acceptance by motion of the entity of a verbal resignation.

105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.

Lee Cornelius (oral): We'd also like on 105.6-2 verbiage in there stating that if somebody does resign and they turn it to the board, that the board must notify the BCSO office.

Response

The commenter requests that the Law be revised to include language that requires a board, committee, or commission of the Nation that accepts a resignation to notify the Business Committee Support Office.

The requirement of a board, committee, or commission to notify the Business Committee Support Office that a resignation has been received and a position is now vacant is already required by the Law. The Law requires that an entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. [1 O.C. 105.6-3]. This would include when a board, committee, or commission accepts a verbal resignation by motion, or if a resignation letter is delivered to Chairperson of the entity, or designee.

There is no recommended revision based on this comment.

LOC Consideration

Comment 11 – Posting of Vacancies:

105.6. Vacancies

105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The Secretary shall post notice of vacancies at the following times:

- (a) *End of Term.* Automatically thirty (30) days prior to completion of the term.
- (b) *Removal.* No later than the first Oneida Business Committee meeting following the effective date of the removal.
- (c) *Resignation.* No later than the first Oneida Business Committee meeting following the Secretary's receipt of notice of an effective resignation from the entity.
- (d) *New Positions.* Upon one of the following conditions:
 - (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
 - (2) upon date specified when creating the entity.
- (e) *Termination of appointment.* No later than the first Oneida Business Committee meeting following the effective date of the termination.

Lee Cornelius (oral): 105.6-4, we would like to change it from the Secretary shall post to the BCSO will post the vacancies. For (a) End of Term, Automatically it currently says 30 days. With our backwards scheduling and everything, we would like to extend that out to 60 days. And Resignation part (c), on that one it says no later than the first Oneida Business Committee meeting following the Secretary's receipt of notice of an effective resignation from the entity. We would like to see, change the verbiage to next available BC because if it's done after our deadline to turn in, the deadline for putting in a request then we won't be able to have time for it. And that seems to be it. Thank you.

Response

The commenter makes a couple suggested revisions regarding timelines and requirements for posting vacancies. The commenter serves as a representative of the Business Committee Support Office who currently handles most responsibilities regarding the posting of vacancies, and has the specific knowledge and experience regarding these matters.

It is recommended that the following revisions be made:

105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The Secretary Business Committee Support Office shall post notice of vacancies at the following times:

- (a) *End of Term.* Automatically ~~thirty~~ sixty (360) days prior to completion of the term.
- (b) *Removal.* No later than the ~~first~~ next available Oneida Business Committee meeting following the effective date of the removal.
- (c) *Resignation.* No later than the ~~first~~ next available Oneida Business Committee meeting following the Secretary's receipt of notice of an effective resignation from the entity.
- (d) *New Positions.* Upon one of the following conditions:
 - (1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or
 - (2) upon date specified when creating the entity.
- (e) *Termination of appointment.* No later than the ~~first~~ next available Oneida Business Committee meeting following the effective date of the termination.

The LOC may determine if the recommended revisions should be made to the law, or if the language included in the law regarding the posting of vacancies should remain as currently drafted.

LOC Consideration

Comment 12 – Review of Application Materials for Appointment:

105.7. Appointment to an Entity

105.7-1. *Appointment Selection.* The following procedures shall be used to determine how the applicant for an appointed position is selected:

- (a) Five (5) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:
 - (1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and
 - (2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made.
- (b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.
 - (1) The entity's Chairperson may have until the executive session to review the application materials and provide the Oneida Business Committee a recommendation of an applicant for appointment.
- (c) The Oneida Business Committee shall have a full and complete discussion of the

merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:

- (1) choose an applicant for appointment, or**
- (2) ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.**

Chad Wilson (oral): Under the Section 105.6(b), I think it's b. Okay, I got it wrong. It's talking about when the applications come in for appointment that the Business Committee will review the application and that the entity's chair will also have the opportunity to review that application and that the BC Support Office will make an appointment on the next BC meeting to discuss that appointment. Just like the BC, ERB would like all of the members to go ahead and look at that application and make that recommendation for the appointment, not just the chair. So, having it on the next meeting might not work out, not all people utilize electronic mail or social media and sometimes we can't get a hold of members on the telephone, so if we could have it at least a month out or into the next or after the next regularly scheduled meeting for that entity, that way we can have that recommendation move forward.

Response

The Law provides that five (5) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall deliver the application materials to the members of the Oneida Business Committee and Chairperson of the entity for review, and then place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made. [1 O.C. 105.7-1(a)].

The Law then allows the Chairperson of the entity to provide a recommendation of an applicant for appointment during the executive session discussion where the Oneida Business Committee will review the application materials. [1 O.C. 105.7-1(b)(1)].

The commenter requests that timeline be extended at least a month out, or after the next regularly scheduled meeting for that entity, so that the entity has the opportunity to allow all of its members to come together and review the application materials and make recommendations for the Chairperson of the entity to bring to the Oneida Business Committee.

During the development of the amendments to this section of the law the LOC relied on comments received during the September 21, 2017 and February 22, 2018 work meetings with members of various boards, committees, and commissions of the Nation. Representatives from the Environmental Resource Board, Police Commission, Oneida Nation Commission on Aging, Election Board, Land Claims Commission, Oneida Trust Enrollment Committee, Oneida Nation Veterans Affairs Committee, Gaming Commission, Pow-Wow Committee, Land Commission, and the Oneida Community Library Board attended the work meetings and shared comments, suggestions, and concerns with the Legislative Operating Committee.

One prevalent concern that was shared by the members of the various boards, committees, and commissions was the amount of time it would take for an individual to be appointed to fill a vacancy on a board, committee, or commission. For this reason, the Legislative Operating Committee wanted to amend the appointment process to ensure that appointments would be made in a timely manner so that a board, committee, or commission would not be left with a vacancy that could potentially affect the board, committee, or commission's quorum and ability to conduct business.

Although the Law does allow a member whose position is considered vacant once the terms ends to remain in office until the member's successor is sworn into office by the Oneida Business Committee [1 O.C. 105.6-2(1)], this would not address vacancies due to removal, termination of appointment, resignation, or the creation of new positions.

The Legislative Operating Committee determined that once application materials are collected by the Business Committee Support Office the appointment should be placed on the next Oneida Business Committee agenda.

The Legislative Operating Committee recognized the importance of allowing the Chairperson of the entity, who has specific knowledge on the needs and standards of his or her specific entity, to provide a recommendation, and that boards, committees, or commissions might want the Chairperson of their entity to gain input from the entire board, committee, or commission.

The Legislative Operating Committee ultimately determined that boards, committees, or commissions would still be allowed to review application materials as an entity and come to a consensus to the recommendation the Chairperson would make to the Oneida Business Committee, but it would have to occur before the executive session discussion.

Boards, committees, or commissions have options on how they would choose to handle addressing the need to make a recommendation for a vacancy. The board, committee, or commission could decide to hold a meeting to address recommendations for a vacancy, communicate via their entity specific email address, or even conduct e-polls to determine a recommendation.

Although the commenter suggested that the timeline for making an appointment could be dependent on the meeting schedule of the specific board, committee, or commission that has the vacancy, the Legislative Operating Committee's goal is to create a consistent process that could be used across the board for all boards, committees, or commission.

The LOC may consider if:

1. The Law should remain as currently drafted and require that appointments be placed on the next Oneida Business Committee meeting agenda; or
2. The Law should be revised to extend the timeline for when appointments are placed on the Oneida Business Committee agenda.

It is recommended that if the Legislative Operating Committee determines that the Law should remain as currently drafted, that the language is revised to clarify that the appointments should be placed on the next *available* Oneida Business Committee meeting agenda. An example of the proposed language revision would be as follows:

105.7-1(a)(2): place the appointment for the entity on the next available executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made.

LOC Consideration

Comment 13 – Termination of Appointment versus Removal:

105.7. Appointment to an Entity

105.7-4. *Termination of Appointment.* Appointed members of entities serve at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.

(a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.

(b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

Lori Elm (oral): One of the other things was I was a little confused on the termination and removal policy, but I talked to somebody just before I came and they told me the termination is actually different from the removal policy, because the removal policy was from the GTC directive, so I was wondering how can that happen, but it was the wording, it was a different effect. I understand it so but, this may be clarification on that too, that reason why it isn't going to GTC.

Response

The commenter states that she was confused about the inclusion of both termination and removal in the Law, but spoke with myself, Attorney Clorissa N. Santiago, before the meeting and received some clarification on the matter.

Termination of appointment refers to how an *appointed* official would be removed from his or her board, committee, or commission, while removal refers to how an *elected* official would be removed from his or her board, committee, or commission.

The termination of an appointment of a board, committee, or commission member is at the discretion of the Oneida Business Committee, and requires a two-thirds majority vote of the Oneida Business Committee. [1 O.C. 105.7-4].

The removal of an elected official is subject to the procedures contained in the Nation's Removal law. [1 O.C. 105.6-2(b)]. The Removal law was adopted by the General Tribal Council through resolution GTC-01-09-06-A, and then most recently amended through resolution BC-05-28-14-B, for the purpose of governing the removal of persons elected to serve on boards, committees, or commissions of the Nation. [1 O.C. 104]. The Removal law provides the various grounds for removal [1 O.C. 104.4], the process for petitioning for a removal of an elected official [1 O.C. 104.5], the preliminary review of a petition of the removal [1 O.C. 104.6], the hearing for a petition for removal [1 O.C. 104.7], and the process for the General Tribal Council's consideration of the removal [1 O.C. 104.8].

There is no recommended revision based on this comment.

LOC Consideration

Comment 14 – Appointment Selection Process:

105.7. Appointment to an Entity

105.7-1. Appointment Selection. The following procedures shall be used to determine how the applicant for an appointed position is selected:

(c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:

- (1) choose an applicant for appointment, or
- (2) ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.

105.7. Appointment to an Entity

105.7-3. Declination of Appointment. An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.

- (a) An individual may decline an appointment to an entity in the following ways:
 - (1) Delivery of a letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or
 - (2) The failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee.
- (b) The Business Committee Support Office shall notify the Oneida Business Committee if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined in section 105.7-1 to select another applicant for

appointment.

Lori Elm (oral): When they are doing the selection process, I've seen one part that said, I think it's Line 178, OBC may elect. I think they should just swipe that out if it says may. It should just be shall all the time and if anything, one of my recommendation is, is if the OBC is voting in Executive Session on this, that the support staff don't even put names on them when they send the packets to you, so that is executive session, names, addresses, anything that, you know, you can tell who the person is and then when it does go to you that you automatically make three recommendations and if all the board is not there, it should say who is not voting so then it's just done. So then if say for example someone got appointed and they declined, then it would automatically go to the next one, next one, they would have that right in place right away.

Response

The commenter suggests that application materials do not contain the names of the applicant or any identifying information when the Oneida Business Committee members are tasked with reviewing the application materials and making a decision on who to appoint to a vacant position.

The commenter also suggests that three recommendations are ranked and made, so that if an individual declines an appointment, the next highest ranked individual would be given the appointment.

The Law currently only allows the Oneida Business Committee to select one applicant for appointment during the appointment selection process. [1 O.C. 105.7-1(c)]. If the individual that is selected for appointment declines the appointment, then the Law requires that the Oneida Business Committee uses the original pool of applications for the vacancy posting and the process for the selection for appointment outlined in section 105.7-1 of the Law is used to select another applicant for appointment. [1 O.C. 105.7-3].

The Legislative Operating Committee may determine if a provision should be added to the Law that requires the application materials not include any identifying information.

The Legislative Operating Committee may also determine if the appointment selection process should remain as currently drafted in the law, or if provisions should be revised to address the selection of multiple appointments for one (1) vacant position and how a declined appointment is handled.

LOC Consideration

Comment 15 – Oath of Office:

105.9. Oath of Office

105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.

(a) The appointed or elected member shall appear in person at the Oneida Business Committee meeting to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.

Lori Elm (oral): Oath of office was another thing I had a question about. Over the years oath of offices were done right in the offices here and I think precedence was set years ago that and then they would approve it on the BC Agenda. Now lately, they have to be at a BC Meeting. One of the things I, a lot of times when everybody gets elected they have a big ceremony outside and everybody takes their oath of office outside. Nobody calls that to order or I mean it isn't a meeting. So that's my thing, maybe one thing they should look at is at least for the wording of that, is at least maybe if they do the oath of offices, they always have to be recorded on the next agenda or some type of, I'm not for sure about that, but that was just one thing that I noticed.

Response

The commenter states a belief that precedence was set before which allowed people the ability to take their oath of office outside of an Oneida Business Committee meeting, and requests that if someone is allowed to take their oath outside of an Oneida Business Committee meeting then it at least be recorded in the record on the next agenda.

The Law requires oaths of office to be taken in person during a regular or special Oneida Business Committee meeting, unless if granted permission by the Secretary to appear by video conferencing equipment. [1 O.C. 105.9-1(a)].

There is no recommended revision based on this comment. The Legislative Operating Committee may determine if the Law should be revised to allow for oaths of office to be taken at other locations than during an Oneida Business Committee meeting.

LOC Consideration

Comment 16 – Requirement for Bylaws:

105.10. Bylaws

105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.

(a) All existing entities must comply with this format and present bylaws for

adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this law.

(b) Bylaws must contain at least the minimum information required by law, although more information is not prohibited.

(c) *Exception.* Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities must have, at minimum, mission or goal statements for completion of the task.

Jolene D. Hensberger (written): Bylaws – School Board utilizes Policies and Procedures.

Response

The commenter states that the School Board uses “Policies and Procedures” and not bylaws.

All entities are required to have bylaws that conform to the requirements of this law. [1 O.C. 105.10-1]. The Law outlines the minimum information that a board, committee, or commission must include in their bylaws, and provides boards, committees, and commissions the flexibility to include any other information the board, committee, or commission believes is necessary and relevant. [1 O.C. 105.10-1(b)].

The School Board, as well as every other board, committee, or commission of the Nation will be required to comply with the format for bylaws provided by the Law, and present bylaws for adoption within a reasonable time after the Law is adopted. [1 O.C. 105.10-1(a)].

There is no recommended revision based on this comment.

LOC Consideration

Comment 17 – Age Requirements for Boards, Committees and Commissions:

105.10. Bylaws

105.10-3. *Sections.* Articles shall be divided into "sections" as set out.

(a) "Article I. Authority" shall consist of the following:

(5) *Membership.* The following information shall be in this section:

- (A) Number of members on the entity;**
- (B) If members on the entity are elected or appointed, and how a member is elected or appointed;**
- (C) How vacancies are filled; and**
- (D) Qualifications for membership on the entity.**

Maryann Kruckeberg (oral): I’d like to amend the laws that some boards, committees and commissions have the same age group, age limit on it, because some are 18 and some are 21 to

be on these boards, except for the ONCOA Board, which is 55. The other ones, some have 18 age limit to be on it, like the Trust Committee has age 18 and the Election Board has age 21. So what is the difference? Make the age the same on all boards, commissions and committees, except the ONCOA Board. Thank you.

Response

The commenter requests that minimum age requirements for serving on a board, committee, or commission of the Nation be consistent throughout all boards, committees, or commissions of the Nation, except for the Oneida Nation Commission on Aging (ONCOA).

The presumption behind excluding ONCOA from any requirements for consistent minimum age requirements for membership would be that ONCOA is comprised of elders in the community, aged fifty-five (55) years or older.

The Law currently does not address minimum age requirements for those individuals that wish to serve on a board, committee, or commission of the Nation. The Law does allow for a board, committee, or commission to determine the qualifications for membership on their specific entity through the bylaws of that entity. [1 O.C. 105.13-3(a)(5)(D)]. This would allow a board, committee, or commission to set minimum age requirements for those that wish to serve on the entity through the entity's bylaws.

For elected boards, committees, and commissions of the Nation the Nation's Election law requires that a person be a qualified voter on the day of the election in order to be eligible as a candidate. [1 O.C. 102.5-2(b)]. A qualified voter is defined as an enrolled member of the Nation who is eighteen (18) years of age or older. [1 O.C. 102.3-20].

A review of the bylaws of the Nation's various boards, committees, and commissions has provided the following information in regards to any minimum age requirements:

Boards, Committees, and Commissions of the Nation with No Minimum Age Requirements:

- Anna John Resident Centered Care Community Board – No minimum age requirement listed.
- Oneida Community Library Board – No minimum age requirement listed.
- Environmental Resource Board – No minimum age requirement listed.
- Oneida Nation Arts Board – No minimum age requirement listed.
- Oneida Nation Veterans Affairs Committee – No minimum age requirement listed.
- Personnel Selection Committee – No minimum age requirement listed.
- Oneida Pow-Wow Committee – No minimum age requirement listed.
- Oneida Election Board* – No minimum age requirement listed.
- Oneida Land Commission* – No minimum age requirement listed.
- Oneida Nation School Board* – No minimum age requirement listed.
- Oneida Trust Enrollment Committee* – No minimum age requirement listed.

Boards, Committees, and Commissions of the Nation with an Additional Age Requirement:

- Oneida Police Commission – Must be twenty-five (25) years of age or older.
- Pardon and Forgiveness Screening Committee – Has three (3) representatives from the community-at-large, one (1) of which must be an elder over the age of fifty-five (55) years old. No minimum age requirement listed for other community-at-large representatives.
- Southeastern Oneida Tribal Services Advisory Board – Must be eighteen (18) years of age or older.
- Oneida Nation Commission on Aging* – Must be fifty-five (55) years of age or older.
- Oneida Gaming Commission* – Must be twenty-one (21) years of age or older.
- Oneida Land Claims Commission* – Must be twenty-one (21) years of age or older.

*The * denotes an elected board, committee, or commission, where members must be at least eighteen (18) years of age or older.*

The Legislative Operating Committee may determine if the Law should provide for a consistent minimum age requirement for qualification on a board, committee, or commission of the Nation, or if boards, committees, and commissions should be allowed the flexibility to determine any qualifications for membership in their bylaws, including minimum age requirements.

LOC Consideration

Comment 18 – Authority of Boards, Committees, and Commissions:

105.10. Bylaws

105.10-3. Sections. Articles shall be divided into "sections" as set out.

(a) "Article I. Authority" shall consist of the following:

(2) Establishment. This section shall state the citation and name, if any, of the creation document.

(3) Authority. This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.

Lori Elm (oral): Yes. Hello, I'm Lori Elm. Some of my comments are, one of them is, I was looking for authority of the boards, committees and commissions, because in my area currently in the past year, one of the commission's that's in our area was like, seemed to have jumped authority and kind of went into our actual day-to-day business, so I don't know if some type of stipulation can be put into there. I know there is a resolution for the BC that they need to stay out of the day-to-day business, but maybe there is something that can be put in here to put some type of guideline in that, so maybe there is some type of directive they have to take or if they

have some type of complaint or process against the actual employees or the actual processes that they can put the steps in there on how to do it.

Response

The commenter suggests that a provision be included in the Law that provides guidance to the specific authorities of boards, committees, and commissions of the Nation. Specifically, the commenter would like to see language included in the Law regarding a board, committee, or commission's authority over a department of the Nation.

It would be difficult to address the authority of each and every board, committee, or commission in one general statement in the Law itself, because each board, committee, or commission of the Nation has its own determined authorities and responsibilities.

The Legislative Operating Committee does believe that it is important that the authority and responsibilities of a board, committee, or commission of the Nation be clearly defined. For that reason, the Legislative Operating Committee added a provision into the Law that requires each board, committee, or commission's bylaws to address the authority of the board, committee, or commission.

The Law requires that bylaws contain a section that addresses authority, and contains information regarding how the board, committee, or commission was established, for what purpose the entity was created, and what, if any, authority the entity is delegated. [1 O.C. 105.10-3(a)].

There is no recommended revision based on this comment. The Legislative Operating Committee can determine if this issue should be addressed further in the Law.

LOC Consideration

Comment 19 – Audio Recording Requirement:

105.10. Bylaws

105.10-3. Sections. Articles shall be divided into "sections" as set out.

(f) "Article VI. Records and Reporting" shall consist of the following information:

(5) Audio Recordings. An entity shall audio record all meetings. This section shall state how the entity will audio record meetings, and how the entity shall maintain the audio records.

Chad Wilson (oral): Just have one more that I saw. Okay, under 105.10-3(5). It's talking about audio recordings. An entity shall audio record all meetings. This section shall state how the

entity will audio record meetings, and how the entity shall maintain the records. We've never had that before and generally when we talk about this stuff, I don't, there's a lot of sidebar, trying to remember, like what had happened, or different results and stuff and I don't know if that's necessarily something that you would want on the recording while they are trying to figure this stuff out. Generally if we put it, we put what is pertinent into the minutes and make it a motion and that way people know what it is. I know the board might not be comfortable with any kind of recordings that, if we have public meetings or public hearings, we always record those and we have those on file along with, back when we had hearing authority we have those also recorded, but for standard meeting, I don't see them wanting that, that the minutes would reflect what was going on in the meeting. Thank you.

Response

The commenter expresses concern that members of boards, committees, or commissions will not want to audio record their meetings.

The Legislative Operating Committee determined that all boards, committees, or commissions of the Nation should be required to audio record their meetings for better recordkeeping purposes, and transparency.

The Legislative Operating Committee may consider whether the requirement for all boards, committees, or commissions of the Nation to audio record their meetings should remain in the Law.

LOC Consideration

Comments 20 through 21– Entering an E-Poll into the Record:

105.11. Electronic Polling

105.11-4. *Entering an E-Poll in the Record.* Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:

- (a) Original e-poll request and all supporting documentation;
- (b) A summary of the e-poll results identifying each member of the entity and his or her response; and
- (c) A copy of any comment by a member of the entity if comments are made beyond a vote.

Lori Elm (oral): And then the other thing is the e-poll. Just to make sure that they are recorded in the minutes after, with the results and make sure that it has who was there, who was not, the abstentions and I think there is one more.

Jolene D. Hensberger (written): Electronic Polling: School Board members ratify at next meeting.

Response

The commenters request that the Law address recording e-polls in the minutes to demonstrate the results.

The Law addresses entering an e-poll into the record in section 105.11-4. The Law requires that all e-poll requests be placed on the next meeting agenda of the entity to be entered into record, and the record must include the original e-poll request and all supporting documentation, a summary of the e-poll results identifying each member of the entity and his or her response, and a copy of any comment by a member of the entity if comments are made beyond a vote. [1 O.C. 105.11-4].

There is no recommended revision based on this comment.

LOC Consideration

Comment 22 – Reporting to General Tribal Council:

105.12. Reporting Requirements

105.12-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.

(a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.

(b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.

105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

Bonnie Pigman (oral): Additionally, I believe most if not all Business Committees have to, or boards, committees and commissions have to report to the General Tribal Council. This document appears or appears to be attempting to circumvent that responsibility. Thank you.

Response

The commenter asserts that this law appears to be attempting to circumvent boards, committees, and commissions' responsibility to report to the General Tribal Council. This is an inaccurate statement.

The Law does not circumvent, but reaffirms the requirement that boards, committees, and commissions of the Nation report to the General Tribal Council. All boards, committees, and commissions of the Nation are required to provide annual reports to the General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. [1 O.C.105.12-4].

If a board, committee, or commission of the Nation has oversight of a department, then an annual and semi-annual report for each department the board, committee, or commission oversees is also required. [1 O.C.105.12-4(b)].

A failure to comply with the requirements to report to the General Tribal Council may result in a hold being placed on the release of stipend payments. [1 O.C.105.12-5].

Additionally, the Law recognizes that the General Tribal Council requires some bylaws of boards, committees, and commissions to be approved by the General Tribal Council, and reaffirms this requirement. [1 O.C. 105.10-1, 105.10-3(g)(1)].

There is no recommended revision based on this comment.

LOC Consideration

Comments 23 through 24 – Stipends:

105.13. Stipends, Reimbursement and Compensation

105.13-3. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending the resolution.

Lori Elm (oral): Oh, stipends was another one. The Election Board receives a hundred dollar stipend to go to the GTC Meetings. But at the same time they are actually doing the same thing as when they are doing a voting day. Now on a voting day they get paid \$10.00 an hour. So, but it's not in here about the Election Board stipend, so my thing is, what's the difference of the hundred dollars and the ten dollars, they are still doing the same process.

And the next thing on that is the cost of living for that ten dollars an hour never went up from I think 2002 or 2005, so maybe that's something else to look at, as that is still at ten dollars an hour for that. But, so I am just wondering how come it isn't at the GTC Meeting, you get paid

just like you're acting like a regular election official, because that's what you're doing, is you're counting votes. There ain't no difference than when you are sitting at the polling site and you're counting votes, so that's a question I brought up.

Jolene D. Hensberger (written): Stipends: Remain the same of \$75.00 for each Board member, including Chair, if not more for any meeting of 1 hour or longer.

Response

The commenters provide comments and suggestions regarding the various stipends, and amounts of stipends.

The Law provides the Oneida Business Committee the authority to set stipend amounts by resolution. [1 O.C. 105.13-3]. It is anticipated that a resolution containing specific information on the stipends of boards, committees, or commissions of the Nation will be presented for adoption by the Oneida Business Committee when the proposed amendments to this Law are presented for adoption.

Since the Law does not specify stipend amounts, it is recommended that the Legislative Operating Committee take this information under advisement in the development of a resolution addressing stipends of boards, committees, and commissions that will be presented to the Oneida Business Committee.

There is no recommended revision to the Law based on these comments.

LOC Consideration

Comments 25 through 26 – Stipends for Training:

105.13. Stipends, Reimbursement and Compensation

105.13-9. Conferences and Training. A member of any entity, elected or appointed, shall be reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. **Provided that:**

- (a) A member shall be eligible for a stipend for each full day the member is present at the conference or training, when attendance at the conference or training is required by law, bylaw or resolution.
- (b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.
- (c) No stipend payments shall be made for those days spent traveling to and from the conference or training.

Jolene D. Hensberger (written): Trainings: The School Board members should be able to attend trainings relating to education for both children and adults, such as the Conscious Discipline Training coming up at the Radisson. School Board members are encouraged, by many entities, to be present for this training but this is a two-day training, which means that the members will need to take off of work and possibly have to use their personal / vacation time.

Jolene D. Hensberger (written): Stipends: Include clarification of what is considered “out of town” training, i.e. Radisson or at other place of location other than regular meeting place. School Board members have to take off of work and use vacation / personal time to attend trainings which are usually one full day to two days.

Response

The commenter states that members of the School Board should be able to attend trainings related to both the education of children and adults. The commenter also requests clarification on what is considered “out of town” training, and expresses concern that even when a training is local, the members of the board, committee, or commission still have to take off of work to attend and incur expenses.

Members of boards, committees, and commissions are allowed to attend trainings and conferences, as long as the training and/or conference is identified by law, bylaw, or resolution of the Nation. [1 O.C. 105.13-9(a)]. Bylaws of every board, committee or commission are required to include information on any trainings and/or conferences that the entity deems necessary for members to responsibly serve the entity, if any. [1 O.C. 105.10-3(a)(7)]. In reference to trainings and/or conferences the Law itself currently does not specifically reference locations of trainings, or provide for different procedures for different locations of training.

The Law does provide that a member of a board, committee or commission shall be reimbursed for travel and per diem for attendance at a conference in accordance with the Nation’s policy for travel and per diem. The Oneida Travel and Expense Policy was most recently amended by the Oneida Business Committee through resolution BC-08-06-08-B. The Oneida Travel and Expense Policy does differentiate between local and non-local travel in its policies regarding the reimbursement of travel expenses. Non-local travel is defined by the Oneida Travel and Expense Policy as any travel which requires an overnight stay. [2 O.C. 219.3-1(a)].

Although the Oneida Travel and Expense Policy differentiates between local and non-local attendance at trainings or conferences, the Law does provide that a member of a board, committee, or commission shall be eligible for a stipend for each full day the member is present at the conference or training, when attendance at the conference or training is required by law, bylaw or resolution. [1 O.C. 105.13-9(a)]. This means that the member of the board, committee, or commission will be eligible for a stipend for his or her attendance at a conference or training no matter if the conference or training is local or non-local. The specific amount for the stipend for attendance at a conference or training will be determined and approved by the Oneida Business Committee through the adoption of a resolution regarding stipends. [1 O.C. 105.13-3].

There is no recommended revision based on this comment.

LOC Consideration

Comment 27 – Stipend Payment Process:

Jolene D. Hensberger (written): To avoid delays in the Stipend Payment Process – Stipend payment process for the School Board is recommended to remain the same. The School Board currently prints out Stipend Form Request, the draft Minutes, Sign-In Sheet, then has it signed by the authorizing representative, and then forwarded to the ONSS Account Clerk to submit to Accounts Payable.

Response

The commenter requests that the stipend payment process remain the same, and describes the School Board's current process.

The Law currently does not address the stipend payment process. The actual payment process for stipends is currently an internal process.

The Legislative Operating Committee may consider if the stipend payment process should be addressed in the law, or if the stipend payment process should remain an internal process. The Business Committee Support Office intends to take over the responsibility of managing stipends for boards, committees, and commissions.

LOC Consideration

Comment 28 – Official Entity Email Address:

105.14. Confidential Information

105.14-3. Official Oneida Nation E-mail Address. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.

- (a) If a member is also an employee of the Nation, he or she shall receive a separate e-mail address from his or her regular work e-mail address.
- (b) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.
- (c) A member of an entity shall not use any personal or work e-mail address to

electronically conduct any business of the entity.

(d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

Pat Lassila (oral): Good afternoon. I just needed some clarification in regards to individuals that get elected to on a board, committee or commission, in here it's talking about receiving an e-mail address, that you have to have a tribal e-mail address and you cannot use a personal e-mail address. What do you do with individuals that are not employees of the Tribe? So you are going to make it available to everyone is my question. Before we couldn't get it, like I've been on this, the ONCOA Board for three years now and I'm using a personal e-mail, because they said I couldn't have one because I'm not an employee of the Tribe. So, are you going to make us, make it available then for those who are not employees of the Tribe?

Response

The commenter questions whether members of boards, committees, or commissions of the Nation who are not employees of the Nation will be receiving an e-mail address.

Yes, the Law will be providing a member of an entity an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.

There is no recommended revision based on this comment.

LOC Consideration

Comments 29 through 30 – Application of the Law to the Oneida Business Committee's Political Appointees:

105.15. Conflicts of Interest

105.15-3. Due to the potential for a real or perceived conflict of interest to exist, political appointees and legislative assistants shall not serve on an appointed or elected entity.

Bonnie Pigman (oral): Question, what about the personnel appointed by the OBC. Are they considered exempted too? Again, why not? Under what separate definition do they not qualify as an appointed. I know there is a law out there or a policy out there about appointed political appointments.

Lois Strong (oral): Good afternoon, Lois Strong and the question I have is around the, not the question, the comment I have pertains to the political appointees and it states in there what has to

be done with the political appointees, but I believe the definition that is out there is the political appointees are those assistants working directly with BC members, but there are some political appointees out there, it says there are three in this document, what is the status of those? How do you explain those? Are they going to be ongoing, not ongoing and how do you work on that process to define them or how are you going to work on it to define it?

Response

The commenters questions who exactly is considered a political appointee, and if personnel appointed by the Oneida Business Committee are exempt from this Law.

The term political appointee was used in the Law in reference to the Oneida Business Committee member's executive assistants. The three political appointees that are referenced in the legislative analysis are currently serving on an elected boards, committees, or commissions of the Nation.

Personnel appointed by the Oneida Business Committee, also known as political appointees, are not subject to this Law.

This Law was developed for the purpose of governing boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. [1 O.C. 105.1-1].

In regards to the Law, the term "appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee. [1 O.C. 105.3-1(b)]. While the term "entity" is defined as a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership. [1 O.C. 105.3-1(h)].

Although the Oneida Business Committee's political appointees are appointed, they are not appointed to serve on a board, committee, or commission of the Nation and therefore do not meet the definition of appointment or entity, or fit into the purpose of this law.

Additionally, the Law specifies that political appointees shall not serve on an appointed or elected entity. [1 O.C. 105.15-3].

The Legislative Operating Committee has made the determination that upon adoption of the Law the three political appointees that are currently serving on a board, committee, or commission of the Nation will be allowed to complete their term, but will be prohibited from seeking reelection.

To avoid future confusion it is recommended that a definition for political appointee be included in the law, as follows:

105.3-1(l) "Political appointee" means a person appointed by a member of the Oneida Business Committee to provide assistance the Oneida Business Committee member's daily activities and operations.

LOC Consideration

Comment 31 – Dissolution of Grant Funded Boards, Committees, and Commissions:

105.17. Dissolution of an Entity

105.17-2. *Dissolution of an Entity.* All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee. The General Tribal Council shall have the authority to dissolve an entity created by the General Tribal Council or the Oneida Business Committee, and the Oneida Business Committee shall have the authority to dissolve an entity created by the Oneida Business Committee.

Florence Petri (oral): Okay. I have a few concerns, one is, not sure now, but maybe there be some checking, but ONCOA is a board required by a grant. They have to have an advisory board and so is the Nutrition Board. So, I didn't see anything in here regarding, should those grants end is the boards end? That was one of my concerns.

Response

The commenter requests clarification on whether a board, committee, or commission of the Nation that is grant funded, would be automatically dissolved if the grant funding ends.

The Law does address the dissolution of a board, committee, or commission of the Nation. The Law provides that all entities of the Nation, other than a task force or ad hoc committee, shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee. [1 O.C. 105.17-2]. The Law then provides more detail on a dissolution of a board, committee, or commission of the Nation by stating that the General Tribal Council shall have the authority to dissolve an entity created by the General Tribal Council or the Oneida Business Committee, and the Oneida Business Committee shall have the authority to dissolve an entity created by the Oneida Business Committee. [1 O.C. 105.17-2].

Therefore, a board, committee, or commission that is currently grant funded would not automatically be dissolved if that grant funding were to end. The Oneida Business Committee or the General Tribal Council would have to take official action, through a motion, to dissolve the entity.

There is no recommended revision based on this comment.

LOC Consideration

Comment 32 – Adoption by the General Tribal Council:

Bonnie Pigman (oral): I would strongly encourage this document be placed on the GTC agenda for further review and approval as I believe GTC should weigh in as to whether the Business Committee should be exempted in this law.

Response

As stated previously in the response to Comment 1, many of the standards and requirements that the Law sets forth for boards, committees, and commissions of the Nation are already addressed by the Constitution in terms of application to the Oneida Business Committee. Therefore, it is not that the Oneida Business Committee is exempt from many of the same requirements as other boards, committees, and commissions of the Nation are expected to comply with, it is just that the standards and requirements for the Oneida Business Committee are addressed through other legislative means such as the Constitution.

The General Tribal Council has already determined standards and requirements for the Oneida Business Committee through the Constitution. Including the Oneida Business Committee in this Law would be a duplication of standards and requirements.

Additionally, it is important to note that the General Tribal Council delegated the authority to develop and adopt legislation for the Nation to the Legislative Operating Committee and the Oneida Business Committee through the adoption of the Legislative Procedures Act (“the LPA”) through resolution GTC-01-07-13-A. The purpose of the LPA is to provide a process for the adoption of laws of the Nation that has been sanctioned by the General Tribal Council. [1 O.C. 109.1-1]. The development of this Law has conformed with the process and procedure contained in the LPA.

There is no recommended revision based on this comment.

LOC Consideration

Comment 33 – Application of the Law to the Oneida Trust Enrollment Committee:

105.1. Purpose and Policy

105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

Oneida Trust Enrollment Committee (written): In addition to any comments presented at the public meeting, the Oneida Trust Enrollment Committee submits the following comment:

The Oneida Trust Enrollment Committee (OTEC) was established by the people (GTC) and for the people. The OTEC is accountable to GTC. The OTEC is an elected body and an autonomous body. The amendments to the Comprehensive Policy Governing Boards, Committees, and Commissions are an overreach of authority by the Oneida Business Committee (OBC).

Responding to the details of the proposed law would be inappropriate because it would suggest that we are negotiating and commenting on the proposed changes. If anything, operation changes must be negotiated with the OBC and OTEC and confirmed by GTC. The inclusion of elected boards, commissions and committees will create additional political rife in the community.

If you have any questions or concerns with this public comment, please contact OTEC Chairwoman, Bobbi Webster, at (920) 869-4270.

Signed on behalf of the Oneida Trust Enrollment Committee.

Response

The commenter states that the amendments to the Law are an overreach of authority of the Oneida Business Committee as elected boards, committees, or commissions of the Nation should not have to follow the requirements prescribed by the Law due to their autonomous nature.

The development of amendments to the Law is not an overreach of authority of the Oneida Business Committee as the Legislative Operating Committee and the Oneida Business Committee have been delegated the authority to develop and adopt legislation by the General Tribal Council. Through resolution GTC-01-07-13-A the General Tribal Council took action to adopt the Legislative Procedures Act (“the LPA”) which provides a process for the adoption of laws of the Nation. [1 O.C. 109.1-1].

Thus far, the development of this Law has conformed with the process and procedure contained in the LPA.

All individuals, departments, programs, boards, committees, and commissions of the Nation are expected and required to follow all laws, policies, and rules of the Nation. The only time an individual or entity of the Nation may be exempt from the expectation to follow a law, is if that law specifically exempts an entity.

The entire purpose of this Law is to govern boards, committees, and commissions of the Nation, no matter whether the board, committee, or commission is an appointed or elected body. [1 O.C. 105.1-1]. It would be illogical to exempt a board, committee, or commission of the Nation from this Law solely due to its elected status.

Although the commenter cautions that “*inclusion of elected boards, commissions and committees will create additional political rife in the community*” it is important to note that this Law was

originally adopted by the Oneida Business Committee in 1997 through resolution BC-05-14-97-F. This means that for the last twenty-one (21) years there has been the expectation that both elected and appointed boards, committees, and commissions of the Nation would conform and follow the requirements and procedures of the Law.

Additionally, although the commenter states “*responding to the details of the proposed law would be inappropriate because it would suggest that we are negotiating and commenting on the proposed changes,*” it is important to note that the Oneida Trust Enrollment Committee has been involved and provided valuable input to the Legislative Operating Committee throughout the development of this Law. The Trust Enrollment Committee had representation at both the September 21, 2017, and February 22, 2018, Legislative Operating Committee work meetings when various boards, committees, and commissions of the Nation met with the Legislative Operating Committee to discuss potential amendments to the Law. The Legislative Operating Committee relied heavily on the input and suggestions of the boards, committees, and commissions in the development of this Law. The Oneida Trust Enrollment Committee’s involvement in the development of this Law demonstrates it is not inappropriate for the Oneida Trust Enrollment Committee to comment on proposed changes and engage in the legislative process.

There is no recommended revision based on this comment.

LOC Consideration

Comment 34 – Use of Personal and Vacation Time for Members of a Board, Committee, or Commission:

Jolene D. Hensberger (written): Using Personal or Vacation Time – Some emergency meetings require Board members to have to take off of their employment to attend meetings. Is there a procedure or exception that will allow School Board members to not have to use personal or vacation time to attend urgent meetings that cannot wait?

Response

The commenter questions if there is a procedure or exception that would allow members of a board, committee, or commission to not have to use personal or vacation time to attend emergency meetings.

The Law focuses on the governance of boards, committees, and commissions of the Nation and the standard procedures that would be necessary for a board, committee, or commission of the Nation to function. [1 O.C. 105.1-1].

It is important to remember that not every member of a board, committee, or commission of the Nation is also an employee with the Nation. During a work meeting with the Management Information System Department (MIS) on April 11, 2018, MIS stated that an initial review of current board, committee, or commission members demonstrated that only about thirty-three (33) out of the one hundred and seventy (170) current board, committee, and commission members are also employees of the Nation. This equates to only nineteen percent (19%) of board, committee, or commission members also being employees of the Nation.

In recognition of the fact that not every member of a board, committee, or commission of the Nation is also an employee of the Nation, a determination as to whether members of a board, committee, or commission are required to use his or her vacation or personal time to attend meetings of the board, committee, or commission would be better addressed by the member's own place of employment. The use of personal or vacation time would be a determination of the board, committee, or commission member's own employer or supervisor.

If the Nation would choose to address whether a member of a board, committee, or commission is required to use his or her vacation and/or personal time to attend meetings of a board, committee, or commission, that policy would be more relevant to be included in the Nation's laws and policies governing employment, rather than this Law.

There is no recommended revision based on this comment. The Legislative Operating Committee may determine if this issue warrants further consideration.

LOC Consideration

Comment 35 – Law Regarding Elected Officials and Political Appointments:

Bonnie Pigman (oral): On August 13, 2014, included in an OBC motion there was language assigning the LOC to work to create laws and policies around elected officials and political appointments. This motion came about from an August 12, 2014, memo from HRD stating there was a lack of policy on law or law on Oneida Business Committee members and political appointments. I have not been able to find any documents that this assignment was accomplished. So I am looking for that to be a reason as to your, maybe your rational or if you haven't defined or done that work with LOC, I recommend that it be followed up on.

Response

The commenter questions the status of a directive from the Oneida Business Committee from 2014 assigning the Legislative Operating Committee to create laws and policies regarding Oneida Business Committee members and political appointments:

“Motion by Melinda J. Danforth to accept the HRD manager's interpretation on BC members and political appointments leaving office which is dated Aug. 12 to the Business Committee as information and assign the LOC to work to create laws and policies around elected officials and political appointments, seconded by Brandon Stevens. Motion carried with one abstention.”

The Law does not apply to the Oneida Business Committee, or political appointees of the Oneida Business Committee. Therefore, a comment regarding prior actions for proposed legislation regarding elected officials, specifically the Oneida Business Committee, or political appointees would not be considered relevant to the proposed amendments to this law.

The LOC may determine if they wish to pursue this issue further.

LOC Consideration

Comment 36 – Public Meeting Process:

Lori Elm (oral): If I have anything else then I’ll just write them down. Do I still have to write these down then to you too?

David Jordan (oral): No, but if you have more comments that you want to put in writing you have until Thursday, July 28th at 4:30 p.m.

Lori Elm (oral): All right, thank you.

Response

The commenter questioned if she would have to provide written comments of the comments she provided during the public meeting. David P. Jordan, Chairman of the Legislative Operating Committee, clarified that she did not, but could provide additional comments in writing during the public comment period.

The Legislative Procedures Act (“LPA”), which was adopted by the General Tribal Council through resolution GTC-01-07-13-A, provides a process for the adoption of laws of the Nation. [1 O.C. 109.1-1].

The LPA requires the Legislative Operating Committee to hold a public meeting to solicit oral comments. [1 O.C. 109.8-3]. After the public meeting is held, a public comment period shall remain open for no less than five (5) business days. [1 O.C. 109.8-1(a)]. During the public comment period people are given the opportunity to submit written comments, data, opinions, arguments, or suggestions on the proposed legislation. [1 O.C. 109.8-1(c)].

The Legislative Operating Committee is then required to fully consider all written comments and oral testimony that was received during the public comment period and public meeting. [1 O.C. 109.8-4]. The Legislative Operating Committee utilizes this memorandum as a method to not only fully consider each and every comment and determine if a revision to the law will be necessary, but also as a means to provide responses to those individuals that provided comments on the proposed legislation.

There is no recommended revision based on this comment.

LOC Consideration

Draft 2 – PM Draft – Redline to Current Draft
2018 05 16

Title 1. Government and Finances – Chapter 105
~~COMPREHENSIVE POLICY GOVERNING~~ BOARDS, COMMITTEES AND
COMMISSIONS

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Their laws_____ of the groups we have

105.1. Purpose and Policy
105.2. Adoption, Amendment, Repeal
105.3. Definitions
105.4. ~~Creation of an Entity~~ Applications
105.5. Applications
~~105.6. Vacancies~~
~~105.6. Appointed Positions~~
~~105.7. Elected Positions~~ Appointment to an Entity
105.8. ~~By-Laws of Boards, Committees and Commissions~~ Election to an Entity

105.9. ~~Minutes~~ Oath of Office
105.10. ~~Dissolution of Entities~~ Bylaws
105.11. Electronic Polling
105.12. Reporting Requirements
105.13. Stipends, Reimbursement and Compensation for Services
105.14. Confidential Information
105.15. Conflicts of Interest
105.16. Use of the Nation's Assets
105.17. Dissolution of an Entity
105.18. Enforcement

105.1. Purpose and Policy

105.1-1. It is the purpose of this policy law to govern boards, committees, and commissions of the standard Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of by-laws bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. This policy

(a) This law shall not apply to the Oneida Business Committee.

(b) This law shall apply to the Standing Committees of the Oneida Business Committee where applicable including, but not limited to, the Legislative Operating Committee, Finance Committee, Audit Committee, Quality of Life Committee, and Community Development Planning Committee.

(c) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.

105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of by-laws bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

105.2. Adoption, Amendment, Repeal

105.2-1. This policy law was adopted by the Oneida Business Committee by resolution #BC-5-14-97-F and amended by resolutions #BC-09-27-06-E and #, BC-09-22-10-C, and BC- - - -

105.2-2. This policy law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Oneida Administrative Legislative Procedures Act by the Oneida Business Committee or the Oneida General Tribal Council, regardless of where the original adoption took place.

105.2-3. Should a provision of this policy law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this policy law which are considered to have legal force without the invalid portions.

Draft 2 – PM Draft – Redline to Current Draft
2018 05 16

~~105.2-4. Any policy, regulation, rule, resolution or motion, or portion thereof, which directly conflicts with the provisions of this policy is hereby repealed to the extent that it is inconsistent with or is contrary to this policy. Provided that meeting stipends for elected members of a board, committee or commission that are in effect on [adoption date of the amendments] shall remain unaffected, but prior exceptions to this policy for appointed entities shall be repealed to extent that meeting stipends are inconsistent with this policy.~~

105.2-4. 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.

105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

105.3. Definitions

105.3-1. This section shall govern the definitions of words and phrases ~~as used herein~~within this law. All words not defined herein shall be used in their ordinary and everyday sense.

~~(a)~~(a) "Application" means the form by which a person seeks to be appointed to fill a vacancy on an entity.

(b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.

(c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

(d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.

(e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.

(f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.

(g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.

(h) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the ~~General Tribal Council~~ Nation's membership.

~~(b) "Vacancy"~~(i) "E-poll" means any position an electronic poll, which is the act of delivering an email to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the

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entity.

(j) "Nation" means the Oneida Nation.

(k) "Per Diem" means the payment made by the Nation to offset the costs of being out-of-town or to travel on ~~any~~ behalf of the Oneida Nation.

(l) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.

(m) "Stipend" means that amount paid by the Oneida Nation to persons serving on boards, committees and commissions of the Oneida Nation to offset the expenses of being a member on the board, committee or commission ~~caused by resignation, end of term, removal, termination, or creation of a new position.~~ Stipends are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards.

~~(c) "Application" means any process by which a person proceeds to be appointed to a vacancy.~~

~~(d) "Appointment" means the process by which a person is chosen to fill a vacancy.~~

~~(e)~~(n) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.

(o) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by a preponderance of the evidence.

(p) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.

~~(f) "Conference"~~^q "Vacancy" means any ~~training, seminar, meeting, or other assembly~~ position on any board, committee or commission ~~caused by resignation, end of term, removal, termination, or creation of a new position.~~

105.4. Creation of an assembly Entity

105.4-1. An entity of the ~~entity~~ Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.

~~(g) "Per Diem" means the payment made by 105.4-2. The law or resolution establishing the Tribe to offset entity shall state the costs of being out of town or to travel on behalf purpose of the Oneida Tribe of Indians of Wisconsin.~~

~~(h) "Stipend" means that amount paid by entity and all powers and responsibilities delegated to the entity.~~

105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

105.5. Applications

105.5-1. The Oneida Tribe of Indians of Wisconsin to persons serving on boards, committees and commissions of the Oneida Tribe of Indians of Wisconsin to offset the

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expenses of being a member on the board, committee or commission.

(i) ~~“Official” means any person appointed or elected to membership~~ Business Committee
shall approve all applications to serve on an entity of the ~~Oneida Tribe.~~

~~105.4~~ Nation. ~~Applications~~

~~105.4-1.~~ All ~~applications~~ application materials shall be ~~generated by~~ available in the ~~Tribal~~
~~Secretary's~~ Business Committee Support Office and ~~approved~~ any other location specified by the
~~Oneida~~ Business Committee Support Office.

~~105.4-2.~~ The content of ~~(a)~~ All applications shall ~~be as follows~~ include:

~~(a)~~ questions designed to obtain the following information

~~(1)~~ name

~~(2)~~ address

~~(3)~~ phone number

~~(4)~~ enrollment number

~~(5)~~ position applied for

~~(b)~~ applications may contain any other questions necessary to obtain information
necessary to making an informed decision as to the qualifications of any individual to
hold any vacancy.

~~(c)~~ Form A-1, attached, is the current approved application form in use and shall be
placed in the Tribal Secretary's Office and other locations specified by the Tribal
Secretary's Office.

(1) a statement explaining the attendance requirements of section 105.12-3; and

(2) a section regarding disclosures of conflicts of interest.

(b) An additional application form shall be required for those entities that require a
background investigation. This background investigation application shall include the
applicant's social security number and any other information required for a background
investigation. The background investigation application shall be solely used for the
background investigation and not included in the application materials that are then
shared with the Oneida Business Committee, entity, and/or the Election Board.

~~105.5-2.~~ ~~105.4-3.~~ Applications shall be filed with the ~~Tribal Secretary's office~~ Business
Committee Support Office by 4:30 p.m. of the deadline date. Postmarked envelopes are
accepted as filed if postmarked by the deadline date and received by the ~~Tribal Secretary's~~
~~Office within five (5) business days of the deadline.~~ At the completion of the posted deadline
for filing applications the Tribal Secretary shall notify by postcard all persons who have filed an
application of the date the application was filed and whether it will be considered for the
election or appointment. A tentative date for appointment will be placed on the post card with
the instruction that this is a tentative date and further information can be requested by calling
the Tribal Secretary's Office. Postcard information should be in substantially similar format as
that in Figure 1. Business Committee Support Office within five (5) business days of the
deadline.

159 105.5-3.

Your application was received on:

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	160
Tentative date for appointment or election:	161
	162
You application 9 is – 9 is not being considered.	163
	164
For more information, call the Tribal Secretary's Office at 869-2214.	165
	166

167

105.5-4-4. Five (5) days after the posted deadline for filing applications the Business Committee Support Office shall notify all persons who have filed an application of the date his or her application was received and if his or her application met the deadline to be considered for the election or appointment.

105.5-4-4. Applications for elected positions shall be verified according to the Oneida Election Ordinance. Nation's laws and/or policies governing elections. Applications for appointed positions shall be verified by the Tribal Secretary's Business Committee Support Office as needed or as required in the by-laws ~~bylaws~~ of the entity.

105.4-5-5. Insufficient Applicants. In the event that there are an insufficient number of applicants after the deadline date has passed for appointed positions, the Tribal Chairperson Oneida Business Committee may elect to:

- (a) Include ~~include~~ within the pool of appointed persons late applications, or
- (b) Repost ~~repost~~ for an additional time period. In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.

105.56. Vacancies

~~105.5-1. This section shall govern when vacancies occur, and where and when notice of the vacancies shall be posted.~~

105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws. Unless, a law of the Nation indicates that removal of an official shall be done pursuant to the Removal law, an appointed individual may have his or her appointment terminated by the Oneida Business Committee.

105.56-2. The A position on an entity shall be considered vacant in the following ~~vacancies~~ shall be effective as listed herein. situations:

- (a) *End of Term.* A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends ~~as of the by-laws of the entity.~~

(1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.

- (b) *Removal.* Removal is effective, under adopted pursuant to any law and approved procedures of the entity, when the final action has taken place. Where a final action is defined as/or policy of the Nation regarding removal.

(1) failure to file a timely appeal,

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204 ~~(2) denial of appeal, or~~
205 ~~(3) final written opinion is filed.~~
206 (c) Termination of Appointment. A termination is effective upon a two-thirds (2/3)
207 majority vote of the Oneida Business Committee in favor of a member's termination of
208 appointment.
209 (d) Resignation. A resignation is effective upon:
210 (1) Deliverance of a letter to the ~~entity, or~~ Business Committee Support Office;
211 ~~(2)(A) Upon receipt of resignation, the Business Committee Support~~
212 ~~Office will notify the entity of the resignation;~~
213 (2) Deliverance of a letter to the Chairperson of the entity, or designee, or
214 (3) Acceptance by motion of the entity of a verbal resignation.
215 ~~(e) New Positions. Vacancies on new entities are effective upon adoption of by-~~
216 ~~laws bylaws.~~
217 ~~(e) Interim Positions. Vacancies of interim positions are effective upon creation of~~
218 ~~interim positions by 105.6-3. An entity shall notify the Oneida Business Committee~~
219 ~~Support Office as soon as the entity learns that a position has or General Tribal Council.~~
220 will become vacant. 105.5-3. All notices of vacancy shall be sent to the entities for clarification
221 or confirmation prior to notification to the Oneida Business Committee. The following
222 guidelines are minimum notice requirements:
223 (a) End of Term. Entity should be notified 60 days prior to end of term by the Tribal
224 Secretary.
225 (b) Removal or Resignation. Entity should be notified as soon as final action is taken
226 by the Oneida Business Committee or General Tribal Council to accept the resignation,
227 or final action according to any Removal law of the Tribe.
228 ~~105.5-4. Notice of vacancies shall be by the Tribal Secretary's Office in the following~~
229 ~~locations:~~
230 ~~(a) Tribal Secretary's Office~~
231 ~~(b) The Oneida Community Library, Tsyunhehkwa Retail Store, the Oneida~~
232 ~~Community Health Center, the South Eastern Wisconsin Oneida Tribal Services~~
233 ~~(SEOTS) building and the Highway 54 and E & EE Oneida One Stops.~~
234 ~~(c) Kalihwisaks~~
235 ~~(d) Minutes of the Oneida Business Committee, and~~
236 ~~(e) Any reasonable location requested by the entity.~~
237 105.5-5. The Tribal Secretary's Support Office shall forward the notice of vacancy to the
238 Oneida Business Committee for Secretary. The Secretary shall request and receive approval and
239 direction from the Oneida Business Committee to post the notice as set out in this section of
240 vacancy. The Tribal Secretary shall post notice of vacancies at the following times:
241 (a) End of Term. Automatically thirty (30) days prior to completion of the term.
242 (b) Removal. Upon notice by Secretary, or other person authorized by No later than the
243 by laws first Oneida Business Committee meeting following the effective date of the
244 entity, to the Tribal Secretary's Office. removal.
245 (c) Resignation. Upon notice by No later than the Secretary, or other person authorized
246 by first Oneida Business Committee meeting following the by laws Secretary's receipt of
247 notice of an effective resignation from the entity, to the Tribal Secretary's Office.

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- (d) *New Positions.* Upon one of the following conditions:
- (1) if not specified, immediately upon creation of entity or adoption of ~~by laws~~bylaws, whichever is later, or
 - (2) upon date specified when creating the entity.
- ~~(e) Interim Members. Upon one of the following:~~
- ~~(1) upon completion of the term designated to hold in new entity, or~~
 - ~~(2) upon completion of vacant term of the pre-existing entity~~
- ~~(f) Termination of appointment. At~~No later than the ~~next~~first Oneida Business Committee meeting following the effective date of the ~~termination of appointment.~~

~~105.6. Appointed Positions~~

~~105.6-1. All appointments~~5. Notice of vacancies shall be made~~posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee at regular or special Oneida Business Committee meetings. Provided that, no applicant may be appointed who fails to meet, as well as any other location deemed appropriate by the requirements set out in the entity's by laws~~Secretary.

105.7. Appointment to an Entity

~~105.6-2.7-1. Appointment Selection.~~ The following procedures shall be used to determine ~~who shall be~~how the applicant for an appointed position is selected:

- (a) Five (5) business days after ~~close of notice,~~the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:
 - (1) deliver all applications~~shall be delivered to the Tribal Chairperson,~~ along with a summary of qualifications to hold office~~., and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and~~
- ~~(b) Within a reasonable time, the Tribal Chairperson shall:~~
 - (2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made.
- (b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.
 - (1) The entity's Chairperson may have until the executive session to review the application materials and provide the Oneida Business Committee a recommendation of an applicant for appointment.
- (c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:
 - (1) choose an applicant for appointment, or
 - (2) ask the ~~Tribal Secretary's Office~~Oneida Nation's Secretary to re-notice the

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vacancy because of ineligible, unqualified, or under qualified applicants.

~~(c) Forward choice of applicants to all Council members prior to appointment:~~

~~(1) Council members may accept the Tribal Chairperson's selected applicants, or~~

~~(2) Reject an applicant by majority vote of a quorum at any~~ (d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.

~~105.6-3. All appointments are official upon taking an oath at a~~ (e) During the open session of the regular or special Oneida Business Committee meeting and all rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Tribal Secretary shall notify the chosen persons when they should appear for taking the oath.

~~(a) Originals of the signed oath shall be maintained by the Tribal Secretary's Office.~~

~~(b) Copies of the oath shall be forwarded to the new, a member and the entity.~~

~~(c) Wording of oaths shall be approved by the Oneida Business Committee and kept on file by the Tribal Secretary's Office.~~

~~(1) The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee:~~

~~I, *name*, do hereby promise to uphold the laws and regulations of the Oneida Tribe of Indians of Wisconsin, the General Tribal Council, and the Tribal Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and with the strictest confidentiality.~~

~~I will carry out the duties and responsibilities as a member of the *entity name*, and all recommendations shall be made in the best interest of the Oneida Tribe as a whole.~~

~~(d) Revisions of oaths shall be approved by the Oneida Business Committee prior to usage.~~

~~(e) All oaths shall be sufficient to~~ may make the appointee aware of their duty a motion to the appoint an individual. Oneida Tribe and as Business Committee members of the entity may:

~~105.6-4. The Tribal~~ (1) accept the selected applicant and vote to appoint the individual to the vacant position, or

(2) reject the selected applicant and vote to oppose the appointment of the individual.

(f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.

105.7-2. Notification of Appointment. Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.

(a) The Tribal Nation's Chairperson shall forward a list of all applicants to the Tribal Nation's Secretary and the final decision regarding the selection after the procedures in sec. 6-2 for selection of an applicant described in section 105.7-1 are completed. Provided that, the Tribal

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(b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph:

~~"The Oneida Tribe of Indians of Wisconsin reports all income paid by the Oneida Tribe in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."~~

~~105.6-5. Termination of Appointment. Appointed members of entities serve at the discretion of the Oneida Business Committee. Upon the recommendation of the Tribal Chair, an appointed member of an entity may have his or her appointment terminated by the Oneida Business Committee by a two-thirds majority vote of the entire Oneida Business Committee.~~

~~105.7 Elected Positions~~

~~105.7-1. All elected positions, unless otherwise noted in the by laws of the entity, shall be nominated at a caucus called by the Oneida Election Board, or petition for ballot placement, in accordance with the Oneida Election Law. Provided that, when the Election Board notifies a petitioner or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included:~~

~~"The Oneida Tribe of Indians of Wisconsin~~Nation ~~reports all income paid by the Tribe~~Oneida Nation ~~in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."~~

~~105.7-2. All other processes shall be as directed in the Oneida Election Law~~3. Declination of Appointment. An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.

(a) An individual may decline an appointment to an entity in the following ways:

- (1) Delivery of an letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or
- (2) The failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee.

(b) The Business Committee Support Office shall notify the Oneida Business Committee if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined in section 105.7-1 to select another applicant for appointment.

