



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

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

Comment 1 – Sanctions and Penalties Referendum:

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

Response

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

The July 2016 Special Election ballot contained a referendum question which asked, “*Should the BC develop a law which provides for sanctions and due process for elected officials?*” This referendum question was approved by a vote of one hundred and seventy-eight (178) to fifty-nine (59) during the July 2016 Special Election to be presented to General Tribal Council.

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

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

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

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee appreciates the gratitude for the work completed on this legislative item. The Legislative Operating Committee determined there is no revision to the Law necessary based on this comment.

Comment 2 – Purpose and Policy:

120.1. Purpose and Policy

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

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

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

Response

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

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

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

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

- Who may run for office with the Oneida Business Committee (must be age twenty-one (21) or over and physically reside in either Brown or Outagamie Counties);
- How many members may sit on the Oneida Business Committee (overall nine (9) members);

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

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

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

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

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

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee understands and supports the explanation as to why the Oneida Business Committee is subject to the provisions of the Sanctions and Penalties law, and not subject to the Boards, Committees, and Commissions law. The Legislative Operating Committee determined there is no revision to the Law necessary based on this comment.

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

120.1. Purpose and Policy

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

120.3. Definitions

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

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

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

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

Response

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

The Law is clear that members of the Oneida Business Committee are subject to the provisions of this Law. The Law states that the purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties. This law does not apply to judges of the Oneida Nation Judiciary. [1 O.C. 120.1-1]. The Law then goes on to define official as any person who is elected or appointed to serve on a board, committee or commission of the Nation, including the Oneida Business Committee. [1 O.C. 120.3-1(m)], and defines entity as a board, committee or commission of the Nation, including the Oneida Business Committee. [1 O.C. 120.3-1(i)].

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

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

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

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

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

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law necessary based on this comment.

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

120.1. Purpose and Policy

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

Lisa Liggins (oral): Lines 4 and 5 indicate the law applies to elected and appointed officials, including members of the Oneida Business Committee. Lines 5 and 6 state that the law does not apply to judges of the Judiciary. In the analysis, earlier in the meeting packet, there is a table that lists the 18 appointed and elected boards, committees and commissions to which this law applies

and the Legal Resource Center is not included. Chapter 8-11, which is the Legal Resource Center laws organized under Title 8, The Judiciary. Section 8-11.7 of the Legal Resource Center law covers discipline and removal of attorneys and advocates and states they are subject to disciplinary action pursuant to the Professional Conduct of Attorneys and Advocates law and any other law that governs discipline or removal of elected positions. So it's unclear to me if the Sanctions and Penalties law applies to the attorneys and advocates for the Legal Resource Center. If it does then perhaps just the analysis needs to be updated. If it does not, then I think that the language in Line 6 and 7 should to be updated.

Response

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

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

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

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

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

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

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

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

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

LOC Consideration

The Legislative Operating Committee discussed the application of this Law to the Legal Resource Center attorney and advocates and determined that the Legal Resource Center attorney and advocates should be subject to the provisions of this Law.

The Legislative Operating Committee determined that this Law should apply to the advocates and attorney in the Legal Resource Center because they are elected officials, and therefore there should be some general sanctions available for alleged misconduct not covered by the Professional Conduct of Attorneys and Advocates law.

The Legislative Operating Committee determined the definitions for both entity and official should be made more general than the recommended revision, and decided to include the following revision to the Law based on this comment:

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

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

Comment 5 – Application to All Boards of the Nation:

120.1. Purpose and Policy

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

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

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

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

Response

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

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

presumed that corporate boards, committees, and commissions of the Nation are subject to this Law.

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

1. Corporate boards, committees, and commissions of the Nation are subject to the provisions of this Law.
 - a. If the Legislative Operating Committee makes this determination then no revision to the Law would be necessary, but the Legislative Operating Committee could determine that the definitions for official and entity could be clarified to expressly state this includes corporate boards.
2. Corporate boards, committees, and commissions of the Nation are not subject to the provisions of this Law.
 - a. If the Legislative Operating Committee makes this determination, then the following revision is recommended:
120.1-1. Purpose. The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties.
(a) This law does not apply to judges of the Oneida Nation Judiciary.
(b) This law does not apply to corporate entities of the Nation.

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

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

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

LOC Consideration

The Legislative Operating Committee determined that the provisions of this Law should not apply to corporate boards, committees, or commissions of the Nation as there should be some separation between the actions and governance of the Nation and the corporate entities.

The Legislative Operating Committee is currently developing a law regarding corporations that will be able to address these concerns, and many other issues specific to corporate entities of the Nation.

The Legislative Operating Committee decided the following revision should be made to the Law based on this comment:

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

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

(b) This law does not apply to corporate entities of the Nation.