~~105.7-4. Termination of Appointment. Appointed members of entities serve at the discretion of the Oneida Business Committee.~~3Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.

(a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.

(b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

105.8 Election to an Entity

105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or petition for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.

(a) When the Election Board notifies a petitioner or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: "The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

105.9. Oath of Office

105.9-1. All appointed and elected positions are official upon taking an oath at during a regular or special Oneida Business Committee meeting and all. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.

(a) The appointed or elected member shall appear in person at the Oneida Business Committee meeting to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.

105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.

105.9-3. (a) — Originals of the signed oath, or electronic copies of the originals of the signed oath, shall be maintained by the Tribal Secretary's Business Committee Support Office.

(b) Copies of the oath shall be forwarded to the new member of the entity and the entity.

105.9-4. © Wording of oaths shall be approved by the Oneida Business Committee and kept on file by the Tribal Secretary's Office. The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee:

I, ♣[name ♣, do], hereby promise to uphold the laws and regulations of the Oneida Tribe of Indians of Wisconsin Nation, the General Tribal Council, and the Tribal Oneida Nation Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and with will strictly maintain confidential information. I will carry out the strictest confidentiality duties and responsibilities as a member of the [entity name], and all recommendations shall be made in the best interest of the Oneida Nation as a whole.

I will carry out the duties and responsibilities as a member of the ♣entity name ♣, and all recommendations shall be made in the best interest of the Oneida Tribe as a whole.

(d) Revisions of oaths shall be approved by the Oneida Business Committee prior to

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usage.
(e) ~~105.9-5.~~ All oaths shall be sufficient to make the ~~appointee~~ appointed or elected member of an entity aware of their duty to the TribeNation and as members of the entity.

~~105.8. By-Laws of Boards, Committees and Commissions~~

~~105.8~~ 10. Bylaws

~~105.10-1. By-Laws~~ All entities of all Boards, Committees and Commissions ~~the Nation~~ shall have bylaws that conform to the requirements of this outline-law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.

(a) All existing entities must comply with this format and present ~~by-laws~~ bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after adoption of this ~~policy.~~ By-laws must contain this minimum information, although more information is not prohibited. law.

~~105.8-2. Specifically excepted from this section are~~ (b) Bylaws must contain at least the minimum information required by law, although more information is not prohibited.

(c) Exception. Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities must have, at minimum, mission or goal statements for completion of the task.

~~105.8-3. There~~ 10-2. Articles. Bylaws shall ~~be~~ contain, at a minimum, the following Articles:

- (a) Article I. Authority.
- (b) Article II. Officers.
- (c) Article III. Meetings.
- (d) Article IV. ~~Reporting~~ Expectations.
- (e) Article V. Stipends and Compensation.
- (f) Article VI. Records and Reporting.
- (g) Article VII. Amendments.

~~105.8-4~~ 10-3. Sections. Articles shall be divided into "~~Sections~~ sections" as set out.

(a) "Article I. Authority" ~~consists~~ shall consist of the following ~~information:~~

(1) Name. ~~All entities should list the~~ The full name of the entity. ~~In addition, there should be listed~~ shall be stated, along with any short name that will be officially used.

(2) Authority Establishment. This section ~~should~~ shall state the citation and name, if any, of the creation document.

~~(3)~~ (3) Authority. This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.

~~(4)~~ (4) Office. There ~~should~~ shall be listed the official office or post box of the entity.

~~(5)~~ (5) Membership. The following information ~~should~~ shall be in this section:

- (A) Number of members on the entity;
- (B) ~~How~~ If members on the entity are elected or appointed; and how a member is elected or appointed;
- (C) How vacancies are filled; and
- (D) ~~The qualifications~~ Qualifications for membership on the entity.

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(6) Termination or Removal. This section shall identify causes for termination or removal, if any, in addition to those already identified in laws and/or policies of the Nation.

(7) Trainings and Conferences. This section shall describe any trainings and/or conferences that the entity deems necessary for members to responsibly serve the entity, if any.

(b) "Article II. Officers" ~~consists~~shall consist of the following ~~information~~:

(1) ~~Chair~~Chairperson and Vice-~~Chair~~Chairperson. This section creates the chairperson and vice-chairperson positions of the entity. Other officer positions may also be created here.

(2) ~~Chair duties.~~Responsibilities of the Chairperson. Because of the importance of this position, ~~those~~all duties and responsibilities of the chairperson, as well as limitations ~~should~~of the chairperson shall be specifically listed here.

(3) Responsibilities of the Vice-~~Chair duties~~Chairperson. Because of the importance of this position, ~~those~~all duties and responsibilities of the vice-chairperson, as well as limitations ~~should~~of the vice-chairperson shall be specifically listed here.

(4) Responsibilities of Additional ~~Offices and Duties.~~Officers. There ~~should~~may be additional sections as needed for every ~~office~~officer position created in subsection one (1) above. These sections shall state all duties and responsibilities of the officer, as well as any limitations of the officer.

(5) ~~How chosen.~~ There should be specifically set out Selection of Officers. This section shall identify how a member of the entity ~~will occupy~~shall be selected for an official officer position ~~as set out in this section~~the entity.

~~(6)~~ (6) Budgetary Sign-Off Authority and Travel. This section shall identify the entity's varying levels of budgetary sign-off authority, the members that are authorized to sign-off at each level, and how the entity shall handle approving travel on behalf of the entity.

(A) An entity shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.

(B) An entity shall approve a member's request to travel on behalf of the entity by majority vote at a regular or emergency meeting of the entity.

(7) Personnel. ~~State entities~~This section shall state the entity's authority for hiring personnel, if any, and the duties of such personnel.

(c) "Article III. Meetings" ~~consists~~shall consist of the following ~~information~~:

(1) Regular meetings. ~~There~~This section shall ~~be listed~~identify when and where regular meetings shall be held, and, how the entity shall provide notice of the meeting agenda, documents, and minutes ~~will be disbursed to the members~~.

(2) Emergency meetings. ~~There~~This section shall ~~be listed~~identify what constitutes an emergency meeting, how Emergency~~emergency~~ meetings shall be called ~~and noticed~~, and how the entity shall provide notice of the emergency meeting.

(A) All bylaws shall include a provision requiring that within seventy-two (72) hours after an emergency meeting, the entity shall provide the

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Nation's Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular or special meeting.

(3) *Quorum*. This section shall ~~list~~identify how many members of an entity create a quorum.

(4) *Order of Business*. This section sets out how the agenda will be set up.

(5) *Voting*. This section ~~should list how~~shall identify voting ~~shall be taken, what percentages shall be needed~~requirements, such as, but not limited to—pass different items;

(A) the percentages that shall be needed to pass different items;

(B) if, and when, the chairperson is allowed to vote;

(C) if the use of an e-poll is permissible; and

(D) if the use of and e-poll is permissible, who will serve as the Chairperson's designee for the responsibility of conducting an e-poll, if a designee is utilized.

(d) ~~"Article IV. Reporting"~~consists~~Expectations"~~ shall consist of the following information:

(1) *Behavior of Members*. This section shall identify the behavioral expectations and requirements of a member of the entity, and identify how the entity shall enforce these behavioral expectations.

(2) *Prohibition of Violence*. This section shall prohibit any violent intentional act committed by a member of the entity that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property, and set forth any further expectations regarding the prohibition of violence.

(3) *Drug and Alcohol Use*. This section shall prohibit the use of alcohol and prohibited drugs for a member of an entity when acting in their official capacity, and set forth any further expectations regarding the use of prohibited drugs and alcohol.

(4) *Social Media*. This section shall identify expectations for the use of social media in regards to official business of the entity.

(5) *Conflict of Interest*. This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest and how they are handled, as well as requirements related to prohibited activities resulting from disclosed conflicts of interest, and means by which a party can alleviate or mitigate the conflict of interest.

(e) "Article V. Stipends and Compensation" shall consist of the following information:

(1) *Stipends*. This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.

(2) *Compensation*. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting such compensation, if any in addition to those contained in this law.

(f) "Article VI. Records and Reporting" shall consist of the following information:

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(1) Agenda Items. Agenda items shall be maintained in ~~an~~ a consistent format as identified ~~format~~ by this section.

(2) Minutes. Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the entity. This may include a summary of action taken by the entity. This section shall identify the format for minutes, and a reasonable timeframe by which minutes shall be submitted to the Business Committee Support Office.

(3) Attachments. Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented. This section shall identify how records of attachments shall be kept.

(4) Oneida Business Committee Liaison. Entities ~~will report to~~ shall regularly communicate with the Oneida Business Committee member who is their designated liaison. This ~~reporting~~ section shall identify a format and frequency for communication which may be as the liaison and entity agree to, but not less than that required in any law or policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. ~~Reports shall be made within a reasonable time after a meeting is held, or as the Oneida Business Committee member liaison and entity agree. Provided that, the agreement~~ The purpose of the liaison relationship is to uphold the ability of the liaison to act as a support to that entity.

~~(5)~~ Audio Recordings. An entity shall audio record all meetings. This section shall state how the entity will audio record meetings, and how the entity shall maintain the audio records. (g) "Article ~~V~~ VII. Amendments" consists of:

(1) Amendments to By-laws. ~~There should be described~~ Bylaws. This section shall describe how amendments to the ~~by-laws shall take place. Provided that, bylaws are made. Any~~ amendments to bylaws shall conform to the requirements of this and any other policy. ~~Provided further, that amendments are of the Nation. Amendments to bylaws shall be~~ approved by the Oneida Business Committee, in addition to the General Tribal Council when applicable, prior to implementation.

105.9. Minutes

11. Electronic Polling
105.911-1. An entity may utilize an e-poll when approval of an action may be required before the next available meeting agenda of the entity.

105.11-2. Conducting an E-Poll. The Chairperson of the entity, or designee, shall e-mail the e-poll to all members of the entity. Requests for an e-poll shall be sent only from an official email address of the entity. The e-poll's message shall include the following information:

(a) The email subject line shall begin with "E-poll Request:" and include a short title describing the purpose of the request.

(b) The body of the e-poll shall contain the following elements:

(1) An executive summary of the reason for the request and why the request cannot be presented at the next available meeting of the entity;

(2) A proposed motion which shall be in bold and identified in a separate

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paragraph by the words “Requested Action;”

(3) All attachments in *.pdf format, which are necessary to understand the request being made; and

(4) A deadline date for a response to be returned regarding the results of the electronic poll which shall be in bold and identified in a separate paragraph by the words “Deadline for Response.”

(A) E-poll requests shall be open for response not less than one (1) hour and no more than twenty-four (24) hours.

(B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.

105.11-3. Response to an E-Poll. A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.

(a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.

(b) E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support, and result in a denied request.

(c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.

(d) The Chairperson, or designee, shall monitor all responses and deadline dates for responses.

105.11-4. Entering an E-Poll in the Record. Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:

(a) Original e-poll request and all supporting documentation;

(b) A summary of the e-poll results identifying each member of the entity and his or her response; and

(c) A copy of any comment by a member of the entity if comments are made beyond a vote.

105.12. Reporting Requirements

105.12-1. Minutes. All minutes shall be submitted to the ~~Tribal Secretary's~~ Business Committee Support Office within a reasonable time after approval by the entity, ~~as identified in the entity's bylaws.~~

~~105.9-2.~~ (a) Actions taken by an entity are valid ~~when~~ upon approval of the action by vote, unless the bylaws of the entity otherwise require minutes ~~are approved, provided that, minutes are to be approved by the entity before the actions are valid.~~

(b) Minutes shall be filed according to this section, and any specific directions within approved ~~by laws~~ bylaws.

~~(c) 105.9-3.~~ No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the ~~by-laws~~ bylaws of that entity.

~~105.9-4. In the event of dissolution of an entity, all files and documents are required to be forwarded to the Tribal Secretary's Office for proper storage and disposal.~~

105.10. Dissolution of Entities

~~105.10-1. All entities of the Tribe shall be dissolved according to this section. Provided that other specific directions may be included within by laws.~~

~~105.10-2. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Tribal Secretary's Office for proper disposal within two weeks of dissolution.~~

105.10-3. 12-2. Standard Operating Procedures. All other entities of the Tribe shall be dissolved only standard operating procedures established by motion of the Oneida General Tribal Council or an entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.

105.12-3. Quarterly Reports to the Oneida Business Committee. Entities shall provide quarterly reports to the Oneida Business Committee. Unless otherwise indicated, in accordance with the materials generated quarterly reporting schedule approved by these entities shall be forwarded to the Tribal Secretary's Office for proper disposal within two weeks of dissolution. the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:

(a) Contact Information. The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.

(b) Meetings. When and how often the entity is holding meetings and whether any emergency and/or special meetings have been held.

(1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.

(2) If special meetings were held, the report shall indicate the topic of each meeting.

(c) Accomplishments. Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.

(d) Goals. Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.

(e) Budget. The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.

(f) Requests. Details of any requests to the Oneida Business Committee.

(g) Other. And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.

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105.12-4. Annual and Semi-Annual Reports to the General Tribal Council. Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.

(a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.

(b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.

105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

~~105.10-4. All Chairpersons and Secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding materials.~~

105.11. Stipends, Reimbursement and Compensation for Service

105.13-1. The Nation recognizes that an individual serving on an entity of the Nation, whether elected or appointed, incurs some expense as a result of his or her position on the entity. Therefore, the Nation, in order to attract individuals to serve on entities, shall pay stipends to these members in accordance with this section.

~~105.13-2. 105.11-1.~~ Compensation and reimbursement for expenses shall ~~be~~ follow the procedures as set out in this section and according to procedures for payment as set out by the ~~Oneida Tribe of Indians of Wisconsin~~ Nation.

~~105.11-2. The Oneida Tribe recognizes that persons serving on entities of the Tribe, whether elected or appointed, incur some expense. Therefore, the Tribe, in order to attract persons to serve on entities, shall pay stipends to these members in accordance with this section.~~

~~105.11-3. Meeting Stipends for Appointed Members. Except provided in sub (a) and unless otherwise declined by the entity through its bylaws, or declined by a member(s), appointed members serving on entities shall be paid a stipend of no more than \$50 per month when at least one (1) meeting is conducted where a quorum has been established in accordance with the duly adopted by laws of that entity. Provided that the meeting lasts for at least one (1) hour and that members collecting stipends must be present for at least one (1) hour of the meeting.~~

105.13-3. (a) Members serving on the Oneida Child Protective Board shall be exempt from the \$50 stipend per month limitation and shall receive a \$50. The Oneida Business Committee shall set stipend for each meeting held in accordance with ~~105.11-3.~~

~~105.11-4. Meeting Stipends for Elected Members. Unless otherwise declined by the entity through its bylaws, or declined by a member(s), elected members serving on entities shall be paid a minimum stipend of \$50 for each meeting which has established a quorum in accordance with the duly adopted by laws of that entity for at least one (1) hour, regardless of the length of the meeting. Members collecting stipends must be present for at least one (1) hour of the meeting, regardless of the length of the meeting.~~

~~105.11-5. amounts by resolution.~~ The Oneida Business Committee shall periodically review the amounts provided for ~~meeting~~ stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending ~~this Policy~~ the resolution.

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105.13-4. *Meeting Stipends.* A member of an entity, whether elected or appointed, shall only receive a meeting stipend for a meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting.

(a) *Meeting Stipends for Appointed Members.* Appointed members serving on entities shall be paid no more than one (1) meeting stipend per month when at least one (1) meeting is conducted

(b) *Meeting Stipends for Elected Members.* Elected members serving on entities shall be paid a stipend for each meeting held in accordance with this law.

105.13-5. *Oneida Judiciary Hearings.* A member of an entity may receive a Judiciary hearing stipend if the member's attendance at the Judiciary hearing is required by official subpoena.

105.13-6. *Hearings of an Entity.* A member of an entity that maintains hearing authority may obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of all functions related to the resolution of the matter notwithstanding the amount of time it takes to resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting.

105.13-7. *Oneida Business Committee Meetings.* Up to two (2) members of an entity that attend the Oneida Business Committee meeting where the quarterly report of the entity is an agenda item, and present the quarterly report are eligible to receive a stipend.

105.13-8. *Other Stipends.* The Oneida Business Committee shall determine if, and when, any other stipends are appropriate to compensate members of entities for their official actions. All possible stipends shall be included in the Oneida Business Committee resolution which sets stipend amounts.

105.13-9. ~~105.11-6.~~ *Conferences and Training.* A member of any entity, elected or appointed, shall be reimbursed in accordance with the ~~Tribal~~Nation's policy for travel and per diem, for attending a conference or training. Provided that:

(a) A member shall be eligible for a ~~\$100~~ stipend for each full day the member is present at the conference or training, when attendance at the conference or training is required by law, bylaw or resolution.

(b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.

(c) No stipend payments shall be made for those days spent traveling to and from the conference or training.

~~105.11-7.~~13-10. *Business Expenses.* All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.

105.13-11-8. *Task Force ~~members~~ and ~~members~~Ad Hoc Subcommittees.* ~~Members~~ of ~~task force, ad hoc committees and~~ subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

105.1214. Confidential Information

105.1214-1. ~~The Oneida Tribe is involved in numerous business ventures and governmental functions where it is necessary that private information be kept in the strictest confidence to assure the continued success and welfare~~All members of the Tribe. It is in the best interest of the Oneida Tribe that all officialsan entity shall maintain in a confidential manner all

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information, ~~whether of historical, immediate, or future use or need,~~ obtained through their position on the entity. The ~~Oneida Tribe desires~~ Nation requires that all ~~officials~~ members of an entity who have access to the ~~Oneida Tribe's~~ Nation's confidential information be subject to specific limitations in order to protect the interest of the ~~Oneida Tribe.~~ It is the intention of the Oneida Tribe Nation and ensure that no persons engaged in by the ~~Tribe~~ Nation, nor their relatives or associates, benefit from the use of confidential information.

~~105.12-2. Confidential information means all information or data, whether printed, written, or oral, concerning business or customers of the Oneida Tribe, disclosed to, acquired by, or generated by officials in confidence at any time during their elected or appointed term or during their employment.~~

105.12-3.(a) Confidential information shall be considered and kept as the private and privileged records of the ~~Oneida Tribe~~ Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.

~~105.12-4. An official~~ (b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the ~~Oneida Tribe~~ Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the ~~Oneida Tribe~~ Nation and the entity.

105.12-5.(c) Upon completion or termination of his/ ~~or~~ her elected or appointed term of membership in an entity, for any cause whatsoever, the ~~official~~ member of the entity will surrender to the ~~Oneida Tribe~~ Nation, in good condition, all records kept by the ~~employee~~ member of the entity.

105.12-6.(d) No ~~official~~ member of an entity shall disclose confidential information acquired by reason of his/ ~~her~~ other relationship or status with the ~~Oneida Tribe~~ Nation for his/ ~~or~~ her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.

105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and can only be removed or destroyed by approval from a majority vote of the entity at a duly called meeting. All removal or destruction of documents must be made in accordance with the Nation's laws and policies regarding open records and open meetings.

105.14-3. Official Oneida Nation E-mail Address. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.

(a) If a member is also an employee of the Nation, he or she shall receive a separate e-mail address from his or her regular work e-mail address.

(b) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.

(c) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.

(d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

105.15. Conflicts of Interest

105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.

105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises, and update a conflict of interest disclosure form with the Nation's Secretary on an annual basis.

(a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action must be taken by the Nation regarding the status of the official.

105.15-3. Due to the potential for a real or perceived conflict of interest to exist, political appointees and legislative assistants shall not serve on an appointed or elected entity.

105.16. Use of the Nation's Assets

~~**105.13. Conflicts of Interest**~~

~~*Subpart A. General*~~

~~105.13-1. The Oneida Tribe recognizes the ability of all persons to serve on entities of the Oneida Tribe. However, it is also recognized that the delegated authority and responsibilities of an entity may cause conflict with membership on other entities or employment.~~

~~105.13-2. It is the policy of the Oneida Tribe to request a candidate to disclose possible conflicts prior to election or appointment to allow the conflicts to be resolved in a timely manner.~~

~~105.13-3. Officials shall disclose and resolve conflicts of interest in a reasonable and timely manner. Failure to resolve conflicts shall result in removal from office for elected officials and may result in termination of appointment for appointed officials. Provided that, all applicants shall submit, with the application forms, a signed conflict of interest declaration disclosing all known conflicts.~~

~~105.13-4. This section sets forth specifically prohibited conflicts of interests. However, for any individual candidate or member on an entity, conflicts may arise within the by-laws of that entity or employment relationships.~~

~~105.13-5. No official shall act as a consultant, agent, representative for, or hold any position as an officer, director, partner, trustee, or belong as a member in a board, committee or commission, or the like without first disclosing such activity to determine possible conflicts of interest.~~

~~*Subpart B. Employment Interests*~~

~~105.13-6. No official shall hold office in an entity which has authority over the area in which the official is employed by the Oneida Tribe or elsewhere. The Oneida Tribe recognizes the ability of all persons to serve on entities of the Oneida Tribe, however, recognizes the conflict arising out of membership on an entity and employment in an area over which the entity has~~

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authority.

~~105.13-7. Employment is defined for this subpart as that area which the employee supervises or is supervised in regards to a specific subject matter~~ 16-1. Entities.

~~105.13-8. Authority of an entity is defined for this subpart as that area over which the entity has subject matter jurisdiction delegated either by the Oneida Business Committee or Oneida General Tribal Council, and for which that authority may be regulatory, oversight, or otherwise.~~

~~Subpart C. Financial Interests, Investments, and Gifts~~

~~105.13-9. No official, or their immediate family, may have a financial interest in any transaction between the entity and an outside party where the official has a financial or familial relationship.~~

~~105.13-10. The following words are defined for the purposes of this subpart:~~

~~(a) "Financial interest" means any profit sharing arrangements, rebates, payments, commissions, or compensation in any form, and shall include any form of ownership, regardless of ability to control the activities of the business. Provided that, this shall not include ownership of shares which, other than in combination with others, cannot exert a controlling influence on the activities of the business and in relation to the outstanding shares, the ownership of shares represents a small part of the whole.~~

~~(b) "Transaction" means any activity wherein a provider of goods and/or services is compensated in any form.~~

~~(c) "Immediate family" means the mother, father, sister, brother, daughter, son, granddaughter, grandson, grandfather, grandmother and these relationships with any spouse.~~

~~105.13-11. As referred to in this Subpart, entity includes for the purposes of defining conflicts, the programs or enterprises over which the entity has delegated authority.~~

~~105.13-12. Officials shall avoid personal investment in any business with which the Oneida Tribe has or is expected to have a contractual or other business relationship. Notwithstanding the foregoing, however, an investment by an official in a business with which the Oneida Tribe has dealings is permissible if the Oneida Business Committee or other delegated authority determines in writing that:~~

~~(a) the investment is not made or cannot be considered to have been made on the basis of confidential information, and~~

~~(b) the investment cannot be expected to adversely affect or influence the official's judgement in the performance of any services or obligations on behalf of the Oneida Tribe.~~

~~105.13-13. Officials shall not use their relationship with the Oneida Tribe to exercise undue influence to obtain anything which is not freely available to all prospective purchasers.~~

~~105.13-14. No official shall accept gifts, payments for personal gain, opportunities to invest, opportunities to act as an agent, a consultant, or a representative for actual or potential purchasers, sales sources, contractors, consultants, customers or suppliers, or accept any direct or indirect benefit from any actual or potential purchaser, sales source, contractor, consultant, customer, or supplier.~~

~~105.13-15. No official shall accept any gift, entertainment, service, loan, promise of future benefits or payment of any kind which the Oneida Business Committee or other delegated~~

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~~authority determines adversely affects or influence his/her judgement in the performance of any services, duties, obligations or responsibilities to the Oneida Tribe, or impairs confidence in the Oneida Tribe.~~

~~105.13-16. Notwithstanding the foregoing, however, officials may accept or provide business-related meals, entertainment, gifts or favors when the value involved is insignificant and the Oneida Business Committee or other delegated authority has determined that it clearly will not place him/her under any obligation.~~

~~Subpart D. Competition With The Oneida Tribe~~

~~105.13-17. No official shall enter into competition with the Oneida Tribe in the purchase or sale of any property, property rights or interests, without prior consent of the Oneida Tribe.~~

~~105.13-18. An official may enter into competition with the Oneida Tribe where the activity engaged is approved through an Oneida entrepreneur development program or other similar Oneida program and does not otherwise violate this policy.~~

~~Subpart E. Use Of Tribal Assets~~

~~105.13-19. All maintain all bank accounts for tribal~~the Nation's~~ funds ~~shall be maintained~~ in the name of the Oneida ~~Tribe and~~Nation. Bank accounts will be reflected on the Oneida ~~Tribe's~~Nation's books in accordance with Generally Accepted Accounting ~~Procedures~~Principles.~~

~~105.13-20~~16-2. Each ~~official~~member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:

- (a) all transactions are executed in accordance with management's authorization; and
- (b) access to assets is permitted only in accordance with management's authorization; and
- (c) ~~all transactions are recorded to permit preparation of financial statements in conformity with generally accepted accounting principles~~Generally Accepted Accounting Principles or other applicable criteria.

~~105.13-21. Any records created or obtained while as an official of an entity of the Oneida Tribe is/are the property of the Oneida Tribe and can only be removed or destroyed by approval from a quorum of the entity at a duly called meeting. All removal or destruction of documents must be made in accordance with the Open Records and Open Meetings law.~~

~~Subpart F. Disclosure~~

~~105.13-22. Each official shall disclose any outside activities or interests that conflict or suggest a potential conflict with the best interests of the Oneida Tribe by completely filling out the application for membership or informing the Oneida Business Committee or other designated authority after election or appointment of a conflict arising during membership on an entity.~~

~~Subpart G. Reporting~~

~~105.13-23. All conflicts or potential conflicts that arise during membership on an entity shall be immediately reported to the Tribal Secretary of the Oneida Tribe. Upon receiving information of a potential conflict of interest, the Tribal Secretary shall request a determination from the Oneida Law Office whether further action must be taken by the Oneida Tribe regarding the status of the official.~~

~~105.13-24~~105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal

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assets shall be immediately reported to the ~~internal audit staff~~Internal Audit department. If the ~~internal audit staff~~Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office ~~of the Oneida Tribe~~, who will then make a determination of further action to be taken, if any.

105.17. Dissolution of an Entity

105.17-1. Dissolution of a Task Force or Ad Hoc Committee. A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the ~~Subpart H~~ Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.

105.17-2. Dissolution of an Entity. All other entities of the Nation shall be dissolved only by motion of the Oneida General Tribal Council or the Oneida Business Committee. The General Tribal Council shall have the authority to dissolve an entity created by the General Tribal Council or the Oneida Business Committee, and the Oneida Business Committee shall have the authority to dissolve an entity created by the Oneida Business Committee.

105.17-3. Notice of Dissolution. Within five (5) business days of the Oneida General Tribal Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida Business Committee shall provide the entity written notice of the dissolution.

105.17-4. Management of Records and Materials. All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.

(a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

105.18. Enforcement ~~And Penalties~~

~~105.13-25. Officials~~105.18-1. Any member of an entity found to be in violation of this ~~policy~~law may be ~~removed~~subject to:

(a) sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;

(b) removal pursuant to ~~the Removal Law~~ any laws or policies of the Nation's governing removal, if a member of an elected entity; or ~~have their~~

(c) termination of appointment ~~terminated~~ by the Oneida Business Committee, if a member of an appointed entity.

~~105.13-26. Candidates for appointment or election to office found in violation of this policy may be disqualified from taking office.~~

End.

Adopted - BC-~~8-208-02~~-95-A

Amended - BC-~~505~~-14-97-F

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1003 Emergency Amendments - BC-04-12-06-JJ
1004 | Amended - BC-~~90~~⁹⁹-27-06-E (permanent adoption of emergency amendments)
1005 Amended – BC-09-22-10-C
1006 | ~~Amended – BC-~~
1007
1008

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Title 1. Government and Finances – Chapter 105 BOARDS, COMMITTEES AND COMMISSIONS

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105.1. Purpose and Policy
105.2. Adoption, Amendment, Repeal
105.3. Definitions
105.4. Creation of an Entity
105.5. Applications
105.6. Vacancies
105.7. Appointment to an Entity
105.8. Election to an Entity
105.9. Oath of Office

105.10. Bylaws
105.11. Electronic Polling
105.12. Reporting Requirements
105.13. Stipends, Reimbursement and Compensation
105.14. Confidential Information
105.15. Conflicts of Interest
105.16. Use of the Nation's Assets
105.17. Dissolution of an Entity
105.18. Enforcement

105.1. Purpose and Policy

105.1-1. It is the purpose of this law to govern boards, committees, and commissions of the Nation, including the procedures regarding the appointment and election of persons to boards, committees and commissions, creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions.

(a) This law shall not apply to the Oneida Business Committee.

(b) This law shall apply to the Standing Committees of the Oneida Business Committee where applicable including, but not limited to, the Legislative Operating Committee, Finance Committee, Audit Committee, Quality of Life Committee, and Community Development Planning Committee.

(c) This law does not apply to Tribal corporations due to the corporate structure and autonomy of those entities.

105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing or electing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

105.2. Adoption, Amendment, Repeal

105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-5-14-97-F and amended by resolutions BC-09-27-06-E, BC-09-22-10-C, and BC-__-__-__-__.

105.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

105.2-3. 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.

105.2-4. 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.

105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

105.3. Definitions

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105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Application" means the form by which a person seeks to be appointed to fill a vacancy on an entity.

(b) "Appointment" means the process by which a person is chosen to fill a vacancy on an entity by the Oneida Business Committee.

(c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

(d) "Bylaws" means a document which provides a framework for the operation and management of a board, committee, or commission of the Nation chiefly for the government of its members and the regulation of its affairs.

(e) "Conference" means any training, seminar, meeting, or other assembly of persons which is not an assembly of the entity.

(f) "Confidential information" means all information or data, whether printed, written, or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by a member of an entity in confidence at any time during their elected or appointed term or during their employment.

(g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which an elected official, officer, political appointee, employee, contractor, or appointed or elected member, or their immediate family members, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Nation. In addition, conflict of interest also means any financial or familial interest an elected official, officer, political appointee, employee, contractor, or appointed or elected member or their immediate family members may have in any transaction between the Nation and an outside party.

(h) "Entity" means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the Nation's membership.

(i) "E-poll" means an electronic poll, which is the act of delivering an email to all members of an entity, in order to seek a response which identifies a vote in favor of, opposing, or abstaining to an issue requiring approval by the entity.

(j) "Nation" means the Oneida Nation.

(k) "Per Diem" means the payment made by the Nation to offset the costs of being out-of-town or to travel on behalf of the Oneida Nation.

(l) "Prohibited drugs" means marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), hallucinogens, methaqualone, barbiturates, narcotics, and any other substance included in Schedules I through V, as defined by Section 812 of Title 21 of the United States Code. This also includes prescription medication or over-the-counter medicine used in an unauthorized or unlawful manner.

(m) "Stipend" means that amount paid by the Oneida Nation to persons serving on boards, committees and commissions of the Oneida Nation to offset the expenses of being a member on the board, committee or commission. Stipends are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards.

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(n) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.

(o) "Substantiated complaint" means a complaint or allegation in a complaint that was found to be valid by a preponderance of the evidence.

(p) "Task Force or Ad Hoc" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one year, but the goal itself may be long-term.

(q) "Vacancy" means any position on any board, committee or commission caused by resignation, end of term, removal, termination, or creation of a new position.

105.4. Creation of an Entity

105.4-1. An entity of the Nation shall be created by a resolution or law adopted by the Oneida Business Committee or General Tribal Council.

105.4-2. The law or resolution establishing the entity shall state the purpose of the entity and all powers and responsibilities delegated to the entity.

105.4-3. The Oneida Business Committee shall be responsible for drafting the initial bylaws of the entity.

105.5. Applications

105.5-1. The Oneida Business Committee shall approve all applications to serve on an entity of the Nation. All application materials shall be available in the Business Committee Support Office and any other location specified by the Business Committee Support Office.

(a) All applications shall include:

(1) a statement explaining the attendance requirements of section 105.12-3; and

(2) a section regarding disclosures of conflicts of interest.

(b) An additional application form shall be required for those entities that require a background investigation. This background investigation application shall include the applicant's social security number and any other information required for a background investigation. The background investigation application shall be solely used for the background investigation and not included in the application materials that are then shared with the Oneida Business Committee, entity, and/or the Election Board.

105.5-2. Applications shall be filed with the Business Committee Support Office by 4:30 p.m. of the deadline date. Postmarked envelopes are accepted as filed if postmarked by the deadline date and received by the Business Committee Support Office within five (5) business days of the deadline.

105.5-3. Five (5) days after the posted deadline for filing applications the Business Committee Support Office shall notify all persons who have filed an application of the date his or her application was received and if his or her application met the deadline to be considered for the election or appointment.

105.5-4. Applications for elected positions shall be verified according to the Nation's laws and/or policies governing elections. Applications for appointed positions shall be verified by the Business Committee Support Office as needed or as required in the bylaws of the entity.

105.5-5. *Insufficient Applicants.* In the event that there are an insufficient number of applicants

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after the deadline date has passed for appointed positions, the Oneida Business Committee may elect to:

- (a) include within the pool of appointed persons late applications, or
- (b) repost for an additional time period. In the event of reposting, prior applicants will be considered to have filed applications within the deadline period.

105.6. Vacancies

105.6-1. The manner by which an individual fills a vacancy, either through election or appointment, shall determine that member's status as an appointed or elected official, despite the entity's classification as an appointed or elected entity pursuant to the entity's bylaws. Unless, a law of the Nation indicates that removal of an official shall be done pursuant to the Removal law, an appointed individual may have his or her appointment terminated by the Oneida Business Committee.

105.6-2. A position on an entity shall be considered vacant in the following situations:

- (a) *End of Term.* A vacancy is effective as of 4:30 p.m. of the last day of the month in which the term ends.

- (1) Although a position is considered vacant once the term ends, the member of the entity may remain in office until the member's successor has been sworn in by the Oneida Business Committee in an effort to prevent a discontinuation of business or a loss of quorum for the entity.

- (b) *Removal.* Removal is effective, pursuant to any law and/or policy of the Nation regarding removal.

- (c) *Termination of Appointment.* A termination is effective upon a two-thirds (2/3) majority vote of the Oneida Business Committee in favor of a member's termination of appointment.

- (d) *Resignation.* A resignation is effective upon:

- (1) Deliverance of a letter to the Business Committee Support Office;
 - (A) Upon receipt of resignation, the Business Committee Support Office will notify the entity of the resignation;
 - (2) Deliverance of a letter to the Chairperson of the entity, or designee, or
 - (3) Acceptance by motion of the entity of a verbal resignation.

- (e) *New Positions.* Vacancies on new entities are effective upon adoption of bylaws.

105.6-3. An entity shall notify the Business Committee Support Office as soon as the entity learns that a position has or will become vacant. All notices of vacancy shall be sent to the entities for clarification or confirmation prior to notification to the Oneida Business Committee.

105.6-4. The Business Committee Support Office shall forward the notice of vacancy to the Secretary. The Secretary shall request and receive approval from the Oneida Business Committee to post the notice of vacancy. The Secretary shall post notice of vacancies at the following times:

- (a) *End of Term.* Automatically thirty (30) days prior to completion of the term.
- (b) *Removal.* No later than the first Oneida Business Committee meeting following the effective date of the removal.
- (c) *Resignation.* No later than the first Oneida Business Committee meeting following the Secretary's receipt of notice of an effective resignation from the entity.
- (d) *New Positions.* Upon one of the following conditions:

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(1) if not specified, immediately upon creation of entity or adoption of bylaws, whichever is later, or

(2) upon date specified when creating the entity.

(e) *Termination of appointment.* No later than the first Oneida Business Committee meeting following the effective date of the termination.

105.6-5. Notice of vacancies shall be posted by the Business Committee Support Office in all official media outlets of the Nation, as determined by the Oneida Business Committee, as well as any other location deemed appropriate by the Secretary.

105.7. Appointment to an Entity

105.7-1. *Appointment Selection.* The following procedures shall be used to determine how the applicant for an appointed position is selected:

(a) Five (5) business days after the posted deadline for submitting an application, or within twenty-one (21) days of the posted deadline if the entity requires a background investigation to be completed as part of the application process, the Business Committee Support Office shall:

(1) deliver all applications, along with a summary of qualifications to hold office, and the results of the background investigation if required, to each member of the Oneida Business Committee as well as the entity's Chairperson; and

(2) place the appointment for the entity on the next executive session portion of the agenda of a regular or special Oneida Business Committee meeting in which the appointment is intended to be made.

(b) Each member of the Oneida Business Committee shall review the application materials prior to executive session and be prepared to discuss and select an applicant for appointment.

(1) The entity's Chairperson may have until the executive session to review the application materials and provide the Oneida Business Committee a recommendation of an applicant for appointment.

(c) The Oneida Business Committee shall have a full and complete discussion of the merits and qualifications of the potential applicants, and any recommendation made by the Chairperson of the entity, during executive session. After completing a thorough discussion, the Oneida Business Committee shall:

(1) choose an applicant for appointment, or

(2) ask the Oneida Nation's Secretary to re-notice the vacancy because of ineligible, unqualified, or under qualified applicants.

(d) All appointments shall be made by the Oneida Business Committee during the open session of a regular or special Oneida Business Committee meeting. The Oneida Business Committee shall not appoint an applicant who fails to meet the requirements set out in the entity's bylaws.

(e) During the open session of the regular or special Oneida Business Committee meeting, a member of the Oneida Business Committee may make a motion to appoint an individual. Oneida Business Committee members may:

(1) accept the selected applicant and vote to appoint the individual to the vacant position, or

(2) reject the selected applicant and vote to oppose the appointment of the

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individual.

(f) If the Oneida Business Committee rejects the selected applicant, the matter will be deferred to the next Oneida Business Committee meeting where another applicant may be recommended by the Oneida Business Committee, or the Oneida Business Committee may direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.

105.7-2. *Notification of Appointment.* Once an individual is selected for appointment at an Oneida Business Committee meeting, the Nation's Secretary shall notify all applicants of the final status of their application.

(a) The Nation's Chairperson shall forward a list of all applicants to the Nation's Secretary and the final decision regarding the selection after the procedures for selection of an applicant described in section 105.7-1 are completed.

(b) The Nation's Secretary shall include on the notice to the applicant selected for appointment the following paragraph: "The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

105.7-3. *Declination of Appointment.* An individual who has been selected for appointment to an entity by the Oneida Business Committee may decline the appointment.

(a) An individual may decline an appointment to an entity in the following ways:

(1) Delivery of an letter stating that the individual wishes to decline the appointment to the Business Committee Support Office; or

(2) The failure to take the oath of office within thirty (30) days of being selected for appointment by the Oneida Business Committee.

(b) The Business Committee Support Office shall notify the Oneida Business Committee if an individual declines an appointment to an entity. The Oneida Business Committee shall then use the original pool of applications for the vacancy posting and the process outlined in section 105.7-1 to select another applicant for appointment.

105.7-4. *Termination of Appointment.* Appointed members of entities serve at the discretion of the Oneida Business Committee. Upon the recommendation of a member of the Oneida Business Committee or the entity, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee.

(a) A two-thirds majority vote of the Oneida Business Committee shall be required in order to terminate the appointment of an individual.

(b) The Oneida Business Committee's decision to terminate an appointment is final and not subject to appeal.

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105.8 Election to an Entity

105.8-1. All elected positions shall be nominated at a caucus called by the Oneida Election Board, or petition for ballot placement, in accordance with the Nation's laws and/or policies governing elections, except where an entity's bylaws allow for a vacancy to be filled by appointment.

(a) When the Election Board notifies a petitioner or nominee that he or she is eligible to be placed on the ballot, the following paragraph shall be included: "The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive an income report which is also forwarded to the Internal Revenue Service, it is also your responsibility to keep documentation of expenses related to this income."

105.8-2. All other processes for the election of a member of an entity shall be as directed by the Nation's laws and/or policies governing elections.

105.9. Oath of Office

105.9-1. All appointed and elected positions are official upon taking an oath during a regular or special Oneida Business Committee meeting. All rights and delegated authorities of membership in the entity shall vest upon taking the oath. The Nation's Secretary shall notify the chosen persons when they shall appear for taking the oath.

(a) The appointed or elected member shall appear in person at the Oneida Business Committee meeting to take his or her oath, except if granted permission by the Secretary to appear by video conferencing equipment.

105.9-2. The Oneida Business Committee shall approve wording of oaths. Any revisions of oaths shall be approved by the Oneida Business Committee prior to usage. Oaths shall be kept on file by the Business Committee Support Office.

105.9-3. Originals of the signed oath, or electronic copies of the originals of the signed oath, shall be maintained by the Business Committee Support Office. Copies of the oath shall be forwarded to the new member of the entity and the entity.

105.9-4. The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee: I, [name], hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Oneida Nation Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and will strictly maintain confidential information. I will carry out the duties and responsibilities as a member of the [entity name], and all recommendations shall be made in the best interest of the Oneida Nation as a whole.

105.9-5. All oaths shall be sufficient to make the appointed or elected member of an entity aware of their duty to the Nation and as members of the entity.

105.10. Bylaws

105.10-1. All entities of the Nation shall have bylaws that conform to the requirements of this law. Bylaws shall become effective upon approval of the Oneida Business Committee, unless where General Tribal Council approval is additionally required.

(a) All existing entities must comply with this format and present bylaws for adoption within a reasonable time after creation of the entity, or within a reasonable time after

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adoption of this law.

(b) Bylaws must contain at least the minimum information required by law, although more information is not prohibited.

(c) *Exception.* Task Forces and Ad Hoc Committees are excepted from the requirement to have bylaws. However, these entities must have, at minimum, mission or goal statements for completion of the task.

105.10-2. *Articles.* Bylaws shall contain, at a minimum, the following Articles:

(a) Article I. Authority.

(b) Article II. Officers.

(c) Article III. Meetings.

(d) Article IV. Expectations.

(e) Article V. Stipends and Compensation.

(f) Article VI. Records and Reporting.

(g) Article VII. Amendments.

105.10-3. *Sections.* Articles shall be divided into "sections" as set out.

(a) "Article I. Authority" shall consist of the following:

(1) *Name.* The full name of the entity shall be stated, along with any short name that will be officially used.

(2) *Establishment.* This section shall state the citation and name, if any, of the creation document.

(3) *Authority.* This section shall state the purpose for which the entity was created and what, if any, authority the entity is delegated.

(4) *Office.* There shall be listed the official office or post box of the entity.

(5) *Membership.* The following information shall be in this section:

(A) Number of members on the entity;

(B) If members on the entity are elected or appointed, and how a member is elected or appointed;

(C) How vacancies are filled; and

(D) Qualifications for membership on the entity.

(6) *Termination or Removal.* This section shall identify causes for termination or removal, if any, in addition to those already identified in laws and/or policies of the Nation.

(7) *Trainings and Conferences.* This section shall describe any trainings and/or conferences that the entity deems necessary for members to responsibly serve the entity, if any.

(b) "Article II. Officers" shall consist of the following:

(1) *Chairperson and Vice-Chairperson.* This section creates the chairperson and vice-chairperson positions of the entity. Other officer positions may also be created here.

(2) *Responsibilities of the Chairperson.* Because of the importance of this position, all duties and responsibilities of the chairperson, as well as limitations of the chairperson shall be specifically listed here.

(3) *Responsibilities of the Vice-Chairperson.* Because of the importance of this position, all duties and responsibilities of the vice-chairperson, as well as limitations of the vice-chairperson shall be specifically listed here.

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(4) *Responsibilities of Additional Officers.* There may be additional sections as needed for every officer position created in subsection one (1) above. These sections shall state all duties and responsibilities of the officer, as well as any limitations of the officer.

(5) *Selection of Officers.* This section shall identify how a member of the entity shall be selected for an official officer position in the entity.

(6) *Budgetary Sign-Off Authority and Travel.* This section shall identify the entity's varying levels of budgetary sign-off authority, the members that are authorized to sign-off at each level, and how the entity shall handle approving travel on behalf of the entity.

(A) An entity shall follow the Nation's policies and procedures regarding purchasing and sign-off authority.

(B) An entity shall approve a member's request to travel on behalf of the entity by majority vote at a regular or emergency meeting of the entity.

(7) *Personnel.* This section shall state the entity's authority for hiring personnel, if any, and the duties of such personnel.

(c) "Article III. Meetings" shall consist of the following:

(1) *Regular meetings.* This section shall identify when and where regular meetings shall be held, and how the entity shall provide notice of the meeting agenda, documents, and minutes.

(2) *Emergency meetings.* This section shall identify what constitutes an emergency meeting, how emergency meetings shall be called, and how the entity shall provide notice of the emergency meeting.

(A) All bylaws shall include a provision requiring that within seventy-two (72) hours after an emergency meeting, the entity shall provide the Nation's Secretary with notice of the meeting, the reason for the emergency meeting, and an explanation of why the matter could not wait for a regular or special meeting.

(3) *Quorum.* This section shall identify how many members of an entity create a quorum.

(4) *Order of Business.* This section sets out how the agenda will be set up.

(5) *Voting.* This section shall identify voting requirements, such as, but not limited to:

(A) the percentages that shall be needed to pass different items;

(B) if, and when, the chairperson is allowed to vote;

(C) if the use of an e-poll is permissible; and

(D) if the use of and e-poll is permissible, who will serve as the Chairperson's designee for the responsibility of conducting an e-poll, if a designee is utilized.

(d) "Article IV. Expectations" shall consist of the following information:

(1) *Behavior of Members.* This section shall identify the behavioral expectations and requirements of a member of the entity, and identify how the entity shall enforce these behavioral expectations.

(2) *Prohibition of Violence.* This section shall prohibit any violent intentional act committed by a member of the entity that inflicts, attempts to inflict, or threatens

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to inflict emotional or bodily harm on another person, or damage to property, and set forth any further expectations regarding the prohibition of violence.

(3) *Drug and Alcohol Use*. This section shall prohibit the use of alcohol and prohibited drugs for a member of an entity when acting in their official capacity, and set forth any further expectations regarding the use of prohibited drugs and alcohol.

(4) *Social Media*. This section shall identify expectations for the use of social media in regards to official business of the entity.

(5) *Conflict of Interest*. This section shall state any standards and expectations additional to those required by law of the Nation in regards to conflicts of interest and how they are handled, as well as requirements related to prohibited activities resulting from disclosed conflicts of interest, and means by which a party can alleviate or mitigate the conflict of interest.

(e) "Article V. Stipends and Compensation" shall consist of the following information:

(1) *Stipends*. This section shall include a comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.

(2) *Compensation*. This section shall include details regarding all other forms of compensation members are eligible to receive and the requirements for collecting such compensation, if any in addition to those contained in this law.

(f) "Article VI. Records and Reporting" shall consist of the following information:

(1) *Agenda Items*. Agenda items shall be maintained in a consistent format as identified by this section.

(2) *Minutes*. Minutes shall be typed and in a consistent format designed to generate the most informative record of the meetings of the entity. This may include a summary of action taken by the entity. This section shall identify the format for minutes, and a reasonable timeframe by which minutes shall be submitted to the Business Committee Support Office.

(3) *Attachments*. Handouts, reports, memoranda, and the like may be attached to the minutes and agenda, or may be kept separately, provided that all materials can be identified to the meeting in which they were presented. This section shall identify how records of attachments shall be kept.

(4) *Oneida Business Committee Liaison*. Entities shall regularly communicate with the Oneida Business Committee member who is their designated liaison. This section shall identify a format and frequency for communication which may be as the liaison and entity agree to, but not less than that required in any law or policy on reporting developed by the Oneida Business Committee or Oneida General Tribal Council. The purpose of the liaison relationship is to uphold the ability of the liaison to act as a support to that entity.

(5) *Audio Recordings*. An entity shall audio record all meetings. This section shall state how the entity will audio record meetings, and how the entity shall maintain the audio records. (g) "Article VII. Amendments" consists of:

(1) *Amendments to Bylaws*. This section shall describe how amendments to the bylaws are made. Any amendments to bylaws shall conform to the requirements of this and any other policy of the Nation. Amendments to bylaws shall be

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approved by the Oneida Business Committee, in addition to the General Tribal Council when applicable, prior to implementation.

105.11. Electronic Polling

105.11-1. An entity may utilize an e-poll when approval of an action may be required before the next available meeting agenda of the entity.

105.11-2. *Conducting an E-Poll.* The Chairperson of the entity, or designee, shall e-mail the e-poll to all members of the entity. Requests for an e-poll shall be sent only from an official email address of the entity. The e-poll's message shall include the following information:

(a) The email subject line shall begin with "E-poll Request:" and include a short title describing the purpose of the request.

(b) The body of the e-poll shall contain the following elements:

(1) An executive summary of the reason for the request and why the request cannot be presented at the next available meeting of the entity;

(2) A proposed motion which shall be in bold and identified in a separate paragraph by the words "Requested Action;"

(3) All attachments in *.pdf format, which are necessary to understand the request being made; and

(4) A deadline date for a response to be returned regarding the results of the electronic poll which shall be in bold and identified in a separate paragraph by the words "Deadline for Response."

(A) E-poll requests shall be open for response not less than one (1) hour and no more than twenty-four (24) hours.

(B) The time frame for responses shall be determined by the Secretary of the entity, or designee, based on urgency, scheduling, and any other pertinent factors.

105.11-3. *Response to an E-Poll.* A response from a member of an entity shall be valid if received from an official e-mail address of the entity. No responses from unknown e-mails or personal e-mails shall be accepted. An e-poll request shall receive responses from a majority of members of the entity in order to be an official vote.

(a) E-polls that receive at least a majority of supporting votes by the deadline are considered to be approved.

(b) E-polls for which insufficient responses were received by the deadline are considered to have failed to receive support, and result in a denied request.

(c) E-polls that result in a denied request may be reconsidered by the entity at the next available meeting.

(d) The Chairperson, or designee, shall monitor all responses and deadline dates for responses.

105.11-4. *Entering an E-Poll in the Record.* Both approved and denied e-poll requests shall be placed on the next meeting agenda of the entity to be entered into the record. The agenda item shall contain the following information:

(a) Original e-poll request and all supporting documentation;

(b) A summary of the e-poll results identifying each member of the entity and his or her response; and

(c) A copy of any comment by a member of the entity if comments are made beyond a

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vote.

105.12. Reporting Requirements

105.12-1. *Minutes.* All minutes shall be submitted to the Business Committee Support Office within a reasonable time after approval by the entity, as identified in the entity's bylaws.

(a) Actions taken by an entity are valid upon approval of the action by vote, unless the bylaws of the entity otherwise require minutes to be approved by the entity before the actions are valid.

(b) Minutes shall be filed according to this section, and any specific directions within approved bylaws.

(c) No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the bylaws of that entity.

105.12-2. *Standard Operating Procedures.* All standard operating procedures established by an entity shall be submitted to the Business Committee Support Office, where they shall be kept on file.

105.12-3. *Quarterly Reports to the Oneida Business Committee.* Entities shall provide quarterly reports to the Oneida Business Committee in accordance with the quarterly reporting schedule approved by the Oneida Business Committee. All quarterly reports shall be approved by official entity action before they are submitted. The quarterly reports shall not contain any information that conflicts with any law, resolution, or policy of the Nation. At least one (1) member of the entity shall attend the Oneida Business Committee meeting where the quarterly report is an agenda item. Quarterly reports shall follow a format prescribed by the Oneida Business Committee and contain the following information:

(a) *Contact Information.* The name of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.

(b) *Meetings.* When and how often the entity is holding meetings and whether any emergency and/or special meetings have been held.

(1) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.

(2) If special meetings were held, the report shall indicate the topic of each meeting.

(c) *Accomplishments.* Details of what the entity has accomplished that quarter, including any special events held during the reporting period and any travel by the members and/or staff.

(d) *Goals.* Details of both the entity's long term goals, the entity's goals for the next quarter, and projected quarterly activities.

(e) *Budget.* The amount of the entity's budget, the status of the budget at that quarter, the amount of each stipend a member may be eligible to receive, how the budget is being utilized by the entity, and projected budgetary uses for the next quarter.

(f) *Requests.* Details of any requests to the Oneida Business Committee.

(g) *Other.* And any other information deemed appropriate by the entity, as well as any other information required by a law or policy of the Nation.

105.12-4. *Annual and Semi-Annual Reports to the General Tribal Council.* Entities shall provide annual reports to the Oneida General Tribal Council based on their activities during the

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previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Oneida Business Committee.

(a) Annual and semi-annual reports shall contain information on the number of substantiated complaints against all members of the entity.

(b) Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees.

105.12-5. Any failure to comply with the reporting requirements may result in the Oneida Business Committee placing a hold on the release of a stipend payment.

105.13. Stipends, Reimbursement and Compensation

105.13-1. The Nation recognizes that an individual serving on an entity of the Nation, whether elected or appointed, incurs some expense as a result of his or her position on the entity. Therefore, the Nation, in order to attract individuals to serve on entities, shall pay stipends to these members in accordance with this section.

105.13-2. Compensation and reimbursement for expenses shall follow the procedures as set out in this section and according to procedures for payment as set out by the Nation, unless otherwise declined by the entity through its bylaws, or declined by a member.

105.13-3. The Oneida Business Committee shall set stipend amounts by resolution. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending the resolution.

105.13-4. *Meeting Stipends.* A member of an entity, whether elected or appointed, shall only receive a meeting stipend for a meeting where a quorum has been established in accordance with the duly adopted bylaws of that entity, that lasts for at least one (1) hour, and the member collecting the stipend is physically present for the entire meeting.

(a) *Meeting Stipends for Appointed Members.* Appointed members serving on entities shall be paid no more than one (1) meeting stipend per month when at least one (1) meeting is conducted

(b) *Meeting Stipends for Elected Members.* Elected members serving on entities shall be paid a stipend for each meeting held in accordance with this law.

105.13-5. *Oneida Judiciary Hearings.* A member of an entity may receive a Judiciary hearing stipend if the member's attendance at the Judiciary hearing is required by official subpoena.

105.13-6. *Hearings of an Entity.* A member of an entity that maintains hearing authority may obtain a hearing stipend for conducting hearings administered by the entity. A hearing consists of all functions related to the resolution of the matter notwithstanding the amount of time it takes to resolve the matter, including, but not limited to, any continuations of the hearing and decision drafting.

105.13-7. *Oneida Business Committee Meetings.* Up to two (2) members of an entity that attend the Oneida Business Committee meeting where the quarterly report of the entity is an agenda item, and present the quarterly report are eligible to receive a stipend.

105.13-8. *Other Stipends.* The Oneida Business Committee shall determine if, and when, any other stipends are appropriate to compensate members of entities for their official actions. All possible stipends shall be included in the Oneida Business Committee resolution which sets stipend amounts.

105.13-9. *Conferences and Training.* A member of any entity, elected or appointed, shall be

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reimbursed in accordance with the Nation's policy for travel and per diem, for attending a conference or training. Provided that:

(a) A member shall be eligible for a stipend for each full day the member is present at the conference or training, when attendance at the conference or training is required by law, bylaw or resolution.

(b) A member shall not be eligible for a conference and training stipend if that training is not required by law, bylaw or resolution.

(c) No stipend payments shall be made for those days spent traveling to and from the conference or training.

105.13-10. *Business Expenses*. All members of entities shall be eligible for reimbursement for normal business expenses naturally related to membership in the entity.

105.13-11. *Task Force and Ad Hoc Subcommittees*. Members of task force, ad hoc committees and subcommittees shall not be eligible for stipends unless specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

105.14. Confidential Information

105.14-1. All members of an entity shall maintain in a confidential manner all information obtained through their position on the entity. The Nation requires that all members of an entity who have access to the Nation's confidential information be subject to specific limitations in order to protect the interest of the Nation and ensure that no persons engaged in by the Nation, nor their relatives or associates, benefit from the use of confidential information.

(a) Confidential information shall be considered and kept as the private and privileged records of the Nation and will not be divulged to any person, firm, corporation, or other entity except by direct written authorization of the Oneida Business Committee.

(b) A member of an entity will continue to treat as private and privileged any confidential information, and will not release any such information to any person, firm, corporation, or other entity, either by statement, deposition, or as a witness, except upon direct written authority of Oneida Business Committee, and the Nation shall be entitled to an injunction by any competent court to enjoin and restrain the unauthorized disclosure of such information. Such restriction continues after termination of the relationship with the Nation and the entity.

(c) Upon completion or termination of his or her elected or appointed term of membership in an entity, for any cause whatsoever, the member of the entity will surrender to the Nation, in good condition, all records kept by the member of the entity.

(d) No member of an entity shall disclose confidential information acquired by reason of his other relationship or status with the Nation for his or her personal advantage, gain, or profit, or for the advantage, gain, or profit of a relative or associate.

105.14-2. Any records created or obtained while as an official of an entity are the property of the Nation and can only be removed or destroyed by approval from a majority vote of the entity at a duly called meeting. All removal or destruction of documents must be made in accordance with the Nation's laws and policies regarding open records and open meetings.

105.14-3. *Official Oneida Nation E-mail Address*. Each member of an entity shall be provided an official Oneida e-mail address upon election or appointment for the purpose of conducting business of the entity electronically.

(a) If a member is also an employee of the Nation, he or she shall receive a separate e-

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mail address from his or her regular work e-mail address.

(b) A member of an entity shall sign an acknowledgment form provided by the Nation's Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Nation's Secretary shall maintain a record of all such acknowledgment forms.

(c) A member of an entity shall not use any personal or work e-mail address to electronically conduct any business of the entity.

(d) Immediately upon receipt of notice of an entity vacancy, the Nation's Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position.

105.15. Conflicts of Interest

105.15-1. All members of an entity are required to adhere to the Nation's laws and policies governing conflicts of interest.

105.15-2. A member of an entity shall disclose a conflict of interest to the Nation's Secretary as soon as the conflict arises, and update a conflict of interest disclosure form with the Nation's Secretary on an annual basis.

(a) Upon receiving information of a potential conflict of interest, the Nation's Secretary shall request a determination from the Oneida Law Office whether further action must be taken by the Nation regarding the status of the official.

105.15-3. Due to the potential for a real or perceived conflict of interest to exist, political appointees and legislative assistants shall not serve on an appointed or elected entity.

105.16. Use of the Nation's Assets

105.16-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Oneida Nation. Bank accounts will be reflected on the Oneida Nation's books in accordance with Generally Accepted Accounting Principles.

105.16-2. Each member of an entity shall comply with the system of internal accounting controls sufficient to provide assurances that:

(a) all transactions are executed in accordance with management's authorization; and

(b) access to assets is permitted only in accordance with management's authorization; and

(c) all transactions are recorded to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or other applicable criteria.

105.16-3. Any evidence of noncompliance with any policy regarding the use of tribal assets shall be immediately reported to the Internal Audit department. If the Internal Audit department finds evidence of noncompliance they shall notify the Oneida Law Office, who will then make a determination of further action to be taken, if any.

105.17. Dissolution of an Entity

105.17-1. *Dissolution of a Task Force or Ad Hoc Committee.* A task force or ad hoc committee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, the materials generated by a task force or ad hoc committee shall be forwarded to the Business Committee Support Office for proper disposal within two (2) weeks of the dissolution.

105.17-2. *Dissolution of an Entity.* All other entities of the Nation shall be dissolved only by

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motion of the Oneida General Tribal Council or the Oneida Business Committee. The General Tribal Council shall have the authority to dissolve an entity created by the General Tribal Council or the Oneida Business Committee, and the Oneida Business Committee shall have the authority to dissolve an entity created by the Oneida Business Committee.

105.17-3. *Notice of Dissolution.* Within five (5) business days of the Oneida General Tribal Council or the Oneida Business Committee taking official action to dissolve an entity, the Oneida Business Committee shall provide the entity written notice of the dissolution.

105.17-4. *Management of Records and Materials.* All chairpersons and secretaries of dissolved entities shall be responsible for closing out open business of the entity and forwarding all materials and records to the Business Committee Support Office for proper storage and disposal within two (2) weeks of dissolution. The entity shall not alter or destroy any records. The Business Committee Support Office may utilize the assistance of the Records Management Department and/or any other appropriate department for the storage and disposal of the records and materials.

(a) The entity may request the Oneida Business Committee to grant a one (1) week extension of the time allowed to close out open business of the entity and forward all materials and records to the Business Committee Support Office.

105.18. Enforcement

105.18-1. Any member of an entity found to be in violation of this law may be subject to:

- (a) sanctions and penalties in accordance with any laws or policies of the Nation governing sanctions and/or penalties;
- (b) removal pursuant to any laws or policies of the Nation's governing removal, if a member of an elected entity; or
- (c) termination of appointment by the Oneida Business Committee, if a member of an appointed entity.

End.

Adopted - BC-08-02-95-A
Amended - BC-05-14-97-F
Emergency Amendments - BC-04-12-06-JJ
Amended - BC-09-27-06-E (permanent adoption of emergency amendments)
Amended – BC-09-22-10-C
Amended – BC-



LEGISLATIVE OPERATING COMMITTEE PUBLIC MEETING

Comprehensive Policy Governing Boards, Committees, and Commissions Amendments
Business Committee Conference Room-2nd Floor Norbert Hill Center
June 21, 2018 12:15 p.m.

Present: David P. Jordan, Kirby Metoxen, Clorissa N. Santiago, Brandon Wisneski, Lois Strong, Iyania Moore, Maryann Kruckeberg, Florence Petri, Lee Cornelius, Laura Manthe, Chad Wilson, Bonnie Pigman, Matthew W. Denny, Lori Elm, Reggie Doxtator, Patty Denny, Pat Lassila, Jennifer Falck, Laura Laitinen-Warren, Cathy Bachhuber, Rosa Laster, Maureen Perkins.

David P. Jordan : Good afternoon. The time is 12:15 p.m. and today's date is Thursday, June 21, 2018. I will now call to order the public meeting for the amendments for the Comprehensive Policy Governing Boards, Committees and Commissions.

The Legislative Operating Committee is hosting these public meetings to gather feedback from the community regarding the legislative proposal. The public meeting is not a question or answer period. All persons who wish to present oral testimony need to register and sign up on the sheet at the back of the room.

Written comments may be submitted to the Tribal Secretary's Support Office or the Legislative Reference Office in person, by US Mail, interoffice mail, e-mail or fax as provided on the public hearing meeting notice. These comments must be received by close of business on Thursday, June 28, 2018.

In attendance from the LOC is Kirby Metoxen and myself, David.

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

We will not begin today's public meeting for the amendments to the Comprehensive Policy Governing Boards, Committees and Commissions. This is a proposal to amend the law and update various requirements for the Nation's boards, committees and commissions including:

- Creation of a board, committee or commission;
- Applications and vacancies;
- Appointment or election to a board, committee or commission;
- Oath of office and the requirements for bylaws;
- Electronic polling and reporting requirements;
- Stipends and compensation;
- Confidential information, conflicts of interest and use of the Nation's assets;
- Dissolution of a board, committee or commission; and

- Enforcement.

First speaker, Lois, do you have any comments? Lois Strong.

Lois Strong: Inaudible.

David P. Jordan: They're not questions, it's only a comment period. So if you have comments about the law you can come up to the mike and it has to be recorded, so we need you up at the table here. You can sit down or you can stand by the mic.

Lois Strong: Inaudible.

David P. Jordan: Okay. Deanna Moore.

Iyania Moore : Inaudible.

David P. Jordan: Okay. Maryann Kruckeberg.

Maryann Kruckeberg: I'd like to amend the laws that some boards, committees and commissions have the same age group, age limit on it, because some are 18 and some are 21 to be on these boards, except for the ONCOA Board, which is 55. The other ones, some have 18 age limit to be on it, like the Trust Committee has age 18 and the Election Board has age 21. So what is the difference? Make the age the same on all boards, commissions and committees, except the ONCOA Board. Thank you.

David P. Jordan: Thank you. Next up would be Florence Petri.

Kirby Metoxen: A question for Mary Ann. Mary Ann did you say you wanted it 18 or 21, it doesn't matter.

Maryann Kruckeberg: Inaudible.

Kirby Metoxen: Okay.

Maryann Kruckeberg: Inaudible.

Kirby Metoxen: And it don't matter which one, just have them all the same.

Maryann Kruckeberg: Inaudible.

David P. Jordan: Okay Florence.

Florence Petri: Okay. I have a few concerns, one is, not sure now, but maybe there be some checking, but ONCOA is a board required by a grant. They have to have an advisory board and so is the Nutrition Board. So, I didn't see anything in here regarding, should those grants end is the boards end? That was one of my concerns. Also, another one I have is, it says the Oneida

Business Committee shall be responsible for drafting the initial bylaws of the entity. Shouldn't the entity initiate those bylaws and then followed up by the Business Committee? That's my opinion. Thank you.

David P. Jordan: Thank you Florence. Next up would be Lee Cornelius.

Lee Cornelius: Our office went over this and we had some concerns and questions that we had. First is 105.5-1. We were wondering if we could make the packets just be uniform. Have a section in there basically for the background investigation, instead of having separate applications. We're curious as to why the attendance requirements are due at the time of the application. We're wondering if we could attach a conflict of interest right away to the application instead of having a separate section for that.

105.5-2. We want a, we were wondering if we could have a strict deadline of 4:30 instead of the mailing five days later. And if we do have the mailing five days later, can we have the verbiage changed that we will have more time than five days to get it to BC for consideration, because obviously that would be the same day.

We would like the end of terms for elected positions to be the end of July. We already have terminology in there that states that they can stay on until the next person takes the oath, so we were wondering if we could end it on July 31st and just use that terminology and start with the new person.

We'd also like on 105.6-2 verbiage in there stating that if somebody does resign and they turn it to the board, that the board must notify the BCSO office.

105.6-4, we would like to change it from the Secretary shall post to the BCSO will post the vacancies. For (a) End of Term, Automatically it currently says 30 days. With our backwards scheduling and everything, we would like to extend that out to 60 days. And Resignation part (c), on that one it says no later than the first Oneida Business Committee meeting following the Secretary's receipt of notice of an effective resignation from the entity. We would like to see, change the verbiage to next available BC because if it's done after our deadline to turn in, the deadline for putting in a request then we won't be able to have time for it. And that seems to be it. Thank you.

David P. Jordan: All right, thank you Lee. Next up Laura Manthe, do you choose not to speak or

Inaudible.

David P. Jordan: No. Okay, then Chad Wilson.

Chad Wilson: Hi. So I just have a few things that I have a concern about. One thing I do like, board members staying in that way we have quorums, so I just want to put that out there. Back when Racquel was chair we weren't getting people elected and we were losing quorums, so by having a person stay in office until the next person takes their oath, I think that's a great change.

Under the Section 105.6(b), I think it's b. Okay, I got it wrong. It's talking about when the applications come in for appointment that the Business Committee will review the application and that the entity's chair will also have the opportunity to review that application and that the BC Support Office will make an appointment on the next BC meeting to discuss that appointment. Just like the BC, ERB would like all of the members to go ahead and look at that application and make that recommendation for the appointment, not just the chair. So, having it on the next meeting might not work out, not all people utilize electronic mail or social media and sometimes we can't get a hold of members on the telephone, so if we could have it at least a month out or into the next or after the next regularly scheduled meeting for that entity, that way we can have that recommendation move forward.

Just have one more that I saw. Okay, under 105.10-3(5). It's talking about audio recordings. An entity shall audio record all meetings. This section shall state how the entity will audio record meetings, and how the entity shall maintain the records. We've never had that before and generally when we talk about this stuff, I don't, there's a lot of sidebar, trying to remember, like what had happened, or different results and stuff and I don't know if that's necessarily something that you would want on the recording while they are trying to figure this stuff out. Generally if we put it, we put what is pertinent into the minutes and make it a motion and that way people know what it is. I know the board might not be comfortable with any kind of recordings that, if we have public meetings or public hearings, we always record those and we have those on file along with, back when we had hearing authority we have those also recorded, but for standard meeting, I don't see them wanting that, that the minutes would reflect what was going on in the meeting. Thank you.

David P. Jordan: Thank you. Next up would be Bonnie Pigman.

Bonnie Pigman: Hi, I'm Bonnie Pigman, General Tribal Council Member, 5361. I'm wanting to talk about the Purpose and Policy, Line 7, which specifically states "This law shall not apply to the Oneida Business Committee." I have a couple of questions and then some information and some things with the definitions. A question for me is why not? Where is it defined that the OBC is not considered a committee. I haven't seen anything that says they are not a committee. Everybody calls you the Oneida Business Committee. Question, what about the personnel appointed by the OBC. Are they considered exempted too? Again, why not? Under what separate definition do they not qualify as an appointed. I know there is a law out there or a policy out there about appointed political appointments. On August 13, 2014, included in an OBC motion there was language assigning the LOC to work to create laws and policies around elected officials and political appointments. This motion came about from an August 12, 2014, memo from HRD stating there was a lack of policy on law or law on Oneida Business Committee members and political appointments. I have not been able to find any documents that this assignment was accomplished. So I am looking for that to be a reason as to your, maybe your rational or if you haven't defined or done that work with LOC, I recommend that it be followed up on.

Line 59, which is in the definitions. An entity reads, means a board, committee or commission created by GTC or the Business Committee whose members are appointed by the OBC or

elected by the Nation's membership. How does the Business Committee not apply to this definition? Even the Constitution, Article III, Governing Body, Section 3 reads, the qualified voters of the Oneida Nation shall elect from among the enrolled Oneida Nation members aged 21 and over who physically reside within Brown and Outagamie Counties of Wisconsin, by secret ballot, a Chairman, Vice Chairman, Secretary, Treasurer and five council members who shall constitute the Oneida Business Committee. Again, committee and perform such duties as authorized by, may be authorized by General Tribal Council. I would strongly encourage this document be placed on the GTC agenda for further review and approval as I believe GTC should weigh in as to whether the Business Committee should be exempted in this law. Additionally, I believe most if not all Business Committees have to, or boards, committees and commissions have to report to the General Tribal Council. This document appears or appears to be attempting to circumvent that responsibility. Thank you.

David P. Jordan: Thank you. Next up would be Matt Denny.

Matt Denny: Inaudible.

David P. Jordan: Okay, Lori do you have any comments?

Lori Elm: Yes. Hello, I'm Lori Elm. Some of my comments are, one of them is, I was looking for authority of the boards, committees and commissions, because in my area currently in the past year, one of the commission's that's in our area was like, seemed to have jumped authority and kind of went into our actual day-to-day business, so I don't know if some type of stipulation can be put into there. I know there is a resolution for the BC that they need to stay out of the day-to-day business, but maybe there is something that can be put in here to put some type of guideline in that, so maybe there is some type of directive they have to take or if they have some type of complaint or process against the actual employees or the actual processes that they can put the steps in there on how to do it.

One of the other things I've seen was the conflict of interest. It was a little confusing for me because just this week in the mail or an e-mail I sent, we had to have all of our land commissioners sign a new conflict of interest, but when I was reading this it says then the application they are going to have a conflict of interest. So if they are going to have it on the application, the conflict of interest, couldn't there be some type of stipulation just put right on there, if you are elected that if you would, you know comply, or you would have to stay in compliance with the conflict of interest and if anything would change you have 30 days to report it to your board or to your, to the Secretary's office, just so then that needs so much paperwork.

One of the other things was I was a little confused on the termination and removal policy, but I talked to somebody just before I came and they told me the termination is actually different from the removal policy, because the removal policy was from the GTC directive, so I was wondering how can that happen, but it was the wording, it was a different effect. I understand it so but, this may be clarification on that too, that reason why it isn't going to GTC.

When they are doing the selection process, I've seen one part that said, I think it's Line 178, OBC may elect. I think they should just swipe that out if it says may. It should just be shall all

the time and if anything, one of my recommendation is, is if the OBC is voting in Executive Session on this, that the support staff don't even put names on them when they send the packets to you, so that is executive session, names, addresses, anything that, you know, you can tell who the person is and then when it does go to you that you automatically make three recommendations and if all the board is not there, it should say who is not voting so then it's just done. So then if say for example someone got appointed and they declined, then it would automatically go to the next one, next one, they would have that right in place right away.

Oath of office was another thing I had a question about. Over the years oath of offices were done right in the offices here and I think precedence was set years ago that and then they would approve it on the BC Agenda. Now lately, they have to be at a BC Meeting. One of the things I, a lot of times when everybody gets elected they have a big ceremony outside and everybody takes their oath of office outside. Nobody calls that to order or I mean it isn't a meeting. So that's my thing, maybe one thing they should look at is at least for the wording of that, is at least maybe if they do the oath of offices, they always have to be recorded on the next agenda or some type of, I'm not for sure about that, but that was just one thing that I noticed.

Oh, stipends was another one. The Election Board receives a hundred dollar stipend to go to the GTC Meetings. But at the same time they are actually doing the same thing as when they are doing a voting day. Now on a voting day they get paid \$10.00 an hour. So, but it's not in here about the Election Board stipend, so my thing is, what's the difference of the hundred dollars and the ten dollars, they are still doing the same process.

And the next thing on that is the cost of living for that ten dollars an hour never went up from I think 2002 or 2005, so maybe that's something else to look at, as that is still at ten dollars an hour for that. But, so I am just wondering how come it isn't at the GTC Meeting, you get paid just like you're acting like a regular election official, because that's what you're doing, is you're counting votes. There ain't no difference than when you are sitting at the polling site and you're counting votes, so that's a question I brought up.

And then the other thing is the e-poll. Just to make sure that they are recorded in the minutes after, with the results and make sure that it has who was there, who was not, the abstentions and I think there is one more. If I have anything else then I'll just write them down. Do I still have to write these down then to you too?

David P. Jordan: No, but if you have more comments that you want to put in writing you have until Thursday, July 28th at 4:30 p.m.

Lori Elm: All right, thank you.

David P. Jordan: Thank you. Okay, Reggie I know your name is not on here but I just wanted to know if you had any comments? None, okay. Pat, do you have any comments?

Pat Lassila: Good afternoon. I just needed some clarification in regards to individuals that get elected to on a board, committee or commission, in here it's talking about receiving an e-mail address, that you have to have a tribal e-mail address and you cannot use a personal e-mail

address. What do you do with individuals that are not employees of the Tribe? So you are going to make it available to everyone is my question. Before we couldn't get it, like I've been on this, the ONCOA Board for three years now and I'm using a personal e-mail, because they said I couldn't have one because I'm not an employee of the Tribe. So, are you going to make us, make it available then for those who are not employees of the Tribe?

David P. Jordan: Okay, thank you. This is just a comment period, so we'll take that comment into consideration and it will be in the packet. Okay, did I forget anybody? Patty do you have any comments? No. Does anybody else that I missed have any comments?

Okay, with no more comments. Wait, okay.

Lois Strong: Good afternoon, Lois Strong and the question I have is around the, not the question, the comment I have pertains to the political appointees and it states in there what has to be done with the political appointees, but I believe the definition that is out there is the political appointees are those assistants working directly with BC members, but there are some political appointees out there, it says there are three in this document, what is the status of those? How do you explain those? Are they going to be ongoing, not ongoing and how do you work on that process to define them or how are you going to work on it to define it?

David P. Jordan: Okay, thank you. If there be no more comments, then this public meeting will come to an end. The Comprehensive Policy Governing Boards, Committees and Commissions will close at 12:39 p.m.

Written comments may be submitted up until close of business day on Thursday, June 28, 2018. Thank you. Oh, June 28th, sorry.

Inaudible.

David Jordan: Correct. Thanks everybody for coming.

-End of Meeting-

TO: Lisa Summers, Tribal Secretary
FROM: Oneida Trust Enrollment Committee
DATE: June 21, 2018
SUBJECT: Written comment regarding Comprehensive Policy Governing Boards,
Committees and Commissions

In addition to any comments presented at the public meeting, the Oneida Trust Enrollment Committee submits the following comment:

The Oneida Trust Enrollment Committee (OTEC) was established by the people (GTC) and for the people. The OTEC is accountable to GTC. The OTEC is an elected body and an autonomous body. The amendments to the Comprehensive Policy Governing Boards, Committees and Commissions are an overreach of authority by the Oneida Business Committee (OBC).

Responding to the details of the proposed law would be inappropriate because it would suggest that we are negotiating and commenting on the proposed changes. If anything, operational changes must be negotiated with the OBC and the OTEC and confirmed by GTC. The inclusion of elected boards, commissions and committees will create additional political rife in the community.

If you have any questions or concerns with this public comment, please contact OTEC Chairwoman, Bobbi Webster, at (920) 869-4270.

Signed on behalf of the Oneida Trust Enrollment Committee,



Elaine Skenandore-Cornelius,
Oneida Trust Enrollment Committee Secretary

Date: 6/22/18

From: Jolene D. Hensberger
Sent: Thursday, June 28, 2018 4:21 PM
To: Clorissa N. Santiago
Cc: Todd Hill
Subject: RE: Boards, Committees, and Commissions

Hi Clorissa,

Recommendations:

Trainings: The School Board members should be able to attend trainings relating to education for both children and adults, such as the Conscious Discipline Training coming up at the Radisson. School Board members are encouraged, by many entities, to be present for this training but this is a two-day training, which means that the members will need to take off of work and possibly have to use their personal / vacation time.

Electronic Polling: School Board members ratify at next meeting

Stipends: Remain the same of \$75.00 for each Board member, including Chair, if not more for any meeting of 1 hour or longer. Include clarification of what is considered "out of town" training, i.e. Radisson or at other place of location other than regular meeting place. School Board members have to take off of work and use vacation / personal time to attend trainings which are usually one full day to two days.

Bylaws – School Board utilizes Policies and Procedures

Using Personal or Vacation Time – Some emergency meetings require Board members to have to take off of their employment to attend meetings. Is there a procedure or exception that will allow School Board members to not have to use personal or vacation time to attend urgent meetings that cannot wait?

To avoid delays in the Stipend Payment Process – Stipend payment process for the School Board is recommended to remain the same. The School Board currently prints out Stipend Form Request, the draft Minutes, Sign-In Sheet, then has it signed by the authorizing representative, and then forwarded to the ONSS Account Clerk to submit to Accounts Payable.

Thank you

From: Clorissa N. Santiago
Sent: Wednesday, June 27, 2018 12:30 PM



Legislative Operating Committee
July 18, 2018

Military Service Employee Protection Act Emergency Amendments

Submission Date: 4/18/18	Public Meeting: n/a
LOC Sponsor: David P. Jordan	Emergency Enacted: 4/25/18

Summary: *Request to amend this law on an emergency basis was due to action taken through resolution BC-04-11-18-A by the Oneida Business Committee which dissolved the Personnel Commission and directed the Legislative Operating Committee to develop and present emergency legislative amendments to fully address the impact of this resolution by the April 25, 2018, Oneida Business Committee meeting for consideration of adoption.*

4/18/18 LOC: Motion by Kirby Metoxen to add to the Active Files list as a high priority with David P. Jordan as the Sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

4/18/18: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Jo Anne House, Tani Thurner, Laura Laitinen-Warren. The purpose of this work meeting was to discuss an update and plan for the emergency amendments.

4/20/18: E-Poll conducted.

4/25/18 OBC: Motion by David P. Jordan to adopt resolution 04-25-18-D Military Service Employee Protection Act Emergency Amendments, seconded by Ernie Stevens III. Motion carried unanimously.

5/2/18/ LOC: Motion by Ernest Stevens III to enter the Military Service Employee Protection Act Emergency Amendments E-poll into the record; seconded by Kirby Metoxen. Motion carried unanimously.

5/16/18: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Laura Laitinen-Warren. The purpose of this work meeting was to review and discuss the drafted permanent amendments. Drafting attorney will update the draft.

6/6/18 LOC: Motion by Ernest Stevens III to accept the draft of the Military Service Employee Protection Act with the addition of the word “unit” in front of roll on line 90 and direct that a legislative analysis be completed; seconded by Jennifer Webster. Motion carried unanimously.

6/20/18 LOC: Motion by Jennifer Webster to accept the legislative analysis for the Military Service Protection Act amendments and defer to a work meeting; seconded by Ernest Stevens III. Motion carried unanimously.

6/22/18: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Brandon Stevens, Clorissa Santiago, Brandon Wisneski, Cathy Bachhuber, Laura Laitinen-Warren. The LOC reviewed the legislative analysis and the considerations. Drafting attorney will update draft based on LOC's decisions.

Next Steps:

- Approve the public meeting packet and forward the Military Service Employee Protection amendments to a public meeting to be held on August 16, 2018.
- Forward the Military Service Employee Protection amendments to the Finance Office for a fiscal analysis.

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Title 2. Employment – Chapter 213 MILITARY SERVICE EMPLOYEE PROTECTION

~~Sot@H Laotilhwisa>@tsla>~~

213-1. Purpose and Policy	213-6. Reemployment Rights of Persons who Serve in the Military
213-2. Adoption, Amendment, Repeal	213-7. Reemployment Positions
213-3. Definitions	213-8. Benefits of Persons Absent from Employment for Military Service
213-4. Character of Service	213-9. Health Plans
213-5. Prohibition of Discrimination Against Persons Who Serve in the Military	213-10. Retirement Plans
Prohibited	213-11. Enforcement of Employment or Reemployment Rights

213.1. Purpose and Policy

213.1-1. ~~—Purpose.~~ The purpose of this law is to minimize the disruption to the lives of employees of the Nation serving in the military as well as to the Nation by providing for the prompt reemployment of such persons upon completion of such service; and to prohibit discrimination against people because they serve in the military.

213.1-2. ~~—Policy.~~ It is the policy of the Nation to reemploy persons who return from military service in the same position, or a substantially similar position, of employment the person held prior to leaving for military service.

213.2. Adoption, Amendment, Repeal

213.2-1. ~~—This law was adopted by the Oneida Business Committee by resolution BC-10-24-07-E and amended by BC-__-__-__-__.~~

213.2-2. ~~—This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.~~

213.2-3. ~~—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.~~

213.2-4. ~~—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.~~

213.2-5. ~~—This law is adopted under authority of the Constitution of the Oneida Nation.~~

213.3. Definitions

213.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Area Manager” means the supervisor of the supervisor of an employee who is protected under this law, or, in other words, two levels of supervision in the chain of command above the protected employee, or an individual designated to be the Area Manager by the Division Director ~~(or, in divisions where there is no director, the General Manager)~~ and approved by the Human Resources Department Manager ~~(or designee).~~

(b) “Benefit” means any advantage, profit, privilege, gain, or interest (other than wages or salary) that accrues by reason of an employment agreement or an employer policy, plan, or practice and includes rights and benefits under a retirement plan, a health plan, insurance coverage, incentives, unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

(c) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m.,

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38 excluding

39 holidays recognized by the Nation.

40 (d) “Employee” means any person employed by the Oneida Nation.

41 (e) “Health plan” means an insurance policy or contract or other arrangement under
42 which health services for individuals are provided or the expenses of such services are
43 paid.

44 (f) “Military” means the Armed Forces, the Army National Guard and the Air National
45 Guard when engaged in active duty for training, inactive duty training, or full-time
46 National Guard duty, the commissioned corps of the Public Health Service, and any other
47 category of persons designated by the President in time of war or national emergency.

48 (g) “Nation” means the Oneida Nation, ~~as employer through its divisions, departments,~~
49 ~~programs, enterprises or other subdivisions of the Nation.~~

50 (h) “Qualified,” with respect to an employment position, means having the ability to
51 perform the essential tasks of the position.

52 (i) “Reasonable efforts”, in the case of actions required of the Nation under this law,
53 means actions, including providing training, that do not place an undue hardship on the
54 Nation.

55 (j) “Seniority” means longevity in employment together with any benefits of employment
56 which accrue with, or are determined by, longevity in employment.

57 (k) “Service” or “service in the military” means the performance of duty on a voluntary
58 or involuntary basis in a branch of the military and includes active duty, active duty for
59 training, initial active duty for training, inactive duty training, full-time National Guard
60 duty, the time a person is absent from a position of employment for the purpose of an
61 examination to determine the fitness of the person to perform any such duty, and the
62 period for which a person is absent from employment for the purpose of performing
63 funeral honors duty.

64 (l) “Trial Court” means the Court of the Oneida Judiciary where evidence and testimony
65 are first introduced, received, and considered. The Oneida Judiciary was established by
66 Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial
67 authorities and responsibilities of the Nation.

68 (m) “Undue hardship”, in the case of actions taken by the Nation, means actions
69 requiring significant difficulty or expense, when considered in light of:

70 (1) the nature and cost of the action needed under this law;

71 (2) the overall financial resources of the department involved in the provision of
72 the action; the number of persons employed within the department; the effect on
73 expenses and resources, or the overall impact of such action upon the operation of
74 the department;

75 (3) the financial resources of the Nation; the size of the Nation with respect to
76 how many employees and departments it has; and

77 (4) the type of operation(s) of the Nation, including the composition, structure,
78 and functions of the work force of its departments.

80 **213.4. Character of Service**

81 213.4-1. Those who serve in the military are ineligible to receive benefits under this law if they:

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- (a) receive a dishonorable discharge or a bad conduct discharge; ~~or~~
- (b) receive a dismissal from a general court-martial, or by order of the President; or
- (c) are dropped from the unit rolls because they have been:
 - (1) absent without authority for at least three months; ~~or~~
 - (2) sentenced by a court-martial to confinement for more than six (6) months and have served at least six (6) months; or
 - (3) sentenced to confinement in a penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

213.5. Prohibition of Discrimination Against Persons Who Serve in the Military ~~Prohibited~~

213.5-1. ~~The Nation~~ shall not deny employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of a person's membership, application for membership, performance of service, application for service, or obligation to perform service in the military.

213.5-2. ~~The Nation may not discriminate in employment against or take any adverse employment action against anyone because such person has exercised a right or taken an action to enforce a protection afforded under this law, has testified or otherwise made a statement in or in connection with any proceeding under this law, or has participated in an investigation under this law;~~

- (a) exercised a right or taken an action to enforce a protection afforded under this law;
- (b) has testified or otherwise made a statement in or in connection with any proceeding under this law; or
- (c) has participated in an investigation under this law.

213.5-3. ~~The Nation shall not be considered to have engaged in a prohibited action if the same action would have been taken regardless of an employee's military status.~~

213.5-4. ~~Section 213.5-1 and section 213.5-2~~ The prohibition of discrimination against persons who serve in the military or have exercised a right under this law, shall apply to any position of employment, including a seasonal, temporary, or a limited term position ~~that is described in section 213.6-4(c).~~

213.6. Reemployment Rights of Persons Who Serve in the Military

213.6-1. — Reemployment Rights. Any person who takes a leave of absence from an employment position to serve in the military shall be entitled to the reemployment benefits and other employment benefits of this law if the following conditions are met:

- (a) the Nation receives advance written notice of such service as soon as practicable after the employee receives notice;
 - (1) Advance written notice shall not be required if it is precluded by military necessity or, under all of the relevant circumstances, the giving of notice is otherwise impossible or unreasonable.
- (b) the cumulative length of the absence and of all previous absences with the Nation by reason of service in the military does not exceed five (5) years; and
- ~~(c) except as provided in section 213.6-6,~~ (c) the person reports to the Nation in accordance with section 213.6-5, this law.

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~~213.6 2. No notice is required under section 213.6 1(a) if it is precluded by military necessity or, under all~~ 213.6-2. Calculating the Cumulative Length ~~of the relevant circumstances, the giving of notice is otherwise impossible or unreasonable.~~

~~213.6 3.~~ Absence. When calculating the length of absence ~~under section 213.6 1(b)~~ the Nation shall not include any service:

(a) that is required, beyond five (5) years, to complete an initial period of obligated service;

(b) during which such person was unable to obtain orders releasing such person from a period of service in the military before the expiration of such five (5) year period and such inability was through no fault of such person;

(c) performed as required pursuant to training requirements for reservists and National Guard members;

(d) performed by a member of the military service who is:

(1) ordered to or retained on active duty involuntarily during domestic emergency or national security related situations;

(2) ordered to or retained on active duty under any provision of law because of a war or national emergency declared by the President of the United States or the Congress;

(3) ordered to active duty in support of an “operational mission”, without his or her consent;

(4) ordered to active duty in support of a “critical mission or requirement” in times other than war or national emergency and when no involuntary call up is in effect; or

(5) called into Federal service by the President as a member of the National Guard to suppress an insurrection, repel an invasion, or execute the laws of the United States.

~~213.6-4. Nation's~~ 3. Nation's Right to Not Reemploy. ~~The~~ Certain circumstances exist in which the Nation is ~~shall~~ not be required to reemploy a person under this law ~~if:~~

~~(a) The Nation is not required to reemploy a person under this law if one of the following circumstances are met:~~

(1) circumstances have so changed as to make such reemployment impossible or unreasonable;

~~(b) in the case of a person entitled to reemployment under section 213.7 1(c), 2103.7 1(d), or section 213.7 (2);~~ such employment would impose an undue hardship on the Nation; or

~~(e)3~~ (3) the employment from which the person leaves is for a brief, non-recurrent period (i.e.— seasonal, temporary, limited term) and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

~~(d)—the(b)~~ The Nation shall have the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or non-recurrent nature of the employment.

~~213.6 5. Except as provided under section 213.6 6, an employee referred to in section 213.6~~ +213.6-4. Notification of Intent to Return. An employee who has taken a leave of absence from

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their position of employment shall notify the Nation of the person's intent to return to a position of employment within ninety (90) days of separation of active duty service and within thirty-one (31) days from completion of training for reservists. The Nation shall, as soon as practicable after receiving notice, make arrangements with the employee for an employment return date.

~~213.6-6.~~ (a) Exception for Injury and/or Illness. A person who is hospitalized for, or recovering from, an illness or injury incurred in, or aggravated during, the performance of service in the military shall, at the end of the period that is necessary for the person to recover from such illness or injury notify the Nation of the person's intent to return to a position of employment. Such period of recovery may not exceed two (2) years, unless the minimum time required to accommodate the circumstances beyond such person's control is longer than two (2) years, making reporting within the period specified impossible or unreasonable.

~~213.6-7.~~ (b) Required Documentation of Intent to Return. A person who has notified the Nation of the person's intent to return to a position of employment shall, upon the request of the Nation, provide documentation to establish that:

(1) the notification is timely;

(2) the cumulative length of absence requirements have not been exceeded, except as permitted under this law; and

(3) the person's entitlement to benefits has not been terminated due to character of service.

213.6-5. Failure to Report for Reemployment. A person who fails to report for reemployment within the appropriate period shall not automatically forfeit such person's entitlement to ~~the any~~ employment benefits ~~referred to in section 213.6-1,~~ but shall be subject to the ~~Nation's~~ Nation's policies and procedures pertaining to discipline with respect to absence from scheduled work.

~~213.6-8. A person who has notified the Nation of the person's intent to return to a position of employment in accordance with section 213.6-5 shall, upon the request of the Nation, provide documentation to establish that:~~

~~(a) the notification is timely;~~

~~(b) the time limits in section 213.6-1(b) have not been exceeded, except as permitted under section 213.6-3; and~~

~~(c) the person's entitlement to benefits has not been terminated pursuant to section 213.4.~~

~~213.6-9.~~ 213.6-6. The timing, frequency, and duration of a person's training or service, or the nature of such training or service (including voluntary service) in the military, shall not be a basis for denying protection of this law if the service does not exceed the limitations ~~set forth under section 213.6-3~~ for calculating a leave of absence, and the notice and notification requirements ~~established in this section~~ are met.

~~213.6-10.~~ 7. The Nation's Human Resources Department shall inform employees of their rights, benefits, and obligations under this law and shall provide assistance to employees with respect to the employment and reemployment benefits to which they are entitled under this law.

213.7. Reemployment Positions

213.7-1. A person entitled to reemployment ~~under section 213.6~~ shall be promptly reemployed in a position of employment in accordance with the following order of priority:

(a) In the case of a person whose period of service in the military was for less than

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ninety-one (91) days, the person is entitled to reemployment:

(1) in the position which the person would have been employed if the continuous employment of such person had not been interrupted by such service, ~~the duties of which~~ as long as the person is qualified to perform the duties of that position; or

(2) in the position which the person was employed on the date of the commencement of the service in the military, only if the person is not qualified to perform the duties of the position ~~referred to under section 213.7-1(a)(1)~~ which the person would have been employed if the continuous employment of such person had not been interrupted by such service after reasonable efforts by the Nation are made to qualify the person for that position.

(b) In the case of a person whose period of service in the military was for more than ninety (90) days, the person is entitled to reemployment:

(1) in the position which the person would have been employed if the continuous employment of such person had not been interrupted by such service, or a position of like seniority, status and pay, ~~the duties of which~~ as long as the person is qualified to perform the duties of that position; or

(2) in the position which the person was employed on the date of the commencement of the service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of the position ~~referred to under section 213.7-1(b)(1)~~ the person would have been employed if the continuous employment of such person had not been interrupted by such service, after reasonable efforts by the Nation are made to qualify the person for that position.

(c) In the case of a person who has a disability incurred in, or aggravated during, service, and after reasonable efforts by the Nation to accommodate the disability, is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the Nation had not been interrupted by such service, the person is entitled to reemployment:

(1) in any other position which is equivalent in seniority, status, and pay, ~~the duties of which~~ as long as the person is qualified to perform the duties of that position or can become qualified to perform with reasonable efforts by the Nation; or

(2) in a position which is the nearest approximation to ~~a~~ any other position ~~referred to which is equivalent in (1) in terms of~~ seniority, status, and pay consistent with such person's case.

(d) In the case of a person who is not qualified to become reemployed ~~under section 213.7-1(a)-(e)~~ and cannot become qualified, even with reasonable efforts by the Nation, the person is entitled to reemployment in any other position which is the nearest approximation to a position which such person is qualified to perform, with full seniority.

213.7-2. If two or more persons are entitled to reemployment in the same position and more than one of them has reported for reemployment, the person who left the position first shall have the prior right to reemployment in that position.

~~213.7-3. A(a) The person entitled to reemployment~~ who is not reemployed, because of ~~section 213.7-2~~ the other person entitled to reemployment left the position first, shall be

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entitled to reemployment in any other position ~~referred to in~~ accordance with section 213.7-1, remaining consistent with the circumstances of such person's case, in the order of priority set out in the appropriate section, with full seniority.

213.8. Benefits of Persons Absent from Employment for Military Service

213.8-1. *Benefits and Seniority.* A person who is reemployed under this law is entitled to the seniority and other benefits determined by seniority that the person had on the date of the commencement of service in the military, plus the additional seniority and benefits that such person would have attained if the person had remained continuously employed.

(a) A person on leave of absence for military service shall not be entitled to any benefits to which the person would not otherwise be entitled if the person had remained continuously employed.

213.8-2. *Leave of Absence.* A person who is absent from a position of employment by reason of service in the military shall be:

(a) deemed to be on a leave of absence while performing such service; and

(b) entitled to other benefits not determined by seniority as are generally provided by the Nation to employees having similar seniority, status, and pay who are on leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.

213.8-3. *Intent Not to Return to Employment.* A person who

~~(a)~~ is absent from an employment position because of service in the military; and

~~(b)~~ knowingly provides written notice of intent not to return to a position of employment after service in the military, is not entitled to benefits under this section.

The Nation has the burden of proving that a person knowingly provided written notice of intent not to return to a position after service in the military and was aware of the specific benefits to be lost.

~~213.8-4. A person on leave of absence for military service shall not be entitled to any benefits to which the person would not otherwise be entitled if the person had remained continuously employed.~~

~~213.8-5.~~ *213.8-4. Funded Benefits.* A person may be required to pay the Nation's cost, if any, of any funded benefit continued to the extent other employees on leave of absence are so required.

~~213.8-6.~~ *5. Termination of Employment.* A person who is reemployed under this law shall only be terminated in accordance with the Nation's laws and policies governing employment.

~~213.8-7.~~ *6. Use of Vacation and Personal Accruals.* Any person whose employment is interrupted by military service shall be permitted to use, during such period of service, any vacation or personal time accrued by the person before the commencement of such service. The Nation ~~may~~ shall not require any person to use vacation or personal time during such period of service.

~~213.8-8.~~ *7. Funeral Honors Duty.* The Nation shall grant an employee who is a reserve member an unpaid temporary leave of absence in order to perform funeral honors duty. Employees may use vacation or personal time to perform funeral honors duty if eligible.

213.9. Health Plans

213.9-1. *Continuation of Health Plan Coverage.* If a person, or a person's dependents, has

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coverage under a health plan through the Nation and such person is on a leave of absence for military service, the plan shall provide that the coverage may be continued. ~~The maximum period of coverage of a person and the person's dependents shall be the lesser of:~~

(a) The maximum period of coverage of a person and the person's dependents shall be the lesser of:

(1) the eighteen (18) month period beginning on the date on which the person's absence begins; or

(b) the day after the date on which the person fails to return to a position of employment, as determined under section 213.6-5 in accordance with the notification requirements for the person's intent to return to a position of employment with the Nation.

213.9-2.(b) A person who elects to continue health-plan coverage may be required to pay not more than the amount paid by other employees who take a leave of absence, except that in the case of a person who serves in the military for less than thirty-one (31) days, such person may not be required to pay more than the employee share, if any, for such coverage.

~~213.9-3~~ 2. If a person's health plan is terminated by reason of military service, an exclusion or waiting period may not be imposed in connection with the reinstatement of such coverage upon reemployment if an exclusion or waiting period would not have been imposed had coverage of such person not been terminated as a result of such service.

(a) This shall apply to the person who is reemployed and to his or her dependents who are covered under the plan with the reinstatement of coverage of such person.

(b) This shall not apply to the coverage of any illness or injury incurred in, or aggravated during, performance of service in the military.

213.10. Retirement and Pension Plans

213.10-1. Accrual Benefits under a Retirement or Pension Plan. Each period served by a person in the military shall, upon reemployment, be deemed to constitute service for the purpose of determining the ~~nonforfeitability~~ non-forfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under a retirement or pension plan.

(a) When a person is absent from a position of employment for more than ninety (90) days and is reemployed, the Nation may require documentation before treating the person as not having incurred a break in service for retirement or pension plan purposes under this section.

213.10-2. Employee Contributions to a Retirement or Pension Plan. A person reemployed under this law shall be entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals if the person makes payment to a retirement or pension plan with respect to such contributions or deferrals.

(a) If the employee makes up the contributions, the Nation shall make up any required matching contributions.

(b) No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the Nation throughout the period of service.

(c) Any payment to a retirement or pension plan shall be made during the period

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beginning with the date of reemployment and whose duration is three (3) times the period of the person's service in the military, such payment period not to exceed five (5) years.
~~213.10-3.~~ 213.10-3. Calculation of Employee's Compensation During Period of Service. For purposes of computing the Nation's liability or the employee's contributions, the employee's compensation during the period of service shall be computed:

(a) at the rate the employee would have received compensation but for the period of service; or

(b) in the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the twelve (12) month period immediately preceding such period ~~(, or, if shorter, the period of employment immediately preceding such period).~~

213.10-4. *Pension Plan.* When a person who participates in a pension plan is reemployed after a period of military service, the Nation shall be liable to the pension plan for funding any obligation to provide the benefits the employee would have received had they not taken a leave of absence.

(a) The Nation shall allocate the amount of the Nation's contribution for the person in the same manner and to the same extent the allocation occurred for other employees eligible for the pension plan during the period of service.

(b) For purposes of determining the amount of such liability and any obligation of the pension plan, earnings and forfeitures shall not be included.

213.11. Enforcement of Employment or Reemployment Rights

213.11.1. Notification of Denial. The Nation shall notify, in writing, any person who has been denied employment, reemployment, or benefits under this law.

213.11-2. Basis for a Complaint. A person may file a complaint whenever such person claims that:

(a) he or she is entitled to employment or reemployment rights or benefits with respect to employment by the Nation; or

(b) the Nation has failed or refused to comply with the provisions of this law.

213.11-3. ~~Such~~ Requirements for Filing a Complaint. A complaint shall:

(a) be in writing;

(b) contain a summary of the allegations that form the basis for the complaint; and

(c) be filed with the person's area manager and the Nation's Human Resources Manager ~~(, or designee),~~ within ten (10) business days from the day the person received a denial of employment and/or benefits by the Nation.

~~213.11-4.~~ 213.11-4. Investigation by the Area Manager. The area manager shall conduct an investigation of the basis of the complaint.

(a) If the area manager determines that the action alleged in such complaint occurred, the area manager shall attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this law.

~~213.11-5.~~ (b) If the efforts of the area manager do not resolve the complaint within ten (10) business days from the receipt of the employee's complaint, the complainant shall be notified of the results of the area manager's investigation and ~~the complainant's~~

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entitlement to refer the complaint to the Trial Court.

(c) One extension of no more than five (5) business days may be requested of and granted by the Human Resources Manager ~~(or designee)~~ at his or her discretion, to the area manager for time to resolve the complaint.

213.11-~~65~~. Appeal of the Area Manager's Decision. If an employee appeals the area manager's decision, the appeal must be filed with the Trial Court within ten (10) business days of the employee's receipt of the Area Manager's decision. The Trial Court shall notify the Human Resources Manager ~~(or designee)~~ within one (1) business day when an employee files an appeal.

213.11-~~76~~. Remedies. In any action relating to this law, relief may be awarded as follows:

(a) Require the Nation to comply with the provisions of this law; and/or

(b) ~~Require the Nation to compensate the person for any loss of wages or benefits suffered by reason of the Nation's~~ Nation's failure to comply with the provisions of this law.

213.11-~~87~~. Any compensation awarded shall be in addition to, and shall not diminish, any of the other benefits provided for under this law.

End.

Adopted - BC-10-24-07-E

Emergency Amended – BC-04-25-18-D

Amended – BC-__-__-__-__

ONEIDA NATION PUBLIC MEETING NOTICE

LEGISLATIVE OPERATING COMMITTEE
WWW.ONEIDA-NSN.GOV/GOVERNMENT

Thursday, August 16, 2018, 12:15pm

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

AMENDMENTS TO MILITARY SERVICE

EMPLOYEE PROTECTION LAW



The purpose of this law is to minimize the disruption to the lives of employees of the Nation serving in the military as well as to the Nation by providing for the prompt reemployment of such persons upon completion of such service; and to prohibit discrimination against people because they serve in the military.

Some of the proposed amendments will:

1. Permanently adopt the emergency amendments to the Law, adopted through Oneida Business Committee resolution BC-04-25-18-D, which replace any reference to the Oneida Personnel Commission with a reference to the Judiciary's Trial Court.
2. Remove unnecessary internal citations throughout the Law.
3. Clarify and update language throughout the Law.

PUBLIC COMMENTS PERIOD CLOSSES THURSDAY, AUGUST 23, 2018

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



-PUBLIC MEETING PACKETS ARE AVAILABLE AT-
www.oneida-nsn.gov/Register/Public Meetings or contact Oneida Nation Legislative Reference Office located
in the Norbert Hill Center, PO Box 365, Oneida, Wisconsin 54155
Email: LOC@oneidanation.org Phone: 920-869-4376



AMENDMENTS TO MILITARY SERVICE EMPLOYEE PROTECTION ACT LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: OBC	SPONSOR: David P. Jordan	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	To permanently transfer the Personnel Commission's responsibilities under this law regarding appeals to the Oneida Judiciary Trial Court.		
Purpose	The purpose of the Military Service Employee Protection Act is to minimize disruption of the lives of Tribal employees serving in the military, to provide for prompt reemployment of these individuals upon completion of their service, and to prevent discrimination against people who serve in the military [see <i>Military Service Employee Protection Act</i> , 2 O.C. 213.1-1].		
Affected Entities	Oneida Judiciary, Oneida Human Resources Department, Oneida Personnel Commission, all Oneida Nation employees and job applicants who serve in the military.		
Affected Legislation	Military Service Employee Protection Act.		
Enforcement/Due Process	Individuals denied employment or reemployment under this law may file a complaint with their area manager and appeal the area manager's decision to the Trial Court [see <i>Military Service Employee Protection Act</i> , 2 O.C. 213.11]		
Public Meeting	A public meeting has not yet been held.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. On April 11, 2018, the Oneida Business Committee (OBC) dissolved the Oneida Personnel Commission and directed that the Commission's hearing authority be transferred to the Oneida Judiciary [see *BC Resolution 04-11-18-A*].
- B. The Oneida Personnel Commission is included in the appeals process of this law. Now that the Personnel Commission is dissolved, amendments are needed to transfer the Personnel Commission's responsibilities under this law to the Oneida Judiciary.
- C. On April 25, 2018, the Oneida Business Committee adopted emergency amendments to transfer the Personnel Commission's hearing authority under this law to the Oneida Judiciary Trial Court. The emergency amendments expire on October, 25, 2018 and may be renewed for one additional six-month period [see *BC Resolution 04-25-18-D*].
- D. Permanent adoption of these amendments will ensure that the Nation's employees and job applicants who serve in the military will continue to have a venue to appeal denial of employment, reemployment or benefits under this law.

SECTION 3. CONSULTATION AND OUTREACH

- A. The Judiciary Law, Personnel Policies and Procedures, Employee Protection Policy, and Military Service Employee Protection Act were reviewed in drafting this analysis.
- B. Personnel Commission staff were consulted regarding the number of pending cases and filing fees.

SECTION 4. PROCESS

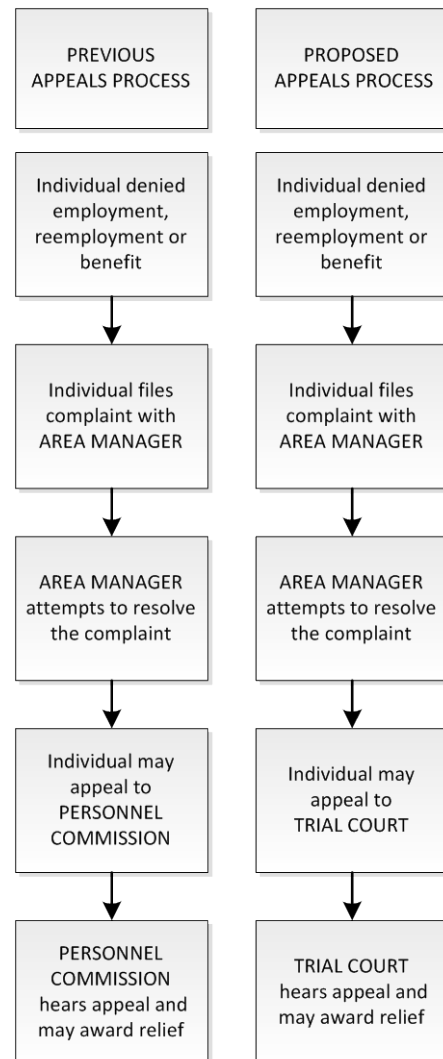
- A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- B. This law was originally added to the Active Files List as emergency amendments on 4/18/2018. Emergency amendments were adopted by the BC on 4/25/2018. The emergency amendments expire on 10/25/18 and may be renewed for one additional six-month period.
- C. A public meeting and fiscal impact statement was not required for the adoption of emergency legislation. However, a public a meeting and fiscal impact statement is now required to consider this law for permanent adoption.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. ***Replace Personnel Commission with Trial Court in Appeals Process.*** If a member of the military feels they have been wrongly denied employment, reemployment, or benefit under this law, they can file a complaint with the Area Manager who oversees that department. If they are unsatisfied with the Area Manager's decision, they can file an appeal. Originally, ***Chart 1. Appeals Process***

these appeals were filed with the Personnel Commission. Instead, appeals will now be filed with the Judiciary Trial Court. The appeals process in this law has been revised to remove references to the Oneida Personnel Commission and replace them with the Trial Court:

- i. ***Definitions.*** A definition for "Trial Court" has been added [see *Military Service Employee Protection Act*, 2 O.C. 213.3(l)].
- ii. If the area manager does not resolve a complaint within ten (10) business days, an individual may now take their complaint to the Trial Court, rather than the Personnel Commission [see *Military Service Employee Protection Act*, 2 O.C. 213.11-4(B)].
- iii. If an employee appeals the area manager's decision under this law, the appeal must now be filed with the Trial Court instead of the Personnel Commission [see *Military Service Employee Protection Act*, 2 O.C. 213.11-5].
- iv. The Trial Court, rather than the Personnel Commission, must notify the Human Resources Department within one (1) business day when an employee files an appeal [see *Military Service Employee Protection Act*, 2 O.C. 213.11-5].
- v. The Trial Court, rather than the Personnel Commission, may award relief by requiring the Nation to comply with the provisions of this law or by requiring the Nation to compensate for any back pay or loss of benefits [see *Military Service Employee*



Protection Act, 2 O.C. 213.11-6].

B. *Replacement of Citations to Improve Readability.* This law originally included over twenty-five (25) citations referencing other sections of the same law. For example: “Except as provided under 213.6-6, an employee referred to in 213.6-1 shall notify...” [*see Military Service Employee Protection Act, 2 O.C. 213.6-5*]. The extensive use of citations made this law difficult to read. Since this law was originally adopted in 2007, the Nation’s drafting style has evolved to avoid extensive use of citations. Therefore, many of the citations throughout the law have been replaced with plain language or removed where unnecessarily repetitive. These revisions do not change the meaning of the law. See example below:

Chart 2. Example of Revision to Improve Readability:

Current Law (With Citations)	Proposed Law (Citations Removed)
<p>213.6-8. A person who has notified the Tribe of the person’s intent to return to a position of employment in accordance with section 213.6-5 shall, upon the request of the Tribe, provide documentation to establish that:</p> <ul style="list-style-type: none"> (a) the notification is timely; (b) the time limits in section 213.6-1(b) have not been exceeded, except as permitted under section 213.6-3; and (c) the person’s entitlement to benefits has not been terminated pursuant to section 213.4. 	<p>213.6-4(b) <i>Required Documentation of Intent to Return.</i> A person who has notified the Nation of the person’s intent to return to a position of employment shall, upon the request of the Nation, provide documentation to establish that:</p> <ul style="list-style-type: none"> (1) the notification is timely; (2) the time limits for notification have not been exceeded, except as permitted for cases involving injury and/or illness; and (3) the person’s entitlement to benefits has not been terminated due to character of service.

C. *Minor Formatting Revisions.* Minor revisions were made to reflect current drafting and formatting standards. For example, “Tribe” has been replaced with “Nation.”

SECTION 6. EFFECT ON EXISTING LEGISLATION

- A.** As a result of the dissolution of the Personnel Commission and creation of the Personnel Selection Committee, the following laws were also amended on an emergency basis to replace references to the Personnel Commission:
- i. Oneida Personnel Policies and Procedures [*see BC Resolution 04-25-18-E*].
 - ii. Oneida Judiciary Rules of Civil Procedure [*see BC Resolution 04-15-18-F*].
 - iii. Oneida Employee Protection Policy [*see BC Resolution 04-15-18-G*].

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

- A. *Trial Court Filing Fees.*** The Personnel Commission did not charge a fee to file appeals relating to this law. The Trial Court, however, charges a \$50 filing fee for general civil cases. Therefore, individuals may now be required to pay filing fees in order to have their cases heard under this law.

- i. *Fee Waiver*. If individuals are unable to pay the filing fee, they may request a fee waiver from the court for the following reasons: Unemployed, Health/Medical, Indigent (below poverty level), or other reasons.

- B. *Pending Cases*. At the time the emergency amendments were adopted on 4/25/18, five cases were pending before the Personnel Commission. These cases, and any associated timelines, were placed on hold until emergency amendments to this and related laws were adopted. At the time this analysis was drafted, it is not known if any of the five pending cases involved the Military Service Employee Protection Act.

SECTION 8. ENFORCEMENT AND ACCOUNTABILITY

- A. If an individual is denied employment, reemployment or benefits under this law, they may appeal to the Area Manager and Trial Court. The Area Manager or Trial Court may award relief, including: compensating the individual for lost wages or benefits and requiring compliance with this law [*see Military Service Employee Protection Act, 2 O.C. 213.11-5*].

SECTION 9. OTHER CONSIDERATIONS

- A. Please refer to the fiscal impact statement for any fiscal impacts.

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Title 2. Employment – Chapter 213
MILITARY SERVICE EMPLOYEE PROTECTION ACT
Sot@- Laotilhwisa>@-sla>

213-1. Purpose and Policy	213-6. Reemployment Rights of Persons who Serve in the Military
213-2. Adoption, Amendment, Repeal	213-7. Reemployment Positions
213-3. Definitions	213-8. Benefits of Persons Absent from Employment for Military Service
213-4. Character of Service	213-9. Health Plans
213-5. <u>Prohibition of</u> Discrimination Against Persons Who Serve in the Military	213-10. Retirement Plans
<u>Prohibited</u>	213-11. Enforcement of Employment or Reemployment Rights

213.1. Purpose and Policy

213.1-1. ~~—Purpose. The purposes of this law are:~~Purpose. The purpose of this law is to minimize the disruption to the lives of employees of the Nation serving in the military as well as to the Nation by providing for the prompt reemployment of such persons upon completion of such service; and to prohibit discrimination against people because they serve in the military.

~~(a) to minimize the disruption to the lives of Tribal employees serving in the military as well as to the Tribe by providing for the prompt reemployment of such persons upon completion of such service; and~~

~~(b) to prohibit discrimination against people because they serve in the military.~~

213.1-2. ~~—Policy.~~ It is the policy of the ~~Oneida Tribe~~Nation to reemploy persons who return from military service in the same position, or a substantially similar position, of employment the person held prior to leaving for military service.

213.2. Adoption, Amendment, Repeal

213.2-1. ~~—This law was adopted by the Oneida Business Committee by resolution BC-10-24-07-E, and amended by BC-~~ - - - .

213.2-2. ~~—This law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act~~or repealed by the Oneida Business Committee or the ~~Oneida General Tribal Council~~pursuant to the procedures set out in the Legislative Procedures Act.

213.2-3. ~~—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.~~

213.2-4. ~~—Any law, policy, regulation, rule, resolution, or motion, or portion thereof, which directly conflicts with the provisions of this law is hereby repealed to the extent that it is inconsistent with or is contrary to this law~~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.

213.2-5. ~~—This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin~~Nation.

213.3. Definitions

213.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Area Manager” means the supervisor of the supervisor of an employee who is protected under this law, or, in other words, two levels of supervision in the chain of command above the protected employee, or an individual designated to be the Area

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Manager by the Division Director ~~(or, in divisions where there is no director, the General Manager)~~ and approved by the Human Resources Department Manager ~~(, or designee).~~

(b) “Benefit” means any advantage, profit, privilege, gain, or interest (other than wages or salary) that accrues by reason of an employment agreement or an employer policy, plan, or practice and includes rights and benefits under a retirement plan, a health plan, insurance coverage, incentives, unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

~~(c)~~ “(c) ‘Business day’ means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding

holidays recognized by the Nation.

~~(d)~~ “Employee” means any person employed by the Oneida ~~Tribe~~Nation.

~~(e)~~ “Health plan” means an insurance policy or contract or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

~~(f)~~ “Military” means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

~~(g)~~ “(g) ‘Nation’ means the Oneida Nation.

~~(h)~~ “Qualified,” with respect to an employment position, means having the ability to perform the essential tasks of the position.

~~(i)~~ “Reasonable efforts”, in the case of actions required of the ~~Tribe~~Nation under this law, means actions, including providing training, that do not place an undue hardship on the ~~Tribe~~Nation.

~~(j)~~ “Seniority” means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.

~~(k)~~ “Service” or “service in the military” means the performance of duty on a voluntary or involuntary basis in a branch of the military and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, the time a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and the period for which a person is absent from employment for the purpose of performing funeral honors duty.

~~(l) “Tribe” means the Oneida Tribe of Indians of Wisconsin as employer through its divisions, departments, programs, enterprises or other subdivisions of the Tribe.~~

~~(m)~~ “(l) ‘Trial Court’ means the Court of the Oneida Judiciary where evidence and testimony are first introduced, received, and considered. The Oneida Judiciary was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

~~(n)~~ “Undue hardship”, in the case of actions taken by the ~~Tribe~~Nation, means actions requiring significant difficulty or expense, when considered in light of:

(1) the nature and cost of the action needed under this ~~Law~~law;

(2) the overall financial resources of the department involved in the provision of the action; the number of persons employed within the department; the effect on

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expenses and resources, or the overall impact of such action upon the operation of the department;

(3) the financial resources of the TribeNation; the size of the TribeNation with respect to how many employees and departments it has; and

(4) the type of operation(s) of the TribeNation, including the composition, structure, and functions of the work force of its departments.

213.4. Character of Service

213.4-1. Those who serve in the military are ineligible to receive benefits under this law if they:

(a) receive a dishonorable discharge or a bad conduct discharge; ~~or~~

(b) receive a dismissal from a general court-martial, or by order of the President; or

(c) are dropped from the unit rolls because they have been:

(1) absent without authority for at least three months; ~~or~~

(2) sentenced by a court-martial to confinement for more than six (6) months and have served at least six (6) months; or

(3) sentenced to confinement in a penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

213.5. Prohibition of Discrimination Against Persons Who Serve in the Military ~~Prohibited~~

213.5-1. ~~The~~ TribeNation shall not deny employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of a person's membership, application for membership, performance of service, application for service, or obligation to perform service in the military.

213.5-2. ~~The~~ TribeNation may not discriminate in employment against or take any adverse employment action against anyone because such person has ~~exercised a right or taken an action to enforce a protection afforded under this law, has testified or otherwise made a statement in or in connection with any proceeding under this law, or has participated in an investigation under this law;~~

(a) exercised a right or taken an action to enforce a protection afforded under this law;

(b) has testified or otherwise made a statement in or in connection with any proceeding under this law; or

(c) has participated in an investigation under this law.

213.5-3. ~~The~~ TribeNation shall not be considered to have engaged in a prohibited action if the same action would have been taken regardless of an employee's military status.

213.5-4. ~~Sections 213.5-1 and 213.5-2~~ The prohibition of discrimination against persons who serve in the military or have exercised a right under this law, shall apply to any position of employment, including a seasonal, temporary, or a limited term position ~~that is described in 213.6-4(e).~~

213.6. Reemployment Rights of Persons Who Serve in the Military

213.6-1. ~~—~~ Reemployment Rights. Any person who takes a leave of absence from an employment position to serve in the military shall be entitled to the reemployment benefits and other employment benefits of this law if the following conditions are met:

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(a) the ~~Tribe~~Nation receives advance written notice of such service as soon as practicable after the employee receives notice;

~~(b) the cumulative length of the absence and of all previous absences with the Tribe by reason of service in the military does not exceed five (5) years; and~~

~~(c) except as provided in 213.6-6, the person reports to the Tribe in accordance with 213.6-5;~~

~~213.6-2. No notice is required under 213.6-1(a)(1)~~ Advance written notice shall not be required if it is precluded by military necessity or, under all of the relevant circumstances, the giving of ~~—~~notice is otherwise impossible or unreasonable.