Comment 6 – Removal of the Nation’s Core Values:

120.1. Purpose and Policy

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

- (a) Kahletsyalúsla. The heart felt encouragement of the best in each of us.**
- (b) Kanolukhwásla. Compassion, caring, identity, and joy of being.**
- (c) Ka’nikuhli’yó. The openness of the good spirit and mind.**
- (d) Ka’tshatstásla. The strength of belief and vision as a People.**
- (e) Kalihwi’yó. The use of the good words about ourselves, our Nation, and our future.**
- (f) Twahwahtsílawayá. All of us are family.**
- (g) Yukwatsístayá. Our fire, our spirit within each one of us.**

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

Response

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

The Legislative Operating Committee made the determination to include the Nation’s core values of The Good Mind as expressed by Onlayote’a’ka in the section of this Law that provides for the purpose and policy in an effort to set a tone that officials of the Nation are expected to behave in

a manner than promotes and exhibits the Nation's core values. The Legislative Operating Committee wanted to be clear that it is when an official fails to exhibit the Nation's core values that the allegations of misconduct arise, and the process for filing and determining a complaint against an official as provided for by this Law are used.

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

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

LOC Consideration

The Legislative Operating Committee made the decision that the Nation's core values should remain in the Law in section 120.1-3, as this sets the tone for the Law regarding the expectation for how officials behave and conduct themselves.

The Legislative Operating Committee felt the suggestion to include the Nation's core values on the application for an elected and/or appointed position is a great idea. The inclusion of the Nation's core values on an application informs a person right away when they are first considering serving an elected or appointed position of the expectations that will be placed on himself or herself so that the person can make a determination as to if he or she can meet those expectations.

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comment 7 – Definition of Day:

120.3. Definitions

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

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

120.8. Sanctions and Penalties

120.8-2. Sanctions and penalties may include:

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

Matthew W. Denny (oral): Afternoon. My first comment has to do with the definitions. What's missing is the fact that there are no, when you mention what days in the suspension or in here, I

would like it defined whether you are talking about working days or calendar days, because there is a big difference in regards to suspension and that kind of stuff. So I would like to see the definition of days or otherwise be defined within whatever section is referencing days in the law.

Response

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

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

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

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

LOC Consideration

The Legislative Operating Committee determined that the reference to suspension should be clarified to mean business days. Therefore, the Legislative Operating Committee determined the following revision should be made to the Law based on this comment:

120.8-2. Sanctions and penalties may include:

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

The Legislative Operating Committee also determined that overall the Law should use business days instead of calendar days when providing timelines. The Legislative Operating Committee will review the Law and make all necessary revisions as to the designation of what day means.

Comment 8 – Terminology:

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

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

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

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

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

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

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

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

Response

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

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

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

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

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

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

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

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

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

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

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

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

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee discussed the use of the term complaint and charge and determined that the term charge may have a more negative connotation than complaint. The Legislative Operating Committee determined that the term complaint shall remain in the Law.

The Legislative Operating Committee also determined that the Law should not be amended to require the individual making the complaint to sign a written statement under oath, since the Law already requires the complainant to provide 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.

Comments 9 through 10 – Definition of Misconduct:

120.4. Misconduct

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

- (a) a violation of the Constitution or any of the Nation's laws, policies, or rules;

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

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

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

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

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

Response

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

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

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

[1 O.C. 120.1-3].

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

The Law then states that misconduct includes:

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

[1 O.C. 120.4-2].

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

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

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

The Legislative Operating Committee may determine whether:

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

LOC Consideration

The Legislative Operating Committee discussed the fact that throughout the development of this proposed Law there was much discussion surrounding how much detail to include in regard to what constitutes misconduct. The Legislative Operating Committee determined that the Law should remain as currently drafted and allow for flexibility in the interpretation of what constitutes misconduct.

Additionally, the Legislative Operating Committee discussed that fact that this Law is not being developed to address any specific behavior that is occurring today, but instead is being developed with the understanding that there should be a process for how complaints against elected and appointed officials are handled.

Comment 11 – Process For Filing a Complaint:

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

Response

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

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

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

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

subject the complainant to a fine or prohibition against filing another complaint. [1 O.C. 120.6-5(c)(2)(A)];

7. All complaints of alleged misconduct have to be proved by clear and convincing evidence. [1 O.C. 120. 6-6, 120.7-2];
8. Appeals of both the Oneida Business Committee and Trial Court decisions are appealable to the Nation's Court of Appeals. [1 O.C. 120. 6-9, 120.7-4]; and
9. The resignation of an official after a complaint has been filed against the official shall not affect the status of the hearing and determination by either the Oneida Business Committee or