(b) the cumulative length of the absence and of all previous absences with the Nation by reason of service in the military does not exceed five (5) years; and

(c) the person reports to the Nation in accordance with this law.

~~213.6-3. 2. Calculating the Cumulative Length of Absence.~~ 2. Calculating the Cumulative Length of Absence. When calculating the length of absence ~~under 213.6-1(b)~~ the ~~Tribe~~Nation shall not include any service:

(a) that is required, beyond five (5) years, to complete an initial period of obligated service;

(b) during which such person was unable to obtain orders releasing such person from a period of service in the military before the expiration of such five (5) year period and such inability was through no fault of such person;

(c) performed as required pursuant to training requirements for reservists and National Guard members;

(d) performed by a member of the military service who is:

(1) ordered to or retained on active duty involuntarily during domestic emergency or national security related situations;

(2) ordered to or retained on active duty under any provision of law because of a war or national emergency declared by the President of the United States or the Congress;

(3) ordered to active duty in support of an “operational mission”,² without his or her consent;

(4) ordered to active duty in support of a “critical mission or requirement” in times other than war or national emergency and when no involuntary call up is in effect; or

(5) called into Federal service by the President as a member of the National Guard to suppress an insurrection, repel an invasion, or execute the laws of the United States.

~~213.6-4. Tribe's 3. Nation's Right to Not Reemploy.~~ 3. Nation's Right to Not Reemploy. ~~The Tribe is~~ Certain circumstances exist in which the Nation shall not ~~be~~ required to reemploy a person under this law ~~if:~~

(a) The Nation is not required to reemploy a person under this law if one of the following circumstances are met:

(1) circumstances have so changed as to make such reemployment impossible or unreasonable;

(b) in the case of a person entitled to reemployment under 213.7-1(c), (d), or 213.7-2; such employment would impose an undue hardship on the

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TribeNation; or
(e3) the employment from which the person leaves is for a brief, nonrecurrentnon-recurrent period (i.e.– seasonal, temporary, limited term) and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.
(d)–the Tribe(b) The Nation shall have the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or nonrecurrentnon-recurrent nature of the employment.

~~213.6-5. Except as provided under 213.6-6, an~~ 4. Notification of Intent to Return. An employee referred to in 213.6-1 who has taken a leave of absence from their position of employment shall notify the TribeNation of the person's intent to return to a position of employment within- ninety (90) days of separation of active duty service and within thirty-one (31) days from completion of training for reservists. The TribeNation shall, as soon as practicable after receiving notice, make arrangements with the employee for an employment return date.

~~213.6-6. (a) Exception for Injury and/or Illness.~~ A person who is hospitalized for, or recovering from, an illness or injury incurred in, or aggravated during, the performance of service in the military shall, at the end of the period that is necessary for the person to recover from such illness or injury notify the TribeNation of the person's intent to return to a position of employment. Such period of recovery may not exceed two (2) years, unless the minimum time required to accommodate the circumstances beyond such person's control is longer than two (2) years, making reporting within the period specified impossible or unreasonable.

~~213.6-7. (b) Required Documentation of Intent to Return.~~ A person who has notified the Nation of the person's intent to return to a position of employment shall, upon the request of the Nation, provide documentation to establish that:

- ~~(1) the notification is timely;~~
- ~~(2) the cumulative length of absence requirements have not been exceeded, except as permitted under this law; and~~
- ~~(3) the person's entitlement to benefits has not been terminated due to character of service.~~

~~213.6-5. Failure to Report for Reemployment.~~ A person who fails to report for reemployment within the appropriate period shall not automatically forfeit such person's entitlement to ~~theany~~ employment benefits ~~referred to in section 213.6-1,~~ but shall be subject to the ~~Tribe's~~ Nation's policies and procedures pertaining to discipline with respect to absence from scheduled work.

~~213.6-8. A person who has notified the Tribe of the person's intent to return to a position of employment in accordance with section 213.6-5 shall, upon the request of the Tribe, provide documentation to establish that:~~

- ~~(a) the notification is timely;~~
- ~~(b) the time limits in section 213.6-1(b) have not been exceeded, except as permitted under section 213.6-3; and~~
- ~~(c) the person's entitlement to benefits has not been terminated pursuant to section 213.4.~~

~~213.6-9.~~ 213.6-6. The timing, frequency, and duration of a person's training or service, or the nature of such training or service (including voluntary service) in the military, shall not be a basis for denying protection of this law if the service does not exceed the limitations ~~set forth~~

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under ~~section 213.6-3~~ for calculating a leave of absence, and the notice and notification requirements ~~established in this section~~ are met.

213.6-107. The Nation's Human Resources Department shall inform employees of their rights, benefits, and obligations under this law and shall provide assistance to employees with respect to the employment and reemployment benefits to which they are entitled under this law.

213.7. Reemployment Positions

213.7-1. A person entitled to reemployment ~~under section 213.6~~ shall be promptly reemployed in a position of employment in accordance with the following order of priority:

(a) In the case of a person whose period of service in the military was for less than ninety-one (91) days, the person is entitled to reemployment:

(1) in the position which the person would have been employed if the continuous employment of such person had not been interrupted by such service, ~~the duties of which~~ as long as the person is qualified to perform the duties of that position; or

(2) in the position which the person was employed on the date of the commencement of the service in the military, only if the person is not qualified to perform the duties of the position ~~referred to under section 213.7-1(a)(1)~~ which the person would have been employed if the continuous employment of such person had not been interrupted by such service after reasonable efforts by the ~~Tribe~~ Nation are made to qualify the person for that position.

(b) In the case of a person whose period of service in the military was for more than ninety (90) days, the person is entitled to reemployment:

(1) in the position which the person would have been employed if the continuous employment of such person had not been interrupted by such service, or a position of like seniority, status and pay, ~~the duties of which~~ as long as the person is qualified to perform the duties of that position; or

(2) in the position which the person was employed on the date of the commencement of the service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of the position ~~referred to under section 213.7-1(b)(1)~~ the person would have been employed if the continuous employment of such person had not been interrupted by such service, after reasonable efforts by the ~~Tribe~~ Nation are made to qualify the person for that position.

(c) In the case of a person who has a disability incurred in, or aggravated during, service, and after reasonable efforts by the ~~Tribe~~ Nation to accommodate the disability, is not qualified due to such disability to be employed in the position of employment in which the person would have been employed if the continuous employment of such person with the ~~Tribe~~ Nation had not been interrupted by such service, the person is entitled to reemployment:

(1) in any other position which is equivalent in seniority, status, and pay, ~~the duties of which~~ as long as the person is qualified to perform the duties of that position or can become qualified to perform with reasonable efforts by the ~~Tribe~~ Nation; or

(2) in a position which is the nearest approximation to ~~a~~ any other position

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referred to which is equivalent in ~~(1) in terms of~~ seniority, status, and pay consistent with such person's case.

(d) In the case of a person who is not qualified to become reemployed ~~under 213.7-1(a) (e)~~ and cannot become qualified, even with reasonable efforts by the ~~Tribe~~Nation, the person is entitled to reemployment in any other position which is the nearest approximation to a position which such person is qualified to perform, with full seniority.

213.7-2. If two or more persons are entitled to reemployment in the same position and more than one of them has reported for reemployment, the person who left the position first shall have the prior right to reemployment in that position.

~~213.7-3. A(a) The~~ person ~~entitled to reemployment~~ who is not reemployed, because of ~~section 213.7-2~~ the other person entitled to reemployment left the position first, shall be entitled to reemployment in any other position ~~referred to in~~ accordance with section 213.7-1, remaining consistent with the circumstances of such person's case, in the order of priority set out in the appropriate section, with full seniority.

213.8. Benefits of Persons Absent from Employment for Military Service

213.8-1. Benefits and Seniority. A person who is reemployed under this law is entitled to the seniority and other benefits determined by seniority that the person had on the date of the commencement of service in the military, plus the additional seniority and benefits that such person would have attained if the person had remained continuously employed.

(a) A person on leave of absence for military service shall not be entitled to any benefits to which the person would not otherwise be entitled if the person had remained continuously employed.

213.8-2. Leave of Absence. A person who is absent from a position of employment by reason of service in the military shall be:

(a) deemed to be on a leave of absence while performing such service; and

(b) entitled to other benefits not determined by seniority as are generally provided by the ~~Tribe~~Nation to employees having similar seniority, status, and pay who are on leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.

213.8-3. Intent Not to Return to Employment. A person who

~~(a)~~ is absent from an employment position because of service in the military; and

~~(b)~~ knowingly provides written notice of intent not to return to a position of employment after service in the military, is not entitled to benefits under this section.

The ~~Tribe~~Nation has the burden of proving that a person knowingly provided written notice of intent not to return to a position after service in the military and was aware of the specific benefits to be lost.

~~213.8-4. A person on leave of absence for military service shall not be entitled to any benefits to which the person would not otherwise be entitled if the person had remained continuously employed.~~

Funded Benefits. ~~213.8-5.~~ A person may be required to pay the ~~Tribe~~Nation's cost, if any, of any funded benefit continued to the extent other employees on leave of absence are so required.

213.8-5. Termination of Employment. ~~213.8-6.~~ A person who is reemployed under this law shall only be terminated in accordance with the ~~Oneida Personnel Policies~~Nation's laws and

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Procedures policies governing employment.

~~213.8-7~~213.8-6. *-Use of Vacation and Personal Accruals.* Any person whose employment is interrupted by military service shall be permitted to use, during such period of service, any vacation or personal time accrued by the person before the commencement of such service. The ~~Tribe may~~Nation shall not require any person to use vacation or personal time during such period of service.

~~213.8-8.7.~~ *Funeral Honors Duty.* The ~~Tribe~~Nation shall grant an employee who is a reserve member an unpaid temporary leave of absence in order to perform funeral honors duty. Employees may use vacation or personal time to perform funeral honors duty if eligible.

213.9. Health Plans

213.9-1. *Continuation of Health Plan Coverage.* If a person, or a person's dependents, has coverage under a health plan through the ~~Tribe~~Nation and such person is on a leave of absence for military service, the plan shall provide that the coverage may be continued. ~~The maximum period of coverage of a person and the person's dependents shall be the lesser of:~~

~~(a)~~(a) The maximum period of coverage of a person and the person's dependents shall be the lesser of:

(1) the eighteen (18) month period beginning on the date on which the person's absence begins; or

(b) the day after the date on which the person fails to return to a position of employment, as determined under section 213.6-5 in accordance with the notification requirements for the person's intent to return to a position of employment with the Nation.

~~213.9-2.~~(b) A person who elects to continue health-plan coverage may be required to pay not more than the amount paid by other employees who take a leave of absence, except that in the case of a person who serves in the military for less than thirty-one (31) days, such person may not be required to pay more than the employee share, if any, for such coverage.

~~213.9-3.~~2. If a person's health plan is terminated by reason of military service, an exclusion or waiting period may not be imposed in connection with the reinstatement of such coverage upon reemployment if an exclusion or waiting period would not have been imposed had coverage of such person not been terminated as a result of such service.

(a) This shall apply to the person who is reemployed and to his or her dependents who are covered under the plan with the reinstatement of coverage of such person.

(b) This shall not apply to the coverage of any illness or injury incurred in, or aggravated during, performance of service in the military.

213.10. Retirement and Pension Plans

213.10-1. *Accrual Benefits under a Retirement or Pension Plan.* Each period served by a person in the military shall, upon reemployment, be deemed to constitute service for the purpose of determining the ~~nonforfeability~~non-forfeability of the person's accrued benefits and for the purpose of determining the accrual of benefits under a retirement or pension plan.

(a) When a person is absent from a position of employment for more than ninety (90) days and is reemployed, the ~~Tribe~~Nation may require documentation before treating the

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person as not having incurred a break in service for retirement or pension plan purposes under this section.

213.10-2. Employee Contributions to a Retirement or Pension Plan. A person reemployed under this law shall be entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals if the person makes payment to a retirement or pension plan with respect to such contributions or deferrals.

(a) If the employee makes up the contributions, the ~~Tribe~~Nation shall make up any required matching contributions.

(b) No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the ~~Tribe~~Nation throughout the period of service.

(c) Any payment to a retirement or pension plan shall be made during the period beginning with the date of reemployment and whose duration is three (3) times the period of the person's service in the military, such payment period not to exceed five (5) years.

213.10-3. Calculation of Employee's Compensation During Period of Service. For purposes of computing the ~~Tribe~~Nation's liability or the employee's contributions, the employee's compensation during the period of service shall be computed:

(a) at the rate the employee would have received compensation but for the period of service; or

(b) in the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the twelve (12) month period immediately preceding such period ~~—(, or, if shorter, the period of employment immediately preceding such period)—~~.

213.10-4. Pension Plan. When a person who participates in a pension plan is reemployed after a period of military service, the ~~Tribe~~Nation shall be liable to the pension plan for funding any obligation to provide the benefits the employee would have received had they not taken a leave of absence.

(a) The ~~Tribe~~Nation shall allocate the amount of the ~~Tribal~~Nation's contribution for the person in the same manner and to the same extent the allocation occurred for other employees eligible for the pension plan during the period of service.

(b) For purposes of determining the amount of such liability and any obligation of the pension plan, earnings and forfeitures shall not be included.

213.11. Enforcement of Employment or Reemployment Rights

213.11.1. ~~The Tribe~~Notification of Denial. ~~The Nation~~ shall notify, in writing, any person who has been denied employment, reemployment, or benefits under this law.

213.11-2. Basis for a Complaint. A person may file a complaint whenever such person claims that:

(a) he or she is entitled to employment or reemployment rights or benefits with respect to employment by the ~~Tribe~~Nation; or

(b) the ~~Tribe~~Nation has failed or refused to comply with the provisions of this law.

213.11-3. ~~Such~~Requirements for Filing a Complaint. A complaint shall:

(a) be in writing;

(b) contain a summary of the allegations that form the basis for the complaint; and

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(c) be filed with the person's area manager and the ~~Oneida~~Nation's Human Resources Manager ~~(, or designee),~~ within ten (10) ~~working~~business days from the day the person received a denial of employment and/or benefits by the ~~Tribe~~Nation.

~~213.11-4.~~213.11-4. *Investigation by the Area Manager.* The area manager shall conduct an investigation of the basis of the complaint.

(a) If the area manager determines that the action alleged in such complaint occurred, the area manager shall attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this law.

~~(b)213.11-5.~~ If the efforts of the area manager do not resolve the complaint within ten (10) ~~working~~business days from the receipt of the employee's complaint, the complainant shall be notified of the results of the area manager's investigation and ~~the complainant's entitlement to refer the complaint to the Oneida Personnel Commission. One extension of no more than five (5) working days may be requested of and granted by the Oneida Human Resources Manager (or designee) at his or her discretion.~~Trial Court.

(c) One extension of no more than five (5) business days may be requested of and granted by the Human Resources Manager, or designee, at his or her discretion, to the area manager for time to resolve the complaint.

~~213.11-5.~~213.11-5. *Appeal of the Area Manager's Decision.*~~213.11-6.~~ If an employee appeals the area manager's decision, the appeal must be filed with the ~~Oneida Personnel Commission~~Trial Court within ten (10) ~~working~~business days of the employee's receipt of the Area Manager's decision. The ~~Commission~~Trial Court shall notify the Human Resources Manager ~~(, or designee),~~ within one (1) business day when an employee files an appeal.

~~213.11-7.~~213.11-6. *Remedies.* In any action relating to this law, relief may be awarded as follows:

(a) Require the ~~Tribe~~Nation to comply with the provisions of this law; and/or

(b) ~~Require the Tribe~~Nation to compensate the person for any loss of wages or benefits suffered by reason of the ~~Tribe's~~Nation's failure to comply with the provisions of this law.

~~213.11-8.~~213.11-7. Any compensation awarded shall be in addition to, and shall not diminish, any of the other benefits provided for under this law.

End.

Adopted - BC-10-24-07-E

Emergency Amended – BC-04-25-18-D

Amended – BC- - - -

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Title 2. Employment – Chapter 213
MILITARY SERVICE EMPLOYEE PROTECTION
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213-1. Purpose and Policy	213-7. Reemployment Positions
213-2. Adoption, Amendment, Repeal	213-8. Benefits of Persons Absent from Employment for Military Service
213-3. Definitions	213-9. Health Plans
213-4. Character of Service	213-10. Retirement Plans
213-5. Prohibition of Discrimination Against Persons Who Serve in the Military	213-11. Enforcement of Employment or Reemployment Rights
213-6. Reemployment Rights of Persons who Serve in the Military	

213.1. Purpose and Policy

213.1-1. *Purpose.* The purpose of this law is to minimize the disruption to the lives of employees of the Nation serving in the military as well as to the Nation by providing for the prompt reemployment of such persons upon completion of such service; and to prohibit discrimination against people because they serve in the military.

213.1-2. *Policy.* It is the policy of the Nation to reemploy persons who return from military service in the same position, or a substantially similar position, of employment the person held prior to leaving for military service.

213.2. Adoption, Amendment, Repeal

213.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-24-07-E and amended by BC-__-__-__-__.

213.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

213.2-3. 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.

213.2-4. 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.

213.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

213.3. Definitions

213.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Area Manager" means the supervisor of the supervisor of an employee who is protected under this law, or, in other words, two levels of supervision in the chain of command above the protected employee, or an individual designated to be the Area Manager by the Division Director and approved by the Human Resources Department Manager, or designee.

(b) "Benefit" means any advantage, profit, privilege, gain, or interest (other than wages or salary) that accrues by reason of an employment agreement or an employer policy, plan, or practice and includes rights and benefits under a retirement plan, a health plan, insurance coverage, incentives, unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

(c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m.,

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38 excluding

39 holidays recognized by the Nation.

40 (d) “Employee” means any person employed by the Oneida Nation.

41 (e) “Health plan” means an insurance policy or contract or other arrangement under
42 which health services for individuals are provided or the expenses of such services are
43 paid.

44 (f) “Military” means the Armed Forces, the Army National Guard and the Air National
45 Guard when engaged in active duty for training, inactive duty training, or full-time
46 National Guard duty, the commissioned corps of the Public Health Service, and any other
47 category of persons designated by the President in time of war or national emergency.

48 (g) “Nation” means the Oneida Nation.

49 (h) “Qualified,” with respect to an employment position, means having the ability to
50 perform the essential tasks of the position.

51 (i) “Reasonable efforts”, in the case of actions required of the Nation under this law,
52 means actions, including providing training, that do not place an undue hardship on the
53 Nation.

54 (j) “Seniority” means longevity in employment together with any benefits of employment
55 which accrue with, or are determined by, longevity in employment.

56 (k) “Service” or “service in the military” means the performance of duty on a voluntary
57 or involuntary basis in a branch of the military and includes active duty, active duty for
58 training, initial active duty for training, inactive duty training, full-time National Guard
59 duty, the time a person is absent from a position of employment for the purpose of an
60 examination to determine the fitness of the person to perform any such duty, and the
61 period for which a person is absent from employment for the purpose of performing
62 funeral honors duty.

63 (l) “Trial Court” means the Court of the Oneida Judiciary where evidence and testimony
64 are first introduced, received, and considered. The Oneida Judiciary was established by
65 Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial
66 authorities and responsibilities of the Nation.

67 (m) “Undue hardship”, in the case of actions taken by the Nation, means actions
68 requiring significant difficulty or expense, when considered in light of:

69 (1) the nature and cost of the action needed under this law;

70 (2) the overall financial resources of the department involved in the provision of
71 the action; the number of persons employed within the department; the effect on
72 expenses and resources, or the overall impact of such action upon the operation of
73 the department;

74 (3) the financial resources of the Nation; the size of the Nation with respect to
75 how many employees and departments it has; and

76 (4) the type of operation(s) of the Nation, including the composition, structure,
77 and functions of the work force of its departments.
78

79 **213.4. Character of Service**

80 213.4-1. Those who serve in the military are ineligible to receive benefits under this law if they:

81 (a) receive a dishonorable discharge or a bad conduct discharge;

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- (b) receive a dismissal from a general court-martial, or by order of the President; or
- (c) are dropped from the unit rolls because they have been:
 - (1) absent without authority for at least three months;
 - (2) sentenced by a court-martial to confinement for more than six (6) months and have served at least six (6) months; or
 - (3) sentenced to confinement in a penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

213.5. Prohibition of Discrimination Against Persons Who Serve in the Military

213.5-1. The Nation shall not deny employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of a person's membership, application for membership, performance of service, application for service, or obligation to perform service in the military.

213.5-2. The Nation may not discriminate in employment against or take any adverse employment action against anyone because such person has:

- (a) exercised a right or taken an action to enforce a protection afforded under this law;
- (b) has testified or otherwise made a statement in or in connection with any proceeding under this law; or
- (c) has participated in an investigation under this law.

213.5-3. The Nation shall not be considered to have engaged in a prohibited action if the same action would have been taken regardless of an employee's military status.

213.5-4. The prohibition of discrimination against persons who serve in the military or have exercised a right under this law, shall apply to any position of employment, including a seasonal, temporary, or a limited term position.

213.6. Reemployment Rights of Persons Who Serve in the Military

213.6-1. *Reemployment Rights.* Any person who takes a leave of absence from an employment position to serve in the military shall be entitled to the reemployment benefits and other employment benefits of this law if the following conditions are met:

- (a) the Nation receives advance written notice of such service as soon as practicable after the employee receives notice;
 - (1) Advance written notice shall not be required if it is precluded by military necessity or, under all of the relevant circumstances, the giving of notice is otherwise impossible or unreasonable.
- (b) the cumulative length of the absence and of all previous absences with the Nation by reason of service in the military does not exceed five (5) years; and
- (c) the person reports to the Nation in accordance with this law.

213.6-2. *Calculating the Cumulative Length of Absence.* When calculating the length of absence the Nation shall not include any service:

- (a) that is required, beyond five (5) years, to complete an initial period of obligated service;
- (b) during which such person was unable to obtain orders releasing such person from a period of service in the military before the expiration of such five (5) year period and

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such inability was through no fault of such person;

(c) performed as required pursuant to training requirements for reservists and National Guard members;

(d) performed by a member of the military service who is:

(1) ordered to or retained on active duty involuntarily during domestic emergency or national security related situations;

(2) ordered to or retained on active duty under any provision of law because of a war or national emergency declared by the President of the United States or the Congress;

(3) ordered to active duty in support of an operational mission, without his or her consent;

(4) ordered to active duty in support of a critical mission or requirement in times other than war or national emergency and when no involuntary call up is in effect; or

(5) called into Federal service by the President as a member of the National Guard to suppress an insurrection, repel an invasion, or execute the laws of the United States.

213.6-3. *Nation's Right to Not Reemploy.* Certain circumstances exist in which the Nation shall not be required to reemploy a person under this law.

(a) The Nation is not required to reemploy a person under this law if one of the following circumstances are met:

(1) circumstances have so changed as to make such reemployment impossible or unreasonable;

(2) such employment would impose an undue hardship on the Nation; or

(3) the employment from which the person leaves is for a brief, non-recurrent period (i.e. seasonal, temporary, limited term) and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

(b) The Nation shall have the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or non-recurrent nature of the employment.

213.6-4. *Notification of Intent to Return.* An employee who has taken a leave of absence from their position of employment shall notify the Nation of the person's intent to return to a position of employment within ninety (90) days of separation of active duty service and within thirty-one (31) days from completion of training for reservists. The Nation shall, as soon as practicable after receiving notice, make arrangements with the employee for an employment return date.

(a) *Exception for Injury and/or Illness.* A person who is hospitalized for, or recovering from, an illness or injury incurred in, or aggravated during, the performance of service in the military shall, at the end of the period that is necessary for the person to recover from such illness or injury notify the Nation of the person's intent to return to a position of employment. Such period of recovery may not exceed two (2) years, unless the minimum time required to accommodate the circumstances beyond such person's control is longer than two (2) years, making reporting within the period specified impossible or unreasonable.

(b) *Required Documentation of Intent to Return.* A person who has notified the Nation of

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the person's intent to return to a position of employment shall, upon the request of the Nation, provide documentation to establish that:

- (1) the notification is timely;
- (2) the cumulative length of absence requirements have not been exceeded, except as permitted under this law; and
- (3) the person's entitlement to benefits has not been terminated due to character of service.

213.6-5. *Failure to Report for Reemployment.* A person who fails to report for reemployment within the appropriate period shall not automatically forfeit such person's entitlement to any employment benefits, but shall be subject to the Nation's policies and procedures pertaining to discipline with respect to absence from scheduled work.

213.6-6. The timing, frequency, and duration of a person's training or service, or the nature of such training or service (including voluntary service) in the military, shall not be a basis for denying protection of this law if the service does not exceed the limitations for calculating a leave of absence, and the notice and notification requirements are met.

213.6-7. The Nation's Human Resources Department shall inform employees of their rights, benefits, and obligations under this law and shall provide assistance to employees with respect to the employment and reemployment benefits to which they are entitled under this law.

213.7. Reemployment Positions

213.7-1. A person entitled to reemployment shall be promptly reemployed in a position of employment in accordance with the following order of priority:

(a) In the case of a person whose period of service in the military was for less than ninety-one (91) days, the person is entitled to reemployment:

- (1) in the position which the person would have been employed if the continuous employment of such person had not been interrupted by such service, as long as the person is qualified to perform the duties of that position; or
- (2) in the position which the person was employed on the date of the commencement of the service in the military, only if the person is not qualified to perform the duties of the position which the person would have been employed if the continuous employment of such person had not been interrupted by such service after reasonable efforts by the Nation are made to qualify the person for that position.

(b) In the case of a person whose period of service in the military was for more than ninety (90) days, the person is entitled to reemployment:

- (1) in the position which the person would have been employed if the continuous employment of such person had not been interrupted by such service, or a position of like seniority, status and pay, as long as the person is qualified to perform the duties of that position; or
- (2) in the position which the person was employed on the date of the commencement of the service, or a position of like seniority, status and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of the position the person would have been employed if the continuous employment of such person had not been interrupted

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- 214 by such service, after reasonable efforts by the Nation are made to qualify the
215 person for that position.
- 216 (c) In the case of a person who has a disability incurred in, or aggravated during, service,
217 and after reasonable efforts by the Nation to accommodate the disability, is not qualified
218 due to such disability to be employed in the position of employment in which the person
219 would have been employed if the continuous employment of such person with the Nation
220 had not been interrupted by such service, the person is entitled to reemployment:
- 221 (1) in any other position which is equivalent in seniority, status, and pay, as long
222 as the person is qualified to perform the duties of that position or can become
223 qualified to perform with reasonable efforts by the Nation; or
- 224 (2) in a position which is the nearest approximation to any other position which is
225 equivalent in seniority, status, and pay consistent with such person's case.
- 226 (d) In the case of a person who is not qualified to become reemployed and cannot
227 become qualified, even with reasonable efforts by the Nation, the person is entitled to
228 reemployment in any other position which is the nearest approximation to a position
229 which such person is qualified to perform, with full seniority.
- 230 213.7-2. If two or more persons are entitled to reemployment in the same position and more than
231 one of them has reported for reemployment, the person who left the position first shall have the
232 prior right to reemployment in that position.
- 233 (a) The person who is not reemployed, because the other person entitled to
234 reemployment left the position first, shall be entitled to reemployment in any other
235 position in accordance with section 213.7-1, remaining consistent with the circumstances
236 of such person's case, in the order of priority set out in the appropriate section, with full
237 seniority.
- 238
- 239 **213.8. Benefits of Persons Absent from Employment for Military Service**
- 240 213.8-1. *Benefits and Seniority.* A person who is reemployed under this law is entitled to the
241 seniority and other benefits determined by seniority that the person had on the date of the
242 commencement of service in the military, plus the additional seniority and benefits that such
243 person would have attained if the person had remained continuously employed.
- 244 (a) A person on leave of absence for military service shall not be entitled to any benefits
245 to which the person would not otherwise be entitled if the person had remained
246 continuously employed.
- 247 213.8-2. *Leave of Absence.* A person who is absent from a position of employment by reason of
248 service in the military shall be:
- 249 (a) deemed to be on a leave of absence while performing such service; and
- 250 (b) entitled to other benefits not determined by seniority as are generally provided by the
251 Nation to employees having similar seniority, status, and pay who are on leave of absence
252 under a contract, agreement, policy, practice, or plan in effect at the commencement of
253 such service or established while such person performs such service.
- 254 213.8-3. *Intent Not to Return to Employment.* A person who is absent from an employment
255 position because of service in the military and knowingly provides written notice of intent not to
256 return to a position of employment after service in the military, is not entitled to benefits under
257 this section. The Nation has the burden of proving that a person knowingly provided written

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notice of intent not to return to a position after service in the military and was aware of the specific benefits to be lost.

213.8-4. *Funded Benefits*. A person may be required to pay the Nation's cost, if any, of any funded benefit continued to the extent other employees on leave of absence are so required.

213.8-5. *Termination of Employment*. A person who is reemployed under this law shall only be terminated in accordance with the Nation's laws and policies governing employment.

213.8-6. *Use of Vacation and Personal Accruals*. Any person whose employment is interrupted by military service shall be permitted to use, during such period of service, any vacation or personal time accrued by the person before the commencement of such service. The Nation shall not require any person to use vacation or personal time during such period of service.

213.8-7. *Funeral Honors Duty*. The Nation shall grant an employee who is a reserve member an unpaid temporary leave of absence in order to perform funeral honors duty. Employees may use vacation or personal time to perform funeral honors duty if eligible.

213.9. Health Plans

213.9-1. *Continuation of Health Plan Coverage*. If a person, or a person's dependents, has coverage under a health plan through the Nation and such person is on a leave of absence for military service, the plan shall provide that the coverage may be continued.

(a) The maximum period of coverage of a person and the person's dependents shall be the lesser of:

(1) the eighteen (18) month period beginning on the date on which the person's absence begins; or

(2) the day after the date on which the person fails to return to a position of employment, in accordance with the notification requirements for the person's intent to return to a position of employment with the Nation.

(b) A person who elects to continue health-plan coverage may be required to pay not more than the amount paid by other employees who take a leave of absence, except that in the case of a person who serves in the military for less than thirty-one (31) days, such person may not be required to pay more than the employee share, if any, for such coverage.

213.9-2. If a person's health plan is terminated by reason of military service, an exclusion or waiting period may not be imposed in connection with the reinstatement of such coverage upon reemployment if an exclusion or waiting period would not have been imposed had coverage of such person not been terminated as a result of such service.

(a) This shall apply to the person who is reemployed and to his or her dependents who are covered under the plan with the reinstatement of coverage of such person.

(b) This shall not apply to the coverage of any illness or injury incurred in, or aggravated during, performance of service in the military.

213.10. Retirement and Pension Plans

213.10-1. *Accrual Benefits under a Retirement or Pension Plan*. Each period served by a person in the military shall, upon reemployment, be deemed to constitute service for the purpose of determining the non-forfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under a retirement or pension plan.

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(a) When a person is absent from a position of employment for more than ninety (90) days and is reemployed, the Nation may require documentation before treating the person as not having incurred a break in service for retirement or pension plan purposes under this section.

213.10-2. *Employee Contributions to a Retirement or Pension Plan.* A person reemployed under this law shall be entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals if the person makes payment to a retirement or pension plan with respect to such contributions or deferrals.

(a) If the employee makes up the contributions, the Nation shall make up any required matching contributions.

(b) No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the Nation throughout the period of service.

(c) Any payment to a retirement or pension plan shall be made during the period beginning with the date of reemployment and whose duration is three (3) times the period of the person's service in the military, such payment period not to exceed five (5) years.

213.10-3. *Calculation of Employee's Compensation During Period of Service.* For purposes of computing the Nation's liability or the employee's contributions, the employee's compensation during the period of service shall be computed:

(a) at the rate the employee would have received compensation but for the period of service; or

(b) in the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the twelve (12) month period immediately preceding such period, or, if shorter, the period of employment immediately preceding such period.

213.10-4. *Pension Plan.* When a person who participates in a pension plan is reemployed after a period of military service, the Nation shall be liable to the pension plan for funding any obligation to provide the benefits the employee would have received had they not taken a leave of absence.

(a) The Nation shall allocate the amount of the Nation's contribution for the person in the same manner and to the same extent the allocation occurred for other employees eligible for the pension plan during the period of service.

(b) For purposes of determining the amount of such liability and any obligation of the pension plan, earnings and forfeitures shall not be included.

213.11. Enforcement of Employment or Reemployment Rights

213.11.1. *Notification of Denial.* The Nation shall notify, in writing, any person who has been denied employment, reemployment, or benefits under this law.

213.11-2. *Basis for a Complaint.* A person may file a complaint whenever such person claims that:

(a) he or she is entitled to employment or reemployment rights or benefits with respect to employment by the Nation; or

(b) the Nation has failed or refused to comply with the provisions of this law.

213.11-3. *Requirements for Filing a Complaint.* A complaint shall:

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- (a) be in writing;
- (b) contain a summary of the allegations that form the basis for the complaint; and
- (c) be filed with the person's area manager and the Nation's Human Resources Manager, or designee, within ten (10) business days from the day the person received a denial of employment and/or benefits by the Nation.

213.11-4. *Investigation by the Area Manager.* The area manager shall conduct an investigation of the basis of the complaint.

- (a) If the area manager determines that the action alleged in such complaint occurred, the area manager shall attempt to resolve the complaint by making reasonable efforts to ensure that the person or entity named in the complaint complies with the provisions of this law.

- (b) If the efforts of the area manager do not resolve the complaint within ten (10) business days from the receipt of the employee's complaint, the complainant shall be notified of the results of the area manager's investigation and the complainant's entitlement to refer the complaint to the Trial Court.

- (c) One extension of no more than five (5) business days may be requested of and granted by the Human Resources Manager, or designee, at his or her discretion, to the area manager for time to resolve the complaint.

213.11-5. *Appeal of the Area Manager's Decision.* If an employee appeals the area manager's decision, the appeal must be filed with the Trial Court within ten (10) business days of the employee's receipt of the Area Manager's decision. The Trial Court shall notify the Human Resources Manager, or designee, within one (1) business day when an employee files an appeal.

213.11-6. *Remedies.* In any action relating to this law, relief may be awarded as follows:

- (a) Require the Nation to comply with the provisions of this law; and/or
- (b) Require the Nation to compensate the person for any loss of wages or benefits suffered by reason of the Nation's failure to comply with the provisions of this law.

213.11-7. Any compensation awarded shall be in addition to, and shall not diminish, any of the other benefits provided for under this law.

End.

Adopted - BC-10-24-07-E

Emergency Amended – BC-04-25-18-D

Amended – BC-__-__-__-__



Legislative Operating Committee July 18, 2018

Sanctions and Penalties Law

Submission Date: 9/6/17	Public Meeting: n/a
LOC Sponsor: Jennifer Webster	Emergency Enacted: n/a

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

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

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

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

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

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

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

3/16/18: *Work Meeting:* Present: David P. Jordan, Jennifer Webster, Daniel Guzman, Ernest Stevens III, Clorissa Santiago, Brandon Wisneski, Cathy Bachhuber, Rosa Laster. The LOC reviewed the potential date for the community meeting, and directed the drafting attorney to schedule the community meeting for May 3, 2018, and to ensure the notice is published in the

Kalihwisaks twice, an appointment is sent to all members of the LOC and boards, committees, and commissions, and that the Communications Department is included in the appointment so they can make efforts to communicate notice of the event.

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

Next Steps:

- Accept the legislative analysis for the Sanctions and Penalties law and defer to a work meeting.



SANCTIONS AND PENALTIES LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Oneida Business Committee	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	To increase accountability among elected and appointed officials of the Nation. This new law creates a formal complaint process and allows for corrective actions against officials who engage in misconduct.		
Purpose	To establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties <i>[see Sanctions and Penalties, 1 O.C. 120.1-1]</i> .		
Affected Entities	Oneida Business Committee; All elected and appointed members of boards, committees, and commissions; Any individual who has knowledge that an official has committed misconduct, Judiciary Trial Court, Judiciary Court of Appeals, Business Committee Support Office. This law does not apply to the judges of the Oneida Judiciary, whose misconduct process is located in the Judiciary Law. This does not apply to members of corporate boards.		
Affected Legislation	Rules of Civil Procedure, Rules of Appellate Procedure, Code of Ethics, Comprehensive Policy on Boards, Committees and Commissions, Garnishment Law, Per Capita Law, and any of the Nation's laws and bylaws.		
Enforcement/Due Process	Sanctions and penalties against appointed officials will be imposed by the Business Committee. Sanctions and penalties against elected officials will be imposed by the Trial Court. Officials accused of misconduct have the right to be represented by an attorney or advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to appear at the investigatory hearing to answer the allegations, provide witness testimony, documents and evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.		
Public Meeting	A public meeting has not yet been held.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. When officials of the Nation commit misconduct in office, there are few remedies available to for the Nation to discipline that official. Currently, appointed officials may have their appointment terminated by the Business Committee, and elected officials may be removed in accordance with the Removal Law. However, there have been instances of misconduct that do not rise to the level of removal. For example, officials with multiple unexcused absences, failure to submit reports on time, or behaving disrespectfully to community members or fellow officials. In these cases, other remedies such as verbal reprimands, fines, or suspensions may be more appropriate.
- B. This law creates a formal complaint process that gives all tribal members an opportunity to file complaints while ensuring that due process rights for those accused are protected. This law also

creates a range of potential sanctions and penalties for officials who violate the laws of the Nation or commit other forms of misconduct.

- C. This law will apply to members of the Oneida Business Committee, as well as members of the following Boards, Committees and Commissions:

ELECTED	APPOINTED
<ul style="list-style-type: none"> Oneida Election Board Oneida Gaming Commission Oneida Land Claims Commission Oneida Land Commission Oneida Nation Commission on Aging (ONCOA) Oneida Nation School Board Trust Enrollment Committee 	<ul style="list-style-type: none"> Anna John Resident Centered Care Community Board (AJRCC) Audit Committee Environmental Resource Board (ERB) Finance Committee Oneida Library Board Oneida Nation Arts Board Oneida Police Commission Oneida Pow Wow Committee Oneida Nation Veterans Affairs Committee (ONVAC) Pardon and Screening Forgiveness Committee Southeastern WI Oneida Tribal Services Advisory Board (SEOTS)

SECTION 3. CONSULTATION AND OUTREACH

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

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

- B. The Business Committee Support Office, Records Management Department, Human Resources Department and representatives from the following Boards, Committees and Commissions were consulted in the development of this law and analysis:

- Anna John Resident Centered Care Community Board (AJRCC);
- Election Board;
- Environmental Resource Board (ERB);
- Gaming Commission;
- Land Commission;
- Police Commission;
- Pow-wow Committee;
- Trust Enrollment Committee;
- Oneida Nation Veterans Affairs Committee (ONVAC).

- C. A community pot-luck meeting was held on May 3, 2018 to gather community input on this law. Sixteen (16) people attended this meeting.

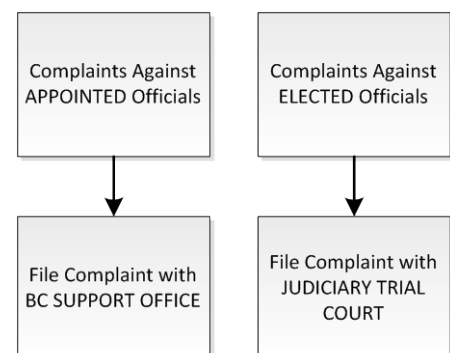
SECTION 4. PROCESS

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

SECTION 5. CONTENTS OF THE LEGISLATION .

- A. ***What Qualifies as Misconduct.*** The Oneida Nation expects elected and appointed officials to uphold high ethical and moral standards. Officials who engage in misconduct may be subject to sanctions and penalties. This section describes what behaviors could be considered misconduct [see *Sanctions and Penalties 120.4*]. Under this law, the definition of misconduct is very broad and includes any of the following:
- Violating the Oneida Constitution or any law, policy or rule of the Oneida Nation.
 - Violating the bylaws or standard operating procedures of the board the official serves on.
 - Being convicted of a felony under federal or Wisconsin law, or being convicted of a crime elsewhere that would be considered a felony in the state of Wisconsin or the United States.
 - Any other activity that does not uphold the moral and ethical standards expected of the Nation's officials.
- B. ***Filing a Complaint.*** Under this law, anyone eighteen (18) years or older who believes that an official has committed misconduct can file a complaint. The person filing the complaint does not need to be an enrolled tribal member. Examples of individuals who might file complaints include community members, employees of the Nation, and fellow officials. The complaint must be filed within 90 days of when the alleged misconduct occurred. If the misconduct occurred more than 90 days prior, the complaint will not be accepted [see *Sanctions and Penalties 120.5*].

Chart 2. Where to File Complaints

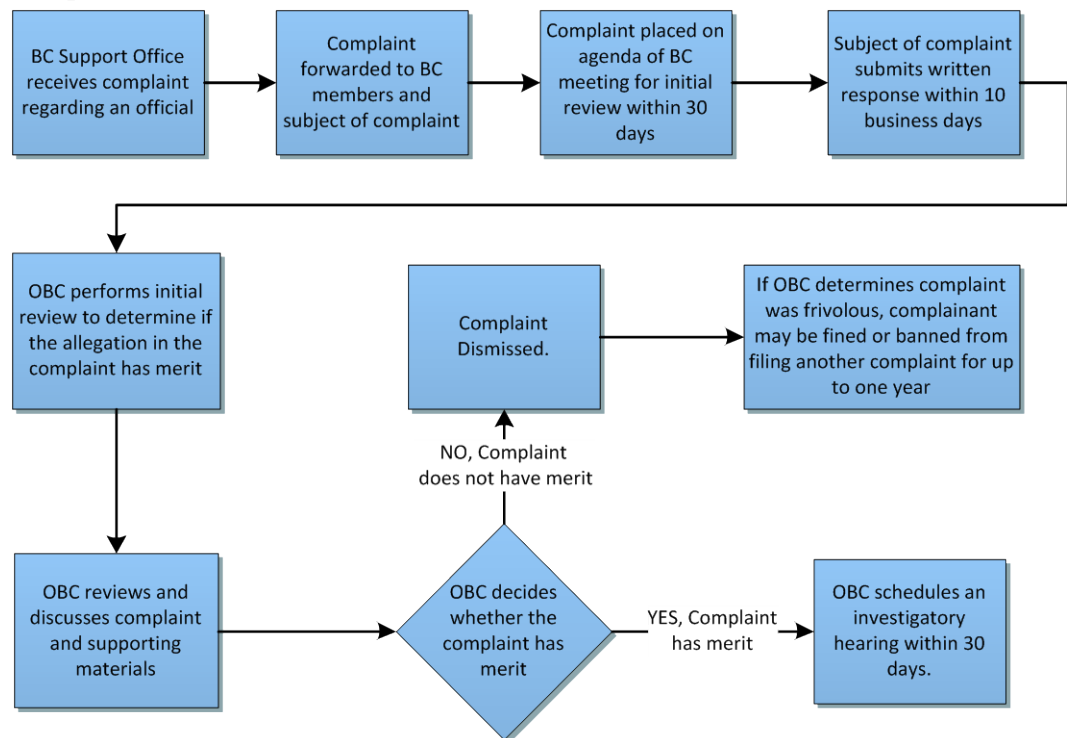


- 85 ▪ *Contents of the Complaint.* Complaints must include the following information:
 - 86 ○ Information about the official, including the official's name and the entity they serve on.
 - 87 ○ Information about the alleged misconduct, including date, time, location and specific
 - 88 details.
 - 89 ○ The specific law, policy, rule or bylaw that the official violated.
 - 90 ○ Information about any witnesses or others with knowledge of the violation.
 - 91 ○ Contact information of the individual filing the complaint.
 - 92 ○ Supporting documents and any other information required by the Rules of Civil
 - 93 Procedure.
 - 94 - The Rules of Civil Procedure must be followed for complaints against elected
 - 95 officials, which are filed in the Trial Court. More detail on the Rules of Civil
 - 96 Procedure is included later in this analysis.
- 97 ▪ *Where to File Complaints.* Complaints against appointed officials are filed with the Business
- 98 Committee (BC) Support Office, which is currently located at the Norbert Hill Center.
- 99 Complaints against elected officials are filed with the Trial Court, with is located within the
- 100 Oneida Judiciary.
- 101 ▪ *Retaliation.* Retaliation against someone who files a complaint or cooperates with a misconduct
- 102 investigation is not allowed.
- 103 ▪ *Right to an Attorney or Advocate.* Any official who has been accused of misconduct has the right
- 104 to be represented by an attorney or an advocate, at their own expense.
 - 105 ○ *Legal Resource Center.* The Legal Resource Center Law established an office to provide
 - 106 legal advice and representation to Tribal members and employees in cases before the
 - 107 Judiciary. This office currently has two advocates who provide services at cost.
- 108 C. ***Complaints Against an Appointed Official.*** Complaints against an appointed official will be filed
- 109 with the Business Committee (BC) Support Office. Appointed officials serve at the discretion of the
- 110 Oneida Business Committee (BC), who may terminate appointments at any time. The LOC has
- 111 determined that because the BC is responsible for selecting and appointing officials, the BC should be
- 112 responsible for holding appointed officials accountable through sanctions and penalties. The
- 113 following is a description of the complaint process for appointed officials [*see Sanctions and*
- 114 *Penalties 120.6*].
 - 115 ▪ ***Receipt of Complaint.*** When the BC Support Office receives a complaint, it will forward copies
 - 116 of the complaint to all members of the Oneida Business Committee (BC) for review, and to the
 - 117 official the complaint has been made against. The BC Support Office will place the complaint on
 - 118 the agenda of a Business Committee meeting within thirty (30) days.
 - 119 ▪ ***Answer to the Complaint.*** The official who has been accused of misconduct will have ten (10)
 - 120 business days to respond in writing to the complaint. The official may admit to the misconduct,
 - 121 deny the misconduct, or provide an affirmative defense. An affirmative defense means that an
 - 122 official admits they committed the alleged acts, but that they were justified in doing so.
 - 123 ▪ ***Conflict of Interest.*** If a member of the Oneida Business Committee (BC) has a conflict of
 - 124 interest regarding a complaint, they must recuse themselves and not participate in the review or
 - 125 hearings. If a member of the BC fails to recuse themselves, that member may be subject to
 - 126 sanctions and penalties under this law.
 - 127 ▪ ***Initial Review.*** The Oneida Business Committee (BC) will review the complaint, the official's
 - 128 written response, and any documentation. The BC will discuss and decide whether the complaint

has merit by majority vote. If the BC decides the complaint has merit, they will schedule an investigatory hearing. If BC decides the complaint does not have merit, it the complaint will be dismissed.

- **Frivolous Complaints.** If the BC decides that an individual filed a complaint that was frivolous, false, or made with malicious intent, they may fine that individual up to \$500 or ban them from filing another complaint for up to 1 year. In addition, the official the complaint was filed against may also file a civil suit in the Trial Court.

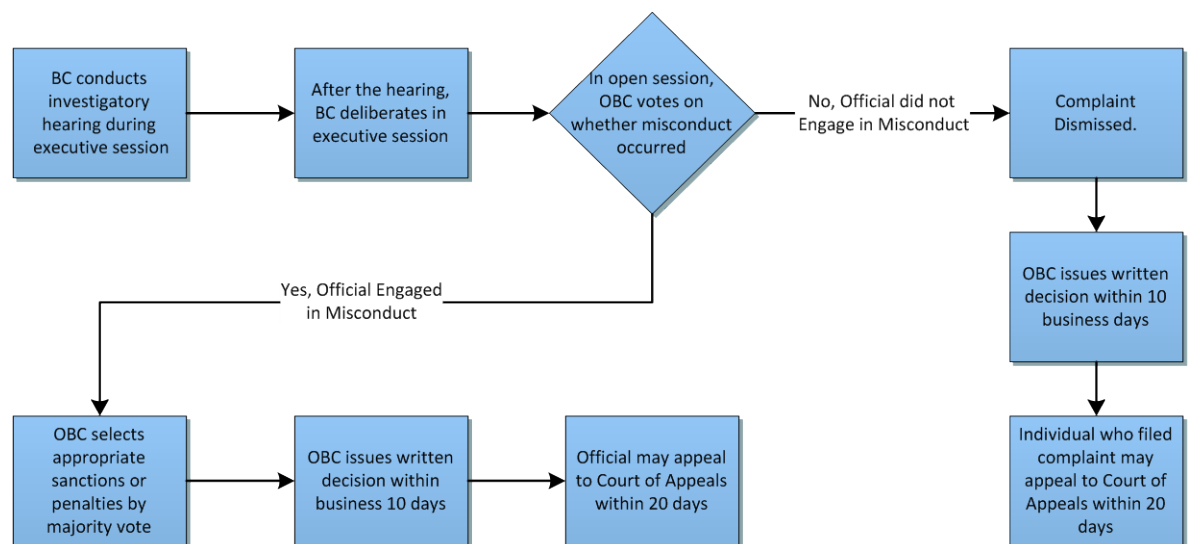
Chart 3. Complaint Process Against Appointed Officials: Receipt and Initial Review of Complaint.



- **Investigatory Hearing.** The BC will conduct an investigatory hearing during executive session of a regular or special BC meeting. During this hearing, the BC will determine whether there's enough evidence to substantiate the allegations by clear and convincing evidence.
 - **Burden of Proof.** The burden of proof for allegations made under this law is "clear and convincing evidence." This is the same standard the Nation uses in misconduct cases against judges in the Oneida Judiciary [see 8 O.C. Judiciary Law 801.12-6(c)]. This means that the person filing the complaint must provide evidence "indicating that the [allegation] to be proved is highly probably or reasonably certain" [see Black's Law Dictionary]. This is a greater burden than "preponderance of the evidence," the standard in most civil trials, but less than evidence "beyond a reasonable doubt," which is used for criminal trials.
- The BC will have the authority to call witnesses to provide testimony and physical evidence under oath.

- *Testimony.* The official accused of misconduct will have the opportunity to answer allegations, provide witness testimony and evidence on their own behalf. The individual who filed the complaint will also have an opportunity to answer questions, provide witness testimony and information to support their claim. The hearing will be informal.
- **Deliberation.** After the investigatory hearing, the BC will remain in executive session to discuss the evidence and information provided. The BC will also discuss which sanctions and penalties to impose, if appropriate.
- **Determination.** During an open session of a special or regular Oneida Business Committee meeting, the BC will vote to decide whether the allegations of misconduct have been proven by clear and convincing evidence. If the BC finds that the official has engaged in misconduct, then they will also decide the appropriate sanction or penalty by majority vote. The BC must issue a written decision within 10 days of the investigatory hearing, and provide copies of the decision to the person who made the complaint, the official accused of misconduct, and the BC Support Office.
- **Appeal.** Both the official accused of misconduct and the individual who filed the complaint have the right to appeal the decision of the Oneida Business Committee. The appeal must be filed with the Court of Appeals within 20 days of the BC's written decision.

Chart 4. Complaint Process Against Appointed Officials: Investigatory Hearing & Decision

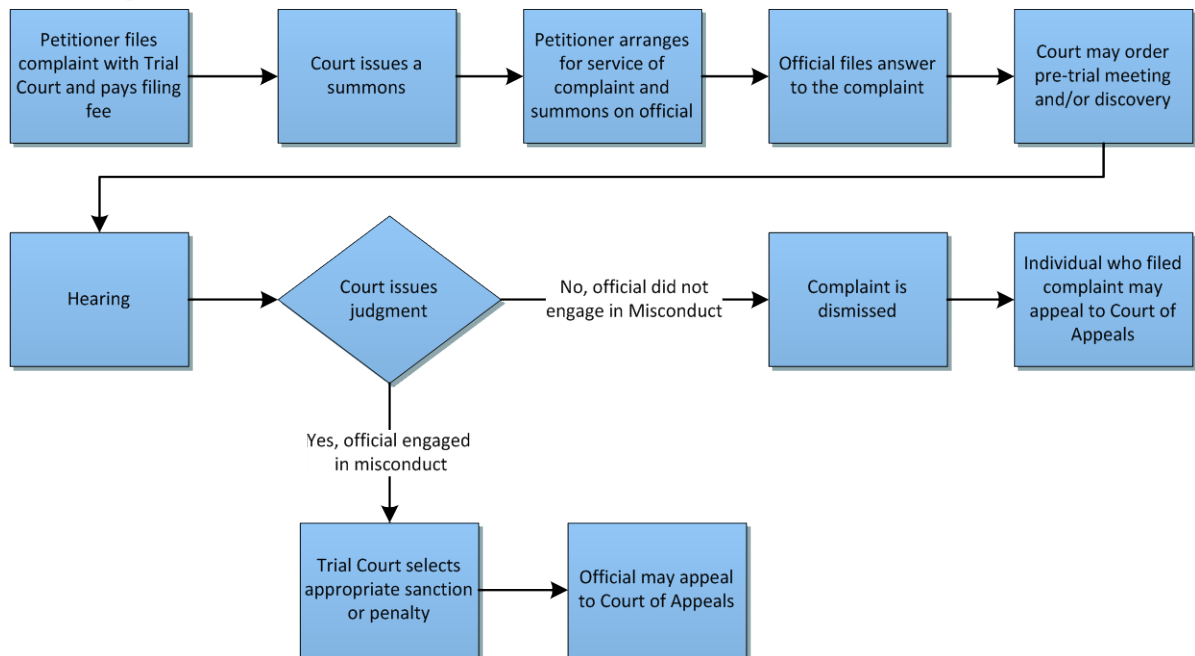


D. Complaints Against an Elected Official.

- Complaints against elected officials, including members of the Oneida Business Committee, will be heard by the Nation's Trial Court. Because elected officials are chosen by the tribal membership, it has been determined that complaints against these officials should go to the Nation's Trial Court.
- All complaints must follow the Trial Court's Rules of Civil Procedure. The following is a brief overview of how a civil case is processed by the Trial Court [see *Sanctions and Penalties* 120.7].
 - *Petitioner Files a Complaint with the Trial Court and Pays Filing Fee.* The Trial Court has a standard complaint form with instructions to fill out the complaint.

- *Complaint.* At the time this analysis was drafted, the Rules of Civil Procedure require the complaint to include the full name and address of the plaintiff and defendant, why the defendant is being sued, facts supporting each claim, why the trial court has jurisdiction, specifically what relief is sought from the defendant, and a summons [see *Oneida Judiciary Rules of Civil Procedure 803.5-1*].
- *Filing Fee.* The Oneida Judiciary Trial Court charges a \$50 filing fee to file a general civil case. However, individuals may request a fee waiver from the court for the following reasons: unemployed, health/medical, or below poverty level. Note that this fee applies only to cases filed against elected officials. Complaints against appointed officials will be filed with the BC Support Office, which does not charge a fee.
- *Summons:* A summons is a document ordering a defendant to appear before a judge. The Trial Court has a standard summons form.
- o *Complaint and Summons are served on official.* The complaint and summons must be delivered to the official within 30 days after the complaint is filed. In addition, for complaints against officials, notice must also be served to the Secretary's office [see *8 O.C. Rules of Civil Procedure 803.5*].
- o *Petitioner Files Proof of Service.* The petitioner must provide proof to the Court that the complaint and summons were delivered to the defendant within 10 days of delivery. If proof of service is not completed, then the case will be dismissed. [see *Rules of Civil Procedure 803.5-3*].
- o *Official Files an Answer.* The official responds to the complaint by filing an answer. The official can either admit to or deny the allegations made in the complaint and provide defenses to each claim made in the complaint.
- o *Pre-Trial Meeting.* A pre-trial meeting may be scheduled between the judge, petitioner and defendant. The purpose for this meeting could include preparing for the trial, creating a plan regarding discovery, or facilitating a settlement, such as peacemaking [see *Rules of Civil Procedure 803.12*].
- o *Discovery.* The petitioner may make efforts to obtain information relevant to the case, such as documents and electronic information. The judge may place limitations on the information.
- o *Hearing.* The individual who filed the complaint must prove by clear and convincing evidence that the elected official committed misconduct.
- o *Judgment.* If the Trial Court determines by clear and convincing evidence that the official engaged in misconduct, then the Trial Court will impose sanctions and penalties that they deem appropriate.
- o *Appeals.* Both the official accused of misconduct and the individual who filed the complaint have the right to appeal the decision of the Trial Court. The appeal must be filed with the Court of Appeals in accordance with the Rules of Appellate Procedure.

Chart 5. Complaint Process Against Elected Officials



E. Sanctions and Penalties. This law includes a list of sanctions and penalties that may be imposed on an official for misconduct in office. The Trial Court is responsible for imposing sanctions on an elected official. The Oneida Business Committee is responsible for imposing sanctions on an appointed official. Officials may receive one or more of the following penalties. The Trial Court or BC will select whichever penalty they feel is appropriate [see *Sanctions and Penalties 120.8*].

- **Verbal Reprimand.** During a BC or GTC meeting, the Nation’s chairperson will read a statement describing the official’s misconduct. The chairperson will also state that the official’s behavior was unacceptable and that the official should not engage in misconduct again.
- **Public Apology.** An official may be ordered to make a public apology at a BC or GTC meeting. The apology must include a description of the misconduct, a statement that the actions were wrong, a description of the harm caused by the misconduct, and a “clear and unambiguous” apology.
- **Written Reprimand.** The Oneida Business Committee or Judiciary Trial Court may publish a written reprimand in the Nation’s official media outlets. The Nation’s official media outlets are the Oneida Nation website and the Kalihwisaks newspaper [see *BC Resolution #03-22-17-B*]. The written reprimand will include the same information as a verbal reprimand.
- **Suspension.** The BC or Trial Court may suspend an official for up to sixty (60) days. During a suspension, the official cannot attend meetings, trainings, or conferences. The official also cannot vote or perform work for the board. In addition, the official cannot earn any stipends, salary or mileage during the suspension.
- **Restitution.** An official can be ordered to pay restitution, which means paying back any improperly received benefit, such as stolen money or items or replacing damaged property. Examples of restitution could include paying back money that was improperly taken or paying to repair or replace damaged items.

- 254 ▪ *Fines.* An official can be ordered to pay a fine for each act of misconduct. Unlike restitution, a
255 fine is a punishment. The maximum amount of each fine is \$5000.
 - 256 ○ *Fine Process.* All fines will be paid to the trial court and deposited into the Nation's
257 General Fund. Officials must pay their fine within 90 days after the fine is issued or
258 upheld on final appeal. If the fine is not paid on time, the Nation may collect the money
259 through garnishment or the official's per capita payment.
 - 260 ○ *Community Service Alternative.* An official may complete community service to make
261 up all or part of their fine at a rate of \$10 for each hour of community service. The Nation
262 currently allows community service for fines issued in the Hunting, Fishing and Trapping
263 Law [see *Hunting Fishing and Trapping 406.10-5(a)*].
- 264 ▪ *Loss of Stipend.* An official may lose their stipend for up to twelve (12) meetings. Appointed
265 boards are eligible for only one meeting stipend per month, so at most this could amount to one
266 year's worth of stipends. Elected boards are allowed to meet more frequently, so this could
267 amount to six (6) months of stipends for a board that meets twice per month.
- 268 ▪ *Termination of Appointment.* The Oneida Business Committee can terminate the appointment of
269 any appointed official at any time. All appointed members serve at the discretion of the BC [see
270 *Comprehensive Policy 1 O.C. 105.6-5*].
- 271 ▪ *Removal.* The Trial Court can recommend that an official be removed from office in accordance
272 with the Removal Law. However, this would only be a recommendation. The Removal Law
273 provides a strict process that must be followed to remove elected officials:
 - 274 ○ *Removal Law Process.* In order to remove an elected official, an eligible voter must file a
275 petition with the Secretary signed by at least 30% of the vote cast in the previous general
276 election. For example, the number of votes cast in the 2017 general election was 1612, so
277 the number of signatures needed to initiate removal is 484. Then, the Judiciary conducts
278 a preliminary review to determine whether there is sufficient grounds for removal. If so,
279 the Judiciary holds a hearing. If the Judiciary determines that sufficient grounds for
280 removal has been proven, the findings are forwarded to the Nation's Chair, who
281 schedules a GTC meeting. At the GTC meeting, an elected official may be removed from
282 office after a 2/3 vote [see *Removal Law 1 O.C. 104*].
- 283 ▪ *Prohibition.* An official can be banned from serving on an entity for up to three years.
 - 284 ○ *Election Law.* The Election law contains a similar provision that bans members of the
285 Election Board from serving for up to three years if they are removed from office [see
286 *Election Law 1 O.C. 102.4-4*].

287 **F. *Factors in Determining Appropriate Sanction and/or Penalty.*** The Trial Court and Oneida Business
288 Committee may consider the following when deciding which sanction or penalty to apply [see
289 *Sanctions and Penalties 120.8-3*].

- 290 ▪ How severe the misconduct was, whether it was intentional, and how likely the official is to
291 repeat the misconduct.
- 292 ▪ The damage to the finances or reputation of the Nation, the entity, or any person or organization.
- 293 ▪ Whether the official has expressed remorse and is willing to take steps to correct the harm done.
- 294 ▪ Whether any prior complaints have been filed against the official. For example, is this the first
295 complaint against the official or does it represent a pattern of behavior.

- 296 **G. *Civil Liability and Criminal Prosecution.*** In addition to the sanctions and penalties in this law, an
297 official who commits misconduct may also suffer other consequences. [*see Sanctions and Penalties*
298 *120.8-4*]. These include:
- 299 ▪ Removal from office or termination of appointment.
 - 300 ▪ Criminal prosecution, if the official violated a criminal law. For example, criminal charges for
301 theft or violent acts.
 - 302 ▪ Civil liability, in accordance with any applicable law of any jurisdiction. For example, a lawsuit
303 in court for damages.
 - 304 ▪ Any other penalties listed in another law of the Oneida Nation.
 - 305 ○ For example, a violation of the Computer Resources Ordinance may result in loss of
306 access to the Nation's computer resources [*see Computer Resources 2 O.C. 215.9-1*].
- 307 **H. *Effect of Resignation by an Official.*** If an official resigns from office after a complaint has been
308 filed, that complaint will still be investigated and sanctions and penalties may still be pursued.
309 Resigning from office does not end or prevent an investigation [*see Sanctions and Penalties 120.9*].
- 310 **I. *Record of Conduct in Office.*** A record of conduct for each official will be maintained by the BC
311 Support Office, which will include copies of complaints filed against the official, outcome of the
312 complaints, and any sanctions and penalties the official received. This record will be maintained for at
313 least 10 years [*see Sanctions and Penalties 120.10*].
- 314 ▪ ***Public Access to Record of Conduct.*** The Open Records and Open Meetings law provides tribal
315 members with access to public records of the Nation. However, the Open Records and Open
316 Meetings law also states that “any record containing personally identifiable information that is
317 collected or maintained in connection with a complaint, investigation or other circumstances that
318 may lead to an enforcement action, administrative proceeding, arbitration or court proceeding” is
319 exempt from inspection and copying [*see Open Records and Open Meetings Law 1 O.C. 107.4-*
320 *1(j)*]. Therefore, this suggests that the record of conduct maintained by the BC Support Office
321 would not be available for the public to view or copy. However, it should be noted that sanctions
322 such as verbal reprimand, public apology, and written reprimand will occur in a public meeting or
323 be published in the Nation's newspaper.
- 324

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

- 326 **A. *References to the Other Laws of the Nation:*** The following laws of the Nation are referenced in this
327 law. This law does not conflict with any of the referenced laws.
- 328 ▪ *Rules of Civil Procedure.*
 - 329 ▪ *Rules of Appellate Procedure.*
 - 330 ▪ *Garnishment Law.*
 - 331 ▪ *Per Capita Law.*
- 332

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

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

SECTION 8. ENFORCEMENT AND ACCOUNTABILITY

- A. Sanctions and penalties against appointed officials will be imposed by the Business Committee. Sanctions and penalties against elected officials will be imposed by the Nation's Trial Court.

SECTION 9. OTHER CONSIDERATIONS

- A. **Code of Ethics.** Most other tribal, municipal and state governments place sanctions and penalties within their Code of Ethics law. This makes sense, as the Code of Ethics and Sanctions and Penalties are closely related. The Code of Ethics provides guidelines that officials must follow, while the sanctions and penalties describe what happens if those guidelines are violated.

- **Need for Revision of Code of Ethics.** Any efforts to create a Sanctions and Penalties should include a review of the Code of Ethics so that the two documents work together harmoniously. Currently, Nation's Code of Ethics is written in vague, broad terms. In contrast, the Code of Ethics of other Tribal Nations and municipalities often provide clear, specific examples. Revising the Code of Ethics will provide clear guidance to officials, individuals filing complaints, the Business Committee and the Judiciary when they begin hearing complaints under this law.
- **Recommendation:** The Code of Ethics is currently on the LOC's Active Files List. It is suggested that work proceed on reviewing and updating the Code of Ethics as this Sanctions and Penalties law moves forward.

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

- **Other Forms of Complaint.** The Removal Law requires a large number of signatures and has rarely (if ever) been successfully used. GTC petitions provide another opportunity for tribal members to express their complaints and opinions regarding actions of the Nation. Petitions require 50 (fifty) signatures, and over the past decade GTC has received between five (5) and (17) petitions per year. Both Removal Law and GTC petitions require signatures, while this process does not. Therefore, it is reasonable to assume that the number of complaints filed using this law will be much higher. GTC Meetings regularly feature complaints from GTC members regarding individual office holders or specific boards, committees and commissions. It is not known how many of these verbal complaints would result in written complaints under this law.
- **Recommendation:** Given the uncertainty regarding the number of potential complaints, the Business Committee, BC Support Office and Judiciary should be prepared to potentially process a large number of complaints upon passage of this law. After implementation,

- C. **Impact of Suspension on Full-Time Officials.** Members of the Oneida Business Committee and Oneida Gaming Commission are full-time elected officials. Therefore, suspension of these officials will impact salaries, benefits such as health insurance, and access to buildings and email. The Human Resources Department reports that they have a suspension procedure in place for employees of the Nation, and that this procedure could be used for suspension of full-time officials.

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

D. Public Apologies. Under this law, an official may be ordered to issue a “clear and unambiguous” public apology. The practice of ordering an apology is used in the state of Wisconsin. The WI Department of Corrections notes that “some offenders are ordered by a court to write apology letters to their victims.” However, it is possible that an official may decline to offer an apology, or offer an apology that appears insincere. The LOC may also consider whether it is appropriate to “force” an individual to make a statement if they do not agree with it.

- **Recommendation:** Rather than requiring an apology, the LOC may want to consider offering public apology as an alternative to other sanctions and penalties. For example, ordering an official to give a public apology OR receive a written reprimand.

E. Comparison to Other Nations. Research of other tribal nations and municipalities indicate that there are many different processes for sanctions and penalties of public officials. There is not a single standard used by all tribal governments. Examples of other sanctions and penalties processes are provided below for information:

Chart 6. Sanctions and Penalties Process of other Tribal Nations

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

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

F. Create a Standard Complaint Form. The BC Support Office and Judiciary may want to consider drafting standard complaint forms to provide to individuals who wish to file a complaint against officials under this law. This form could include the information required under 120.5-3, instructions, and clearly state where complaints against elected officials or appointed officials must be filed. The Nation’ Trial Court has a standard civil complaint packet which could be used as an example.

G. Community Service. This law allows officials to complete community service instead of paying a fine. These volunteer hours will need to be tracked and reported to ensure that they have been completed. The Hunting, Fishing and Trapping Law has a similar community service provision for fines issued under that law. The Trial Court has developed a form for documenting community service. The individual is required to contact entities on their own to schedule their own community service. Environmental Resource Board (ERB) reports that a deadline was typically placed on when the community service had to be completed. At this time, the completed volunteer forms are turned in to the Law Office.

- **Recommendation:** The Judiciary and/or Law Office should be prepared to accept and track community service hours should individuals be fined under this law.

- 413 **H. Complaints against Judiciary.** The Judiciary Law already contains a process for reprimand,
414 suspension and removal of judges [*see Judiciary Law 8 O.C. 801.12*]. Therefore, the Judiciary is not
415 included in this law.
- 416 **I. Rules of Civil Procedure.** Complaints filed in the Judiciary Trial Court must follow the Rules of
417 Civil Procedure. The Rules of Civil Procedure are currently on the LOC's Active Files List and may
418 be revised in the near future.
- 419 **J. Fiscal Impacts.** Please refer to the fiscal impact statement for any fiscal impacts.
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Title 1. Government and Finances - Chapter 120

SANCTIONS AND PENALTIES

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

120.7. Complaint Alleged Against an Elected Official
120.8. Sanctions and Penalties
120.9. Effect of Resignation by an Official
120.10. Record of Conduct in Office

120.6. Complaint Alleged Against an Appointed Official

120.1. Purpose and Policy

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

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

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

- (a) Kahletsyal&sla. The heart felt encouragement of the best in each of us.
- (b) Kanolukhw@sla. Compassion, caring, identity, and joy of being.
- (c) Ka>nikuhli=y%. The openness of the good spirit and mind.
- (d) Ka>tshatst^sla. The strength of belief and vision as a People.
- (e) Kalihwi=y%. The use of the good words about ourselves, our Nation, and our future.
- (f) Twahwahts\$lay<. All of us are family.
- (g) Yukwats\$stay<. Our fire, our spirit within each one of us.

120.2. Adoption, Amendment, Repeal

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

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

120.2-3. 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.

120.2-4. 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.

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

120.3. Definitions

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

- (a) “Affirmative defense” means a fact or set of facts other than those alleged by the complainant which, if proven by the official, defeats or mitigates the consequences of the official's otherwise unlawful conduct.
- (b) “Answer” means a formal written statement addressing the dispute on the merits and presents any defenses and counterclaims.
- (c) “Business Committee Support Office” means the office that provides administrative support for the Oneida Business Committee and various other governmental operations.
- (d) “Business day” means Monday through Friday 8:00 a.m. – 4:30 p.m., excluding holidays recognized by the Nation.
- (e) “Clear and convincing evidence” means that it is substantially more likely than not that the facts presented are true.
- (f) “Complainant” means an individual who has made a complaint.
- (g) “Constitution” means the Constitution and By-Laws of the Oneida Nation.
- (h) “Court of Appeals” means the Court of Appeals of the Oneida Nation Judiciary.
- (i) “Entity” means a board, committee or commission of the Nation, including the Oneida Business Committee.
- (j) “Frivolous” means a complaint without any reasonable basis or merit, that cannot be supported by a good faith argument. Most often frivolous complaints are intended to merely harass, delay, or embarrass the opposition.
- (k) “Misconduct” means wrongful, improper or unlawful conduct or behavior.
- (l) “Nation” means the Oneida Nation.
- (m) “Official” means any person who is elected or appointed to serve on a board, committee or commission of the Nation, including the Oneida Business Committee.
- (n) “Restitution” means compensation to an individual for an injury, damage or loss.
- (o) “Stipend” means the amount paid by the Oneida Nation to individuals serving on boards, committees and commissions of the Nation to offset the expenses of being a member on the board, committee or commission.
- (p) “Substantiate” means to find that the complaint or allegation in the complaint is valid because there is clear and convincing evidence.
- (q) “Trial Court” means the Trial Court of the Oneida Nation Judiciary.

120.4. Misconduct

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

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

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

120.5. Filing of a Complaint

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

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

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

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

120.5-4. *Where to File.*

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

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

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

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

120.6. Complaints Alleged Against an Appointed Official

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

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

- (a) immediately forward copies of the complaint, including any supporting documentation, to:
 - (1) all members of the Oneida Business Committee for review; and
 - (2) the individual who is the subject of the complaint.

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

120.6-3. *Answer to the Complaint.* The individual who is the subject of the complaint shall have ten (10) business days after receiving his or her copy of the complaint, to submit to the Business Committee Support Office a written answer setting forth any admission, denial, affirmative defense, or other relevant information upon which the official intends to rely during proceedings related to the complaint.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the complainant,

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

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

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

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

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

120.7. Complaints Alleged Against an Elected Official

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

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

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

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

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

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

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

120.8. Sanctions and Penalties

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

120.8-2. Sanctions and penalties may include:

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

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

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

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

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

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

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

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

- (1) identify the specific misconduct committed by the official;
- (2) recognize that the official's actions or inactions were wrong;
- (3) identify the effects of the official's misconduct; and
- (4) include a clear and unambiguous apology from the official.

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

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

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

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

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

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

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

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

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

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

(4) Community service may be substituted for part or all of any fine at the rate of ten dollars (\$10) for each hour of community service.

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

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

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

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

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

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

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

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

120.9. Effect of Resignation by an Official

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

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

120.10. Record of Conduct in Office

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

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

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

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

End.

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Adopted –



Legislative Operating Committee
July 18, 2018

Oneida Personnel Policies and Procedures Emergency Amendments

Submission Date: 4/18/18	Public Meeting: n/a
LOC Sponsor: David P. Jordan	Emergency Enacted: 4/25/18

Summary: *Request to amend this law on an emergency basis was due to action taken through resolution BC-04-11-18-A by the Oneida Business Committee which dissolved the Personnel Commission and directed the Legislative Operating Committee to develop and present emergency legislative amendments to fully address the impact of this resolution by the April 25, 2018, Oneida Business Committee meeting for consideration of adoption.*

4/18/18 LOC: Motion by Daniel Guzman King to add to the Active Files list as a high priority with David P. Jordan as the Sponsor; seconded by Jennifer Webster. Motion carried unanimously.

4/18/18: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Jo Anne House, Tani Thurner, Laura Laitinen-Warren. The purpose of this work meeting was to discuss an update and plan for the emergency amendments.

4/20/18: E-Poll conducted.

4/25/18 OBC: Motion by David P. Jordan to adopt resolution 04-25-18-E Oneida Personnel Policies and Procedures Emergency Amendments, seconded by Kirby Metoxen. Motion carried unanimously.

5/2/18 LOC: Motion by Ernest Stevens III to enter the Oneida Personnel, Policies, and Procedures Emergency Amendments E-poll into the record; seconded by Kirby Metoxen. Motion carried unanimously.

5/17/18: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Clorissa Santiago, Brandon Wisneski. The purpose of this work meeting was to review and discuss the proposed permanent amendments to the Personnel Policies and Procedures. Drafting attorney will update the draft.

6/6/18 LOC: Motion by Jennifer Webster to accept the draft of the Oneida Personnel, Policies, and Procedures amendments and direct that a legislative analysis be completed; seconded by Ernest Stevens III. Motion carried unanimously.

Next Steps:

- Accept the legislative analysis of the Oneida Personnel Policies and Procedures amendments and defer to a work meeting.



AMENDMENTS TO PERSONNEL POLICIES AND PROCEDURES LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: OBC	SPONSOR: David P. Jordan	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	To permanently remove references to the Personnel Commission and transfer their responsibilities under this law to the Oneida Judiciary and the newly created Personnel Selection Committee.		
Purpose	The purpose of the Personnel Policies and Procedures, also referred to as “the blue book,” is to govern the Nation’s employment policies regarding recruitment, selection, compensation and benefits, employee relations, safety and health, record keeping and other work standards.		
Affected Entities	Oneida Human Resources Department, Oneida Judiciary, Oneida Personnel Commission, Oneida Personnel Selection Committee, All employees of the Nation, All applicants who interview for jobs with the Nation.		
Affected Legislation	Oneida Personnel Policies and Procedures		
Enforcement/Due Process	This law includes a disciplinary process for violations. Employees may appeal disciplinary actions to their area manager or Oneida Judiciary Trial Court [see <i>Personnel Policies and Procedures – Section VI</i>].		
Public Meeting	A public meeting has not yet been held.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- A. On April 11, 2018, the Oneida Business Committee (OBC) dissolved the Oneida Personnel Commission and directed that the Commission’s hearing authority be transferred to the Oneida Judiciary [see *BC Resolution 04-11-18-A*]. On the same day, the Oneida Business Committee recreated the Personnel Selection Committee to assume the Personnel Commission’s responsibilities related to job screening and interviews [see *BC Resolution 04-11-18-B*]. The Personnel Selection Committee was originally created by the General Tribal Council to monitor the hiring process to protect against issues of nepotism and enforce Oneida and Indian preference. In 1990, the OBC changed the committee’s name to the “Personnel Commission” [see *BC Resolution BC-04-13-90*]. Over time, the Personnel Commission assumed additional responsibilities beyond the hiring process, such as hearing employment-related grievances [see *BC Resolution 05-12-93-J*].
- B. References to the Personnel Commission appear in several of the Nation’s laws. Now that the Personnel Commission is dissolved, amendments are necessary to transfer the Personnel Commission’s responsibilities to the Oneida Judiciary or to the newly recreated Personnel Selection Committee.
- C. On April 25, 2018, the Oneida Business Committee adopted emergency amendments to transfer the Personnel Commission’s responsibilities under this law to the Oneida Judiciary Trial Court and the Personnel Selection Committee. The emergency amendments expire on October, 25, 2018 and may be renewed for one additional six-month period. [see *BC Resolution 04-25-18-D*].

- D. Permanent adoption of these amendments will ensure that the Nation's employees can continue to have their employment-related grievances heard. These amendments also ensure that the Nation's job screening and interview process will include participation from the newly recreated Personnel Selection Committee.

SECTION 3. CONSULTATION AND OUTREACH

- A. The Judiciary Law, Personnel Policies and Procedures, Employee Protection Policy, and Military Service Employee Protection Act, and draft Employment law were reviewed in drafting this analysis.
- B. The Human Resources Department, Judiciary and former Personnel Commission staff were consulted in the development of this analysis.

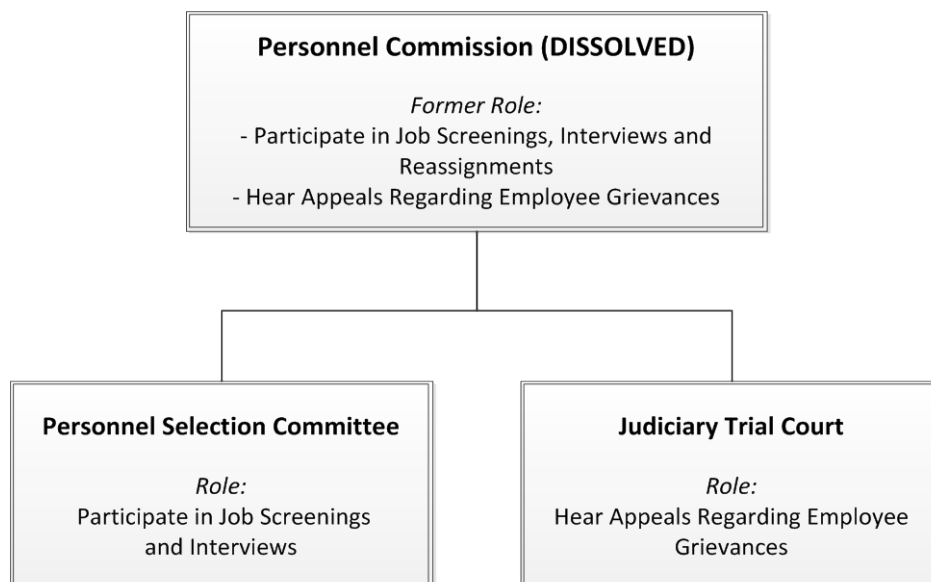
SECTION 4. PROCESS

- A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- B. This law was added to the Active Files List as emergency amendments on 4/18/2018. Emergency amendments to this law were adopted by the BC on 4/25/2018. The emergency amendments expire on 10/25/18 and may be renewed for one additional six-month period.
- C. The Legislative Procedures Act did not require a public meeting or fiscal impact statement when considering emergency legislation. However, they are now required when considering permanent adoption of these amendments.

SECTION 5. CONTENTS OF THE LEGISLATION

- A. **Removal of Personnel Commission.** The Personnel Commission served two roles in the Personnel Policies and Procedures: Participating in hiring through job screening, interviews and reassignment and participating in grievances by hearing appeals regarding disciplinary actions and employee grievances. These amendments split these duties between the Judiciary Trial Court and the new Personnel Selection Committee.

Chart 1. Transfer of Personnel Commission's Responsibilities:



- i. **Personnel Selection Committee.** The Oneida Business Committee created the Personnel Selection Committee on April 11, 2018 to replace the Personnel Commission. Members of the committee will be appointed by the Oneida Business Committee and participate in job screenings and job interviews. The Personnel Selection Committee will consist of eight (8) members appointed by the Oneida Business Committee. Unlike the Personnel Commission, the Personnel Selection Committee will not actively “score” job applicants during interviews. Instead, their role will be to observe and ensure that proper procedures are being followed in the hiring process.

Chart 2. Comparison of Personnel Commission and Personnel Selection Committee.

Personnel Commission (Dissolved)	Personnel Selection Committee (New)
Appointed by Business Committee	Appointed by Business Committee
Participated in screenings, interviews and job reassignments.	Participates in screenings and interviews.
Scored job applicants during interviews	Does not score job applicants during interviews – observes only.
Conducted investigations.	Cannot conduct investigations.
Original Hearing Body. Held hearings and issued decisions.	Not an original hearing body. Will not conduct hearings or issue decisions.
Role Under this law: represent the community at large in the selection of tribal employees	Role under this this law: to protect against issues of nepotism and enforce Oneida and Indian preference

- ii. **Oneida Judiciary Trial Court.** The General Tribal Council adopted the Judiciary Law on January 7, 2013, which created the Oneida Judiciary. In a Secretarial election held May 2, 2015, the Nation’s members voted to amend the Constitution to add Article V, which references the Judiciary. Since that time, several boards, committees and commissions have transferred their hearing authority to the Judiciary, including the Land Commission and Environmental Resource Board. The Judiciary Trial Court is made up of three judges elected by the General Tribal Council.

B. Section III – Selection Policy. This section of the law describes the Nation’s procedures regarding hiring, screening, interviewing, and selecting job applicants. Previously, the Personnel Commission actively participated in screening, job interviews, and the scoring of applicants. References to the Personnel Commission in this section have been replaced with the Personnel Selection Committee:

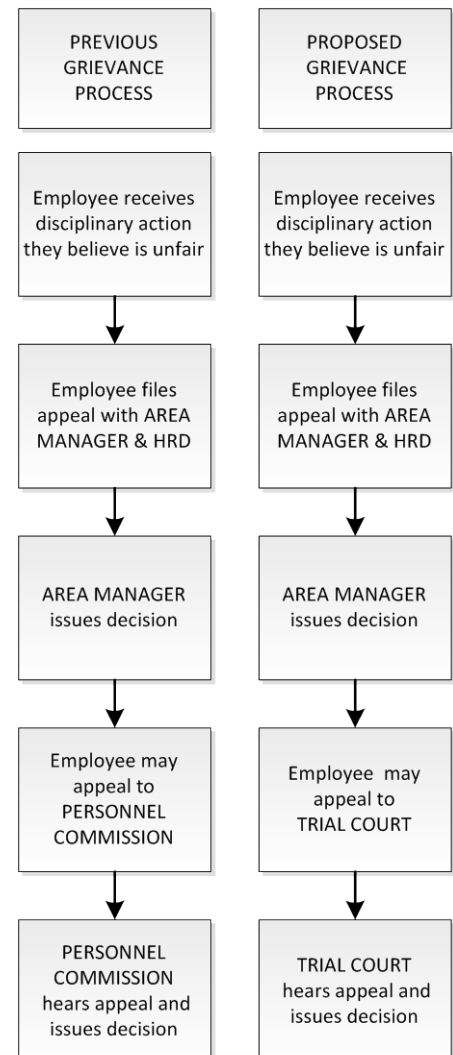
- i. **Training.** The Personnel Selection Committee must undergo training and periodic re-training in Equal Employment Opportunity (EEO) and Tribal laws, rules and regulations [see *Personnel Policies and Procedures – Section III(B)(1)*].
- ii. **Role of Personnel Selection Committee.** The section of this law describing the role of the Personnel Commission has been re-titled to describe the role of the Personnel Selection Committee. This role is to protect against issues of nepotism, enforce Oneida and Indian preference, and ensure fairness and equality is maintained during interviews. [see *Personnel Policies and Procedures – Section III(B)(2)(b)*].
- a. **Limited Role.** This change reflects the Personnel Selection Committee’s limited role in comparison to the former Personnel Commission. While the Personnel Commission actively participated in the selection of applicants during job interviews, the role of the

- Personnel Selection Committee is to observe interviews to ensure fairness and equality is maintained.
- iii. *Screening.* Screening Committees, which conduct screening of job applicants, will now include a member of the Personnel Selection Committee instead of a member of the Personnel Commission [see *Personnel Policies and Procedures – Section III(B)(2)(f)(1)*].
 - iv. *Interviews.* Interview Committees, which conduct interviews of job candidates, will now include a second member of the Personnel Selection Committee instead of a second member of the Personnel Commission. [see *Personnel Policies and Procedures – Section III(B)(2)(g)(1)*].
 - v. *Job Reassignments.* The requirement that job reassignments be reviewed by a “Personnel Evaluation Committee” has been removed. A Personnel Evaluation Committee consisted of three members of the Personnel Commission. Job reassignments will now be made with the approval of the Area Manager only.

C. Section V – Employee Relations. This section of the law describes the Nation’s procedures regarding disciplinary actions and employee grievances. Supervisors may discipline employees for unacceptable work performance. If an employee believes a disciplinary action was unfair, they may appeal it to the Area Manager. If the employee is unhappy with the Area Manager’s decision, they can appeal again. Originally, these appeals went to Personnel Commission. Instead, employees will now appeal the Area Manager’s decision to the Oneida Judiciary Trial Court. All references to the Personnel Commission in this section have been replaced with the Oneida Judiciary Trial Court:

- i. *Appeal Process.* Employees who wish to appeal the area manager’s decision will now take their appeals to the Judiciary Trial Court instead of the Personnel Commission [See *Personnel Policies and Procedures - Section V(D)(6)(b)*].
- ii. *Timelines and Notification Requirements.* All timelines and requirements for notice or delivery of documents remain unchanged. However, all references to the Personnel Commission within these timelines have been replaced with the Judiciary Trial Court:
 - a. *Timeline for Appeal.* The timeline for filing appeals remains unchanged at ten (10) working days from date the employee receives the Area Manager’s decision. These appeals must now be filed with the Judiciary Trial Court instead of the Personnel Commission. [see *Personnel Policies and Procedures - Section V(D)(6)(b)*].
 - b. *Notifying HRD of Appeal.* The Judiciary Trial Court, not the Personnel Commission, must notify HRD that an appeal has been filed within one (1) business day [see *Personnel Policies and Procedures - Section V(D)(6)(b)*].
 - c. *Delivery of Case Documents.* All information regarding the case must be hand delivered to the

Chart 3. Grievance Process



- Oneida Judiciary Trial Court, instead of the Personnel Commission.
- d. *Notice of Hearing Date.* The Trial Court, rather than the Personnel Commission, will notify petitioners and respondents of their hearing date at least five (5) working days prior to the hearing.
- e. *Delivery of Case Documents.* If a hearing date has been scheduled, all information regarding the case must be hand delivered to the Oneida Judiciary Trial Court at least two (2) working days before the appeal date.
- iii. *Process for New Evidence and Decisions.* The process for introduction of new evidence and rendering decisions remains unchanged, except that references to the Personnel Commission are replaced with the Oneida Judiciary Trial Court:
- a. *New Evidence.* If new evidence is introduced during the Trial Court process, then the hearing will be suspended and the case remanded to the Area Manager to reconsider his or her original decision based on the new evidence [see *Personnel Policies and Procedures Section V(D)(6)(b)(4)*].
- b. *Basis of Decision.* The Trial Court, rather than the Personnel Commission, will base their decisions only on the information presented to them [see *Personnel Policies and Procedures Section V(D)(6)(b)(4)*].
- c. *Decision.* The Trial court may uphold the disciplinary action or overturn the disciplinary action. If the disciplinary action is overturned, the Trial Court may reinstate the employee with or without back pay. Decisions of the Judiciary Trial Court may be appealed to the Court of Appeals [see *Personnel Policies and Procedures Section V(D)(6)(b)(7)*].
- D. *Minor Drafting Revisions.* Additional minor revisions were made to reflect current drafting and formatting standards. For example, “Tribe” has been changed to “Nation.”

SECTION 6. EFFECT ON EXISTING LEGISLATION

- A. As a result of the dissolution of the Personnel Commission and creation of the Personnel Selection Committee, the following laws were also amended on an emergency basis to remove references to the Personnel Commission:
- i. Oneida Employee Protection Policy [see *BC Resolution 04-15-18-G*].
- ii. Military Service Employee Protection Act [see *BC Resolution 04-25-18-D*].
- iii. Oneida Judiciary Rules of Civil Procedure [see *BC Resolution 04-15-18-F*].

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

- A. *Trial Court Filing Fees.* The Personnel Commission did not charge a fee to file appeals related to this law. The Trial Court, however, charges a \$50 filing fee for general civil cases. Therefore, employees may now be required to pay filing fees in order to have their cases heard.
- i. *Fee Waiver.* If individuals are unable to pay the filing fee, they may request a fee waiver from the court for the following reasons: Unemployed, Health/Medical, Indigent (poverty level), or other reasons.
- B. *Pending Cases.* At the time the emergency amendments were adopted on 4/25/18, five cases were pending before the Personnel Commission. These cases, and any associated timelines, were placed on hold until emergency amendments to this and related laws were adopted. The Oneida Business Committee’s resolution indicated that the Judiciary was notified and prepared to accept these responsibilities [see *BC Resolution 04-11-18-A*].

SECTION 8. ENFORCEMENT AND ACCOUNTABILITY

- A. The Personnel Selection Committee will provide enforcement and accountability in the hiring process by observing all employment prescreens and interviews to protect against nepotism and enforce Oneida and Indian preference.
- B. The Oneida Judiciary will provide enforcement and accountability in the grievance process. Employees who receive a disciplinary action they believe to be unfair may challenge the action first to the Area Manager and HRD Manager, and then to the Judiciary Trial Court.

SECTION 9. OTHER CONSIDERATIONS

The LOC should be aware of the following impacts regarding the adoption of these amendments:

- A. **Permanent Adoption of Amendments to Personnel Policies and Procedures.** The Oneida Personnel Policies and Procedures is considered a GTC-adopted law, which can only be permanently amended by the General Tribal Council (GTC). While the OBC may adopt emergency amendments to this law, any permanent amendments should be brought to the GTC for adoption.
- i. Below are examples of previous emergency amendments to the Personnel Policies and Procedures that were later presented to GTC for permanent adoption:

Chart 4. Previous Emergency Amendments to Personnel Policies and Procedures

Emergency Amendments by OBC:	Permanent Adoption by GTC:	Description of Amendments:
BC Resolution 09-10-03-A	GTC Resolution 02-28-04-A	Emergency amendments to address vagueness and ambiguity regarding the grievance process.
BC Resolution 04-14-10-B and BC Resolution 09-22-10-D	GTC Resolution 05-23-11-A	Emergency amendments to strengthen Indian Preference in Hiring
BC Resolution 09-08-10-C and BC Resolution 02-23-11-D	GTC Resolution 05-23-11-B	Emergency Amendments on Trade Back for Cash of Personal and Vacation Time

- ii. Since the OBC and GTC are already considering revisions to Personnel Policies and Procedures through adoption of the Employment Law, LOC may want to include these amendments in future drafts and debate on that law.
- B. **Impact on Draft Employment Law.** The Oneida Business Committee and General Tribal Council are currently considering adoption of an Employment Law. A draft of the Employment Law was most recently presented to GTC on 3/19/2017. An Employment Law update was also on the agenda for the Special GTC meeting on 6/18/18, but was deleted from the agenda.
- i. **Creation of Personnel Selection Committee.** The current draft of the Employment Law dissolves the Personnel Commission and transfers its hearing authority to the Trial Court and all non-hearing related responsibilities to HRD. The draft of the Employment Law and handbook should be updated to reflect the BC's action to dissolve the Personnel Commission and create the Personnel Selection Committee.

ii. **Employment Law.** The proposed Employment Law repeals the Personnel Policies and Procedures and replaces it with a new Employee Handbook. Therefore, if the Employment Law is adopted before the emergency amendments to Personnel Policies and Procedures expire, then permanent adoption of these amendments will be unnecessary.

iii. **Prior to the expiration of these emergency amendments, one of the following will occur:**

GTC Action	Impact on Personnel Policies and Procedures	Outcome
Scenario 1: GTC adopts Personnel Policies and Procedures amendments.	Personnel Commission permanently removed from Personnel Policies and Procedures	GTC may consider Employment Law at a later date.
Scenario 2: GTC adopts Employment Law	Personnel Policies and Procedures replaced by new Employment Law, which removes Personnel Commission	Personnel Policies and Procedures amendments no longer needed.
Scenario 3: GTC fails to adopt Personnel Policies and Procedures or Employment Law prior to expiration of emergency amendments.	Emergency amendments expire. Outdated references to Personnel Commission return to the Personnel Policies and Procedures. Personnel Commission is not recreated by failure to adopt these amendments.	Personnel Policies and Procedures will be out of date.
Scenario 4: GTC rescinds the dissolution of the Personnel Commission and related emergency amendments.	References to Personnel Commission return to the Personnel Policies and Procedures	Amendments to Personnel Policies and Procedures no longer needed.

C. **Impact of GTC Petition Regarding Personnel Commission.** On May 14, 2018, the Petition: G. Powless – Oneida Personnel Commission Dissolution was submitted to the Business Committee Support Office. At the time this analysis was drafted, it is anticipated that GTC will consider this petition at a Special GTC Meeting on 8/27/18. The petition requests that GTC rescind the dissolution of the Personnel Commission [BC Resolution 04-11-18-A], the creation of the Personnel Selection Committee [BC Resolution 04-11-18-B], and the emergency amendments to this law [BC Resolution 04-25-18-D]. In the event that GTC rescinds these actions, the amendments to this law will become unnecessary.

D. **Impact of Expiration of Emergency Amendments.** Should these emergency amendments expire before permanent adoption by GTC, the outdated references to the Personnel Commission will return to the law. A similar situation has occurred previously, when the Oneida Business Committee removed a position that appeared in the Personnel Policies and Procedures:

i. **Example: Removal of General Manager.** When the Business Committee removed the General Manager position, the Human Resources Department issued an HRD Interpretation that the function of “General Manager,” as stated in the Oneida Personnel Policies and Procedures, is defined as the highest level in the chain of command under the Oneida

Business Committee; or, Boards, Committees and Commissions that report directly to the General Tribal Council.”

- ii. Conclusion:* In the event that these emergency amendments expire without the re-creation of the Personnel Commission, HRD may want to consider issuing an HRD interpretation until GTC either approves amendments to this law or rescinds the dissolution of the Personnel Commission.

The LOC may want to review the following policy considerations:

E. Job Reassignments. The Personnel Commission originally had three roles in the hiring process: job screenings, job interviews and job reassignments. This law transfers responsibility for job screenings and interviews to the Personnel Selection Committee. However, this law does not include the Personnel Selection Committee in the job reassignment process.

- i. What is a Job Reassignment?* A job reassignment is a business decision that involves moving an employee from one regular status position to another. This may be initiated by the supervisor or the employee. The employee must meet the minimum requirements for the position they are reassigned to. An example is moving someone from an Accountant position into a Senior Accountant position, or moving a receptionist from one department to another. The purpose is to make efficient use of employees in the best interests of the business unit. Job reassignments cannot be used as a disciplinary action.

- ii. Approval of Job Reassignments.* All job reassignments must be approved by the Area Manager. Prior to the dissolution of the Personnel Commission, all job reassignments were also reviewed by a group of three (3) members of the Personnel Commission. The Personnel Commission verified that the employee met the job requirements and had submitted all required documentation. The Personnel Commission could request information and request changes prior to signing off on the job reassignment.

- iii. Recommendation.* In the current draft, job reassignments will only require approval of the Area Manager. Whether to include the Personnel Selection Committee as an additional “check” in the review process for job reassignments is a policy decision.

F. Additional Amendments. The amendments to this law are strictly limited to addressing the dissolution of the Personnel Commission. Meanwhile, the LOC continues to pursue the development and adoption of the Employment Law, which will include broad changes to the Nation’s employment policies. However, now that the Personnel Policies and Procedures are on the Active Files List, the LRO has received comments from departments suggesting additional amendments to the Personnel Policies and Procedures.

- i. Recommendation.* Since the LOC is pursuing two employment-related laws simultaneously, the LOC should clarify whether employment-related recommendations should be incorporated into these amendments or the Employment Law:

- i. Option 1:* Limit these amendments to the dissolution of the Personnel Commission only, and incorporate all other recommendations into the drafting the Employment Law.
- ii. Option 2:* Accept amendments to this law that are unrelated to the Personnel Commission, and if so, identify how this will impact the LOC’s approach to the Employment Law.

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The following is provided for informational purposes:

G. *Status of the Personnel Selection Committee.* The Oneida Business Committee adopted by-laws for the Personnel Selection Committee on May 23, 2018. At the time this analysis was drafted, members had not yet been appointed to this committee.

H. *Historical Caseload of Personnel Commission.* Based on a review of the Personnel Commission's quarterly reports, the Commission's caseload is provided for informational purposes: In Fiscal Year 2017, The Personnel Commission participated in 245 prescreens, 154 job interviews, reviewed 96 job reassignments and heard 20 grievance cases.

PERSONNEL POLICIES AND PROCEDURES MANUAL

SECTION I – Introduction



Welcome to the Oneida Nation. We are pleased to have you join us as a partner on a team of people dedicated to providing quality service that enhances the quality of life of the Oneida community. The role you play in your position is important to the overall effort required by your department to meet the goals and objectives of the Oneida Nation. We encourage you to take advantage of the opportunities presented to you, as an employee, to grow and develop both personally and professionally.

The purpose of this “Employee Manual” is to provide you with a ready source of information about employee related Oneida tribal policies and procedures. Although we have tried to make this manual as comprehensive as possible; it does not, and cannot, include policies which address every situation that may arise. The Oneida Nation reserves the right to modify, alter, change or cancel existing policies and procedures or adopt new procedures and policies at any time.

The policies and procedures set forth in this manual apply to all employees. As an employee of the Oneida Nation, you are required to know and abide by these policies and procedures. Tribal departments may have specific and additional procedures enhancing the general policies stated in this manual. Each employee is expected to learn his/her department’s procedures and comply with them. In the event of any conflict between policies in this manual and departmental procedure, the policies in this manual supersede. Each employee is also expected to conform to the professional standards of his/her occupation. Questions regarding this manual, or any employee related policies, should be directed to your supervisor, department head, or to the Human Resources Department at (920) 496-7900.

The Oneida Nation is proud to have you on our staff and we look forward to a fulfilling and successful team relationship.

SECTION II - RECRUITING

A. RECRUITING

1. Recruiting Strategy

- a. The Oneida ~~Tribe~~Nation shall implement a Recruiting Strategy to increase the potential for hiring the best-qualified and most capable employees possible.
 - 1) The Recruiting Strategy shall target as the first priority applicants in accordance with the Oneida and Indian Preference Policy.
 - 2) The Recruiting Strategy shall have a nationwide focus and will use:
 - a) The Kalihwisaks (national distribution);
 - b) The Oneida Higher Education Office's network of post-secondary school students;
 - c) Local and regional media and public employment agencies.

2. Applicant Pool

- a. The Oneida ~~Tribe~~Nation shall establish and maintain an Applicant Pool consisting of individuals who have expressed an interest in working for the Oneida ~~Tribe~~Nation.
 - 1) The Applicant Pool will consist of files containing:
 - a) A ~~Tribal~~Oneida Nation Application Form;
 - b) A summary of career goals and job preferences.
 - 2) The Applicant Pool will be regularly reviewed to:
 - a) Update individual files;
 - b) Remove files where indicated.
 - 3) The Applicant Pool will be cross-referenced by job preferences.
 - a) Notices of job vacancies and an Application Form will be sent to all Applicant Pool members as appropriate.
 - 4) All Applicant Pool members shall have the right to review and update their file upon request.
 - 5) Applicant Pool members shall be apprised of the ~~Tribe's~~Nation's Indian Preference Policy.

B. LABOR POOLS

1. Supervisors that wish to establish a job classification as a Labor Pool Position will work with the HRD to establish the job classification.
2. Each Labor Pool Position shall be advertised as on-going recruitment pool. The HRD shall maintain an updated list of qualified candidates for each Labor Pool Position.
3. The HRD will accept all job applications and verify that each applicant is qualified according to the established job description. All qualified applicants will then be placed in a pool according to the ~~Tribe's~~Nation's Oneida and Indian Preference Policy and the date the application was received. All applicants will be notified of acceptance into or rejection from the pool.
 - a. **PRESCREENING OF LABOR POOL POSITIONS** (HR Interpretation 11-13-12) Applicants who were previously employed by the Oneida ~~Tribe~~Nation and were terminated for reasons of misconduct or performance issues will be screened out for a period of twelve (12) months following the date of discharge.

4. The HRD will keep an updated list of qualified applicants for each job position.
5. When a vacancy occurs in a Labor Pool Position, the supervisor will notify the HRD of the position to be filled. The HRD Office shall then refer the top three (3) applicants to the immediate supervisor. The top three applicants shall be based first on the Oneida and Indian Preference Policy and, second, the date an application was received. The immediate supervisor will notify the HRD of their selection and the HRD will then offer the position to the applicant. After the position is filled, all ranked candidates will move up on the list. [\(HR Interpretation 7-11-13\)](#)
6. If the applicant refuses the position, the HRD Office will then offer it to the next applicant until the position is filled.
7. If the applicant refuses the job, the applicant may withdraw from the Labor Pool or, if he or she declines to withdraw from the Labor Pool, the date of refusal will be considered the date the application was received and the applicant will be placed in the Labor Pool list according to B.3.
8. Indian (Oneida) Preference will be adhered to in all hiring decisions.

C. EMERGENCY/TEMPORARY POSITIONS

1. The HRD will periodically recruit individuals who are interested in filling temporary positions which consist of the following classifications:
 - a. Emergency/Temp
 - b. Limited Term
 - c. Seasonal
 - d. Substitute/Relief
 - e. Youth Worker
 - f. Student/Intern
2. Creation of Positions
 - a. Creation of positions in the above Temporary Employee Classifications will require that these positions be budgeted for the current fiscal year, or proof through documentation that the budget is adequate to incorporate these positions.
 - b. The positions must be developed in conjunction with the HRD; assuring that all Policies and Procedures are adhered to. Creation of temporary classification requires the approval of the Director, Area Manager, and HRD Manager, or elected official of the Oneida [TribeNation](#).
 - c. All newly created temporary positions must be processed through the Wage and Salary system before a position can be filled with a temporary employee.
3. Recruitment/Selection
 - a. Recruitment/selection of applicants for all temporary positions requires a completed Temporary Personnel Requisition form with an updated job description attached.
 - b. The HRD will provide a list of qualified candidates according to the job descriptions to the immediate supervisor. The immediate supervisor will select from the approved list adhering to Indian Preference.
 - c. The HRD will contact the selected candidate and offer the position, following the proper

- procedures to put the incumbent on payroll.
- d. The selected candidate will sign a statement accepting conditions of temporary employment, and length of employment where applicable.
 - e. Temporary employees will be paid within the Grade in which the job is classified and salary will be negotiated within the first three (3) steps of respective grade.
 - 1) Any negotiated salary beyond step three will require written justification and approval from the respective General Manager. [\(H.R. Interpretation, 12-8-16\)](#)
 - f. Temporary employees are welcome to apply for any regular position within the [TribeNation](#) that becomes available during the term of their employment.
 - g. Temporary employees that are terminated due to documented cause will have the right to the appeal process as outlined in the Personnel Policies and Procedures.
 - h. All temporary employees are subject to lay-off based upon department job needs and budgets. [\(HR Interpretation – 11-25-13\)](#)
 - i. Supervisors are required to do proficient planning within their respective span of control; as such they must also enforce separation dates and will be monitored by HRD for compliance.
 - j. Supervisors must select the most appropriate category of classification for the job.
 - 1) Moving from one classification to another is prohibited.
4. Benefits
- a. The following employee classifications will be eligible for benefits as defined in the section of the Personnel Policies and Procedures as medical, dental, vacation and personal accrual, holiday pay, premium pay.
 - 1) Limited Term
 - 2) Seasonal
 - b. The following employee classifications will be eligible for benefits as defined in this section of the Personnel Policies and Procedures as Mandatory Benefits and Holiday pay.
 - 1) Emergency/Temporary
 - 2) Substitute/Relief
 - 3) Seasonal Worker (only during their first season)
 - c. The following employee classifications will be eligible for benefits as defined in this section of the Personnel Policies and Procedures as Mandatory Benefits.
 - 1) Youth Worker
 - 2) Student/Intern

SECTION III – SELECTION POLICY

A. ONEIDA PREFERENCE AND INDIAN PREFERENCE STATEMENT OF POLICY

Federal policy since 1834 accords hiring preference to Indians. The purpose of this preference is threefold: 1) to give Indians a greater participation in self-government; 2) to further the Government's trust obligation; and 3) to increase the positive effect of having Indians administer matters that affect Indian tribal life. (GTC Resolution – 5-23-11-A)

More recently, legislation such as the Civil Rights Act (1964) and the Education Amendments of 1972 (passed after the Equal Employment Opportunity Act) continued to specifically provide for preferential hiring of Indians by Indian Tribes Nations.

As an employer, the TribeNation seeks to employ individuals who possess the skills, abilities and background to meet the employment needs of the TribeNation.

As a sovereign Indian TribeNation and a unique cultural group, the Oneida TribeNation has determined that a highly desirable employment characteristic is knowledge of Oneida culture that can be attained only by membership (or eligibility for membership) in the Oneida TribeNation. Further, the TribeNation recognizes the unique, shared culture of Native American Indians and has determined that a desirable employment characteristic is status as a member of an American Indian TribeNation. At a minimum, the TribeNation has determined that some knowledge of Indian culture is a desirable employment characteristic.

Accordingly, the Oneida TribeNation establishes the following policy in regard to Indian Preference for selecting employees to provide services that meet the needs of the Oneida people. This Indian Preference policy shall be specific to staffing decisions made under the Personnel Policies and Procedures and shall not be construed to have an application outside of these policies and procedures.

The Oneida TribeNation of Indians of Wisconsin is an equal employment opportunity employer and follows non-discriminatory policies and procedures in personnel decisions. (HR Interpretation 5-19-14) However, the Oneida TribeNation exists to serve the needs of the Oneida people and therefore accords Oneida Preference to enrolled Oneida Tribal Members where such preference is not otherwise prohibited. All General Managers and top administrative positions, as defined by HRD, shall be held by enrolled Tribal members. In all other instances, the TribeNation applies the following priorities of Indian Preference in staffing decisions:

- 1 Enrolled Oneida Tribal member;
- 2 Oneida Indians eligible for enrollment in the Oneida TribeNation;
- 3 Documented first generation Oneida descendant;
- 4 Other Native American Indian;
- 5 Other (non-Indian). (HR interpretation 6-24-11)

This policy will apply in decisions where the basic requirements for employment are met.

B. HIRING PROCEDURE

1 Statement of Policy

- a. The Oneida ~~Tribe of Indians of Wisconsin~~ Nation is an equal employment opportunity employer and follows nondiscriminatory policies in hiring.
- b. The Oneida ~~Tribe~~ Nation is a firm advocate of the 1964 Civil Rights Act (as amended) and the 1968 Indian Civil Rights Act (as amended) and will make every effort to ensure compliance with each Act; however:
- c. The Oneida ~~Tribe~~ Nation follows the principles of Indian Preference in the implementation of hiring practices (see the Oneida Preference and Indian Preference Statement of Policy).
- d. The members of the Personnel ~~Commission~~ Selection Committee and all Tribal employees who supervise other Tribal employees shall undergo training in EEO and Tribal laws, rules and regulations.
 - 1) Training will be knowledge - and skills-based
 - 2) All Personnel ~~Commission~~ Selection Committee members and Tribal supervisors will undergo periodic re-training in EEO and Tribal laws, rules and regulations
- e. No person shall be recommended for a position if a conflict of interest or nepotism is created. Nepotism is created by the following relationships: [\(HR Interpretation 08-13-12\)](#)
 - a) Father
 - b) Mother
 - c) Husband
 - d) Wife
 - e) Brother
 - f) Sister
 - g) Son
 - h) Daughter
 - i) Father-in-law
 - j) Mother-in-law
 - k) Brother-in-law
 - l) Sister-in-law
 - m) Son-in-law
 - n) Daughter-in-law
 - m) Grandparent
 - n) Grandchild

2. Hiring Procedures

a. HRD Office Responsibilities

- 1) Unless specifically noted, the HRD Office will have responsibility for implementing the policies and procedures guiding the selection of ~~Tribal~~ employees of the Nation.

b. Personnel ~~Commission~~ Selection Committee Role

- 1) The Oneida ~~Tribe~~ Nation established the Personnel ~~Commission~~ Selection Committee to ~~represent the~~ protect against issues of nepotism and enforce Oneida ~~Community at-large in the selection of tribal employees~~ and Indian Preference.
 - a) The Personnel ~~Commission~~ Selection Committee is directed to:
 - i. ~~Seek out the best matched applicants for each available position;~~
 - ii. ~~Consider only job related factors (such as education, experience, past job performance, skills and abilities, and compatibility with the position and potential co-workers) when selecting candidates.~~

- i. Protect against issues of nepotism;
- ii. Enforce Oneida and Indian preference;
- iii. Ensure fairness and equality is maintained during interviews.

c. Identification of Vacancies and Development of Job Descriptions (Work Standard, 11-16-11)

- 1) Supervisors may inform the HRD Office of pending vacancies as soon as they are identified.
- 2) For existing positions, the HRD Manager (or designate), the supervisor and the Area Manager (at his/her option) will review the job description to ensure compliance with:
 - a) The ~~Tribal~~ Nation's job structure;
 - b) The needs and requirements of the job.
- 3) For new positions, the HRD Manager, the appropriate Area Manager, and the supervisor shall develop the job description.
 - a) The new job description shall conform to the ~~Tribal~~ Nation's job structure.
 - b) The new job description will be reviewed by the General Manager.
(HR Interpretation, 12-8-16)
- 4) All job descriptions shall contain the following information:
 - a) Job title, division/department, location, supervisor's title;
 - b) Posting date, application deadline, preferred starting date, date of job, description review;
 - c) Pay level (grade, step, hourly rate);
 - d) A brief job summary;
 - e) Duties and responsibilities;
 - f) Qualifications;
 - g) Inquiry address;
 - h) Statement of compliance with EEO and Indian Preference policies.

d. Applications

- 1) All inquiries for job vacancies will be responded to with a ~~Tribal Application~~ an Oneida Nation Application Form which will consist of:
 - a) Job vacancy title;
 - b) Applicant biographical data;
 - c) A request for a resume (where applicable).
- 2) The Application Form shall be accompanied by a Statement of Policy regarding Oneida Preference and Indian Preference.
- 3) Hand-delivered applications will be accepted at the HRD Office until 4:30 p.m. on the deadline date; mailed applications must be postmarked on or before the deadline date.
- 4) All applications will be acknowledged.

e. Advertising

- 1) Position vacancies will be advertised as widely as possible including:
 - a) The Kalihwisaks;

- b) Statewide, through print and electronic media and public employment agencies;
- c) Through targeted recruiting efforts including:
- i. Major metropolitan areas (i.e. Milwaukee, Chicago, Minneapolis, etc.)
 - ii. The Bureau of Indian Affairs;
 - iii. The Oneida Higher Education Office.
- d) Other postings targeted toward special recruiting categories (such as professions) shall be carried out at the discretion of the HRD Office with the advice and consent of the affected department.
- 2) Unless otherwise prohibited by external grant source or federal law, the first posting for a position vacancy shall be limited to enrolled Oneida members and shall be posted for a minimum of seven (7) calendar days.
- 3) The second posting for a position vacancy shall be posted for a minimum of ten (10) calendar days and shall be open to the general public, unless the position must be filled by an enrolled ~~Oneida Tribal~~ member of the Oneida Nation. (HR Interpretation 8-9-11)
- 4) All vacancies requiring re-posting shall be referred back to B-2.c (Identification of Vacancies and Development of Job description) to begin the re-posting process.
- f. Screening of Applicants (HR Interpretation 11-16-12) (HR Interpretation 10-22-12)
- 1) A Screening Committee consisting of the HRD Manager (or designate), the position supervisor, the Area Manager (at his/her option), and a member of the Personnel ~~Commission~~ Selection Committee shall be convened to conduct the screening of applicants. The Screening process will begin as soon as practical following the closing of the position. This Committee will:
- a) Verify that all applications are complete, are accurate and were submitted on time.
 - i. Applications that are incomplete, inaccurate, or were not submitted on or before the posted deadline date may be screened out.
 - b) Analyze the job description to establish screening criteria. These criteria will include qualifications listed on the job description determined by the supervisor and Area Manager to be essential to the job. (T.O.E. WS - 5-6-13)
 - c) Screen verified applications
 - d) Recommend a list of applicants to be interviewed.
- 2) The HRD Office shall notify screened out applicants within five (5) working days after the initial screening and reserve these applications in the general recruiting pool.
- 3) The HRD Office will arrange for interviews with the listed candidates.
- g. Candidate Interviews
- 1) An Interview Committee will be convened and will consist of the members of the Screening Committee except that the HRD Manager will be replaced with a second member of the Personnel ~~Commission~~ Selection Committee. The Interview Committee will:

- 320 a) Construct an interview format consisting of:
- 321 i. A set of questions related to the screening criteria qualifications;
- 322 ii. An interview rating scale designed to objectively evaluate each candidate's
- 323 qualifications.
- 324 b) Interview candidates and evaluate each individually
- 325 2) The HRD Manager (or designee) will total the evaluation rating scale to rank order of the
- 326 candidates.
- 327
- 328
- 329 h. Selection [\(Interpretation - Disqualification of Applicant 10-24-2013\)](#)
- 330 1) The supervisor shall select one of the top two (2) candidates as ranked through the
- 331 rating scale. [\(HR Interpretation - 10-17-12\)](#)
- 332 a) The supervisor may conduct an additional personal interview with the top two (2)
- 333 candidates.
- 334 b) The selection decision shall be governed by the Oneida Preference and Indian
- 335 Preference Policy. [\(HR Interpretation - 6-6-11\)](#)
- 336 c) The HRD Office will notify the selected candidate and offer the candidate the job
- 337 within five (5) working days of the selection decision by the supervisor.
- 338 i. Should the supervisor's first choice refuse the offer, the HRD Office will offer
- 339 the job to the second ranked candidate.
- 340 2) Should both of the top two ranked candidates refuse the job offer, the supervisor may:
- 341 a) Repeat the process outlined in B.2.h.1. above; or
- 342 b) Re-post the position.
- 343 3) The HRD Office will notify those candidates interviewed but not selected of the
- 344 decision to hire the best-qualified candidate.
- 345 4) All newly hired employees will be listed in the HR newsletter.
- 346 | C. TRANSFERS AND PROMOTIONS POLICY - The Oneida [Tribal Nation](#) encourages transfers and
- 347 promotions within and among units in order to make the best possible use of human resources to
- 348 | meet [Tribal the Nation's](#) goals and objectives. Supervisors and employees are encouraged to work
- 349 together to create an environment in which employees constantly strive to improve their skills and
- 350 abilities and managers constantly seek to provide challenging and rewarding work experiences.
- 351 1. Procedure
- 352 a. Internal Posting and Bidding
- 353 1) Open positions as determined by a supervisor and his/her Area Manager will be posted
- 354 internally for five (5) working days. This internal posting will be concurrent with the
- 355 external (public) posting of positions.
- 356 | a) Positions will be posted in prominent locations in each [Tribal building of the Nation.](#)
- 357 2) Tribal employees may bid for transfers by notifying their immediate supervisor and
- 358 submitting an Application Form to the HRD Office.
- 359 a) The HRD Manager will inform all affected Area Managers of each transfer bid.
- 360 3) At the end of the five (5) day internal posting period, the HRD Manager will schedule a

conference with the open position's supervisor and the Area Manager.

a) The conference committee will consist of the supervisor, the Area Manager and the HRD Manager (or designate) acting as this Committee will:

- i. Establish selection criteria; and
- ii. Review each bid.

b) The Committee may select the best-qualified applicant but is not required to choose an applicant to fill the open position from those employees who have submitted an application for a transfer or promotion.

c) If the Committee does not fill the position from the transfer/promotion process, the process will continue through the full advertising, screening and interview steps.

- i. Any decision will be governed by the Indian Preference Policy.

4) Employees who are transferred or promoted will not lose any benefits; however:

a) An employee may be required to continue serving in his/her present position until a replacement can be found;

b) An employee who is transferred to a position lower on the ~~Tribal~~Tribe~~Nation's~~Nation Job Structure will be paid at the grade level corresponding to the new position;

c) An employee must have completed one year of service to the ~~Tribe~~Tribe~~Nation~~Nation before being eligible for a promotion or transfer (requests for transfers for documented medical conditions will be handled on a case by case basis and only when in the best interests of both the employee and the ~~Tribe~~Tribe~~Nation~~Nation);

d) The newly transferred or promoted employee shall be required to complete a three (3) month probation period (all conditions of the ~~Tribe's~~Tribe's~~Nation's~~Nation's Probation Policy shall apply).

b. Applicant Pool Process

1) New and vacant positions will be advertised through the ~~Tribal~~Tribe~~Nation's~~Nation Applicant Pool.

2) The job description will be sent to persons whose applications are maintained in the Applicant Pool.

a) The ~~Tribal~~Tribe~~Nation's~~Nation Applicant Pool will consist of open (unspecified) applications from ~~Tribal~~Tribe members of the Nation who wish to be considered for employment by the ~~Tribe~~Tribe~~Nation~~Nation.

b) Advertising through the ~~Tribal~~Tribe~~Nation's~~Nation Applicant Pool will follow the format and time conditions set forth in the Hiring Policy.

2. Reassignments

a. Title Reassignments

1) Title Reassignments may be made by supervisors to:

- a) More accurately describe or define an existing job; or
- b) Make minor adjustments in jobs within a unit or operating division.

2) Title Reassignments may be made at any time with the approval of the Area Manager and HRD Manager.

b. Job Reassignments

- 1) Job Reassignments may be made by supervisors to make more efficient and effective use of human resources.
- 2) Job Reassignments may be supervisor-initiated or employee-initiated but must be made in the best interests of the operating unit.
- 3) Job Reassignments may be made at any time with the approval of the Area Manager and after a review of each affected job by the Personnel Evaluation Committee.

c. Interim Job Reassignments (Work Standard 7-11-13)

D. PROBATION (Work Standard 1-20-2011)

1. The first three (3) months after an employee's starting date shall be considered a period of probation. At the end of six (6) weeks, the employee's performance shall be reviewed with him/her by the supervisor by completing an employee evaluation.
 - a. At the end of the three-month probation period, a second performance evaluation will be conducted. This evaluation will recommend the end of probation and regular status for the employee, an extension of probation, or termination for cause.
2. Status as a Probationary Employee
 - a. Probationary employees will be paid at five percent (5%) below the posted pay rate for the position.
 - 1) New employees hired under a negotiated salary will receive a salary one step below the agreed upon salary during the probationary period.
 - b. Probationary employees will accrue vacation/personal days during the probation period and will receive holiday pay.
 - c. Probationary employees may be terminated for cause at any time during the probation period. Cause must consist of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position. This termination is subject to appeal. (BC Action 3-20-92)
3. Completion of Probation Period
 - a. Satisfactory completion of probation will result in the employee receiving the regular salary for the position.
 - b. Employees who are terminated during the probation period will receive credit for accrued vacation/personal days in their final paycheck.
 - c. Extensions of probation periods will not affect accrual of or use of benefits as explained under D.2.

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

1. ~~Tribal~~The Nation's Job and Salary Structure

- a. An ongoing plan will be instituted based on standard employee grades and step levels to assure that a uniform approach is taken to establish equitable salary and wage levels.
- b. Employee performance evaluations will be a resource in determining whether an employee receives an increase in pay for the upcoming year. An overall satisfactory rating must be attained in order to be granted an increase in pay.
- c. Merit increase shall be granted upon the recommendation of the supervisor, the Area Manager, the HRD Manager and the General Manager.

2. Workday (Work Standard, 10-17-12)

- a. The regular ~~Tribal~~ workday **in the Nation** is from 8:00 a.m. to 4:30 p.m. with an hour for lunch. The exception to these hours occurs only if the program/enterprise hours must vary for the purpose of providing service (such as retail hours beyond 4:30 p.m.). Shifts will be developed as needed, and the shift hours will then become the regular workday for assigned employees for that program/enterprise.
- b. Employees are expected to be at work each scheduled work day.
 - 1) Employees who do not report for work because of inclement weather or unforeseen circumstances will not be paid for that day. Employees may elect to use personal day(s) to cover this absence. (Work Standard, 11-8-12)
 - 2) In case of an unavoidable delay or absence, the supervisor must be notified no later than thirty (30) minutes after the scheduled starting time. Employees are encouraged to notify their supervisor before their scheduled starting time.
 - i. Employees failing to report to their assigned jobs or failing to call in within the thirty (30) minute time allowed will be subject to disciplinary action.
 - ii. Permission to leave early must be obtained by the employee from his/her supervisor.

3. Overtime

- a. Any and all overtime will be kept to a minimum and must be approved by the Supervisor and Area Manager.

- 1) In the case of potential overtime that may occur at night, on holidays or on weekends, supervisors will delegate this authority to a specific employee and outline specific situations and actions that warrant overtime.
 - b. All overtime must be reported to the supervisor for evaluation.
 - c. Overtime will be approved only if the program or enterprise budget is capable of paying it.
 - d. Overtime will be approved only for hours worked in excess of forty (40) hours per week. Personal/vacation days and holidays will not count toward the forth (40) hour requirements.
 - e. ~~Tribal employees~~ Employees of the Nation are expected to work overtime if required. Time and one-half will be paid for this overtime.
 - f. Exempt employees are not eligible for overtime.
 - 1) The HRD Office will maintain a list of exempt employees.
4. Holidays [\(Work Standard, 4-15-11\)](#)
- a. Tribal holidays consist of the following:
 - 1) One-half day Christmas Eve
 - 2) Christmas Day
 - 3) New Year's Day
 - 4) Memorial Day
 - 5) Veteran's Day
 - 6) Independence Day
 - 7) Labor day
 - 8) Thanksgiving Day
 - 9) Indian Day (day after Thanksgiving)
 - 10) One-half day Good Friday
 - 11) Code Talker's Day (Oneida Day, Friday prior to Memorial Day)
[\(BC Resolution – 12-11-13A\)](#)
 - b. To be eligible for a paid holiday, employees must work the preceding and following scheduled work days (except for employees who are on a prescheduled work leave or an approved extended sick leave.) Employees who are granted a sick day directly prior to a holiday must certify that they were capable of working the holiday in order to qualify for a paid holiday.
 - c. All regular employees will be given holiday pay for the maximum pay of eight (8) hours per day.
 - d. Holidays falling on a Saturday will be observed the preceding Friday; holidays falling on a Sunday will be observed on the following Monday. [\(2017 Holiday Observance Calendar\)](#) [\(2016 Holiday Observance Calendar\)](#)
 - e. The Oneida ~~Tribe~~ Nation acknowledges its responsibility to make a reasonable accommodation to employees who wish time off to observe religious holidays. Requests for such time off will be granted where possible, based on the scheduling and staffing needs of affected departments. Employees wishing to take time off work for religious observances should inform their supervisor as early as possible. Employees may use personal time for such requests if eligible; otherwise the time off will be treated as unpaid leave.

5. Vacation/Personal Days

- a. Every ~~Tribal~~ employee of the Nation, except temporary employees, shall be allowed personal and vacation days with pay to the extent that personal days and vacation are accumulated. Temporary employees shall be allowed personal and vacation days in accordance with Section II.C.4. [\(GTC Resolution – 7-02-12-A\)](#)
- b. The amount of personal and vacations days shall be determined by continuous service for the ~~Tribe~~Nation. A "lay-off" from ~~tribal~~ employment of the Nation shall not be considered in interruption in continuous service where the lay-off is in accordance with the ~~Tribe's~~Nation's Layoff Policy, nor shall a preapproved leave of absence. [\(Accruals Interpretation, 3-6-12\)](#)
- c. Except as provided for in section g, the accrual of personal days shall be as follows:
[\(BC Resolution, 4-13-11F\)](#)
 - 1) 0-3 years of service - 6 days per year;
 - 2) 4-7 years of service - 8 days per year;
 - 3) 8-14 years of service - 10 days per year;
 - 4) 15+ years of service - 12 days per year;
- d. Except as provided for in section g, the accrual of vacation days shall be as follows:
 - 1) 0-3 years of service - 12 days per year
 - 2) 4-7 years of service - 15 days per year;
 - 3) 8-15 years of service - 20 days per year;
 - 4) 15+ years of service - 25 days per year.
- e. Part-time employees accrue personal and vacation days for time actually worked at a ratio of a full-time employee.
- f. Service is defined as working for Programs/Enterprises which are contracted by the ~~Tribe~~Nation of specifically sponsored by the ~~Tribe~~Nation.
- g. Vacation and personal days shall be capped at 280 hrs. [\(BC Resolution, 11-10-10D\)](#) An employee shall cease to accrue vacation and personal hours when he or she has reached 280 total hours. Supervisors shall notify their employees when said employees have accumulated 200 total hours of vacation and personal time.
 - 1) An employee may trade back accumulated vacation and personal hours in accordance with Section IV.A.5.n. below. [\(GTC Resolution – 5-23-11-B\)](#)
- h. Upon termination from ~~Tribal~~ employment with the Nation, employees will be paid for any unused personal and/or vacation days.
 - 1) Employees who have used the ~~Tribally~~Nation's sponsored loan program will be required to honor the terms of the loan agreement.
- i. Personal Days can be used for any reason so long as the request is approved by the employee's supervisor at least twenty-four (24) hours in advance (unless the absence is due to illness or unforeseen circumstances).
 - 1) In the case of illness or unforeseen circumstance, the supervisor shall be notified no later than fifteen (15) minutes before the scheduled starting time.
 - 2) Programs and enterprises may institute stricter standards of notification. These standards will be submitted to and approved by the Personnel Department.

- j. An employee shall notify his/her supervisor of an intent to use personal days in the following ways:
 - 1) Three (3) to five (5) days - one (1) week advance notification
 - 2) Six (6) days or more - two (2) weeks advance notification.
- k. An employee shall notify his/her supervisor one (1) day in advance if he/she will take off one (1) or two (2) days of vacation. Programs and enterprises may institute stricter standards of notification.
 - 1) Three (3) to five (5) days of vacation require a one (1) week advance notification.
 - 2) Six (6) or more days of vacation require at least two (2) weeks advance notification.
- l. The burden shall be on the supervisor to show that a denial of a personal day or a vacation day is based upon interference with the business of the [TribeNation](#).
- m. Personal or Vacation Days cannot be taken when an employee is on probation.
- n. Trade-back for Cash - Each fiscal year, the Oneida Business Committee shall analyze fiscal conditions to determine whether employees may trade back personal and/or vacation hours for cash that fiscal year. [\(Work Standard, 10-11-11\)](#)
 - 1) If the Oneida Business Committee approves trade-back for cash, they shall also determine whether (a) and/or (b) applies:
 - i. All employees will have the opportunity to trade-back hours one time that year.
 - 1. By August 15, each employee who has accumulated twenty-four (24) hours or more of vacation and/or personal days may opt to trade in his/her hours for cash.
 - 2. Employees will receive their trade back on or before September 30 of that year.
 - ii. Only those employees who are unable to utilize their personal and/or vacation time due to working conditions, such as a shortage in staffing, as determined by the HRD Manager or designee, will have the opportunity to trade back hours on a quarterly basis.
 - 1. Employees will receive their trade back within sixty (60) days after opting to trade back hours.
 - 2) When trade-back for cash is approved by the Oneida Business Committee, the following standards shall apply:
 - i. Employees must decide which status (vacation or personal or both) from which their trade-back will be drawn.
 - ii. Employees may not trade for cash more than eighty (80) hours in one year.
[\(GTC Resolution 5-23-11-B\)](#)
- o. Additional Duties Compensation
- p. Travel Time Compensation [\(Work Standard - 3-20-13\)](#)

B. INSURANCES [\(see separate publication\)](#) for information on Tribal Insurance plans.

[\(Separating Employees WS 5-6-13\)](#)

C. RETIREMENT PLAN [\(See separate publication for information on Tribal Retirement Plan\).](#)

D. LEAVES

1. Meeting Attendance

- a. Approval for attending any meetings inside normal working hours must be approved in advance by the employee's immediate supervisor. [\(BC Action, 5-16-89\)](#)
- b. Employees who receive stipends or honoraria in excess of \$50.00 for attending meetings during working hours will forfeit the amount in excess of \$50.00 from their regular paycheck. Stipends for travel or per diem will not be deducted if accompanied by receipts for such expenses.
- c. Stipends or honoraria for intra-tribal meetings during normal working hours will result in the employee's paycheck being reduced by the full amount of the stipend.

2. Funeral Leave [\(Work Standard, 8-2-11\)](#)

- a. All regular employees will be given a three (3) day leave without loss of pay for funeral services for immediate family. Immediate family includes:

Husband	Mother	Brother	_____	great-grandparent
Wife	Father	Sister		great-grandchildren
Mother-in-law	Son	Grandparent		Spouse's great-grandparents
Father-in-law	Daughter	Grandchild		Spouse's grandparents
Daughter-in-law	Sister-in-law	Brother-in-law		
- b. Three (3) day leave for other persons will be given only if the employee is responsible for making funeral arrangements, subject to prior approval of supervisor.
- c. All other funeral leave will be limited to no more than one (1) day with pay subject to the notification and approval of the immediate supervisor. [\(Management Directive, 12-17-2009\)](#)

3. Leave of Absence [\(Work Standard, 6-10-14\)](#)

- a. A leave of absence without pay may be granted to employees for a justifiable reason (including caring for a child, spouse or parent with a serious health condition) and when in the best interest of the [TribeNation](#).
 - 1) Leaves of absence will not exceed three (3) months.
 - i. All leaves of absence must be approved by the supervisor, Area Manager, HRD Manager and General Manager. [\(HR Interpretation, 12-8-16\)](#)
 - ii. Requests must be documented and submitted to the supervisor with as much advance notice as possible.
 - iii. Disposition of requests will be made on the basis of staffing requirements.
 - 2) Upon returning, the employee will be reinstated in the former position with full status and benefits. Holiday, vacation, and sick leave will not be accrued during the leave of absence.
 - 3) No later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position. Notice must be presented to the supervisor.
 - i. Failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled

through the selection process. (HR Interpretation 11-21-11)

4. Maternity Leave

a. Maternity leave will be granted for a period of six (6) weeks without pay.

1) An employee may elect to cover any portion of this time by using accumulated sick days.

2) Any maternity-related absences for longer than six (6) weeks must be taken as a medical leave of absence.

5. Military Leave

a. In addition to the following provisions, the ~~Tribe's~~Nation's Military Service Protection Act shall govern Military Leave.

b. A Military Leave of Absence is afforded employees entering active duty without accumulation of holiday, vacation or personal time during the period of leave. Any accumulated benefits prior to leave will be maintained for the employee.

c. Time off for inactive duty training, examinations to determine fitness for duty and funeral honors duty shall be afforded to employees without the accumulation or loss of holiday, vacation or personal time. An employee will receive pay from the ~~Tribe~~Nation for any hours work that the employee was required to miss due to reservist training.

1) Any pay received for performing any of the above duties shall be deducted from the employee's pay. (GTC Resolution - 1-26-08A)

6. Jury Duty

a. During a period of jury duty, an employee will receive pay from the ~~Tribe~~Nation for any hours of work missed due to jury duty.

1) Jury duty pay will be deducted from the employee's paycheck when determining the amount of pay

2) No overtime will be allowed in determining employee pay while serving on jury duty.

7. Educational Leave (BC Action, 5-4-90)

a. A leave of absence for education purposes will not exceed one (1) year.

8. Parent Policy Leave (BC Action, 3-2-94A)

a. Employees who are parents, guardians, or those individuals specifically referred to as "immediate family" as defined in Section IV, page 6 of these Personnel Policies and Procedures which includes husband, wife, mother, father, brother, sister, son, daughter, mother-in-law, father-in-law, grandparent and grandchild may request to participate in their child(ren)'s educationally sanctioned events not to exceed four (4) hours per employee per month

1) These four (4) hours shall not accumulate.

b. Approval to utilize the four (4) hours must be obtained from the supervisor.

1) An employee shall request his/her supervisor to utilize this leave with a minimum of twenty-four (24) hours' notice.

2) The Supervisor may request verification of

i. Guardianship of the child(ren) and/or

ii. The attendance of the employee at their child(ren)'s educationally sanctioned - event.

- c. The burden shall be on the supervisor to show that a denial of the Parent Policy Leave which is based upon interference with the business of the [TribeNation](#).
- d. This leave shall not be paid as overtime. The supervisor may have the option to use flex time to cover this time off to attend their child(ren)'s educationally sanctioned events.
- e. All employees, except Emergency/Temporary, Youth Workers, Student Interns, and Seasonal Workers during their first season, and Substitute Reliefs are eligible to participate in this benefit.

SECTION V – EMPLOYEE RELATIONS

A. ORIENTATION POLICY

The Oneida [TribeNation](#) reflects the unique culture and character of the Oneida Nation. The [TribeNation](#) recognizes that this may present special problems and difficulties for a new employee. The [TribeNation](#) therefore provides an Orientation Program designed to ease the new employee's transition into a job and enable the new employee to become effective and productive as quickly as possible.

1. Orientation Program Outline

- a. Overview
- b. [TribalThe Nation's](#) Government and Procedures
- c. Key Policies and Procedures
- d. Benefits
- e. Safety, Health and Security
- f. Departmental Orientation

2. Responsibilities

- a. The HRD Office will administer the General Orientation Program
 - 1) The HRD Office will assist Divisions in administering Departmental Orientation Programs.
- b. The HRD Office will develop and establish an Employee Mentor Program with each Division.
 - 1) Employee Mentors will be responsible for conducting the Departmental Orientation.
 - 2) Employee Mentors will assist new employees throughout their probation period as a source of references and referrals.
- c. The HRD Office will annually review the General Orientation Program and each Departmental Orientation Program to:
 - 1) Evaluate the effectiveness of each Program,
 - 2) Modify programs as necessary.
 - 3) Requirements
 - a) The HRD Office will provide a copy of the Employee Policy and Procedures Manual to new employees before (if possible) the scheduled starting date.
 - b) The General Orientation Program will be completed in appropriate stages within the

first month of the new employee's starting date.

i. The Departmental Orientation will be completed within the first week of the starting date.

c) The HRD Office will administer a NEW Employee Reporting Form to provide information for the purposes of maintaining a ~~Tribal~~Nation wide skills assessment inventory and a management succession plan.

B. EVALUATIONS

1. Evaluation reports will be used in determining all promotions, transfers and salary adjustments.

2. Annual evaluation reports for each employee will be submitted to the HRD Office by August 1 of each year. (Work Standard – 6-4-14)

a. Evaluation reports will be retained in each employee's personnel file.

3. All ~~Tribal~~employees Employees of the Nation will be evaluated at least once a year.

a. Employee performance evaluations will be conducted by each employee's immediate supervisor. The Business Committee will conduct the performance evaluation of the General Manager. (HR Interpretation – 12-8-16)

b. The supervisor will discuss the evaluation with each employee. The evaluation will then be signed by the employee and the supervisor and forwarded to the HRD Office.

4. Satisfactory evaluations may result in the employee receiving an increase in pay within their grade level provided that the employee has not attained the highest step within the grade.

a. Unsatisfactory evaluations will result in probation status for the employee. The supervisor shall provide documentation to the Area Manager and to the employee detailing the deficiency(s). A repeat evaluation will be conducted three (3) months after the unsatisfactory evaluation. This second evaluation will result in the employee:

1) Being removed from probation and receiving a salary increase if the second evaluation results in an overall satisfactory rating; or

2) Receiving appropriate disciplinary actions if the second evaluation also results in an unsatisfactory rating.

b. Employees may appeal unsatisfactory evaluations to the HRD Manager. The HRD Manager will consult with the supervisor and the employee to negotiate an appropriate resolution

(Work Standard 6-21-11)

C. CAREER DEVELOPMENT

1. ~~Tribal~~employees Employees of the Nation are encouraged to develop their skills and abilities by pursuing education at a local educational institution. (BC Action – 9-9-92)

a. ~~Tribal~~employees Employees of the Nation must provide a general Career Development Plan to the supervisor listing the goals and objectives of the training and education to be undertaken.

2. ~~Tribal~~employees Employees of the Nation may be eligible for assistance for one (1) course per semester. The employee must attempt to arrange to take the class outside his/her normal working hours.

a. Where a class conflicts with the employee's work schedule, the needs of the ~~Tribal~~Nation's unit take precedence; however, the supervisor shall attempt to accommodate the

- 772 employee's request.
- 773 b. In no case shall the accommodation exceed actual class hours plus reasonable travel time.
- 774 c. Employees must obtain the approval of their immediate supervisor to take a course on
- 775 | [Tribethe Nation's](#) time.
- 776 3. The supervisor's approval and estimated cost must be submitted to the HRD Office, the Area
- 777 Manager and the General Manager. [\(HR Interpretation – 12-8-16\)](#)
- 778 | 4. The cost of the books, tuition and fees for the course shall be paid by the [Tribethe Nation](#) through
- 779 funds budgeted in programs or through the Higher Education program.
- 780 a. Reimbursement for books, tuition and fees is contingent upon the employee receiving at
- 781 least a C (2.0 on a 4.0 point scale).
- 782 b. Employees who receive less than the required grade point will be required to reimburse the
- 783 program for whatever costs were incurred.
- 784
- 785 D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES
- 786 Disciplinary procedures provide a systematic process for handling problem employees.
- 787 [\(Work Standard – 5-6-13\)](#) Disciplinary procedures serve to correct unacceptable behavior and to protect the
- 788 | [Tribethe Nation](#). Grievance procedures provide a systematic process for hearing and evaluating job
- 789 related disputes. Grievance procedures serve to protect employees from inconsistent and unfair
- 790 treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense,
- 791 discretion and judicious good sense to resolve complaints between employees, exercise disciplinary
- 792 prerogatives, and handle grievances.
- 793 [\(HR Interpretation – 2-4-13\)](#) [\(HR Interpretation - 1-29-14\)](#)
- 794 1. Complaints
- 795 a. Should an employee have a disagreement with another employee, he/she may lodge an
- 796 informal (verbal) or formal (written) complaint with the employee's supervisor.
- 797 b. The supervisor will investigate the complaint and attempt to resolve the disagreement.
- 798 c. If the employee lodging the complaint is dissatisfied with the attempted resolution, he/she
- 799 may ask the Area Manager to attempt a resolution.
- 800 d. There is no further appeal of this process.
- 801 2. Disciplinary Actions
- 802 a. Disciplinary actions will be initiated by an immediate supervisor for the purpose of
- 803 correcting unacceptable work performance. The supervisor will always discuss the action
- 804 with the employee being disciplined to ensure that the employee:
- 805 1) Understands the reason for the disciplinary action;
- 806 2) Understands the expected work performance in light of the disciplinary action;
- 807 3) Understands the consequences of continued unacceptable behavior.
- 808 b. A supervisor shall initiate disciplinary actions commensurate with the seriousness of the
- 809 unsatisfactory performance. A supervisor must consider each disciplinary action in
- 810 progressive order and justify a deviance from that recommended progression.
- 811 c. The actions listed below are examples of unacceptable work performance and do not
- 812 constitute a comprehensive or exhaustive list. The actions in parentheses are guidelines for

a supervisor to use in administering disciplinary actions. (W = written warning; S = suspension; T = termination):

1) Work Performance

- a) Insubordination (including disobedience) or failure/refusal to carry out assignments or instructions. (W/S/T)
- b) Loafing, loitering, sleeping or engaging in personal business. (W/S/T)
- c) Unauthorized disclosure of confidential information or records. (S/T)
- d) Falsifying records or giving false information to departments and/or employees responsible for Recordkeeping. (S/T)
- e) Failure to provide accurate and complete information where such information is required by an authorized person. (S/T)
- f) Failure to comply with health, safety and sanitation requirements, rules and regulations. (W/S/T)
- g) Negligence in the performance of assigned duties. (W/S/T)

2) Attendance and Punctuality

- a) Failure to report promptly and observe work schedules (such as starting time, quitting time, rest and meal breaks) without the specific approval of the supervisor. (W/S/T)
- b) A pattern of unexcused or excessive absenteeism and/or tardiness. (W/S/T)

3) Use of Property

- a) Unauthorized or improper use of ~~Tribal~~the Nation's property or equipment (for example, ~~Tribal~~the Nation's vehicles, telephone, mail services, etc.) (W/S/T)
- b) Unauthorized possession, removal or willful destruction of ~~Tribal~~the Nation's or another employee's property (including improper use of possession of uniforms, identification cards, badges, permits or weapons). (Willful destruction of property may subject the violator to applicable liability laws.) (T)
- c) Unauthorized use, lending, borrowing or duplicating of ~~Tribal~~keys of the Nation. (T)
- d) Unauthorized entry of ~~Tribal~~the Nation's property, including unauthorized entry outside of assigned hours of work or entry into restricted areas without prior supervisory approval. (S/T)
- e) Theft or property shall include theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling or any of these actions, or conspiracy to commit such actions with ~~Tribal~~employees of the Nation or other persons against the ~~Tribe~~Nation, its guests, employee, members, customers and/or clients while on or about ~~Tribal~~premises of the Nation. (S/T) (BC Action – 12-2-88)

4) Personal Actions and Appearance

- a) Threatening, attempting, or doing bodily harm to another person. (T)
- b) Intimidating, interfering with or using abusive language toward customers, clients, co-workers or others. (S/T)
- c) Making false or malicious statements concerning other employees, supervisors or program heads. (W/S/T)

- d) Use of alcohol or illegal controlled substances during work hours. (S/T)
(GTC Resolution – 01-05-09A)
- e) Reporting for work under the influence of alcohol or illegal controlled substances.
(S/T) (GTC Resolution – 01-05-09A)
- f) Failure to immediately report any work-related injuries to the immediate supervisor.
(W/S)
- g) Direct involvement in political campaigning during scheduled work hours. Violations include:
- i. Use of ~~Tribal~~ employment title of the Nation in ~~Tribal~~the Nation's campaign activities. (W/S/T)
 1. Political materials include: leaflets, brochures, etc. which solicit support for candidates for office.
 2. Resolutions or petitions which propose that a political action be initiated.
 3. Leaflets, newsletters, or other written materials the purpose of which is to espouse political views or opinions.
 - h) The acceptance of gifts or gratuities for personal gain in the course of official duties. (Customers are allowed to tip Bingo workers, Oneida Tobacco Enterprise workers, and Museum Workers.) (W/S/T)
 - i) Inappropriate dress or personal hygiene which adversely affects the proper performance of duties or constitutes a health or safety hazard. (W/S)
 - j) Failure to exercise proper judgment. (W/S/T)
 - k) Failure to be courteous in dealing with fellow employees or the general public. (W/S/T)
 - l) Any of the following acts by employees: Arson, bribery, perjury, obstruction or interference with an investigation authorized by the Oneida ~~Tribe~~Nation. (S/T)
(BC Action – 12-2-88)
 - m) The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol, and/or controlled substances on or about ~~Tribal~~ premises of the Nation. (S/T)
(BC Action – 12-2-88)
 - n) Any violation of duly adopted ~~Tribal~~ ordinances of the Nation. (W/S/T) (BC Action – 12-2-88)
- 5) Sexual Harassment Policy
- It is the Oneida ~~Tribe's~~Nation's Policy that all employees have a right to work in an environment free of discrimination which includes freedom from harassment, more specifically sexual harassment. The Oneida ~~Tribe~~Nation considers sexual harassment, in whatever form, in the workplace to be a serious violation of an individual's dignity and personal rights. In all matters, where complaint of sexual harassment is lodged against an employee, the Oneida ~~Tribe~~Nation has a duty and obligation to conduct a thorough investigation using discretion, good judgment and the principles and practice of strict confidentiality. If sexual harassment has been committed, the progressive disciplinary process is as follows (W/S/T).

Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

a) Sexual Harassment (W/S/T)

i. Procedure

a. Should an employee have a complaint, he/she should file a formal (written) complaint with the Human Resources Department.

b. The Human Resources Department is obligated to investigate the complaint which is to be held in the strictest confidence. This investigation shall be done within five (5) working days from receiving the formal written complaint.

c. After investigating the complaint and the Human Resources Department finds cause to take disciplinary action due to sexual harassment violation, the employee will be disciplined accordingly by their supervisor. This disciplinary action shall be initiated within five (5) working days from the date the supervisor receives the report from the Human Resource Department. (BC Actions – 7-16-93)

3. Accumulated Disciplinary Actions Warranting Termination (HR Interpretation – 1-29-14) (Provided that the Drug and Alcohol Free Workplace Policy~~law~~ shall govern disciplinary actions warranting termination for drug and alcohol related violations.) (GTC Resolution – 01-05-09A)

a. The accumulation of three (3) upheld warning notices within any twelve (12) month period. (T)

b. The accumulation of two (2) upheld suspensions within any twelve (12) month period. (T)

c. The accumulation of three (3) of any combination of upheld warning notices and/or upheld suspensions within any twelve (12) month period. (T)

4. Substance Abuse Disciplinary Procedure - Section was deleted. (GTC Resolution – 01-05-09-A)

[Click here](#) for Drug and Alcohol Free Workplace Policy~~law~~.

5. Disciplinary Procedure (Disciplinary Flowchart)

The following procedure shall be adhered to whenever disciplinary action is taken.

a. Supervisor becomes aware of unsatisfactory work performance or violation.

1) Supervisor investigates through a meeting with the employees and determines whether disciplinary action is warranted.

b. If disciplinary action is warranted, within five (5) working days the supervisor will fill out the five (5) part disciplinary action form stating the behavior for which the action is being taken,

- the time and date of its occurrence, and the specific policy section under which action is being taken.
- c. The form will be discussed with the employee and a corrective action will be identified.
 - d. The employee being disciplined will sign the form.
 - 1) Should an employee being disciplined refuse to discuss the action with his/her supervisor, the supervisor shall so note this, with date of refusal, on the form and distribute as in 5.e.
 - e. Copies will be given to the employee, the HRD Manager, the supervisor, the Area Manager and General Manager within twenty-four (24) hours of the conference with the employee.
(HR Interpretation – 12-8-16)
 - f. Should a disciplinary action result in the suspension or termination of an employee, the following guidelines shall apply:
 - 1) The supervisor shall consult with the HRD Manager to mutually determine the length of the suspension.
 - a) Suspensions will be limited to a maximum of three (3) weeks.
 - b) Suspension/terminations that are overturned in the appeal process shall result in the employee receiving back pay for the days he/she was suspended/terminated.
6. Grievance (Grievance Flowchart)
- An employee who receives a disciplinary action which he/she believes is unfair may grieve the action. The Grievance process (including appeals of disciplinary action) shall be conducted with utmost consideration for due process (within the time limits set forth herein) but will allow and account for recognized ~~Tribal~~ holidays of the Nation and unforeseen circumstances (such as illnesses, deaths in the immediate family of principals, etc.). The HRD office will make every attempt to ensure that grievance procedures are concluded within forty-five (45) working days; however, extensions granted for reasonable unforeseen circumstances (as determined by the HRD Manager) may extend the process. The Grievance process will be governed by the following guidelines: (HR Interpretation – 8-19-2011) (HR Interpretation – 1-29-2014)
- a. For all disciplinary actions, regardless of severity:
 - 1) The employee (petitioner) must file an appeal in writing.
 - a) The employee may seek the assistance of a spokesperson or advocate at any time after the disciplinary action has been issued in order to aid in the resolution of the grievance process.
 - b) The appeal must be filed with the Area Manager and the HRD Manager (or designee) within ten (10) working days from the day the employee receives the disciplinary action.
 - 2) The Area Manager, for all disciplinary action investigations, will have ten (10) working days from the receipt of the employee's appeal to complete the investigation. One extension of no more than five (5) working days may be requested of and granted by the HRD Manager (or designee) at his or her discretion.
 - 3) The Area Manager will do one of the following:
 - a) Uphold the disciplinary action; or

- b) Modify the disciplinary action; or
- c) Overturn the disciplinary action. If a suspension or termination is overturned, the employee (petitioner) shall be reinstated with full back pay.
- 4) The Area Manager will file a decision with the employee and the HRD Manager (or designee) and will include a reason for the decision, an explanation of the decision and the action to be taken as a result of it.

b. The employee may appeal the Area Manager's decision to the ~~Oneida Personnel Commission~~Judiciary – Trial Court. The appeal must be filed with the ~~Oneida Personnel Commission~~Judiciary – Trial Court within ten (10) working days from employee's receipt of the Area Manager's decision. Upon receipt of the appeal the ~~Commission~~Judiciary – Trial Court shall, within one business day, notify the HRD Manager (or designee) that an appeal has been filed by the employee. (GTC Resolution – 2-28-04A)

- 1) Copies of all information of the subject case upon which the disciplinary action was upheld by the Area Manager will be hand delivered to the ~~members of the Personnel Commission~~Judiciary – Trial Court. ~~The Personnel Commission~~Judiciary – Trial Court will hear an appeal only if one or both of the following conditions exist:
- a) The decision of the Area Manager is clearly against the weight of the evidence and/or
- b) Procedural irregularities were exhibited during the appeal process that may have been harmful to one of the parties to the grievance.
- 2) If one or both of the above conditions are present, the ~~HRD Office will convene the Personnel Commission to~~Judiciary – Trial Court will hear the grievance.
- a) If neither of the above conditions is present, the ~~Personnel Commission~~Judiciary – Trial Court will deny the appeal for a hearing and affirm the decision of the Area Manager.
- 3) At least five (5) working days prior to the hearing date, the petitioner, ~~and~~ respondent ~~and Personnel Commission~~ will receive notification of the hearing date.
- 4) Copies of all information on the subject case upon which the disciplinary action was upheld will be hand-delivered to the ~~members of the Personnel Commission~~Judiciary – Trial Court at least two (2) working days prior to the appeal date. The petitioner and respondent will have access to this information in the HRD Office at least two (2) days prior to the appeal date.
- a) If new evidence which was previously unavailable is introduced at any point during the ~~Personnel Commission~~Judiciary – Trial Court appeal process, the ~~Commission~~Judiciary – Trial Court hearing will be suspended and the case will be remanded to the Area Manager for reconsideration.
- i. The Area Manager will reconsider his/her decision in light of the new evidence and issue a decision within three (3) working days.

1018 ii. This procedure may be invoked only once. Thereafter, the appeal process will
1019 continue to a conclusion based on the information originally presented and the
1020 newly introduced evidence.

1021 5) The petitioner shall have the right to be represented by an advocate if he/she so
1022 chooses. The expenses of the advocate shall be the total responsibility of the petitioner.
1023 The respondent and/or area manager who is party to the grievance action shall have
1024 access to an advocate for consultation and/or representation. Should the petitioner
1025 engage outside professional legal representation, the respondent and/or area manager
1026 shall have access to professional legal representation.

1027 a) Should the petitioner and his/her representative both fail to appear for any
1028 scheduled hearing without justifiable cause, the decision of the Area Manager shall
1029 be upheld and the grievance dismissed.

1030 Should the respondent and his/her representative both fail to appear for any
1031 scheduled hearing without justifiable cause, the decision of the Area Manager shall
1032 be overturned.

1033
1034
1035 6) The decision of the ~~Personnel Commission~~ Judiciary – Trial Court shall be based solely on
1036 the information presented to them before the appeal hearing, the record of the prior
1037 proceedings and any new evidence (if introduced appropriately through the provisions
1038 of 6.b.4.a. above).

1039 7) The decision of the ~~Personnel Commission~~ Judiciary – Trial Court ~~may be appealed s to~~
1040 the Nation's Court of Appeals pursuant to the Nation's Rules of Appellate Procedure ~~shall~~
1041 be final. The ~~Personnel Commission~~ Judiciary – Trial Court may:

1042 a) Uphold the disciplinary action; or

1043 b) Overturn the disciplinary action and:

1044 i. Reinstate the employee (petitioner) with full back pay for any lost time;

1045 ii. Reinstate the employee (petitioner) without back pay.

1046 8) The petitioner and respondent have a right to a speedy hearing and decision; therefore,
1047 notification of the final decision will be made within five (5) working days following the
1048 hearing.

1049 a) Notification of the final decision will include:

1050 i. The final decision;

1051 ii. The reason(s) for the final decision; and

1052 iii. The action to be taken as a result of the final decision.

1053 9) The HRD Office shall:

1054 a) Keep all records of the hearing;

1055 b) Provide copies of administrative advocacy rules, procedural rules, and time line
1056 rules to interested parties.

SECTION VI – SAFETY AND HEALTH

A. POLICY

The personal safety and health of each employee, customer and client of the Oneida ~~Tribe~~Nation is of primary importance. The prevention of injuries and illnesses is of such importance that it will take precedence over operating productivity whenever necessary.

The Oneida ~~Tribe~~Nation will maintain a safety and health program conforming to the best practices available. To be successful, this program will work to develop the proper attitudes toward on-the-job injury and illness prevention on the part of supervisors and employees. This program will strive to develop a high level of cooperation in all safety and health matters between supervisors and employees and among employees.

The objective of this program is a safe and healthy environment that will reduce the number of job-related injuries and illnesses to an absolute minimum. The ~~Tribe's~~Nation's goal is zero accidents and illnesses.

B. PROCEDURES

The Tribal Safety Committee will adopt and enforce through the Personnel Department procedures related to the education of the ~~Tribal~~Nation's work force in matters of safety and

health. These procedures will include all education and prevention activities, assessments and evaluations, and reporting.

SECTION VII – PROGRAM/ENTERPRISE RULES & REGULATIONS

A. Enterprises and programs may establish internal rules and regulations to facilitate the administration of Tribal the Nation's Personnel Policies and Procedures.

1. In no case will these internal rules and/or regulations conflict with or take the place of Tribal the Nation's Personnel Policies and Procedures.
2. Enterprises and programs which establish internal rules and regulations will file a copy of the rules and regulations with the Personnel Department.

SECTION VIII – RECORD KEEPING

A. PERSONNEL OFFICE

1. Basic records to be retained include:
 - a. Reference Data
 - b. Job Descriptions
 - c. Resumes and Applications
 - d. Interview notes/selection information
 - e. Resignations
 - f. Employee tax exemption claims
 - g. Disciplinary action information
 - h. Performance evaluations
 - i. Insurance coverage/changes
 - j. Transfers
2. The Personnel Office shall keep and maintain a complete record of each employee throughout his/her term of employment.
 - a. ~~Tribal employees~~ Employees of the Nation shall have access to their employment file.
 - b. Employment files kept by the Personnel Office shall be considered confidential information. Release of any information to a third party must have the consent of the employee in writing.

1169 B. ACCOUNTING DEPARTMENT

1170 1. Basic records to be retained include:

1171 a. Attendance records

1172 b. Employee Time Sheets

1173 c. Earnings - in the form of computer printouts

1174 d. Travel - in the form of complete travel authorization forms.

1175 1) Time sheets and travel reports shall be filled out by every employee for pay
1176 period, collected by the program head, and forwarded to the Department.

1177 2. The Accounting Department shall retain all records for a period of seven (7)
1178 years. [\(Archived 29, October 2010\)](#) [\(BC Action, 10-14-09B\)](#)

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PERSONNEL POLICIES AND PROCEDURES MANUAL

SECTION I – Introduction



Welcome to the Oneida Nation. We are pleased to have you join us as a partner on a team of people dedicated to providing quality service that enhances the quality of life of the Oneida community. The role you play in your position is important to the overall effort required by your department to meet the goals and objectives of the Oneida Nation. We encourage you to take advantage of the opportunities presented to you, as an employee, to grow and develop both personally and professionally.

The purpose of this “Employee Manual” is to provide you with a ready source of information about employee related Oneida tribal policies and procedures. Although we have tried to make this manual as comprehensive as possible; it does not, and cannot, include policies which address every situation that may arise. The Oneida Nation reserves the right to modify, alter, change or cancel existing policies and procedures or adopt new procedures and policies at any time.

The policies and procedures set forth in this manual apply to all employees. As an employee of the Oneida Nation, you are required to know and abide by these policies and procedures. Tribal departments may have specific and additional procedures enhancing the general policies stated in this manual. Each employee is expected to learn his/her department’s procedures and comply with them. In the event of any conflict between policies in this manual and departmental procedure, the policies in this manual supersede. Each employee is also expected to conform to the professional standards of his/her occupation. Questions regarding this manual, or any employee related policies, should be directed to your supervisor, department head, or to the Human Resources Department at (920) 496-7900.

The Oneida Nation is proud to have you on our staff and we look forward to a fulfilling and successful team relationship.

SECTION II - RECRUITING

A. RECRUITING

1. Recruiting Strategy

- a. The Oneida Nation shall implement a Recruiting Strategy to increase the potential for hiring the best-qualified and most capable employees possible.
 - 1) The Recruiting Strategy shall target as the first priority applicants in accordance with the Oneida and Indian Preference Policy.
 - 2) The Recruiting Strategy shall have a nationwide focus and will use:
 - a) The Kalihwisaks (national distribution);
 - b) The Oneida Higher Education Office's network of post-secondary school students;
 - c) Local and regional media and public employment agencies.

2. Applicant Pool

- a. The Oneida Nation shall establish and maintain an Applicant Pool consisting of individuals who have expressed an interest in working for the Oneida Nation.
 - 1) The Applicant Pool will consist of files containing:
 - a) A Oneida Nation Application Form;
 - b) A summary of career goals and job preferences.
 - 2) The Applicant Pool will be regularly reviewed to:
 - a) Update individual files;
 - b) Remove files where indicated.
 - 3) The Applicant Pool will be cross-referenced by job preferences.
 - a) Notices of job vacancies and an Application Form will be sent to all Applicant Pool members as appropriate.
 - 4) All Applicant Pool members shall have the right to review and update their file upon request.
 - 5) Applicant Pool members shall be apprised of the Nation's Indian Preference Policy.

B. LABOR POOLS

1. Supervisors that wish to establish a job classification as a Labor Pool Position will work with the HRD to establish the job classification.
2. Each Labor Pool Position shall be advertised as on-going recruitment pool. The HRD shall maintain an updated list of qualified candidates for each Labor Pool Position.
3. The HRD will accept all job applications and verify that each applicant is qualified according to the established job description. All qualified applicants will then be placed in a pool according to the Nation's Oneida and Indian Preference Policy and the date the application was received. All applicants will be notified of acceptance into or rejection from the pool.
 - a. **PRESCREENING OF LABOR POOL POSITIONS** (HR Interpretation 11-13-12) Applicants who were previously employed by the Oneida Nation and were terminated for reasons of misconduct or performance issues will be screened out for a period of twelve (12) months following the date of discharge.

4. The HRD will keep an updated list of qualified applicants for each job position.
5. When a vacancy occurs in a Labor Pool Position, the supervisor will notify the HRD of the position to be filled. The HRD Office shall then refer the top three (3) applicants to the immediate supervisor. The top three applicants shall be based first on the Oneida and Indian Preference Policy and, second, the date an application was received. The immediate supervisor will notify the HRD of their selection and the HRD will then offer the position to the applicant. After the position is filled, all ranked candidates will move up on the list. [\(HR Interpretation 7-11-13\)](#)
6. If the applicant refuses the position, the HRD Office will then offer it to the next applicant until the position is filled.
7. If the applicant refuses the job, the applicant may withdraw from the Labor Pool or, if he or she declines to withdraw from the Labor Pool, the date of refusal will be considered the date the application was received and the applicant will be placed in the Labor Pool list according to B.3.
8. Indian (Oneida) Preference will be adhered to in all hiring decisions.

C. EMERGENCY/TEMPORARY POSITIONS

1. The HRD will periodically recruit individuals who are interested in filling temporary positions which consist of the following classifications:
 - a. Emergency/Temp
 - b. Limited Term
 - c. Seasonal
 - d. Substitute/Relief
 - e. Youth Worker
 - f. Student/Intern
2. Creation of Positions
 - a. Creation of positions in the above Temporary Employee Classifications will require that these positions be budgeted for the current fiscal year, or proof through documentation that the budget is adequate to incorporate these positions.
 - b. The positions must be developed in conjunction with the HRD; assuring that all Policies and Procedures are adhered to. Creation of temporary classification requires the approval of the Director, Area Manager, and HRD Manager, or elected official of the Oneida Nation.
 - c. All newly created temporary positions must be processed through the Wage and Salary system before a position can be filled with a temporary employee.
3. Recruitment/Selection
 - a. Recruitment/selection of applicants for all temporary positions requires a completed Temporary Personnel Requisition form with an updated job description attached.
 - b. The HRD will provide a list of qualified candidates according to the job descriptions to the immediate supervisor. The immediate supervisor will select from the approved list adhering to Indian Preference.
 - c. The HRD will contact the selected candidate and offer the position, following the proper procedures to put the incumbent on payroll.

- d. The selected candidate will sign a statement accepting conditions of temporary employment, and length of employment where applicable.
 - e. Temporary employees will be paid within the Grade in which the job is classified and salary will be negotiated within the first three (3) steps of respective grade.
 - 1) Any negotiated salary beyond step three will require written justification and approval from the respective General Manager. [\(H.R. Interpretation, 12-8-16\)](#)
 - f. Temporary employees are welcome to apply for any regular position within the Nation that becomes available during the term of their employment.
 - g. Temporary employees that are terminated due to documented cause will have the right to the appeal process as outlined in the Personnel Policies and Procedures.
 - h. All temporary employees are subject to lay-off based upon department job needs and budgets. [\(HR Interpretation – 11-25-13\)](#)
 - i. Supervisors are required to do proficient planning within their respective span of control; as such they must also enforce separation dates and will be monitored by HRD for compliance.
 - j. Supervisors must select the most appropriate category of classification for the job.
 - 1) Moving from one classification to another is prohibited.
4. Benefits
- a. The following employee classifications will be eligible for benefits as defined in the section of the Personnel Policies and Procedures as medical, dental, vacation and personal accrual, holiday pay, premium pay.
 - 1) Limited Term
 - 2) Seasonal
 - b. The following employee classifications will be eligible for benefits as defined in this section of the Personnel Policies and Procedures as Mandatory Benefits and Holiday pay.
 - 1) Emergency/Temporary
 - 2) Substitute/Relief
 - 3) Seasonal Worker (only during their first season)
 - c. The following employee classifications will be eligible for benefits as defined in this section of the Personnel Policies and Procedures as Mandatory Benefits.
 - 1) Youth Worker
 - 2) Student/Intern

SECTION III – SELECTION POLICY

A. ONEIDA PREFERENCE AND INDIAN PREFERENCE STATEMENT OF POLICY

Federal policy since 1834 accords hiring preference to Indians. The purpose of this preference is threefold: 1) to give Indians a greater participation in self-government; 2) to further the Government's trust obligation; and 3) to increase the positive effect of having Indians administer matters that affect Indian tribal life. [\(GTC Resolution – 5-23-11-A\)](#)

More recently, legislation such as the Civil Rights Act (1964) and the Education Amendments of 1972 (passed after the Equal Employment Opportunity Act) continued to specifically provide for preferential hiring of Indians by Indian Nations.

As an employer, the Nation seeks to employ individuals who possess the skills, abilities and background to meet the employment needs of the Nation.

As a sovereign Indian Nation and a unique cultural group, the Oneida Nation has determined that a highly desirable employment characteristic is knowledge of Oneida culture that can be attained only by membership (or eligibility for membership) in the Oneida Nation. Further, the Nation recognizes the unique, shared culture of Native American Indians and has determined that a desirable employment characteristic is status as a member of an American Indian Nation. At a minimum, the Nation has determined that some knowledge of Indian culture is a desirable employment characteristic.

Accordingly, the Oneida Nation establishes the following policy in regard to Indian Preference for selecting employees to provide services that meet the needs of the Oneida people. This Indian Preference policy shall be specific to staffing decisions made under the Personnel Policies and Procedures and shall not be construed to have an application outside of these policies and procedures.

The Oneida Nation of Indians of Wisconsin is an equal employment opportunity employer and follows non-discriminatory policies and procedures in personnel decisions. [\(HR Interpretation 5-19-14\)](#) However, the Oneida Nation exists to serve the needs of the Oneida people and therefore accords Oneida Preference to enrolled Oneida Tribal Members where such preference is not otherwise prohibited. All General Managers and top administrative positions, as defined by HRD, shall be held by enrolled Tribal members. In all other instances, the Nation applies the following priorities of Indian Preference in staffing decisions:

- 1 Enrolled Oneida Tribal member;
- 2 Oneida Indians eligible for enrollment in the Oneida Nation;
- 3 Documented first generation Oneida descendant;
- 4 Other Native American Indian;
- 5 Other (non-Indian). [\(HR Interpretation 6-24-11\)](#)

This policy will apply in decisions where the basic requirements for employment are met.

B. HIRING PROCEDURE

1 Statement of Policy

- a. The Oneida Nation is an equal employment opportunity employer and follows nondiscriminatory policies in hiring.
- b. The Oneida Nation is a firm advocate of the 1964 Civil Rights Act (as amended) and the 1968 Indian Civil Rights Act (as amended) and will make every effort to ensure compliance with each Act; however:
- c. The Oneida Nation follows the principles of Indian Preference in the implementation of hiring practices (see the Oneida Preference and Indian Preference Statement of Policy).
- d. The members of the Personnel Selection Committee and all Tribal employees who supervise other Tribal employees shall undergo training in EEO and Tribal laws, rules and regulations.
 - 1) Training will be knowledge - and skills-based
 - 2) All Personnel Selection Committee members and Tribal supervisors will undergo periodic re-training in EEO and Tribal laws, rules and regulations
- e. No person shall be recommended for a position if a conflict of interest or nepotism is created. Nepotism is created by the following relationships: [\(HR Interpretation 08-13-12\)](#)
 - a) Father
 - b) Mother
 - c) Husband
 - d) Wife
 - e) Brother
 - f) Sister
 - g) Son
 - h) Daughter
 - i) Father-in-law
 - j) Mother-in-law
 - k) Brother-in-law
 - l) Sister-in-law
 - m) Son-in-law
 - n) Daughter-in-law
 - m) Grandparent
 - n) Grandchild

2. Hiring Procedures

a. HRD Office Responsibilities

- 1) Unless specifically noted, the HRD Office will have responsibility for implementing the policies and procedures guiding the selection of employees of the Nation.

b. Personnel Selection Committee Role

- 1) The Oneida Nation established the Personnel Selection Committee to protect against issues of nepotism and enforce Oneida and Indian Preference.
 - a) The Personnel Selection Committee is directed to:
 - i. Protect against issues of nepotism;
 - ii. Enforce Oneida and Indian preference;
 - iii. Ensure fairness and equality is maintained during interviews.

c. Identification of Vacancies and Development of Job Descriptions [\(Work Standard, 11-16-11\)](#)

- 1) Supervisors may inform the HRD Office of pending vacancies as soon as they are identified.

- 238 2) For existing positions, the HRD Manager (or designate), the supervisor and the Area
239 Manager (at his/her option) will review the job description to ensure compliance with:
240 a) The Nation's job structure;
241 b) The needs and requirements of the job.
- 242 3) For new positions, the HRD Manager, the appropriate Area Manager, and the supervisor
243 shall develop the job description.
244 a) The new job description shall conform to the Nation's job structure.
245 b) The new job description will be reviewed by the General Manager.
246 [\(HR Interpretation, 12-8-16\)](#)
- 247 4) All job descriptions shall contain the following information:
248 a) Job title, division/department, location, supervisor's title;
249 b) Posting date, application deadline, preferred starting date, date of job, description
250 review;
251 c) Pay level (grade, step, hourly rate);
252 d) A brief job summary;
253 e) Duties and responsibilities;
254 f) Qualifications;
255 g) Inquiry address;
256 h) Statement of compliance with EEO and Indian Preference policies.
- 257 d. Applications
- 258 1) All inquiries for job vacancies will be responded to with an Oneida Nation Application
259 Form which will consist of:
260 a) Job vacancy title;
261 b) Applicant biographical data;
262 c) A request for a resume (where applicable).
- 263 2) The Application Form shall be accompanied by a Statement of Policy regarding Oneida
264 Preference and Indian Preference.
- 265 3) Hand-delivered applications will be accepted at the HRD Office until 4:30 p.m. on the
266 deadline date; mailed applications must be postmarked on or before the deadline date.
- 267 4) All applications will be acknowledged.
- 268 e. Advertising
- 269 1) Position vacancies will be advertised as widely as possible including:
270 a) The Kalihwisaks;
271 b) Statewide, through print and electronic media and public employment agencies;
272 c) Through targeted recruiting efforts including:
273 i. Major metropolitan areas (i.e. Milwaukee, Chicago, Minneapolis, etc.)
274 ii. The Bureau of Indian Affairs;
275 iii. The Oneida Higher Education Office.

- 279 d) Other postings targeted toward special recruiting categories (such as professions)
280 shall be carried out at the discretion of the HRD Office with the advice and consent
281 of the affected department.
- 282 2) Unless otherwise prohibited by external grant source or federal law, the first posting
283 for a position vacancy shall be limited to enrolled Oneida members and shall be posted
284 for a minimum of seven (7) calendar days.
- 285 3) The second posting for a position vacancy shall be posted for a minimum of ten (10)
286 calendar days and shall be open to the general public, unless the position must be filled
287 by an enrolled member of the Oneida Nation . [\(HR Interpretation 8-9-11\)](#)
- 288 4) All vacancies requiring re-posting shall be referred back to B-2.c (Identification of
289 Vacancies and Development of Job description) to begin the re-posting process.
- 290 f. Screening of Applicants [\(HR Interpretation 11-16-12\)](#) [\(HR Interpretation 10-22-12\)](#)
- 291 1) A Screening Committee consisting of the HRD Manager (or designate), the position
292 supervisor, the Area Manager (at his/her option), and a member of the Personnel
293 Selection Committee shall be convened to conduct the screening of applicants. The
294 Screening process will begin as soon as practical following the closing of the position.
295 This Committee will:
- 296 a) Verify that all applications are complete, are accurate and were submitted on time.
297 i. Applications that are incomplete, inaccurate, or were not submitted on or
298 before the posted deadline date may be screened out.
- 299 b) Analyze the job description to establish screening criteria. These criteria will
300 include qualifications listed on the job description determined by the supervisor
301 and Area Manager to be essential to the job. [\(T.O.E. WS - 5-6-13\)](#)
- 302 c) Screen verified applications
- 303 d) Recommend a list of applicants to be interviewed.
- 304 2) The HRD Office shall notify screened out applicants within five (5) working days after
305 the initial screening and reserve these applications in the general recruiting pool.
- 306 3) The HRD Office will arrange for interviews with the listed candidates.
- 307 g. Candidate Interviews
- 308 1) An Interview Committee will be convened and will consist of the members of the
309 Screening Committee except that the HRD Manager will be replaced with a second
310 member of the Personnel Selection Committee. The Interview Committee will:
- 311 a) Construct an interview format consisting of:
312 i. A set of questions related to the screening criteria qualifications;
313 ii. An interview rating scale designed to objectively evaluate each candidate's
314 qualifications.
- 315 b) Interview candidates and evaluate each individually
- 316 2) The HRD Manager (or designee) will total the evaluation rating scale to rank order of the
317 candidates.
- 318
- 319

h. Selection (Interpretation - Disqualification of Applicant 10-24-2013)

- 1) The supervisor shall select one of the top two (2) candidates as ranked through the rating scale. (HR Interpretation - 10-17-12)
 - a) The supervisor may conduct an additional personal interview with the top two (2) candidates.
 - b) The selection decision shall be governed by the Oneida Preference and Indian Preference Policy. (HR Interpretation - 6-6-11)
 - c) The HRD Office will notify the selected candidate and offer the candidate the job within five (5) working days of the selection decision by the supervisor.
 - i. Should the supervisor's first choice refuse the offer, the HRD Office will offer the job to the second ranked candidate.
- 2) Should both of the top two ranked candidates refuse the job offer, the supervisor may:
 - a) Repeat the process outlined in B.2.h.1. above; or
 - b) Re-post the position.
- 3) The HRD Office will notify those candidates interviewed but not selected of the decision to hire the best-qualified candidate.
- 4) All newly hired employees will be listed in the HR newsletter.

C. TRANSFERS AND PROMOTIONS POLICY - The Oneida Nation encourages transfers and promotions within and among units in order to make the best possible use of human resources to meet the Nation's goals and objectives. Supervisors and employees are encouraged to work together to create an environment in which employees constantly strive to improve their skills and abilities and managers constantly seek to provide challenging and rewarding work experiences.

1. Procedure

a. Internal Posting and Bidding

- 1) Open positions as determined by a supervisor and his/her Area Manager will be posted internally for five (5) working days. This internal posting will be concurrent with the external (public) posting of positions.
 - a) Positions will be posted in prominent locations in each building of the Nation.
- 2) Tribal employees may bid for transfers by notifying their immediate supervisor and submitting an Application Form to the HRD Office.
 - a) The HRD Manager will inform all affected Area Managers of each transfer bid.
- 3) At the end of the five (5) day internal posting period, the HRD Manager will schedule a conference with the open position's supervisor and the Area Manager.
 - a) The conference committee will consist of the supervisor, the Area Manager and the HRD Manager (or designate) acting as this Committee will:
 - i. Establish selection criteria; and
 - ii. Review each bid.
 - b) The Committee may select the best-qualified applicant but is not required to choose an applicant to fill the open position from those employees who have submitted an application for a transfer or promotion.

- 361 c) If the Committee does not fill the position from the transfer/promotion process,
362 the process will continue through the full advertising, screening and interview
363 steps.
364 i. Any decision will be governed by the Indian Preference Policy.
- 365 4) Employees who are transferred or promoted will not lose any benefits; however:
366 a) An employee may be required to continue serving in his/her present position until
367 a replacement can be found;
368 b) An employee who is transferred to a position lower on the Nation's Job Structure
369 will be paid at the grade level corresponding to the new position;
370 c) An employee must have completed one year of service to the Nation before being
371 eligible for a promotion or transfer (requests for transfers for documented medical
372 conditions will be handled on a case by case basis and only when in the best
373 interests of both the employee and the Nation);
374 d) The newly transferred or promoted employee shall be required to complete a three
375 (3) month probation period (all conditions of the Nation's Probation Policy shall
376 apply).
- 377 b. Applicant Pool Process
378 1) New and vacant positions will be advertised through the Nation's Applicant Pool.
379 2) The job description will be sent to persons whose applications are maintained in the
380 Applicant Pool.
381 a) The Nation's Applicant Pool will consist of open (unspecified) applications from
382 members of the Nation who wish to be considered for employment by the Nation.
383 b) Advertising through the Nation's Applicant Pool will follow the format and time
384 conditions set forth in the Hiring Policy.
- 385 2. Reassignments
386 a. Title Reassignments
387 1) Title Reassignments may be made by supervisors to:
388 a) More accurately describe or define an existing job; or
389 b) Make minor adjustments in jobs within a unit or operating division.
390 2) Title Reassignments may be made at any time with the approval of the Area Manager
391 and HRD Manager.
- 392 b. Job Reassignments
393 1) Job Reassignments may be made by supervisors to make more efficient and effective
394 use of human resources.
395 2) Job Reassignments may be supervisor-initiated or employee-initiated but must be
396 made in the best interests of the operating unit.
397 3) Job Reassignments may be made at any time with the approval of the Area Manager.
- 398 c. Interim Job Reassignments (Work Standard 7-11-13)
399
400
401

D. PROBATION ([Work Standard 1-20-2011](#))

1. The first three (3) months after an employee's starting date shall be considered a period of probation. At the end of six (6) weeks, the employee's performance shall be reviewed with him/her by the supervisor by completing an employee evaluation.
 - a. At the end of the three-month probation period, a second performance evaluation will be conducted. This evaluation will recommend the end of probation and regular status for the employee, an extension of probation, or termination for cause.
2. Status as a Probationary Employee
 - a. Probationary employees will be paid at five percent (5%) below the posted pay rate for the position.
 - 1) New employees hired under a negotiated salary will receive a salary one step below the agreed upon salary during the probationary period.
 - b. Probationary employees will accrue vacation/personal days during the probation period and will receive holiday pay.
 - c. Probationary employees may be terminated for cause at any time during the probation period. Cause must consist of a violation of policies or the documented inability of the employee to perform the duties and responsibilities of the position. This termination is subject to appeal. ([BC Action 3-20-92](#))
3. Completion of Probation Period
 - a. Satisfactory completion of probation will result in the employee receiving the regular salary for the position.
 - b. Employees who are terminated during the probation period will receive credit for accrued vacation/personal days in their final paycheck.
 - c. Extensions of probation periods will not affect accrual of or use of benefits as explained under D.2.

SECTION IV - COMPENSATION AND BENEFITS

A. SALARY

1. The Nation's Job and Salary Structure

- a. An ongoing plan will be instituted based on standard employee grades and step levels to assure that a uniform approach is taken to establish equitable salary and wage levels.
- b. Employee performance evaluations will be a resource in determining whether an employee receives an increase in pay for the upcoming year. An overall satisfactory rating must be attained in order to be granted an increase in pay.
- c. Merit increase shall be granted upon the recommendation of the supervisor, the Area Manager, the HRD Manager and the General Manager.

2. Workday (Work Standard, 10-17-12)

- a. The regular workday in the Nation is from 8:00 a.m. to 4:30 p.m. with an hour for lunch. The exception to these hours occurs only if the program/enterprise hours must vary for the purpose of providing service (such as retail hours beyond 4:30 p.m.). Shifts will be developed as needed, and the shift hours will then become the regular workday for assigned employees for that program/enterprise.
- b. Employees are expected to be at work each scheduled work day.
 - 1) Employees who do not report for work because of inclement weather or unforeseen circumstances will not be paid for that day. Employees may elect to use personal day(s) to cover this absence. (Work Standard, 11-8-12)
 - 2) In case of an unavoidable delay or absence, the supervisor must be notified no later than thirty (30) minutes after the scheduled starting time. Employees are encouraged to notify their supervisor before their scheduled starting time.
 - i. Employees failing to report to their assigned jobs or failing to call in within the thirty (30) minute time allowed will be subject to disciplinary action.
 - ii. Permission to leave early must be obtained by the employee from his/her supervisor.

3. Overtime

- a. Any and all overtime will be kept to a minimum and must be approved by the Supervisor and Area Manager.
 - 1) In the case of potential overtime that may occur at night, on holidays or on weekends, supervisors will delegate this authority to a specific employee and outline specific situations and actions that warrant overtime.
- b. All overtime must be reported to the supervisor for evaluation.
- c. Overtime will be approved only if the program or enterprise budget is capable of paying it.
- d. Overtime will be approved only for hours worked in excess of forty (40) hours per week. Personal/vacation days and holidays will not count toward the forth (40) hour requirements.
- e. Employees of the Nation are expected to work overtime if required. Time and one-half will be paid for this overtime.
- f. Exempt employees are not eligible for overtime.
 - 1) The HRD Office will maintain a list of exempt employees.

4. Holidays [\(Work Standard, 4-15-11\)](#)

a. Tribal holidays consist of the following:

- 1) One-half day Christmas Eve
- 2) Christmas Day
- 3) New Year's Day
- 4) Memorial Day
- 5) Veteran's Day
- 6) Independence Day
- 7) Labor day
- 8) Thanksgiving Day
- 9) Indian Day (day after Thanksgiving)
- 10) One-half day Good Friday
- 11) Code Talker's Day (Oneida Day, Friday prior to Memorial Day)

[\(BC Resolution – 12-11-13A\)](#)

b. To be eligible for a paid holiday, employees must work the preceding and following scheduled work days (except for employees who are on a prescheduled work leave or an approved extended sick leave.) Employees who are granted a sick day directly prior to a holiday must certify that they were capable of working the holiday in order to qualify for a paid holiday.

c. All regular employees will be given holiday pay for the maximum pay of eight (8) hours per day.

d. Holidays falling on a Saturday will be observed the preceding Friday; holidays falling on a Sunday will be observed on the following Monday. [\(2017 Holiday Observance Calendar\)](#) [\(2016 Holiday Observance Calendar\)](#)

e. The Oneida Nation acknowledges its responsibility to make a reasonable accommodation to employees who wish time off to observe religious holidays. Requests for such time off will be granted where possible, based on the scheduling and staffing needs of affected departments. Employees wishing to take time off work for religious observances should inform their supervisor as early as possible. Employees may use personal time for such requests if eligible; otherwise the time off will be treated as unpaid leave.

5. Vacation/Personal Days

a. Every employee of the Nation, except temporary employees, shall be allowed personal and vacation days with pay to the extent that personal days and vacation are accumulated. Temporary employees shall be allowed personal and vacation days in accordance with Section II.C.4. [\(GTC Resolution – 7-02-12-A\)](#)

b. The amount of personal and vacations days shall be determined by continuous service for the Nation. A "lay-off" from employment of the Nation shall not be considered in interruption in continuous service where the lay-off is in accordance with the Nation's Layoff Policy, nor shall a preapproved leave of absence. [\(Accruals Interpretation, 3-6-12\)](#)

c. Except as provided for in section g, the accrual of personal days shall be as follows:

[\(BC Resolution, 4-13-11F\)](#)

- 1) 0-3 years of service - 6 days per year;
 - 2) 4-7 years of service - 8 days per year;
 - 3) 8-14 years of service - 10 days per year;
 - 4) 15+ years of service - 12 days per year;
- d. Except as provided for in section g, the accrual of vacation days shall be as follows:
- 1) 0-3 years of service - 12 days per year
 - 2) 4-7 years of service - 15 days per year;
 - 3) 8-15 years of service - 20 days per year;
 - 4) 15+ years of service - 25 days per year.
- e. Part-time employees accrue personal and vacation days for time actually worked at a ratio of a full-time employee.
- f. Service is defined as working for Programs/Enterprises which are contracted by the Nation of specifically sponsored by the Nation.
- g. Vacation and personal days shall be capped at 280 hrs. [\(BC Resolution, 11-10-10D\)](#) An employee shall cease to accrue vacation and personal hours when he or she has reached 280 total hours. Supervisors shall notify their employees when said employees have accumulated 200 total hours of vacation and personal time.
- 1) An employee may trade back accumulated vacation and personal hours in accordance with Section IV.A.5.n. below. [\(GTC Resolution – 5-23-11-B\)](#)
- h. Upon termination from employment with the Nation, employees will be paid for any unused personal and/or vacation days.
- 1) Employees who have used the Nation's sponsored loan program will be required to honor the terms of the loan agreement.
- i. Personal Days can be used for any reason so long as the request is approved by the employee's supervisor at least twenty-four (24) hours in advance (unless the absence is due to illness or unforeseen circumstances).
- 1) In the case of illness or unforeseen circumstance, the supervisor shall be notified no later than fifteen (15) minutes before the scheduled starting time.
 - 2) Programs and enterprises may institute stricter standards of notification. These standards will be submitted to and approved by the Personnel Department.
- j. An employee shall notify his/her supervisor of an intent to use personal days in the following ways:
- 1) Three (3) to five (5) days - one (1) week advance notification
 - 2) Six (6) days or more - two (2) weeks advance notification.
- k. An employee shall notify his/her supervisor one (1) day in advance if he/she will take off one (1) or two (2) days of vacation. Programs and enterprises may institute stricter standards of notification.
- 1) Three (3) to five (5) days of vacation require a one (1) week advance notification.
 - 2) Six (6) or more days of vacation require at least two (2) weeks advance notification.
- l. The burden shall be on the supervisor to show that a denial of a personal day or a vacation day is based upon interference with the business of the Nation.

- m. Personal or Vacation Days cannot be taken when an employee is on probation.
- n. Trade-back for Cash - Each fiscal year, the Oneida Business Committee shall analyze fiscal conditions to determine whether employees may trade back personal and/or vacation hours for cash that fiscal year. [\(Work Standard, 10-11-11\)](#)
 - 1) If the Oneida Business Committee approves trade-back for cash, they shall also determine whether (a) and/or (b) applies:
 - i. All employees will have the opportunity to trade-back hours one time that year.
 - 1. By August 15, each employee who has accumulated twenty-four (24) hours or more of vacation and/or personal days may opt to trade in his/her hours for cash.
 - 2. Employees will receive their trade back on or before September 30 of that year.
 - ii. Only those employees who are unable to utilize their personal and/or vacation time due to working conditions, such as a shortage in staffing, as determined by the HRD Manager or designee, will have the opportunity to trade back hours on a quarterly basis.
 - 1. Employees will receive their trade back within sixty (60) days after opting to trade back hours.
 - 2) When trade-back for cash is approved by the Oneida Business Committee, the following standards shall apply:
 - i. Employees must decide which status (vacation or personal or both) from which their trade-back will be drawn.
 - ii. Employees may not trade for cash more than eighty (80) hours in one year. [\(GTC Resolution 5-23-11-B\)](#)
- o. Additional Duties Compensation
- p. Travel Time Compensation [\(Work Standard - 3-20-13\)](#)

B. INSURANCES [\(see separate publication\)](#) for information on Tribal Insurance plans. [\(Separating Employees WS 5-6-13\)](#)

C. RETIREMENT PLAN [\(See separate publication for information on Tribal Retirement Plan\).](#)

D. LEAVES

1. Meeting Attendance

- a. Approval for attending any meetings inside normal working hours must be approved in advance by the employee's immediate supervisor. [\(BC Action, 5-16-89\)](#)
- b. Employees who receive stipends or honoraria in excess of \$50.00 for attending meetings during working hours will forfeit the amount in excess of \$50.00 from their regular paycheck. Stipends for travel or per diem will not be deducted if accompanied by receipts for such expenses.
- c. Stipends or honoraria for intra-tribal meetings during normal working hours will results in the employee's paycheck being reduced by the full amount of the stipend.

2. Funeral Leave ([Work Standard, 8-2-11](#))

- a. All regular employees will be given a three (3) day leave without loss of pay for funeral services for immediate family. Immediate family includes:

Husband	Mother	Brother	great-grandparent
Wife	Father	Sister	great-grandchildren
Mother-in-law	Son	Grandparent	Spouse's great-grandparents
Father-in-law	Daughter	Grandchild	Spouse's grandparents
Daughter-in-law	Sister-in-law	Brother-in-law	
- b. Three (3) day leave for other persons will be given only if the employee is responsible for making funeral arrangements, subject to prior approval of supervisor.
- c. All other funeral leave will be limited to no more than one (1) day with pay subject to the notification and approval of the immediate supervisor. ([Management Directive, 12-17-2009](#))

3. Leave of Absence ([Work Standard, 6-10-14](#))

- a. A leave of absence without pay may be granted to employees for a justifiable reason (including caring for a child, spouse or parent with a serious health condition) and when in the best interest of the Nation.
 - 1) Leaves of absence will not exceed three (3) months.
 - i. All leaves of absence must be approved by the supervisor, Area Manager, HRD Manager and General Manager. ([HR Interpretation, 12-8-16](#))
 - ii. Requests must be documented and submitted to the supervisor with as much advance notice as possible.
 - iii. Disposition of requests will be made on the basis of staffing requirements.
 - 2) Upon returning, the employee will be reinstated in the former position with full status and benefits. Holiday, vacation, and sick leave will not be accrued during the leave of absence.
 - 3) No later than fifteen (15) working days prior to the expiration of the leave period the employee must give notice in writing of his/her intent to return to the position. Notice must be presented to the supervisor.
 - i. Failure to provide written notice will be interpreted to mean that the employee does not intend to return following the leave. The position will be posted and filled through the selection process. ([HR Interpretation 11-21-11](#))

4. Maternity Leave

- a. Maternity leave will be granted for a period of six (6) weeks without pay.
 - 1) An employee may elect to cover any portion of this time by using accumulated sick days.
 - 2) Any maternity-related absences for longer than six (6) weeks must be taken as a medical leave of absence.

5. Military Leave

- a. In addition to the following provisions, the Nation's Military Service Protection Act shall govern Military Leave.

- b. A Military Leave of Absence is afforded employees entering active duty without accumulation of holiday, vacation or personal time during the period of leave. Any accumulated benefits prior to leave will be maintained for the employee.
 - c. Time off for inactive duty training, examinations to determine fitness for duty and funeral honors duty shall be afforded to employees without the accumulation or loss of holiday, vacation or personal time. An employee will receive pay from the Nation for any hours work that the employee was required to miss due to reservist training.
 - 1) Any pay received for performing any of the above duties shall be deducted from the employee's pay. [\(GTC Resolution - 1-26-08A\)](#)
6. Jury Duty
- a. During a period of jury duty, an employee will receive pay from the Nation for any hours of work missed due to jury duty.
 - 1) Jury duty pay will be deducted from the employee's paycheck when determining the amount of pay
 - 2) No overtime will be allowed in determining employee pay while serving on jury duty.
7. Educational Leave [\(BC Action, 5-4-90\)](#)
- a. A leave of absence for education purposes will not exceed one (1) year.
8. Parent Policy Leave [\(BC Action, 3-2-94A\)](#)
- a. Employees who are parents, guardians, or those individuals specifically referred to as "immediate family" as defined in Section IV, page 6 of these Personnel Policies and Procedures which includes husband, wife, mother, father, brother, sister, son, daughter, mother-in-law, father-in-law, grandparent and grandchild may request to participate in their child(ren)'s educationally sanctioned events not to exceed four (4) hours per employee per month
 - 1) These four (4) hours shall not accumulate.
 - b. Approval to utilize the four (4) hours must be obtained from the supervisor.
 - 1) An employee shall request his/her supervisor to utilize this leave with a minimum of twenty-four (24) hours' notice.
 - 2) The Supervisor may request verification of
 - i. Guardianship of the child(ren) and/or
 - ii. The attendance of the employee at their child(ren)'s educationally sanctioned - event.
 - c. The burden shall be on the supervisor to show that a denial of the Parent Policy Leave which is based upon interference with the business of the Nation.
 - d. This leave shall not be paid as overtime. The supervisor may have the option to use flex time to cover this time off to attend their child(ren)'s educationally sanctioned events.
 - e. All employees, except Emergency/Temporary, Youth Workers, Student Interns, and Seasonal Workers during their first season, and Substitute Reliefs are eligible to participate in this benefit.

SECTION V – EMPLOYEE RELATIONS

A. ORIENTATION POLICY

The Oneida Nation reflects the unique culture and character of the Oneida Nation. The Nation recognizes that this may present special problems and difficulties for a new employee. The Nation therefore provides an Orientation Program designed to ease the new employee's transition into a job and enable the new employee to become effective and productive as quickly as possible.

1. Orientation Program Outline

- a. Overview
- b. The Nation's Government and Procedures
- c. Key Policies and Procedures
- d. Benefits
- e. Safety, Health and Security
- f. Departmental Orientation

2. Responsibilities

- a. The HRD Office will administer the General Orientation Program
 - 1) The HRD Office will assist Divisions in administering Departmental Orientation Programs.
- b. The HRD Office will develop and establish an Employee Mentor Program with each Division.
 - 1) Employee Mentors will be responsible for conducting the Departmental Orientation.
 - 2) Employee Mentors will assist new employees throughout their probation period as a source of references and referrals.
- c. The HRD Office will annually review the General Orientation Program and each Departmental Orientation Program to:
 - 1) Evaluate the effectiveness of each Program,
 - 2) Modify programs as necessary.
 - 3) Requirements
 - a) The HRD Office will provide a copy of the Employee Policy and Procedures Manual to new employees before (if possible) the scheduled starting date.
 - b) The General Orientation Program will be completed in appropriate stages within the first month of the new employee's starting date.
 - i. The Departmental Orientation will be completed within the first week of the starting date.
 - c) The HRD Office will administer a NEW Employee Reporting Form to provide information for the purposes of maintaining a Nation wide skills assessment inventory and a management succession plan.

B. EVALUATIONS

1. Evaluation reports will be used in determining all promotions, transfers and salary adjustments.
2. Annual evaluation reports for each employee will be submitted to the HRD Office by August 1 of each year. [\(Work Standard – 6-4-14\)](#)
 - a. Evaluation reports will be retained in each employee's personnel file.

3. All employees of the Nation will be evaluated at least once a year.
 - a. Employee performance evaluations will be conducted by each employee's immediate supervisor. The Business Committee will conduct the performance evaluation of the General Manager. [\(HR Interpretation – 12-8-16\)](#)
 - b. The supervisor will discuss the evaluation with each employee. The evaluation will then be signed by the employee and the supervisor and forwarded to the HRD Office.
4. Satisfactory evaluations may result in the employee receiving an increase in pay within their grade level provided that the employee has not attained the highest step within the grade.
 - a. Unsatisfactory evaluations will result in probation status for the employee. The supervisor shall provide documentation to the Area Manager and to the employee detailing the deficiency(s). A repeat evaluation will be conducted three (3) months after the unsatisfactory evaluation. This second evaluation will result in the employee:
 - 1) Being removed from probation and receiving a salary increase if the second evaluation results in an overall satisfactory rating; or
 - 2) Receiving appropriate disciplinary actions if the second evaluation also results in an unsatisfactory rating.
 - b. Employees may appeal unsatisfactory evaluations to the HRD Manager. The HRD Manager will consult with the supervisor and the employee to negotiate an appropriate resolution [\(Work Standard 6-21-11\)](#)

C. CAREER DEVELOPMENT

1. Employees of the Nation are encouraged to develop their skills and abilities by pursuing education at a local educational institution. [\(BC Action – 9-9-92\)](#)
 - a. Employees of the Nation must provide a general Career Development Plan to the supervisor listing the goals and objectives of the training and education to be undertaken.
2. Employees of the Nation may be eligible for assistance for one (1) course per semester. The employee must attempt to arrange to take the class outside his/her normal working hours.
 - a. Where a class conflicts with the employee's work schedule, the needs of the Nation's unit take precedence; however, the supervisor shall attempt to accommodate the employee's request.
 - b. In no case shall the accommodation exceed actual class hours plus reasonable travel time.
 - c. Employees must obtain the approval of their immediate supervisor to take a course on the Nation's time.
3. The supervisor's approval and estimated cost must be submitted to the HRD Office, the Area Manager and the General Manager. [\(HR Interpretation – 12-8-16\)](#)
4. The cost of the books, tuition and fees for the course shall be paid by the Nation through funds budgeted in programs or through the Higher Education program.
 - a. Reimbursement for books, tuition and fees is contingent upon the employee receiving at least a C (2.0 on a 4.0 point scale).
 - b. Employees who receive less than the required grade point will be required to reimburse the program for whatever costs were incurred.

D. COMPLAINTS, DISCIPLINARY ACTIONS, AND GRIEVANCES

Disciplinary procedures provide a systematic process for handling problem employees.

(Work Standard – 5-6-13) Disciplinary procedures serve to correct unacceptable behavior and to protect the Nation. Grievance procedures provide a systematic process for hearing and evaluating job related disputes. Grievance procedures serve to protect employees from inconsistent and unfair treatment. In all cases of grievance and discipline, supervisors are enjoined to use common sense, discretion and judicious good sense to resolve complaints between employees, exercise disciplinary prerogatives, and handle grievances.

(HR Interpretation – 2-4-13) (HR Interpretation - 1-29-14)

1. Complaints

- a. Should an employee have a disagreement with another employee, he/she may lodge an informal (verbal) or formal (written) complaint with the employee's supervisor.
- b. The supervisor will investigate the complaint and attempt to resolve the disagreement.
- c. If the employee lodging the complaint is dissatisfied with the attempted resolution, he/she may ask the Area Manager to attempt a resolution.
- d. There is no further appeal of this process.

2. Disciplinary Actions

- a. Disciplinary actions will be initiated by an immediate supervisor for the purpose of correcting unacceptable work performance. The supervisor will always discuss the action with the employee being disciplined to ensure that the employee:
 - 1) Understands the reason for the disciplinary action;
 - 2) Understands the expected work performance in light of the disciplinary action;
 - 3) Understands the consequences of continued unacceptable behavior.
- b. A supervisor shall initiate disciplinary actions commensurate with the seriousness of the unsatisfactory performance. A supervisor must consider each disciplinary action in progressive order and justify a deviance from that recommended progression.
- c. The actions listed below are examples of unacceptable work performance and do not constitute a comprehensive or exhaustive list. The actions in parentheses are guidelines for a supervisor to use in administering disciplinary actions. (W = written warning; S = suspension; T = termination):
 - 1) Work Performance
 - a) Insubordination (including disobedience) or failure/refusal to carry out assignments or instructions. (W/S/T)
 - b) Loafing, loitering, sleeping or engaging in personal business. (W/S/T)
 - c) Unauthorized disclosure of confidential information or records. (S/T)
 - d) Falsifying records or giving false information to departments and/or employees responsible for Recordkeeping. (S/T)
 - e) Failure to provide accurate and complete information where such information is required by an authorized person. (S/T)
 - f) Failure to comply with health, safety and sanitation requirements, rules and regulations. (W/S/T)

g) Negligence in the performance of assigned duties. (W/S/T)

2) Attendance and Punctuality

a) Failure to report promptly and observe work schedules (such as starting time, quitting time, rest and meal breaks) without the specific approval of the supervisor. (W/S/T)

b) A pattern of unexcused or excessive absenteeism and/or tardiness. (W/S/T)

3) Use of Property

a) Unauthorized or improper use of the Nation's property or equipment (for example, the Nation's vehicles, telephone, mail services, etc.) (W/S/T)

b) Unauthorized possession, removal or willful destruction of the Nation's or another employee's property (including improper use of possession of uniforms, identification cards, badges, permits or weapons). (Willful destruction of property may subject the violator to applicable liability laws.) (T)

c) Unauthorized use, lending, borrowing or duplicating of keys of the Nation. (T)

d) Unauthorized entry of the Nation's property, including unauthorized entry outside of assigned hours of work or entry into restricted areas without prior supervisory approval. (S/T)

e) Theft or property shall include theft, embezzlement, cheating, defrauding, pilfering, robbery, extortion, racketeering, swindling or any of these actions, or conspiracy to commit such actions with employees of the Nation or other persons against the Nation, its guests, employee, members, customers and/or clients while on or about premises of the Nation. (S/T) [\(BC Action – 12-2-88\)](#)

4) Personal Actions and Appearance

a) Threatening, attempting, or doing bodily harm to another person. (T)

b) Intimidating, interfering with or using abusive language toward customers, clients, co-workers or others. (S/T)

c) Making false or malicious statements concerning other employees, supervisors or program heads. (W/S/T)

d) Use of alcohol or illegal controlled substances during work hours. (S/T)
[\(GTC Resolution – 01-05-09A\)](#)

e) Reporting for work under the influence of alcohol or illegal controlled substances. (S/T) [\(GTC Resolution – 01-05-09A\)](#)

f) Failure to immediately report any work-related injuries to the immediate supervisor. (W/S)

g) Direct involvement in political campaigning during scheduled work hours. Violations include:

i. Use of an employment title of the Nation in the Nation's campaign activities. (W/S/T)

1. Political materials include: leaflets, brochures, etc. which solicit support for candidates for office.

2. Resolutions or petitions which propose that a political action be initiated.

3. Leaflets, newsletters, or other written materials the purpose of which is to espouse political views or opinions.

h) The acceptance of gifts or gratuities for personal gain in the course of official duties. (Customers are allowed to tip Bingo workers, Oneida Tobacco Enterprise workers, and Museum Workers.) (W/S/T)

i) Inappropriate dress or personal hygiene which adversely affects the proper performance of duties or constitutes a health or safety hazard. (W/S)

j) Failure to exercise proper judgment. (W/S/T)

k) Failure to be courteous in dealing with fellow employees or the general public. (W/S/T)

l) Any of the following acts by employees: Arson, bribery, perjury, obstruction or interference with an investigation authorized by the Oneida Nation. (S/T)
(BC Action – 12-2-88)

m) The use, possession, selling or purchasing of, or attempt to sell or purchase alcohol, and/or controlled substances on or about premises of the Nation. (S/T)
(BC Action – 12-2-88)

n) Any violation of duly adopted ordinances of the Nation. (W/S/T) (BC Action – 12-2-88)

5) Sexual Harassment Policy

It is the Oneida Nation's Policy that all employees have a right to work in an environment free of discrimination which includes freedom from harassment, more specifically sexual harassment. The Oneida Nation considers sexual harassment, in whatever form, in the workplace to be a serious violation of an individual's dignity and personal rights. In all matters, where complaint of sexual harassment is lodged against an employee, the Oneida Nation has a duty and obligation to conduct a thorough investigation using discretion, good judgment and the principles and practice of strict confidentiality. If sexual harassment has been committed, the progressive disciplinary process is as follows (W/S/T).

Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submissions to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

a) Sexual Harassment (W/S/T)

i. Procedure

a. Should an employee have a complaint, he/she should file a formal (written) complaint with the Human Resources Department.

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- b. The Human Resources Department is obligated to investigate the complaint which is to be held in the strictest confidence. This investigation shall be done within five (5) working days from receiving the formal written complaint.
 - c. After investigating the complaint and the Human Resources Department finds cause to take disciplinary action due to sexual harassment violation, the employee will be disciplined accordingly by their supervisor. This disciplinary action shall be initiated within five (5) working days from the date the supervisor receives the report from the Human Resource Department. [\(BC Actions – 7-16-93\)](#)
3. Accumulated Disciplinary Actions Warranting Termination [\(HR Interpretation – 1-29-14\)](#) (Provided that the Drug and Alcohol Free Workplace law shall govern disciplinary actions warranting termination for drug and alcohol related violations.) [\(GTC Resolution – 01-05-09A\)](#)
- a. The accumulation of three (3) upheld warning notices within any twelve (12) month period. (T)
 - b. The accumulation of two (2) upheld suspensions within any twelve (12) month period. (T)
 - c. The accumulation of three (3) of any combination of upheld warning notices and/or upheld suspensions within any twelve (12) month period. (T)
4. Substance Abuse Disciplinary Procedure - Section was deleted. [\(GTC Resolution – 01-05-09-A\)](#)
[Click here](#) for Drug and Alcohol Free Workplace law.
5. Disciplinary Procedure [\(Disciplinary Flowchart\)](#)
The following procedure shall be adhered to whenever disciplinary action is taken.
- a. Supervisor becomes aware of unsatisfactory work performance or violation.
 - 1) Supervisor investigates through a meeting with the employees and determines whether disciplinary action is warranted.
 - b. If disciplinary action is warranted, within five (5) working days the supervisor will fill out the five (5) part disciplinary action form stating the behavior for which the action is being taken, the time and date of its occurrence, and the specific policy section under which action is being taken.
 - c. The form will be discussed with the employee and a corrective action will be identified.
 - d. The employee being disciplined will sign the form.
 - 1) Should an employee being disciplined refuse to discuss the action with his/her supervisor, the supervisor shall so note this, with date of refusal, on the form and distribute as in 5.e.
 - e. Copies will be given to the employee, the HRD Manager, the supervisor, the Area Manager and General Manager within twenty-four (24) hours of the conference with the employee. [\(HR Interpretation – 12-8-16\)](#)
 - f. Should a disciplinary action result in the suspension or termination of an employee, the following guidelines shall apply:
 - 1) The supervisor shall consult with the HRD Manager to mutually determine the length of

the suspension.

a) Suspensions will be limited to a maximum of three (3) weeks.

b) Suspension/terminations that are overturned in the appeal process shall result in the employee receiving back pay for the days he/she was suspended/terminated.

6. Grievance [\(Grievance Flowchart\)](#)

An employee who receives a disciplinary action which he/she believes is unfair may grieve the action. The Grievance process (including appeals of disciplinary action) shall be conducted with utmost consideration for due process (within the time limits set forth herein) but will allow and account for recognized holidays of the Nation and unforeseen circumstances (such as illnesses, deaths in the immediate family of principals, etc.). The HRD office will make every attempt to ensure that grievance procedures are concluded within forty-five (45) working days; however, extensions granted for reasonable unforeseen circumstances (as determined by the HRD Manager) may extend the process. The Grievance process will be governed by the following guidelines: [\(HR Interpretation – 8-19-2011\)](#) [\(HR Interpretation – 1-29-2014\)](#)

a. For all disciplinary actions, regardless of severity:

1) The employee (petitioner) must file an appeal in writing.

a) The employee may seek the assistance of a spokesperson or advocate at any time after the disciplinary action has been issued in order to aid in the resolution of the grievance process.

b) The appeal must be filed with the Area Manager and the HRD Manager (or designee) within ten (10) working days from the day the employee receives the disciplinary action.

2) The Area Manager, for all disciplinary action investigations, will have ten (10) working days from the receipt of the employee's appeal to complete the investigation. One extension of no more than five (5) working days may be requested of and granted by the HRD Manager (or designee) at his or her discretion.

3) The Area Manager will do one of the following:

a) Uphold the disciplinary action; or

b) Modify the disciplinary action; or

c) Overturn the disciplinary action. If a suspension or termination is overturned, the employee (petitioner) shall be reinstated with full back pay.

4) The Area Manager will file a decision with the employee and the HRD Manager (or designee) and will include a reason for the decision, an explanation of the decision and the action to be taken as a result of it.

b. The employee may appeal the Area Manager's decision to the Judiciary – Trial Court. The appeal must be filed with the Judiciary – Trial Court within ten (10) working days from employee's receipt of the Area Manager's decision. Upon receipt of the appeal the Judiciary – Trial Court shall, within one business day, notify the HRD Manager (or designee) that an appeal has been filed by the employee. [\(GTC Resolution – 2-28-04A\)](#)

- 1) Copies of all information of the subject case upon which the disciplinary action was upheld by the Area Manager will be hand delivered to the Judiciary – Trial Court. The Judiciary – Trial Court will hear an appeal only if one or both of the following conditions exist:
 - a) The decision of the Area Manager is clearly against the weight of the evidence and/or
 - b) Procedural irregularities were exhibited during the appeal process that may have been harmful to one of the parties to the grievance.
- 2) If one or both of the above conditions are present, the Judiciary – Trial Court will hear the grievance.
 - a) If neither of the above conditions is present, the Judiciary – Trial Court will deny the appeal for a hearing and affirm the decision of the Area Manager.
- 3) At least five (5) working days prior to the hearing date, the petitioner, and respondent will receive notification of the hearing date.
- 4) Copies of all information on the subject case upon which the disciplinary action was upheld will be hand-delivered to the Judiciary – Trial Court at least two (2) working days prior to the appeal date. The petitioner and respondent will have access to this information in the HRD Office at least two (2) days prior to the appeal date.
 - a) If new evidence which was previously unavailable is introduced at any point during the Judiciary – Trial Court appeal process, the Judiciary – Trial Court hearing will be suspended and the case will be remanded to the Area Manager for reconsideration.
 - i. The Area Manager will reconsider his/her decision in light of the new evidence and issue a decision within three (3) working days.
 - ii. This procedure may be invoked only once. Thereafter, the appeal process will continue to a conclusion based on the information originally presented and the newly introduced evidence.
- 5) The petitioner shall have the right to be represented by an advocate if he/she so chooses. The expenses of the advocate shall be the total responsibility of the petitioner. The respondent and/or area manager who is party to the grievance action shall have access to an advocate for consultation and/or representation. Should the petitioner engage outside professional legal representation, the respondent and/or area manager shall have access to professional legal representation.
 - a) Should the petitioner and his/her representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be upheld and the grievance dismissed.
Should the respondent and his/her representative both fail to appear for any scheduled hearing without justifiable cause, the decision of the Area Manager shall be overturned.
- 6) The decision of the Judiciary – Trial Court shall be based solely on the information presented to them before the appeal hearing, the record of the prior proceedings and

any new evidence (if introduced appropriately through the provisions of 6.b.4.a. above).

- 7) The decision of the Judiciary – Trial Court may be appealed to the Nation’s Court of Appeals pursuant to the Nation’s Rules of Appellate Procedure. The Judiciary – Trial Court may:

- a) Uphold the disciplinary action; or
- b) Overturn the disciplinary action and:
 - i. Reinstatement the employee (petitioner) with full back pay for any lost time;
 - ii. Reinstatement the employee (petitioner) without back pay.

- 8) The petitioner and respondent have a right to a speedy hearing and decision; therefore, notification of the final decision will be made within five (5) working days following the hearing.

- a) Notification of the final decision will include:
 - i. The final decision;
 - ii. The reason(s) for the final decision; and
 - iii. The action to be taken as a result of the final decision.

- 9) The HRD Office shall:

- a) Keep all records of the hearing;
- b) Provide copies of administrative advocacy rules, procedural rules, and time line rules to interested parties.

SECTION VI – SAFETY AND HEALTH

A. POLICY

The personal safety and health of each employee, customer and client of the Oneida Nation is of primary importance. The prevention of injuries and illnesses is of such importance that it will take precedence over operating productivity whenever necessary.

The Oneida Nation will maintain a safety and health program conforming to the best practices available. To be successful, this program will work to develop the proper attitudes toward on-the-job injury and illness prevention on the part of supervisors and employees. This program will strive to develop a high level of cooperation in all safety and health matters between supervisors and employees and among employees.

The objective of this program is a safe and healthy environment that will reduce the number of job-related injuries and illnesses to an absolute minimum. The Nation's goal is zero accidents and illnesses.

B. PROCEDURES

The Tribal Safety Committee will adopt and enforce through the Personnel Department procedures related to the education of the Nation's work force in matters of safety and health. These procedures will include all education and prevention activities, assessments and evaluations, and reporting.

SECTION VII – PROGRAM/ENTERPRISE RULES & REGULATIONS

- A. Enterprises and programs may establish internal rules and regulations to facilitate the administration of the Nation's Personnel Policies and Procedures.
1. In no case will these internal rules and/or regulations conflict with or take the place of the Nation's Personnel Policies and Procedures.
 2. Enterprises and programs which establish internal rules and regulations will file a copy of the rules and regulations with the Personnel Department.

SECTION VIII – RECORD KEEPING

A. PERSONNEL OFFICE

1. Basic records to be retained include:
 - a. Reference Data
 - b. Job Descriptions
 - c. Resumes and Applications
 - d. Interview notes/selection information
 - e. Resignations
 - f. Employee tax exemption claims
 - g. Disciplinary action information
 - h. Performance evaluations
 - i. Insurance coverage/changes
 - j. Transfers
2. The Personnel Office shall keep and maintain a complete record of each employee throughout his/her term of employment.
 - a. Employees of the Nation shall have access to their employment file.
 - b. Employment files kept by the Personnel Office shall be considered confidential information. Release of any information to a third party must have the consent of the employee in writing.

B. ACCOUNTING DEPARTMENT

1. Basic records to be retained include:
 - a. Attendance records
 - b. Employee Time Sheets
 - c. Earnings - in the form of computer printouts
 - d. Travel - in the form of complete travel authorization forms.
 - 1) Time sheets and travel reports shall be filled out by every employee for pay period, collected by the program head, and forwarded to the Department.
2. The Accounting Department shall retain all records for a period of seven (7) years. [\(Archived 29, October 2010\)](#) [\(BC Action, 10-14-09B\)](#)



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



AGENDA REQUEST FORM

- 1) Request Date: June 25, 2018
- 2) Contact Person(s): Troy D. Parr
 Dept: Community & Economic Development Division
 Phone Number: 920-869-4529 Email: tparr@oneidanation.org
- 3) Agenda Title: _____
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
The structure of the Community & Economic Development Division is not accurately identified in the Budget Management and Control Act.

List any supporting materials included and submitted with the Agenda Request Form

- 1) C&EDD Organization Chart 3) _____
- 2) _____ 4) _____
- 5) Please list any laws, policies or resolutions that might be affected:
Budget Management and Control Act
- 6) Please list all other departments or person(s) you have brought your concern to:
Community & Economic Development Division
- 7) Do you consider this request urgent? ☒ Yes ☐ No
 If yes, please indicate why:
Implementing a new budget with inaccurate information

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

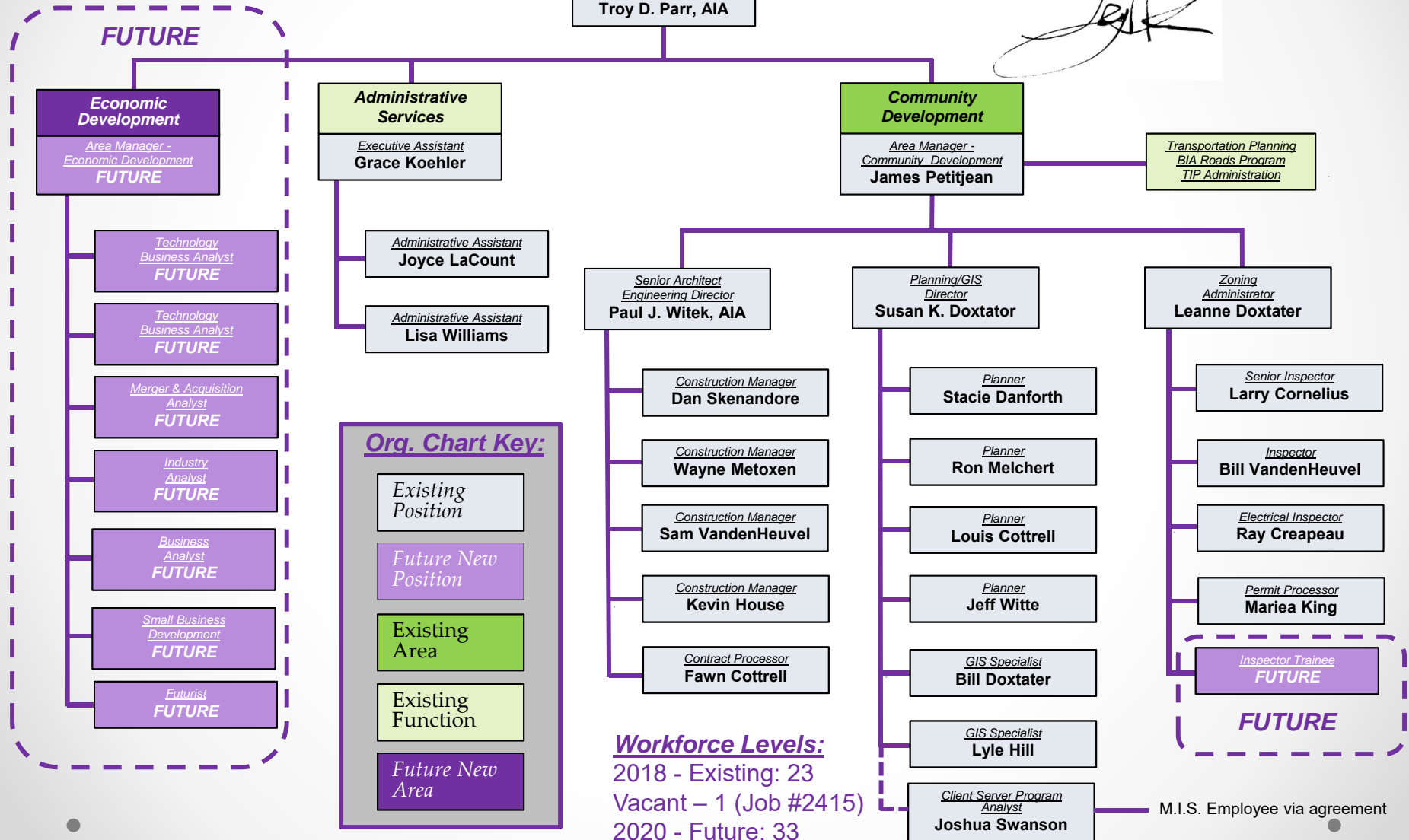
Community & Economic Development Division

Effective: October 1, 2017



O.B.C. Officers
Chairman Hill
Vice-Chair Stevens
Treasurer King
Secretary Summers

Community & Economic Development Division Director
Troy D. Parr, AIA





Travel Report for the National Association of Drug Court Professionals Annual Conference

*Clorissa N. Santiago, Legislative Staff Attorney
Legislative Reference Office
May 28, 2018 – June 1, 2018
Houston, Texas*

The National Association of Drug Court Professionals (NADCP) annual conference is the largest conference on addiction, mental health, and recovery in the justice system. Nearly six thousand (6,000) participants attended the conference to learn more about the drug court treatment model.

Treatment courts are the single most successful intervention in our nation's history for leading people living with substance use and mental health disorders out of the justice system and into lives of recovery and stability. Instead of viewing addiction as a moral failing, they view it as a disease. Instead of punishment, they offer treatment. Instead of indifference, they show compassion. Treatment courts employ a holistic approach that goes beyond simply treating substance use disorders. They improve education, employment, housing, and financial stability; promote family reunification; reduce foster care placements; and increase the rate of mothers with substance use disorders delivering fully drug-free babies.



An opportunity to offer a hand, instead of a hammer.

Attendance at this conference presented the opportunity to attend many sessions and workshops that will be relevant to Oneida's future development of a Wellness Court law. Not only was I able to gain a better understanding of the purpose of a drug court, and how a drug court will function, but I was also able to participate in many sessions that focused on tribal Healing to Wellness Courts and gain knowledge of many different resources available specifically to tribes.

First Time Conference Attendee Orientation Session

Speaker: Terrence D. Walton (NADCP – Chief Operating Officer).

The purpose of this session was for first time conference attendees to get an overview of:

- What the conference entails;
- How to read and understand the agenda for the conference;
- How to make the most effective use of the NADCP conference app;
- Information on continuing education credits;
- Suggestions for interesting sessions to attend.

Advanced Issues in Healing to Wellness Court

Part 1: The Mindimooyenh Healing Circle – Using the Medicine of the Grandmothers for Healing

Part 2: Two Spirit People in the Drug Court: An Open Door or Another Closet

Speaker: Sade Heart of the Hawk Ali Mi’Kmaq First Nation

Part 1: The Mindimooyenh Healing Circle – Using the Medicine of the Grandmothers for Healing

In December 2016, a group of Elder Native women in Michigan came together to discuss how best to respond to the alcohol and other drug challenges and other behavioral health needs of the people and families of the twelve federally-recognized Tribes in Michigan. The group formed a healing circle where they told their own stories of recovery, built relationships and trust by laughing and crying together, and then set forth a model of intervention that draws on the concept of “Mindimooyenh.”

- Representatives from Ho Chunk, Menominee, Bad River, as well as tribes from New York, New Mexico, Arizona, Colorado, and Michigan were in attendance at this session.
 - It was nice to give Oneida some representation in these conversations and let other tribes know that although we do not currently have one, we are interested in pursuing a Healing to Wellness Court.
- “Mindimooyenh” is an Ojibwe word that represents the concept of Elder women who hold the community together and serve as the keepers of traditions of their Tribes.
- Elder tribal women in Michigan created a healing circle to serve as an example for their community.
 - The Elder women wanted to create a culturally-responsible alternative to recovery community organizations. They came together to discuss how best to respond to the alcohol and drug, as well as other behavioral health needs of the people of the twelve federally recognized tribes in Michigan.
 - Many of the women were in recovery themselves, or had a closer family member who had experienced a challenge with the use of alcohol or other drugs.
 - Believe a cultural context is very critical when facilitating healing.
- We then watched a video where the woman in the Mindimooyenh healing circle shared their stories, and what they obtained from participating in this healing circle. Link to video: <https://www.youtube.com/watch?v=OpLP1OnFPkQ>
- Hearing about his effort served as a juxtaposition for what is happening in Oneida. Although we did receive a petition asking for a treatment center to help facilitate healing for those addicted to drugs and alcohol. The Mindimooyenh women did not just ask their government to fix the problem and wait for something to be done, they looked for a solution that they themselves could find and combat this issue with.
- Culturally based healing and community based healing are important, and effective.
- You cannot treat people that you know nothing about. Preached the importance of building trust and relationships throughout the healing process.



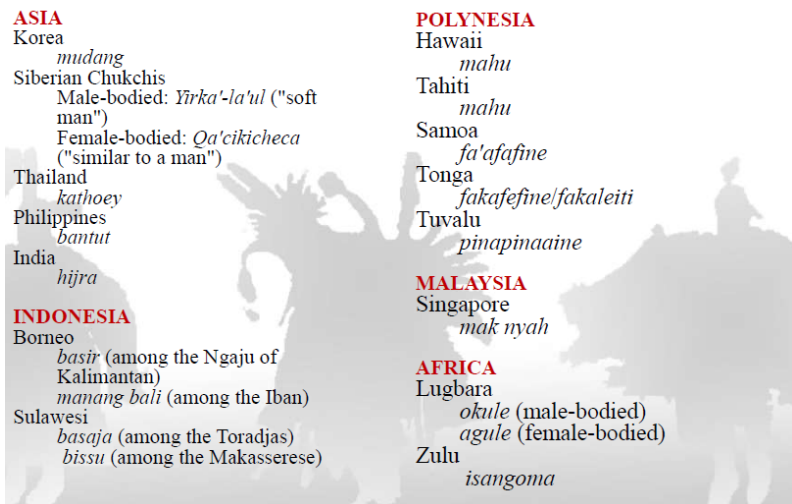
- Their healing circle serves as an example of an sustainable, low cost, indigenous intervention tool that can be utilized in Native communities.

Part 2: Two Spirit People in the Drug Court: An Open Door or Another Closet

Two Spirit Native Americans (known formerly as LGBT) traditionally held sacred places in their communities. Throughout history Christianity and the advent of the residential/boarding schools and their impact on native communities caused trauma, and brought a sense of shame of two spirit Native people, and a sense of demonization of two spirit people - who were once considered as possessing great medicine that was honored and shared within their communities. Today, Tribes need to build a nation of strong allies who understand what the concept of Two Spirit means and the historical value of these once-sacred people to the health and wellness of the community.

- Two spirit people were traditionally viewed as sacred in many tribes. It is said two spirit natives possess a male and female spirit, and represents the fluidity of gender.
 - Two spirit people were great medicine people, had the ability to perceive things that other people could not.
 - Two spirit people were known to have the ability to “walk between worlds” since they were able to walk in both the male and female worlds, could see from multiple points of view, and communicate fluidly between the living and the spirit worlds.
 - Two spirit natives are not necessarily LGBTQ natives. There are less two spirit natives than LGBTQ natives. Being two spirit also has a spiritual connection and connotation.
 - Influence of Christianity skewed the view of homosexuality in Native cultures, changing the sacred value of two spirit natives.
- Documentary called “Two Spirits” on PBS that is interesting and has lots of good information.
- Many other cultures outside of North America (throughout Asia, Indonesia, Polynesia, Malaysia, Africa) that have gender diversity.
- Sade gave praise to the Oneida Nation for bringing her onto the Reservation last December to discuss two spirit people with the Nation’s Behavioral Health staff. She stated this shows that Oneida understands that before you can heal someone, you have to understand them.
- An understanding of an individual is necessary for therapy.
- Our culture is our cure.
- You have to talk about trauma in order to treat alcohol and drug abuse. People do not have addictions for no reason. You must understand a person and their trauma so that you can be a partner in their recovery.
- During the Gathering of the Nations Powwow in Albuquerque, New Mexico, this past April 2018, the two spirit group entered the powwow together during grand entry for the first time ever (normally the men and women are required to go in separately). They almost did not get this opportunity as the powwow coordinators did not want to let them break tradition.

Other cultures outside of North America with Gender Diversity



Tribal Healing to Wellness Court – Tribal Nations Forum

Speakers: Kori Cordero (Tribal Law and Policy Institute – Tribal Justice Specialist) and Lauren van Schilfgaarde (Tribal Law and Policy Institute – Tribal Law Specialist).

The purpose of the Tribal Nations Forum was to provide an opportunity for tribal courts in attendance to gather, meet other Tribal Wellness Courts, learn about tribal specific resources, and the tribal specific sessions that would be occurring during the conference.

- There was a lot of discussion of the numerous opportunities for grants on this subject matter. Not a lot of people are taking advantage of the grant opportunities and applying for these grants. Everyone was encourage to apply – even if you did not think your grant proposal was good.
 - COPE grant was one that was frequently mentioned because the due date for the grant proposals was fast approaching.
- NADCP has “mentor courts” that serve as prime examples of Wellness courts that function at a high level and have been successful.
 - NADCP also has funds available to send tribes to mentor courts at other tribes to observe their court and learn from it.
 - Pueblo Laguna tribe is designated as a mentor court. Has been operating their Wellness court for over eleven (11) years. The Tribe solely funds the Wellness court – they take funds from three different budgets within their tribe to make that happen.
 - Pueblo Laguna invited the Oneida Nation to come and visit and tour their Wellness Court.
- There was a Judge from a Wellness Court in Alaska that shared many challenges her court was facing. The Alaskan Wellness court was a joint jurisdiction court that operated in collaboration with the state. Their Wellness court was having issues with incorporating culture and healing into their court processes and procedures. Has turned out to be more of a county court with a tribal tract, and they wanted to learn more about how to incorporate culture into the process more. Said this might be difficult to implement alongside the state, so they came to this conference to gain ammunition on the success culture brings to these programs.
- Lac de Flambeau also invited the Oneida Nation to come and visit and tour their Wellness Court. They said they are currently working on developing another joint court with the county that has a strong tribal focus.
- Wisconsin has been one of the highest areas for prescription opioid diversions.
- When building a Wellness Court it needs to be understood that you will need medically assisted treatment. You also need sufficient resources, and financial resources to overcome opioid addiction.
- Lots of IHS clinics did over prescribe opioids. This can be a result of the fact that tribal medical needs are often under-funded. People often cannot afford the surgery they need or do not have access to the healthcare they need, so they would be a pain medicine prescription because that is the only help they could get.
- Received a presentation on the National Opioid Litigation:
 - Bad River Band of Lake Superior Tribe of Chippewa Indians, Lac Coutre Oreilles Band of Lake Superior Chippewa, St. Croix Chippewa Indians of Wisconsin, Red Cliff Band Of Lake Superior Chippewa, Lac de Flambeau Band of Lake Superior Chippewa are all a part of the national opioid litigation.
 - Prescription opioids killed approximately 78,000 Americans in 2017.
 - Native Americans are 2X as likely to become addicted to opioids as the rest of the U.S. population.
 - Native Americans are 3X as likely to die from a drug overdose as the rest of the U.S. population.

- A public health report found that in 2009 to 2012, heroin and OxyContin use among American Indian adolescents living on or near reservations was 25% to 229% higher than the national averages (depending on the reservation).

Advancing Justice: Research-Driven Solutions for Treatment Courts and Beyond

Speakers: Mike Bosse (Georgetown Police Department – Chief of Police), Melissa Fitzgerald (NADCP – Director, Advancing Justice), Carolyn Hardin (NADCP – Chief of Training and Research), Douglas Marlowe (NADCP – Division Director), Vanessa Price (National Drug Court Institute – Division Director), Terrence D. Walton (NADCP – Chief Operating Officer), Craig Webre (LaFourche Parish Sheriff’s Office – Sheriff).

This session was conducted by the Advancing Justice initiative –which is in its inaugural year - and focused on research-driven solutions to some of the most pressing and pervasive issues facing the justice system. This session discussed:

- a report from the inaugural Journal for Advancing Justice on equity and inclusion;
 - Discussion on the fact that the statistics show that currently the system is not the most equitable or inclusive – a break-down of those individuals that are suffering the most, and the realization that the populations that are suffering the most are not the populations that have the most access to drug courts- and how this issue can be addressed.
 - Menominee’s Wellness court was one of two drug courts in the Nation to be recognized and win an award for their focus on equity and inclusion in their Wellness Court.
- an exploration of how law enforcement is assisting community stakeholders in addressing issues around public health and public safety;
 - Mike Bosse, the Chief of Police in Georgetown, and Craig Webre a LaFourche Parish Sheriff, discussed the efforts they are making in their own communities.
- and persistent myths surrounding medication in addiction treatment.
 - Discussion on the fact that a lot of drug courts are hesitant to utilize medically assisted treatment. Not only is medically assisted treatment necessary in many cases, but has proven to be successful and should not be ignored.

Preserving Our Culture: Realizing Restorative Justice in Tribal Wellness Courts

Speakers: Hon. Allie Maldonado (Chief Judge of the Little Traverse Bay Bands of Odawa Indians Tribal Court), Patrick McKelvie (Coordinator of the Sault Ste. Marie Chippewa Tribal Court).

This session focused on the fact that a participant’s healing often includes reintegration into the community and reintegration with one’s self. Cultural resources can be used to ground the self, reconnect with lost customs, and develop spiritual and cultural meaning that may have been lost or disregarded.

- Important to keep in mind that culture means different things to different people. Cultural teachings will speak differently to each individual. This is about what culture means to the participant, and not what culture means to you.
- A lot of discussion on the **Little Traverse Bay Bands of Odawa Indians** Tribal Court in Michigan and the various efforts this court is making to incorporate culture into their Wellness Court.



- The Wellness Court has a fifty-two (52) week program that consists of four (4) phases, and then a six (6) month after care program.
- Makes a lot of efforts to include culture in the process as an effort to pull people back into the community.
- *Smudging*. Every Wellness Court hearing begins with a smudge.
- *Fire Ceremonies*. The Wellness Court program has fires for the participants in the program to mark the progression through the phases of the program.
 - The participants learn how to start the fires with flint and steel.
 - Participants then use the fires as an opportunity to talk about the current challenges they are facing.
- *Family Tree Project*. The participants are required to complete a family tree project. Looking at what your ancestors did helps you determine who you are. Also helps you reconnect with family you might have not known existed.
- *Maple Syrup Tapping*. Participants tap maple syrup in a community service sense, but they are also learning something cultural, which then gives them a place in the community. They gift the final maple syrup to the Elders in the community. Helps them make connections with the Elders in the community and feel appreciated. Then even when the program is over, they have the knowledge and experience to continue to tap maple syrup and benefit their community.
- *Serving the Elders*. The participants are required to serve food to Elders at Elders lunches and events.
- *Community Service for the Community*. Participants are required to do community service for their community – yard work, snow removal, volunteering at community events.
- *Giigidoo Tig “Talking Stick”*- The community was having an issue with tension with the youth, so the youth were required to participate in a talking circle and use a talking stick – and the youth were given instructions on how to build the talking stick they would have to use. By the time the youth had built their talking stick, the tension had been resolved. But the youth believed in the power of the talking circle and how it helped them resolve tension, so the youth asked the Court to assist in creating more talking circles. The Wellness Court then ordered the Healing to Wellness participants to make fifty (50) talking sticks for the community to have an utilize.
 - This was a more recent occurrence. The participants were currently in the process of making the talking sticks.
- *Sweetgrass Picking*. Participants go out to and learn where and how to gather sweetgrass, and also learn to braid it. The participants get to keep a braid for themselves, and they gift the rest to the community. Allows the participants the knowledge of the importance of sweetgrass and how to harvest and prepare it. Gives them a connection to the community.
- *Jiimaan Journey*. Participants participate in a seven (7) day canoe journey through the traditional trade routes on the Reservation. Have talking circles throughout the



journey. Very transformative for participants.

- *Traditional Cedar Mat & Ash Basket Making.* A community member comes in and gives the participants teachings on how to make traditional mats and baskets. Participants do all the preparatory work – which is hard, and then get to make a basket that they can gift to whomever they choose.
- *Snowsnake Event.* The snowsnake is a traditional sporting event – snow snake throwing event. Participants go community service by volunteering at this community event that focuses on a traditional sporting event.
- *LTTB Pow Wow.* Participants volunteer at the powwow.
- *Graduation.* There is a ceremony with participants, their friends and family, and the community, when a person graduates from the program. Graduates get a ribbon shirt as a gift. Graduates also get an eagle feather and learn teachings on how to feast for the eagle feather and how to keep and care for the eagle feather.
- The goal is to incorporate culture and community into your program. It does not matter what that culture is – but everyone needs a purpose, a place to belong, and a culture to connect with.
 - Important to note that it is not what YOU believe culture should be, it is what the individual connects with in terms of culture.
 - Shared example of individual who was not connecting to the traditional cultural purpose that is commonly used in the wellness court. But the individual was very much into “Pokemon Go.” The Court happened to find a group of sober people that met up regularly to play Pokemon Go, and the individual was able to connect with them – that was his culture and community – and it worked and was successful.
- For Tribal Healing to Wellness (H2W) Courts a focus on individual and community healing, as well as treatment and rehabilitation is important.
- Patience is very important. It is very easy to revoke a participant and send them to jail, but it takes patience and understanding of the healing people are going through. You do not want to pounce on someone when they make a mistake.
 - Patience, time, therapeutic responses are the direction we have to take. Not just a focus on sanctions and penalties.
- H2W Courts are restorative justice. Based on restoring harmony and peace to victims and the community.
- Efforts that the **Sault Ste. Marie Chippewa** Tribal Court makes in their H2W Court that incorporates culture:
 - *Receiving and Feasting for Spirit Names.* Some tribes believe that it is never too late to get your spirit name and colors. Having your spirit name is said to be 50% of the healing and balance that is needed. Have individuals in the wellness court participate in feasting to receive their spirit names.
 - *Graduation Feasts.* Has the participants engage in feasts with the community for graduation.



- *Blanket Ceremony.* Present participants with a blanket, so they can literally and figuratively enveloped in love and support.
- Have the participants engage in the community where ever they can – painting, woodworking, lodge building, recovery walk for the community etc.
- Court has a greeter dog in the courthouse – this helps alleviate people’s stress of being in court.
- In Alaska when someone graduates from one phase into the next phase, they get a medicine bag with an agate stone – which has great significance for that tribe.
 - The Tribe from Alaska has a court of joint jurisdiction with the State.
 - They have some non-native participants in the court (since it is a joint venture with the State) but then they explain the agate stone as a blessing – so it is inclusive of everyone’s culture.
 - They have lots of different talking circles available for people to participate in.
 - This court in Alaska did speak of difficulties they were having with the fact that were joint with the State – was more like a state court with a tribal tract – but they wanted to be able to incorporate more culture and tribal aspects.
- Humility is important for those involved with the H2W court. The judges and the rest of the H2W court team should be equal with the participants because we can all always learn from one another.
- With H2W courts you have the opportunity to offer a hand instead of a hammer.
- Bad River spoke of their tribal UP program that can provide a lot of services – especially culturally relevant services. If tribes are not in touch with their programs then they should be – tribal DVR/WI DVR has programs that have money to give to tribes.
- Little Traverse Bay Bands of Odawa Indians has a lot of materials on how their Tribal H2W court functions on their website:
 - <http://www.ltbodawa-nsn.gov/Tribal%20Court/DrugCourt/DCIndex.html>
 - The Waabshki-Miigwan (H2W Court) Program has four (4) phases:
 - Phase 1 – Spiritual Healing: Focus on honesty. Detoxification and beginning treatment.
 - Phase 2 - Emotional Healing: Focus on humility and respect. Stabilization and treatment.
 - Phase 3 – Physical Healing: Focus on bravery and love. Maintenance and treatment.
 - Phase 4 – Mental Healing: Focus on wisdom and truth. Aftercare.
- There were some individuals from the Pueblo tribe in attendance in this session, and a man that worked in their H2W court spoke up and stated that he does not believe people can just get a spirit name later in life just for the sake of healing. There are specific times you can receive that name, and you cannot just get culture/tradition because you want it.
 - This started a discussion on the fact that different tribes have different cultures and traditions, and your H2W court has to focus on your own cultural beliefs.
 - Court also clarified that they themselves were not doing these things – like giving participants spirit names – but instead were connecting the participants with elders and people in the community to meet with that were experts in culture and tradition.



Phases of the Waabshki-Miigwan (H2W Court) Treatment Program

Phases of Treatment

Pre-Programming: Committee Group Interview, Team Acceptance, Possible In-Patient/Extensive Out-Patient Treatment before admittance

PHASE I (Yellow)(Spiritual) Honesty	PHASE II (Red) (Emotional) Humility, Respect		PHASE IV (White) (Mental) Wisdom, Truth
Learning Level (Detoxification & Beginning Treatment)	Accepting Level (Stabilization & Treatment)	Willing Level (Maintenance & Treatment)	Succeeding Level (Aftercare)
Phase Graduation Requires: Clean Tests, Meeting Attendance Requirements, 25% Court Costs & Fines Paid, Wellness Projects Complete, 8 Successful Weeks, Team Recommendation	Phase Graduation Requires: Clean Tests, Meeting Attendance Requirements, 50% Court Costs & Fines Paid, Wellness Projects Complete, 10 Successful Weeks, Team Recommendation	Phase Graduation Requires: Clean Tests, Meeting Attendance Requirements, 75% Court Costs & Fines Paid, Wellness Projects Complete, 12 Successful Weeks, Team Recommendation	Phase Graduation Requires: Clean Tests, Meeting Attendance Requirements, 100% Court Costs and Fines Paid, Wellness Projects Complete, 14 Successfully Weeks, Team Recommendation
8 successful weeks a + b + c = successful week	10 successful weeks a + b + c = successful week	12 successful weeks a + b + c = successful week	14 successful weeks a + b + c = successful week
Wellness Projects Status Hearings 4x/month	Wellness Projects Status Hearings 4x/month	Wellness Projects Status Hearings 2x/month	Wellness Projects Status Hearings 2x/month
PBT's Daily Drug Test 2x/week Minimum 1hr/week physical activity	PBT's Daily Drug Test 2x/week Minimum 1hr/week physical activity	PBT's Daily Drug Test 1x/week Minimum 1hr/week physical activity	PBT's Daily Drug Test Random 1hr/week physical activity
Case Management & Supervision	Case Management & Supervision	Case Management & Supervision	Case Management & Supervision
Individual Counseling (2x/week) Educational, Cognitive Behavioral	Individual Counseling (1x/week) Educational, Other Methodology	Individual Counseling (as needed) Educational, Other Methodology	Individual Counseling (as needed) Maintenance, Other Methodology
Self Help Meetings 4x/week	Self Help Meetings 3x/week	Self Help Meetings 3x/week	Self Help Meetings 2x/week
Daily Morning Prayer/Meditation	Daily Morning Prayer/Meditation	Daily Morning Prayer/Meditation	Daily Morning Prayer/Meditation
Step 1	Steps 2 & 3	Steps 4-7	Steps 8-12
			Develop & Implement Aftercare Plan
			Graduation
			Steps 10-12

The Staffing and the Hearing: Strategies for Tribal Wellness Courts

Speakers: Kori Cordero (Tribal Law and Policy Institute – Tribal Justice Specialist), Lauren van Schilfgaarde (Tribal Law and Policy Institute – Tribal Law Specialist), Hon. Carrie Garrow (St. Regis Mohawk Tribal Court Chief Judge), Hon. Charlene Jackson (Jackson Law Firm, PLLC).

The purpose of this session was to discuss the staffing and the hearings of the Wellness Court model. Wellness Courts consist of multi-disciplinary teams that gathers to discuss the participants' progress, issue incentives and sanctions, and problem-solve in order to meet the participants recovery needs.

- Wellness courts have a lot of staffing and hearings - most courts meet once a week, but at a minimum the courts should be meeting no less than twice a month.
- Multi-disciplinary teams that make up the Wellness courts include:
 - H2W Judge;
 - Prosecutor;
 - Defense Attorney;
 - Probation Officer – Police Officer;
 - Treatment Providers;
 - Doctor/Nurse if medically assisted treatment is used.
- INFORMATION SHARING:

- Providing quality relapse support, resources, and care management depends on information sharing between team members, regular contact between the judge and the participants.
- Some courts use secured emails to share information. Some courts do not want to use email. Courts that use email to communicate have improved.
- Your H2W court needs information sharing protocols.
 - MAKE: Team needs to make informed recommendations to the Judge, so they need all relevant and up to date information.
 - USE: Judge can use the information to apply strengths-based practices with the participant.
 - IDENTIFY: Identify service gaps, barriers, challenges.
- Need written consent by participants so that treatment providers can share information with the H2W court – otherwise treatment providers are bound by HIPPA and other federal confidentiality laws.
- National Drug Court Institute (NDCI) has a judicial bench book that is a great resource. <https://www.ndci.org/resources/publications/>
- Departments should sign MOUs to give general outline of common goals, protocols, and expectations. (How the court, treatment providers, Police, Probation, Family Services etc. will work together and have them all sign.)
 - This helps set consistent goals and standards – even when people change roles and positions.
 - Can be one document that is signed by all the agency heads. Even better if you have the MOU be adopted by resolution.
- Tribe in Oregon (checkboard reservation) has a joint jurisdiction court with the State – so they have the state probation officers join the H2W court team.
- **STAFFING MEETING:**
 - All members of the H2W court team meet to discuss the progress of each participant before the participant's hearing.
 - Use progress reports. Usually a court coordinator collects information from all members of the team and creates one comprehensive progress report. Try and keep progress reports down to one page of information on what the person did since the last hearing and how they are progressing through the program. Have information such as:
 - What phase are they in?
 - Were they recently sanctioned?
 - Did they recently receive an incentive or recognition?
 - Do they have children?
 - Do they need other services?
 - What other services are they accessing?
 - It is very important that every staff member attend the staffing meeting.
- **HEARINGS:**
 - Important that the Judge spends AT LEAST three to five minutes with each participant.
 - Hearings are held in a lot of different manners:
 - Held in traditional court settings.

Structure of the Staffing

Address	Address participants on an individual basis
Allow	Allow input from all team members
Resolve	Resolve disagreements between team members so as to present a united front in court

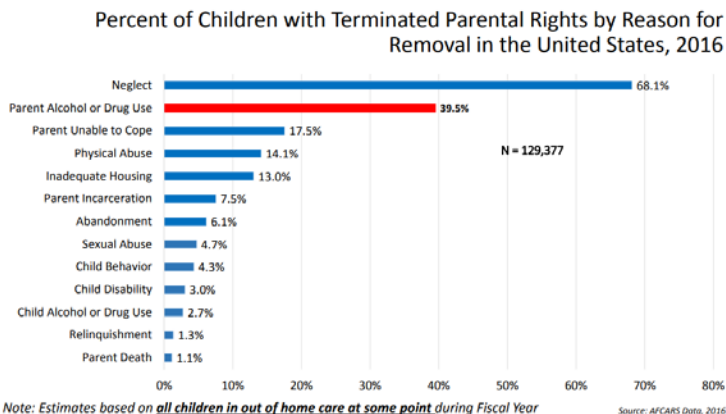
- Held in a setting where everyone – the judge and all team members of the H2W court sit in a circle intermingled with the participants.
- Some judges wear traditional robes, some do not.
- Are there cultural openings?
- Best H2W programs are built on relationships.
- Trauma Informed Court:
 - Absence of visible weapons;
 - Calm voice;
 - Refrain from threats;
 - Supportive questions.

Healing the Family: Tribes and Counties Working Together within the Family Treatment Court and Family Tribal Healing to Wellness Court

Speakers: Hon. Charlene Jackson (Jackson Law Firm, PLLC), Lauren van Schilfgaarde (Tribal Law and Policy Institute – Tribal Law Specialist), Hon. Mary Cardoza (Lummi Nation), Jennifer Foley (Center for Children and Family Futures, Inc.).

This session discussed the Family Treatment Court (FTC) model (which was developed to improve the poor recovery, safety, and permanency outcomes for families affected by parental substance use) and the Family Tribal Healing to Wellness courts (which integrated drug court principles with tribal values, laws, and resources). This session had a panel of tribal H2W professionals who discussed both movements, best practices, and strategies to improve collaboration between county and tribal communities.

- H2W Court is greatly influenced by how a tribe handles Indian child welfare matters. (It was through Indian child welfare cases that most courts became developed and experienced).
- Out of all the termination of parental rights (TPRs) in 2016 39.5% were related to alcohol or drug use.
- 7 Key Ingredients for Family Drug Courts:
 - System of identifying families;
 - Timely access to assessment and treatment services;
 - Increased management of recovery services and compliance with treatment;
 - Improved family-centered services and parent-child relationships;
 - Increased judicial oversight;
 - Systematic response for participants contingency management;
 - Collaborative non-adversarial approach grounded in efficient communication across service systems and court.
- Challenges and barriers to identifying families:
 - Target population unclear;
 - Restrictive and/or subjective eligibility criteria;
 - Screening and identification conducted late;
 - Lack of utilization of standardized screening protocols;
 - Referral process with weak hands-off, lack of tracking.
- Barriers to Effective Cross-Systems Communication:



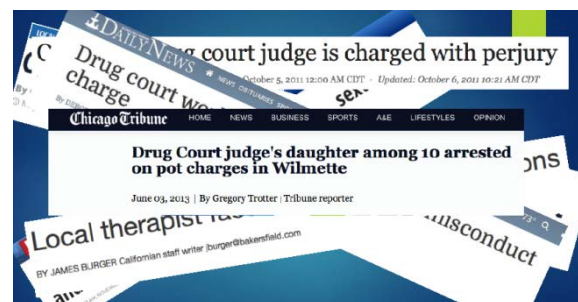
- Discipline specific training;
- Legal mandates and administrative codes;
- Lack of trust between systems;
- Competing timelines;
- Caseload volume;
- Confidentiality provisions.
- Critical to build good relationships between the county and tribal courts.
- Advice is to just go for → begin building relationships, sharing information, working together, requesting referrals from county court to tribal court. Once you have those relationships and systems naturally built up then seek out a MOU to put onto paper the system you have an hammer down protocol.
- You need a collaborative, non-adversarial approach grounded in efficient communication across service systems and courts.
- walkingoncommonground.org is a good source for directories of state and tribal forums → this is a website of resources for promoting and facilitating tribal-state-federal collaborations.
- H2W courts really need a court coordinator/case manager in order to run efficiently.
- Want a clear and consistent referral process (from county to tribe) – preferably a “warm hands off” approach. Need a shared mission and vision, as well as a coordinated case planning and information sharing, timely and ongoing communication and follow-up.

Ethics in Tribal Healing to Wellness Court

Speakers: Hon. Charlene Jackson (Jackson Law Firm, PLLC) and Hon. Carrie Garrow (St. Regis Mohawk Tribal Court Chief Judge).

This session of the conference looked at some of the many ethical considerations that are involved in a Healing to Wellness Court, including those ethical considerations of everyone ranging from the attorney to the treatment provider. Discussed issues such as confidentiality, relationships among team members and participants, and the inter-relationship of Wellness Court duties and distinct professional ethical obligations.

- Important to remember that each discipline involved in the H2W court has their own rules, guidelines, and expectations when it comes to ethics.
- You need ethics rules and guidelines because:
 - Positions of power and authority over others;
 - Position of trust – have clients that are highly vulnerable and have high needs;
 - Helps with multidisciplinary approach;
 - Helps with transition from adversarial structure;
 - Manage expectations of other and ourselves.
- Differences between traditional courts and drug courts:
 - **TRADITIONAL COURT:**
 - Focus: Offense
 - Punishment determined by sentencing range
 - Judicial interaction is limited
 - Minimal post sentence interaction
 - Remove offender from community
 - **DRUG COURT**
 - Focus: behavior behind offense



- Individualized treatment plan
 - Increased judicial interaction
 - High post sentence interaction
 - Offender remains in community
- Shared Core Competencies among Disciplines
 - Fully participates as team member, committed to program, mission, and goals;
 - Operating in non-adversarial manner, promoting a sense of unified team presence;
 - Inappropriate non-court settings, advocates for effective incentives and sanctions;
 - Monitor participant progress within boundaries;
 - Knowledgeable about addiction;
 - Community education about program and efficacy.
- Judicial Core Competencies
 - Program advocate by utilizing community leadership role to create interest and develop support;
 - Leads the team to develop protocols and procedures;
 - Aware of impact substance abuse has on the court system, the lives of offenders, their families and community;
 - Encourages the education of peers, colleagues, judiciary in the efficacy of H2W courts.
- Prosecutor Core Competencies
 - Gate keeper – maintains eligibility standards while participating in a non-adversarial environment;
 - Focuses on the benefits of therapeutic outcomes.
- Defense Counsel Core Competencies
 - Evaluates defendant's legal situation and ensures protection of defendant's legal rights;
 - Effectively advises defendants of their legal rights, options, treatment options, program conditions, and sentencing outcomes while developing a relationship with the defendant that promotes the defendant's long term best interest;
 - Focuses on the benefits of therapeutic outcomes.
- Treatment Core Competencies
 - Timely and competent evaluation process;
 - Treatment progress reporting;
 - Training in substance abuse, addiction and treatment to provide team a meaningful foundation.
- Community Supervision core Competencies
 - Coordinated and comprehensive supervision to minimize participant manipulation and splitting of program staff;
 - Drug testing and supervision;
 - Timely compliance reporting.
- Ex Parte Communication – Ethics Exception for Judges
 - Judges have a therapeutic court exception – a judge may initiate, permit, engage in or consider ex parte communications expressly authorized by law, such as when serving on a therapeutic or problem-solving court, mental health court, or drug courts. Judges can assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.



- Independent Decision and Duty to Decide – Although at staffing the staff discusses participant progress and reaches a consensus on whether there should be an incentive or sanction – the Judge always has the final decision on what should happen and can reject or modify a recommendation from the team.
- Due Process – still applies. Need notice and meaningful opportunity to respond. Process for responding to recommendations for sanctions or incentives. Need due process for loss of liberty and termination from drug court.
- Prosecutor & Defense Counsel – Non-adversarial – now have a shared goal. Prosecutor protects public safety by ensuring eligibility and program compliance. Defense protects due process protection and encourages full participation.
- HIPPA and Confidentiality
 - Consent is not necessary uses and disclosures of protected information for treatment, payment, and health care operations.
 - Authorization requires for uses and disclosures of protected health information for other purposes. Must be valid authorization.
 - Patient has right to request information be sent to a third party.
 - Federal confidentiality laws have process for authorization/consent for disclosure of information.

Turning Points: Critical Events on the Road to Long-Term Recovery

Speakers: Terrance D. Walton (NADCP – Chief Operating Officer), Brian Cuban, Isaiah Pickens, Neely Carlton Lyons.

This session had discussions with three advocates for long term recovery, who talked about some of their own turning points in their life that lead to their recovery.

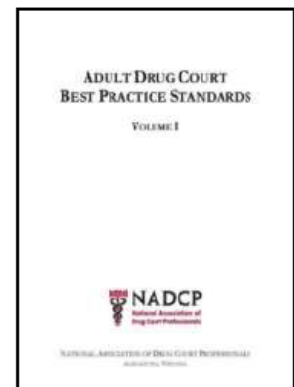
- Brian Cuban, author of *The Addicted Lawyer*.
 - Discussed his journey and how his two brothers, including Mark Cuban, tried to help him even when he was unable to help himself.
 - Discussed the various trauma throughout his life that he had to learn to deal with in order to heal. Overcame suicide attempts and stays in a psychiatric facility.
 - Lawyers have some of the highest rates of addiction.
- Former Mississippi state senator Neely Carlton Lyons.
 - Was the youngest person elected to the Senate. Lives a life dedicated to assisting individuals and families facing addiction in their quest to experience a long-term, sustainable recovery.
 - Discussed her experience as a public official and attorney, as well as her personal journey and pressures.
 - Overcame being someone who was addicted to her work and being perfect. Had to learn that self-care is important and necessary.
- Dr. Isaiah Pickens is a clinical psychologist, author, and television personality.
 - Healing process is a roller coaster ride that twists and turns our expectations—making it difficult to find the path to a place of wholeness.
 - So critical to pursue our own paths to wholeness, while trying to help others. Self-care is important.

If You're Doing These Five Things, You May Call Yourself a Drug Court, But You're Not

Speaker: Douglas Marlowe (NADCP – Senior Scientific Consultant).

The NADCP has Best Practice Standards which outline all of the practices associated with holding the most effective drug court. It is known that not every court will be able to adhere to all the best practice standards – even if that is the goal – but there are practices that are so essential to the drug court model that failure to adhere to the Standards in these areas disqualifies the program from being a legitimate drug court. This session reviewed that standards that if you do not meet, then you are not a legitimate drug court.

- **Key Components:** There are the necessary things you need in order to be a drug court. You have to be in compliance with the key components in order to be considered a drug court.
- **Best Practice Standards:** Tell you what a good drug court does. Assumes that you are already in compliance with the Key Components. Standards for what the most effective drug court does.
- **Drug Courts are Courts.**
 - Your drug court needs to ultimately be a court, not simply a diversion program, or a restorative justice program, or a decriminalization program.
 - Negotiated sentence or disposition.
 - Public forum and public record.
 - Integrate treatment with criminal justice processing
 - Ongoing judicial contact is essential.
 - There is due process (no arbitrary or capricious decisions or actions).
 - There is a right of appeal.
 - There is a perception (and reality) of fairness.
 - Courtroom is a theatre.
 - Vicarious learning occurs when participants watch other participants go before the Judge,
 - Your case is heard in front of other participants.
 - It is a public intervention – you will learn from the other participants.
- **Treatment and Accountability.**
 - Need mechanisms for both treatment and accountability in your court.
 - Treat sick behavior, punish bad behavior, and reward good behavior → never confuse their purposes, you need to do all three.
 - Need gradually escalating sanctions for distal infractions, including substance abuse.
 - Do not use jail for treatment.
 - You should not be putting people in jail for positive drug tests when they are still struggling to overcome addiction.
 - People should not be put in jail for positive drug tests when they are still early in their journey through the drug court.
 - Jail is not a detox, and should also not be used as a safe and sober living arrangement.
 - Substantial sanctions, to include jail time, should be use for willful or proximal infractions.
 - Like you willfully choose to be noncompliant with the program or posed a risk to public safety.
 - Incremental rewards are necessary for good behavior.



- **Multidisciplinary Team.**
 - You need a multidisciplinary team comprised of judge, prosecutor, defense counsel, treatment, probation, law enforcement, social workers, etc.
 - Defense Counsel and Prosecutor have their own Key Component → so they are a necessary part of the team – or else you are not a drug court!
 - Defense counsel advocates for the participants expressed interests, and their constitutional rights.
 - Defense counsel waivers are generally revocable at will unless already relied upon.
 - Prosecutor advocates for accountability and on behalf of public safety and victim interests.
 - Treatment providers advocate for the best interests of the participants.
 - There is an ongoing communication, information exchange, and share decision making actively and regularly.
 - Involved in coordinated responses to participants compliance.
 - Team meetings and status hearing are held on a regular basis.
 - Drug courts are 50% less effective if not regularly attended by ALL members of the team.
- **The Constitution Applies.**
 - Drug courts are still courts of law, so that means that the Constitution applies to everything that occurs.
 - All the people involved are now an agent of the state and bound by the Constitution.
 - Procedural due process is relaxed but not abrogated (fair hearing commensurate with imperiled interests).
 - Substantive due process is unaffected:
 - Judges have discretion but it is not unbridled.
 - Rational bases test (at least).
 - You are not using a rational basis if you are setting general standards/requirements for every participant and not going it on an individualized basis.
 - Like if you say no one in the drug court can use medically assisted treatment, or prohibit the use of specific drugs for medically assisted treatment, or do not allow graduation until you are off medically assisted treatment, or require everyone to go to a residential treatment facility to participate in the drug court, or you have to sit in jail for a certain amount of time before you can participate in drug court.
 - You cannot decide what is right for the recovery of a person before they even become a participant.
 - Particularized inquiry.
 - Reviewable record (articulated rationale).
 - You cannot require all future or contingent rights be waived irrevocably.
 - Equal protection applies (suspect classes).
- **Self-Learning and Correcting.**
 - Drug courts need ongoing professional development and continuing professional education.
 - Two Key Components (20%) are dedicated to ongoing program evaluation and continuing professional education.
 - Drug court needs to be innovation, not sclerotic.
 - Drug courts should be self-learning and self-correcting institutions.
 - Establish effectiveness and engage in continuous quality improvement.
 - Measuring performance and outcomes is a substantive element of the program.

- **Questionable “Drug Court” – You are not a drug court if you do these things:**
 - Your “drug court” is managed by a community panel, treatment agency, probation, police, schools, prosecutor, restorative justice program.
 - If the program is not run and managed by the court, then it is NOT a drug court.
 - Participant compliance is reviewed individually or outside of the courtroom.
 - Jail sanctions imposed for substance use prior to clinical stabilization.
 - Jail is used as a detox, treatment, or housing.
 - Jail off the table for proximal infractions.
 - No defense attorney or prosecutor on the team.
 - Participants must waive defense advocacy.
 - Infrequent team meetings or presence.
 - No hearing for jail or revocation.
 - Blanket prohibitions against evident based interventions (like medically assisted treatment).
 - Requirements not reasonable related to the participant’s current offense, rehabilitation needs, or public safety threat.
 - No current and reliable data on adherence to best practices, including access and outcomes for suspect classes.

Conclusion

Overall, the NADCP annual conference provided the opportunity to gain knowledge and understanding of not only the general drug treatment court model, but also the more tribal specific Healing to Wellness court model.

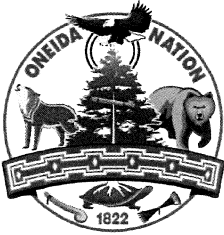
The NADCP annual conference provided a connection to other tribes who have successful Healing to Wellness courts or are also in the process of developing a court.

The NADCP annual conference also provided access to many resources that will be available to the Nation throughout the development of the Wellness Court law.

Many of the conference sessions that I attended provided access to their power point presentations and handouts.

Much of these materials have been saved in the G drive at: G:\LOC\WP\Active Files\Wellness Court\NADCP Conference\Conference Materials





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



AGENDA REQUEST FORM

- 1) Request Date: 07/18/18
- 2) Contact Person(s): Tsyoslake House, JD. Advocate
 Dept: GTC Legal Resource Center
 Phone Number: x5322 Email: thouse2@oneidanation.org
- 3) Agenda Title: _____
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
Request to certify rule #1 - Application for services

List any supporting materials included and submitted with the Agenda Request Form

- 1) Memo
- 2) Rule
- 3) SOE
- 4) Financial
- 5) Please list any laws, policies or resolutions that might be affected:
No conflicts
- 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:
Needed to open the office.

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



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney
DATE: July 18, 2018
RE: Certification of Legal Resource Center Law Rule No. 1 – Application for Services

The Legislative Reference Office has reviewed the certification packet provided by the Legal Resource Center for the Legal Resource Center Law Rule No. 1 – Application for Services (“the Rule”).

The Rule would become effective on July 25, 2018, if adopted by the Oneida Business Committee. Resolution BC-01-24-18-B requires the Legal Resource Center to be open by August 1, 2018. The purpose of this rule is to create a procedure for individuals to apply for services from the Legal Resource Center.

Administrative Record

The certification packet contains all documentation required by the Administrative Rulemaking law for a complete administrative record.

The certification packet contains:

- A memorandum containing the Rule’s procedural timeline and signatures from Legal Resource Center advocates Wesley Martin Jr. and Tsyoslake House approving the Rule;
- Public Meeting Notice as it appeared in the May 17, 2018 Kalihwisaks;
- Final draft of the Rule;
- Summary Report containing the statement of effect and financial analysis; and
- Public meeting sign in sheet.

Procedural Requirements

The certification packet illustrates that the promulgation of the Rule complies with the procedural requirements contained in the Administrative Rulemaking law.

In accordance with the Administrative Rulemaking law:

- A public meeting notice for the Rule was published in the Kalihwisaks on May 17, 2018;
- A public meeting for the Rule was held on June 4, 2018;
- The public comment period was held open until June 11, 2018;
- There were no community member in attendance at the public meeting, and no written comments received during the public meeting or the public meeting comment period; and
- The Legal Resource Center advocates approved the Rule on June 25, 2018.

Rulemaking Authority

The Rule did not exceed the rulemaking authority granted under the law for which the Rule is being promulgated.

Conclusion

Promulgation of the Legal Resource Center Law Rule No. 1 – Application for Services complies with all requirements of the Administrative Rulemaking law.

Memorandum

Date: June 25, 2018

To: Legislative Operating Committee

From: Wesley Martin Jr., Advocate/GTC Legal Resource Center; Tsyoslake House JD., Advocate/GTC Legal Resource Center

The GTC Legal Resource worked cooperatively with the help of all stakeholders to create the proposed rule under Title 8. Judiciary - Chapter 811 Legal Resource Center, called Rule #1 – application for services. Below will show that administrative rulemaking processes have been completed.

Timeline of dates that each rulemaking requirements was completed:

1. Date of Public Meeting was posted.
 - a. Website – May 17, 2018
 - b. Kalihwisaks – May 17, 2018
2. Date the Public Meeting was held.
 - a. June 04, 2018
3. Date the public comments period closed.
 - a. June 11, 2018
4. Date the public comments were considered.
 - a. There were no public or written comments
5. Date the request to other agencies was made for financial analysis.
 - a. This only affected the GTC Legal Resource center. There were no other agencies that needed to provide financial analysis.
6. Date the rule will go into effect.
 - a. July 25, 2018

There was one attendee to the public meeting that had questions in relation to services the office provided and no questions on the proposed rule; no written comments were received by mail.

The GTC Legal Resource Advocates approve this rule by the signatures below.

Wesley Martin Jr., Advocate/GTC Legal Resource Center



Tsyoslake House JD, Advocate/GTC Legal Resource Center



Attachments:

Chapter 811 Legal Resource Center, Rule #1 – application for services Summary Report

Kalihwisaks Public Meeting Notice

Summary Report

Financial Analysis

Statement of Effect

NOTICE OF
PUBLIC MEETING

TO BE HELD
Monday, June 04 at 09:00 a.m.

IN THE
**Ridgeview Plaza Conference Room
(3759 W. Mason St Suite 4 Oneida WI, 54155)**

In accordance with the Administrative Rule Making Law, the Legal Resource Center is hosting this Public Meeting to gather feedback from the community regarding the following rule(s).

**TOPIC: Legal Resource Center Rule #
1 - Applications for Services**

- ♦ **This is a proposal to adopt a process for application for services.**

To obtain copies of the Public Meeting documents for this proposal,
please visit

www.oneida-nsn.gov/Register/PublicMeetings

or contact the Legal Resource Center.

**PUBLIC COMMENT PERIOD
OPEN UNTIL June 11, 2018**

During the Public Comment Period (public comments shall be limited to 5 minutes per person), 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 Legal Resource Center in person at Ridgeview Plaza 3759 W. Mason Suite 6 Oneida WI 54155 or by U.S. mail, interoffice mail, e-mail, or fax.

**Legal Resource Center
PO Box 365 Oneida, WI 54155
E-mail: wmartin@oneidanation.org
Phone: (920) 496-5324
Fax: (920) 497-5805**



Title 8. Judiciary – Chapter 811

LEGAL RESOURCE CENTER

Rule #1 –Application for Services

- 1.1 Purpose and Delegation
- 1.2 Adoption and Authority
- 1.3 Definitions
- 1.4 Eligibility
- 1.5 Representation
- 1.6 Fees and Costs
- 1.7 No Results Promised
- 1.8 Right to Discharge and Withdraw

1.1. Purpose and Delegation

1.1-1. *Purpose.* The purpose of this rule is to create a procedure for individuals to apply for services from the Legal Resource Center.

1.1-2. *Delegation.* The Legal Resource Center law delegated rulemaking authority pursuant to the Administrative Rulemaking law.

1.2. Adoption and Authority

1.2-1. This rule was adopted by the Legal Resource Center in accordance with the procedures of the Administrative Rulemaking law.

1.2-2. This rule may be amended or repealed pursuant to the procedures set out in the Administrative Rulemaking law.

1.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

1.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure, or other regulation; the provisions of this rule control.

1.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Legal Resource Center law.

1.3. Definitions

1.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

(a) “Employee” means any individual hired by the Nation and on the Nation’s payroll and encompasses all forms of employment, including but not limited to: full-time, part-time, at-will, elected/appointed officials, political appointees, and contracted persons.

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

(c) “Minor” means anyone who has not yet attained the age of eighteen (18).

(d) “Nation” means the Oneida Nation.

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

(f) “Frivolous case” means a case without any reasonable basis in law or equity and that cannot be supported by a good faith argument.

1.4. Eligibility

- 1.4-1. An individual shall be eligible for legal services from the Legal Resource Center if they:
- (a) Are a Tribal member or employee who has a case pending before the Judiciary.

1.5. Representation

1.5-1. An eligible individual shall fill out an application for services from the Legal Resource Center.

1.5-2. Representation shall be effective at the date and time that the signed application is delivered in person to the Legal Resource Center and the Legal Resource Center has accepted the case.

1.5-3. The Legal Resource Center may decline representation if:

- (a) The prospective client does not apply for services with enough notice prior to the court hearing. The Legal Resource Center may agree to accept the case and appear for future hearings on behalf of the client.

- (b) If, after review by LRC staff, it is determined that the case is frivolous and has no viable defense, the case will not be accepted.

- (1) A frivolous case is one that is without any reasonable basis in law or equity and that cannot be supported by a good faith argument.

- (c) The Legal Resource Center is prohibited from representing the client pursuant to the Legal Resource Center law, Professional Conduct for Attorneys and Advocates law, or another law or rule of the Nation.

1.6. Fees and Costs

1.6-1. The Legal Resource Center shall not charge a client any fees for the advocacy services provided directly by the Legal Resource Center.

1.6-2. As a condition of obtaining the services of the Legal Resource Center, clients are responsible for paying all filing fees and other costs associated with the case including but not limited to: service of process fees, guardian ad litem fees, physical and mental examinations, expert witness fees, substance abuse assessments, and court costs.

1.6-3. Clients shall be responsible for seeking out any applicable fee waivers, including those offered by the Judiciary.

End.

Original effective date:

Summary Report for LEGAL RESOURCE CENTER Rule #1 – Applications for Service

Original effective date: N/A

Amendment effective date: N/A

Name of Rule: Rule #1 – Application for Services

Name of law being interpreted: Chapter 811 LEGAL Resource Center

Rule Number: #1

Other Laws or Rules that may be affected: None

Brief Summary of the proposed rule: The proposed rule is to create a procedure for individuals to apply for services from the Legal Resource Center.

Statement of Effect: Obtained after requesting from the Legislative Reference Office.

Financial Analysis: This rule creates no anticipated fiscal impact.

Note: *In addition- the agency must send a written request to each entity which may be affected by the rule- asking that they provide information about how the rule would financially affect them. The agency must include each entity's response in the financial analysis. If the agency does not receive a response within 10 business days after the request is made, the financial analysis can note which entities did not provide a response.*

Financial Analysis for Legal Resource Center Rule # 1 – Applications for Services

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	There are no startup costs to this rule.	\$0.00
Personnel	There are no additional costs to personnel to implement this rule.	\$0.00
Office	There are no additional costs to Office to implement this rule.	\$0.00
Documentation Costs	There are no additional costs to Document Costs to implement this rule.	\$0.00
Estimate of time necessary for an individual or agency to comply with the rule after implementation	Compliance will immediately start after the rule has been approved for the opening date of the LRC office on August 01, 2018.	\$0.00
Other, please explain		
Total	Annual Net Revenue	\$0.00



Statement of Effect

Legal Resource Center Law Rule No. 1 – Application for Services

Summary

Legal Resource Center Law Rule No. 1 – Application for Services creates a procedure for individuals to apply for services from the Legal Resource Center.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Date: May 14, 2018

Analysis by the Legislative Reference Office

The Legal Resource Center law (“the Law”) was adopted by the Oneida Business Committee by resolution BC-09-13-17-L for the purpose of establishing a Legal Resource Center to provide legal advice and representation to both Tribal members and employees in cases before the Judiciary, and to represent the Oneida General Tribal Council at General Tribal Council meetings. [8 O.C. 811.1-1].

The Law delegates administrative rulemaking authority to the Legal Resource Center attorney for the purpose of promulgating a rule establishing how clients apply for the Legal Resource Center’s services. [8 O.C. 811.5-3(l)]. The Legal Resource Center attorney position currently remains vacant as there were no candidates on the ballot for the 2017 General Election or the 2017 Special Election. The Law allows for the Legal Resource Center advocates to assume the duty of promulgating the rule for establishing how clients apply for the Legal Resource Center’s services in the absence of an attorney. [8 O.C. 811.4-5].

The Legal Resource Center Law Rule No. 1 – Application for Services (“the Rule”) creates a procedure for individuals to apply for services from the Legal Resource Center. [see Rule section 1.1-1]. The Rule discusses the following:

- Eligibility requirements [see Rule section 1.4];
- When representation begins, and who may receive representation from the Legal Resource Center, and when representation can be declined [see Rule section 1.5]; and
- Fees and costs associated with representation with the Legal Resource Center [see Rule section 1.6].

The provisions of the Rule do not exceed the rulemaking authority granted under the law, as required by the Administrative Rulemaking law. [1 O.C. 106.4-1].

Conclusion

There are no legal bars to adopting the Legal Resource Center Law Rule No. 1 – Application for Services.

252 of 266

Topic: Legal Resource Center Rule # 1 – Application for Services

[illegible]

June 28, 2018 Legislative Operating Committee E-Poll Approval of the Legislative Analysis for the Petition: G. Powless - Oneida Personnel Commission Dissolution

This message was sent with High importance.

From: LOC Sent: Thu 6/28/2018 9:14 AM

To: Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen

Cc: Cathy L. Bachhuber; Jessica L. Wallenfang; Leyne C. Orosco; Melinda J. Danforth; Rosa J. Laster; Jennifer A. Falk

Subject: E-POLL REQUEST: Approval of the Legislative Analysis for the Petition: G. Powless - Oneida Personnel Commission Dissolution

Message 2018 06 28 Petition - G. Powless Oneida Personnel Commission Dissolution SOE.pdf (336 KB)

Good Morning Legislative Operating Committee,

This email serves as the e-poll for the approval of the legislative analysis of the Petition: G. Powless - Oneida Personnel Commission Dissolution.

Executive Summary

On May 23, 2018, the Oneida Business Committee acknowledged the receipt of the Petition: G. Powless - Oneida Personnel Commission Dissolution, and approved a printing production schedule that would require the legislative analysis to be turned into the Oneida Business Committee by July 3, 2018. Since the July 4, 2018, Legislative Operating Committee was canceled due to the holiday, an e-poll to approve the legislative analysis is necessary in order to meet the Oneida Business Committee deadline.

The Petition: G. Powless - Oneida Personnel Commission Dissolution calls for a special General Tribal Council meeting to address the Oneida Business Committee's dissolution of the Oneida Personnel Commission. The legislative analysis reviews all relevant legislation of the Nation and discusses any potential impacts and conflicts the Petition has on legislation of the Nation.

Requested Action

Approve the legislative analysis for the Petition: G. Powless - Oneida Personnel Commission Dissolution and forward to the Oneida Business Committee.

Deadline for Response

Friday, June 29, 2018, at 9:00 a.m.

All supporting documentation has been attached to this email for your convenience.

E-POLL RESULTS:

David P. Jordan, Kirby Metoxen, Jennifer Webster, and Daniel Guzman approved the e-poll request. A response to the e-poll was not obtained from Ernest Stevens III.

The sender responded: Approve.

From: Kirby W. Metoxen Sent: Thu 6/28/2018 9:38 AM

To: LOC

Cc:

Subject: Approve: E-POLL REQUEST: Approval of the Legislative Analysis for the Petition: G. Powless - Oneida Personnel Commission Dissolution

From: Jennifer A. Webster Sent: Thu 6/28/2018 9:54 AM

To: LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen

Cc: Cathy L. Bachhuber; Jessica L. Wallenfang; Leyne C. Orosco; Melinda J. Danforth; Rosa J. Laster; Jennifer A. Falk

Subject: Re: E-POLL REQUEST: Approval of the Legislative Analysis for the Petition: G. Powless - Oneida Personnel Commission Dissolution

Approved,
Jenny

From: David P. Jordan
To: Jennifer A. Webster
Cc: LOC; Daniel P. Guzman; Ernest L. Stevens; Kirby W. Metoxen; Cathy L. Bachhuber; Jessica L. Wallenfang; Leyne C. Oroscio; Melinda J. Danforth; Rosa J. Laster; Jennifer A. Falk
Subject: Re: E-POLL REQUEST: Approval of the Legislative Analysis for the Petition: G. Powless - Oneida Personnel Commission Dissolution

Sent: Thu 6/28/2018 9:57 AM

Support

Sent from my iPhone

From: Daniel P. Guzman
To: LOC; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen
Cc: Cathy L. Bachhuber; Jessica L. Wallenfang; Leyne C. Oroscio; Melinda J. Danforth; Rosa J. Laster; Jennifer A. Falk
Subject: Re: E-POLL REQUEST: Approval of the Legislative Analysis for the Petition: G. Powless - Oneida Personnel Commission Dissolution

Sent: Thu 6/28/2018 3:21 PM

Approve



Legislative Analysis

Petition: G. Powless – Oneida Personnel Commission Dissolution

Summary

This petition calls for a special General Tribal Council meeting to address the Oneida Business Committee's dissolution of the Oneida Personnel Commission.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Date: June 28, 2018

Analysis by the Legislative Reference Office

On May 14, 2018, the Petition: G. Powless – Oneida Personnel Commission Dissolution (“the Petition”) was submitted to the Business Committee Support Office by Gina Powless and has since been verified by the Trust Enrollment Department. On May 23, 2018, the Oneida Business Committee accepted the verified petition and directed that the Legislative Reference Office complete a legislative analysis.

The purpose of this petition is for the General Tribal Council “to address the actions of the Oneida Business Committee’s (OBC) Dissolving the Oneida Personnel Commission (OPC) by BC Resolution #04-11-18-A, BC Resolution #04-11-18-B. The OBC has intentionally violated their authority, they do not have the right to make a decision to dissolve the OPC which was created and approved by General Tribal Council (GTC). The only body that can dissolve the OPC is GTC. The OBC has abused their power and directly violated the Oneida Constitution, their Oath of Office, Oneida’s Code of Ethics, the Oneida Blue Book, to name a few. The OBC has deliberately undermined the authority of GTC. The OBC has cited in their BC resolutions that there is an emergency, yet have not cited any real emergency. The GTC hereby rescinds the action of the OBC, by rescinding BC Resolutions: 04-11-18-A, 04-11-18-B, 04-25-18-D, 04-25-18-E, 04-25-18-E, 04-25-18-F, 04-25-18-G, 04-25-18-H, placing the OPC back into the grievance and hiring practice, per the Oneida Blue Book, until GTC determines otherwise. Further, GTC takes corrective measures pertaining to the OBC, by suspending the OBC Members without pay that approved the mentioned Resolutions for a period of 90 days.”

On April 11, 2018, the Oneida Business Committee adopted resolution BC-04-11-18-A titled, “Dissolution of Personnel Commission, Tolling all Timelines in Personnel Related Matters, and Directing the Development of Emergency Amendments to Existing Laws” which dissolved the Personnel Commission for the purpose of consolidating employment related grievance hearings into the Nation’s Judiciary in an effort to increase consistency in hearing processes, efficiency, and reduce overall costs to the Nation.

The Oneida Business Committee also then adopted resolution BC-04-11-18-B titled, “Creation of the Personnel Selection Committee” which recreated the Personnel Selection Committee to

maintain the General Tribal Council's original intent of having a committee of the Nation that would be responsible for monitoring the hiring process to protect against issues of nepotism and enforcing Oneida and Indian preference.

Oneida Business Committee Action through Resolution BC-04-11-18-A

History of the Oneida Personnel Commission

The General Tribal Council originally created the Personnel Selection Committee for the purpose of monitoring the hiring process to protect against issues of nepotism and enforcing Oneida and Indian preference.

In 1990, through resolution BC-04-13-90-A, the Oneida Business Committee took action to rename the Personnel Selection Committee to the Personnel Commission, and then modified the Committee's authority from what was originally delegated by the General Tribal Council to be the sole Commission to generate personnel policies to be presented and recommended to the Oneida Business Committee for the Oneida Business Committee to review, take formal action to approve, disapprove, change and/or amend said personnel policy recommendations.

Through resolution BC-05-12-93-J, the Oneida Business Committee, in conjunction with the Nation's Human Resources Department and the Personnel Commission, revised the Nation's Personnel Policies and Procedures to allow the Personnel Commission to serve as a grievance hearing body for employment matters.

The Oneida Business Committee, through resolution BC-03-06-01-B, temporarily rescinded authority delegated to the Personnel Commission contained within the Oneida Personnel Policies and Procedures as it pertained to the role of the Personnel Commission as representatives of the community at large, the commissioners' responsibility to serve on the Screening Committee, the Interview Committee, the Personnel Screening Committee, and as the Grievance Hearing Body. The Oneida Business Committee took this action on an emergency basis, for a period not to exceed six (6) months, pursuant to the Oneida Tribal Administrative Procedures Act, now known as the Legislative Procedures Act. This action was taken in response to resolution BC-03-06-01-A which froze all stipends paid to boards, committees and commission with certain exceptions. The Oneida Business Committee had concerns that due to the freeze on stipends, it was difficult to ascertain the commitment level of the Personnel Commission to their delegated responsibilities and that instead the hiring process within the operations shall continue without interruption under the auspices of the Human Resources Department, and that the Oneida Appeal Commission would be delegated the first level hearing body for employment related actions as referenced in the Oneida Personnel Policies and Procedures.

The Oneida Business Committee made the determination to dissolve the Personnel Commission and revert back to the Personnel Selection Committee based on the determination that it is now appropriate to begin consolidating employment related grievance hearings into the Judiciary. This determination was based on the fact that the number of current cases in the Personnel Commission was low and the Personnel Commission's costs of maintaining judicial hearing authorities continued to increase.

Transfer of Hearing Authority to the Nation's Judiciary

Although the Oneida Personnel Commission served the Nation as a hearing body for employee grievances since the early 1990s, except for the period when the Oneida Personnel Commissions' authority was temporarily rescinded and the Oneida Appeal's Commission was delegated the authority, the Nation has been moving towards consolidating all hearing responsibilities to the Oneida Nation's Judiciary.

The General Tribal Council adopted the Judiciary law through resolution GTC-01-07-13-B with the purpose of establishing a Judiciary, and providing for the administration of law, justice, judicial procedures and practices by the Oneida Nation as a sovereign nation by exercising the inherent power to make, execute, apply and enforce its own law, and to apply its own customs and traditions in matters affecting the Oneida people.

The Oneida Nation membership then approved amendments to the Constitution in 2015, approved by the Secretary of Interior on June 16, 2015, which adopted Article V, Judiciary, establishing a judiciary to exercise the judicial authority of the Oneida Nation.

The General Tribal Council adopted resolution GTC-03-19-17-A which designated the Oneida Judiciary as the judiciary authorized pursuant to Article V of the Constitution and By-laws of the Oneida Nation.

Since then the Oneida Business Committee has presented reports, and the General Tribal Council has accepted such reports, regarding the consolidation of administrative hearing and judicial hearing responsibilities in the Judiciary which will increase consistency in hearing processes, efficiency, and reduce overall costs to the Oneida Nation. The Judiciary has stated that it is prepared to accept all judicial functions, and the Oneida Business Committee has already adopted amendments to laws that transferred the hearing authority of the Environmental Resources Board and the Land Commission to the Judiciary.

The Oneida Business Committee's action to dissolve the Personnel Commission through resolution BC-04-11-18-A for the purpose of consolidating employment related grievance hearings into the Judiciary is consistent with the General Tribal Council's and the Nation's efforts to consolidate both administrative and judicial hearing responsibilities in the Judiciary.

The Comprehensive Policy Governing Boards, Committees, and Commissions

The Comprehensive Policy Governing Boards, Committees and Commissions ("the Policy") governs the Oneida Business Committee's authority to dissolve the Personnel Commission. The Policy was most recently amended by the Oneida Business Committee through resolution BC-09-22-10-C, and provides standards and procedures related to the management of boards, committees, and commissions of the Nation. [1 O.C. 105.1-1].

All boards, committees, and commissions of the Nation are required to be dissolved in accordance with this Policy. [1 O.C. 105.10-1]. The Policy allows for any board, committee, or

commission of the Nation to be dissolved by motion of the Oneida General Tribal Council or the Oneida Business Committee. [1 O.C. 105.10-3]. The adoption of resolution BC-04-11-18-A by motion of the Oneida Business Committee complied with the Policy.

The Petition states that the Oneida Business Committee lacked the authority to dissolve the Oneida Personnel Commission because the Oneida Personnel Commission was created and approved by General Tribal Council. Therefore, the Petition asserts, only the General Tribal Council can dissolve the Oneida Personnel Commission. A review of all relevant legislation of the Nation did not find this requirement codified in any law, policy, or rule of the Nation.

The only other requirements for the dissolution of a board, committee, or commission (“an entity”) provided by the Policy addresses any records generated by the entity. When an entity of the Nation is dissolved, any and all materials generated by the entity is required to be forwarded to the Nation’s Secretary’s Office for proper storage and disposal within two weeks of dissolution. [1 O.C. 105.9-4 and 105.10-3]. The Chairperson and Secretary of the dissolved entity is ultimately responsible for closing out open business of the entity and forwarding the materials to the Nation’s Secretary. [1 O.C. 105.10-4].

Resolution BC-04-11-18-A did require that the Business Committee Support Office meet with the Personnel Commission staff to determine how the office and Personnel Commission files and materials shall be stored and accessed.

Oneida Business Committee Action through Resolution BC-04-11-18-B

Despite the fact that the Oneida Business Committee made the determination to move forward with consolidation of the hearing authority consistent with the General Tribal Council’s action regarding the Judiciary, the Oneida Business Committee recognized that the Personnel Selection Committee provided a valuable service in its original formation before being expanded to include hearing authority, and that valuable service remains necessary in the hiring process.

For that reason, the Oneida Business Committee determined the re-creation of the Personnel Selection Committee through resolution BC-04-11-18-B was in the best interest of the Oneida Nation. The Personnel Selection Committee shall have the authority and responsibility for preventing nepotism and enforcing Oneida and Indian preference in the Nation’s hiring process.

The Policy requires that all bylaws be presented for adoption within a reasonable time after creation of a board, committee, or commission, and that the bylaws conform to the various requirements contained in the Policy. [1 O.C. 105.8-1]. The Policy sets forth specific articles and sections that must be included in all bylaws, and details the information that must be addressed. [1 O.C. 105.8-3 and 105.8-4].

Resolution BC-04-11-18-B directed the Legislative Operating Committee to create bylaws for the new Personnel Selection Committee to be presented to the Oneida Business Committee in May 2018. The Oneida Business Committee adopted bylaws for the Personnel Selection Committee that conformed with the requirements of the Policy on May 23, 2018.

Adoption of the Resolutions BC-04-11-18-A and BC-04-11-18-B made Emergency Legislative Action Necessary

The Oneida Business Committee took regular action, not emergency action, through the adoption of resolutions BC-04-11-18-A and BC-04-11-18-B to dissolve the Personnel Commission and re-create the Personnel Selection Committee.

The reference to the term “emergency” in resolution BC-04-11-18-A was in regards to the fact that the Legislative Operating Committee would have to take emergency action to address the four (4) laws that included language that referenced the Oneida Personnel Commission, and its responsibilities.

Emergency Amendments pursuant to the Legislatives Procedures Act

Resolution BC-04-11-18-A directed the Legislative Operating Committee to develop and present emergency legislative amendments to fully address the impact of the dissolution of the Personnel Commission and the created the Personnel Selection Committee.

On April 25, 2018, the Oneida Business Committee adopted emergency amendments to the following laws:

- Military Service Employee Protection Act through resolution BC-04-25-18-D;
- Oneida Personnel Policies and Procedures through resolution BC-04-25-18-E;
- Oneida Judiciary Rules of Civil Procedure through resolution BC-04-25-18-F; and
- Employee Protection Policy through resolution BC-04-25-18-G.

The emergency amendments to these laws replace any reference to the Personnel Commission which refers to actions affecting employees involving adverse employment actions with a reference to the Judiciary – Trial Court. The emergency amendments also replace any reference to the Personnel Commission which refers to actions involving hiring, including screening and interviews with a reference to the Personnel Selection Committee.

Emergency amendments to a law of the Nation are required to follow the procedures contained in the Legislative Procedures Act (“the LPA”). The LPA was adopted by the General Tribal Council through resolution GTC-01-07-13-A for the purpose of providing a process for the adoption and amendment of laws of the Nation. [1 O.C. 109.1-2].

The process provided by the LPA for the development of emergency legislation allows the Oneida Business Committee to temporarily enact emergency legislation where legislation is 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 under this law. [1 O.C. 109.9-5]. This emergency threshold required by the LPA must be met in order for emergency legislation to be enacted.

The threshold for emergency legislation is high in the LPA to ensure that it is only when a true emergency exists can the requirements for proper and thorough analyses, and engagement and review by the public be ignored.

The Oneida Business Committee issued a finding of an emergency and has stated the necessity for approving emergency amendments to the Military Service Employee Protection Act, Oneida Personnel Policies and Procedures, Oneida Judiciary Rules of Civil Procedure, and the Employee Protection Policy. The Oneida Business Committee determined the standard for emergency required by the LPA was met because the amendments were needed for the preservation of the public health, safety, or general welfare of the reservation population in order to ensure that the general welfare and due process rights of employees of the Nation are preserved in the absence of the Personnel Commission.

In the development of emergency legislation, the Legislative Operating Committee is responsible for first reviewing emergency legislation and forwarding requests for emergency legislation to the Oneida Business Committee for consideration. [1 O.C. 109.9-5(a)]. A legislative analysis of the emergency legislation is required to be completed and attached to the legislation. [1 O.C. 109.9-5(a)]. The legislative analysis includes a statement of the legislation's terms and substance; intent of the legislation; a description of the subject(s) involved, including any conflicts with Oneida or other law, key issues, potential impacts of the legislation and policy. [1 O.C. 109.3-1(g)]. The fiscal impact statement, public meeting, and public comment period, which are normally required by the Legislative Procedures Act are not required prior to emergency legislation being considered by the Oneida Business Committee. [1 O.C. 109.9-5(a)].

All of these standards were met in the development of emergency amendments to the Military Service Employee Protection Act, Oneida Personnel Policies and Procedures, Oneida Judiciary Rules of Civil Procedure, and the Employee Protection Policy.

The emergency amendments to the Military Service Employee Protection Act, Oneida Personnel Policies and Procedures, Oneida Judiciary Rules of Civil Procedure, and the Employee Protection Policy took effect immediately upon adoption by the Oneida Business Committee on April 25, 2018. The emergency amendments will remain effective for six (6) months, with the possibility to extend for an additional six (6) months, or until the emergency amendments expire or are permanently adopted. [1 O.C. 109.9-5(b)].

Impacts on Other Legislation of the Nation

The Petition expresses concern that the "OBC has abused their power and directly violated the Oneida Constitution, their Oath of Office, Oneida's Code of Ethics, the Oneida Blue Book, to name a few."

Code of Ethics

The Oneida Business Committee's action to adopt resolutions BC-04-11-18-A, BC-04-11-18-B, BC-04-25-18-D, BC-04-25-18-E, BC-04-25-18-F, BC-04-25-18-G, BC-04-25-18-H do not directly conflict or impact the Nation's Code of Ethics.

The Code of Ethics was adopted by the Oneida Business Committee, and most recently amended through resolution BC-09-27-06-E, for the purpose of promoting the highest ethical conduct in all of its elected and appointed officials, and employees. [1 O.C. 103.1-1]. The Code of Ethics recognizes that government officials should demonstrate the highest standards of personal integrity, truthfulness, honesty, and fortitude in all public activities in order to inspire public confidence and trust in the governmental officials of the Nation [1 O.C. 103.3-2], and provides standards for:

- Interactions between government officials and their constituents, co-officials, and employees [1 O.C. 103.3-3];
- Administrative responsibilities and conduct of staff [1 O.C. 103.3-4];
- When a government employee should disqualify themselves from action or inaction [1 O.C. 103.3-5];
- The regulation of extra governmental activities to minimize the risk of conflict with duties of office [1 O.C. 103.3-6];
- Financial dealings of a government official [1 O.C. 103.3-7]; and
- Involvement with civic and charitable activities that do not interfere with the performance of official duties [1 O.C. 103.3-8].

Oneida Personnel Policies and Procedures

The Petition references a potential violation of the Oneida Blue Book, which is more formally known as the Oneida Personnel Policies and Procedures. No violation of the Oneida Personnel Policies and Procedures has occurred.

The Oneida Personnel Policies and Procedures provides various policies and procedures governing employment with the Nation. Members of the Oneida Business Committee are not subject to the Oneida Personnel Policies and Procedures, as they are elected officials and not employees.

In addition to the role and responsibilities of the Oneida Personnel Commission that were transferred to the Oneida Judiciary and Personnel Selection Committee through the emergency amendments, the Oneida Personnel Policies and Procedures contains additional provisions that prevent against nepotism, and require compliance with the Nation's policies on Oneida and Indian preference. [Oneida Personnel Policies and Procedures Section III(B)].

No violation of the Oneida Personnel Policies and Procedures has occurred.

Constitution and Bylaws of the Oneida Nation

Additionally, the Petition asserts that the Oneida Business Committee abused their power and directly violated the Oneida Constitution. The Oneida Business Committee did not violate the authority granted by the Constitution.

The Constitution and Bylaws of the Oneida Nation ("the Constitution") provides that the qualified voters of the Nation shall elect nine individuals to constitute the Oneida Business

Committee, and this Oneida Business Committee shall perform duties as may be authorized by the General Tribal Council. *[Article III, Section 3 of the Constitution]*.

The Constitution then goes on to further state that the General Tribal Council has the power to appoint committees, delegates, and officials deemed necessary for the proper conduct of tribal business or relations *[Article IV, Section 3(g) of the Constitution]*, as well as the power to charter subordinate organizations for economic purposes and to delegate to such organizations, or to any subordinate boards or officials of the Nation, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power. *[Article IV, Section 3(h) of the Constitution]*.

The Constitution is not explicit as to what specific responsibilities the General Tribal Council has delegated to the Oneida Business Committee. The General Tribal Council adopted the Legislative Procedures Act, which delegated authority to the Oneida Business Committee through to adopt legislation. *[1 O.C. 109.9-1(a), 109.9-2(a)]*. Since the Oneida Business Committee followed the process for dissolving an entity of the Nation as provided by the Comprehensive Policy Governing Boards, Committees, and Commissions, it can be presumed that the Oneida Business Committee did not violate the authority granted by the Constitution. *[1 O.C. 105.10-3]*.

Rescission of Oneida Business Committee Action

The Petition calls for the General Tribal Council to consider rescinding the adoption of Oneida Business Committee resolutions BC-04-11-18-A, BC-04-11-18-B, BC-04-25-18-D, BC-04-25-18-E, BC-04-25-18-F, BC-04-25-18-G, BC-04-25-18-H, which would essentially rescind the dissolution of the Oneida Personnel Commission, the creation of the Personnel Selection Committee, and all emergency amendments to related legislation.

In regards to the request for General Tribal Council to consider taking action to rescind the actions of the Oneida Business Committee, the Constitution does provide for the General Tribal Council to reserve the right to review any action taken by virtue of delegated power to a subordinate board or officials. *[Article IV, Section 3(h) of the Constitution]*.

There is no current legislation of the Nation that addresses a process for how or when General Tribal Council can review the actions of other boards or officials.

Suspension of Oneida Business Committee Members

The Petition also calls for the General Tribal Council to Consider taking corrective measures by suspending the Oneida Business Committee members that approved the mentioned resolutions for a period ninety (90) days without pay.

There is no current legislation of the Nation that provides a process for, or addresses, suspension of Oneida Business Committee members.

Although not provided for in legislation of the Nation, there has been at least one occurrence in the past where the General Tribal Council has suspended without pay members of the Oneida Business Committee. This is demonstrated through resolution GTC-10-02-82-A, in which the General Tribal Council suspended five (5) Oneida Business Committee members without pay for a period of three (3) weeks for taking action that violated the civil rights of a Tribal employee.

The form of enforcement that is utilized by most legislation of the Nation is removal, pursuant to the Nation's Removal law. Both the Nation's Code of Ethics and Comprehensive Policy Governing Boards, Committees and Commissions state that elected officials found in violation of the law may be subject to removal pursuant to the Removal law. [*1 O.C. 103.6-1(a); 1 O.C. 105.13-25*].

Additionally, the Constitution states that the "General Tribal Council may at its discretion remove any official on the Business Committee by a two-thirds majority vote at any regular or special meeting of the Tribal Council, pursuant to a duly adopted ordinance. Such ordinance shall fix the specific causes for removal and ensure that the rights of the accused are protected, including his receiving in writing a statement of the charges against him and assurance on sufficient notice thereof where he shall be afforded every opportunity to speak in his own defense." [*Article III, Section 3 of the Constitution*].

The General Tribal Council adopted the Removal law through resolution GTC-01-09-06-A, and then most recently amended the Removal law through resolution BC-05-28-14-B, for the purpose of governing the removal of persons elected to serve on boards, committees, or commissions of the Nation. [*1 O.C. 104*]. The Removal law provides the various grounds for removal [*1 O.C. 104.4*], the process for petitioning for a removal of an elected official [*1 O.C. 104.5*], the preliminary review of a petition of the removal [*1 O.C. 104.6*], the hearing for a petition for removal [*1 O.C. 104.7*], and the process for the General Tribal Council's consideration of the removal [*1 O.C. 104.8*]. Removal of any Oneida Business Committee member would be required to follow the processes and procedures contained in this law.

This Petition does not ask the General Tribal Council to consider the removal of any Oneida Business Committee members.

Conclusion

Adoption of the Petition: G. Powless – Oneida Personnel Commission Dissolution would result in no legislative impact.

A thorough review of all legislation of the Nation has demonstrated that the Oneida Business Committee's actions to adopt resolutions BC-04-11-18-A, BC-04-11-18-B, BC-04-25-18-D, BC-04-25-18-E, BC-04-25-18-F, BC-04-25-18-G, BC-04-25-18-H did not conflict, violate, or impact any current legislation of the Nation.

Although there was no conflict or impact to legislation based on the Oneida Business Committee's actions, it is within the enumerated powers of the General Tribal Council to review any action taken by officials that have been delegated power by the General Tribal Council. [*Article IV, Section 3(h) of the Constitution*].

Additionally, although the appropriate laws that were reviewed for the analysis of this Petition provide that removal pursuant to the Nation's Removal law be the enforcement for any violations of the law, current legislation of the Nation does not prevent the General Tribal Council from considering the suspension of an Oneida Business Committee member, even though there is no legislation of the Nation that would detail the process or procedure that would be required for that suspension.

Requested Action

Accept the legislative analysis of the Petition: G. Powless – Oneida Personnel Commission Dissolution.

July 2018

July 2018

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August 2018

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	Sun	Mon	Tue	Wed	Thu	Fri	Sat
Jul 1 - 7	Jul 1	2	3	4	5	6	7
	10:00am 2:00pm GTC (Radisson)						
Jul 8 - 14	8	9	10	11	12	13	14
			6:00pm 10:00pm GTC (Radisson)		1:00pm 2:00pm LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago		
Jul 15 - 21	15	16	17	18	19	20	21
			3:00pm 4:30pm LOC Prep (BC_Exec_Conf_Room) - LOC	9:00am 3:00pm LOC (BC_Conf_Room) - LOC			
Jul 22 - 28	22	23	24	25	26	27	28
				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)			
Jul 29 - Aug 4	29	30	31	Aug 1	2	3	4
		6:00pm 10:00pm GTC (Radisson)					

August 2018

August 2018						
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September 2018						
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	Sun	Mon	Tue	Wed	Thu	Fri	Sat
Jul 29 - Aug 4	Jul 29	30	31	Aug 1	2	3	4
				9:00am 3:00pm LOC (BC_Conf_Room) - LOC			
Aug 5 - 11	5	6	7	8	9	10	11
		1:30pm 4:00pm LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago					
Aug 12 - 18	12	13	14	15	16	17	18
		1:30pm 4:00pm LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago		9:00am 3:00pm LOC (BC_Conf_Room) - LOC			
Aug 19 - 25	19	20	21	22	23	24	25
		1:30pm 4:00pm LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	3:00pm 4:30pm LOC Prep (BC_Exec_Conf_Room) - LOC				
Aug 26 - Sep 1	26	27	28	29	30	31	Sep 1
			8:30am 11:00a m LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago				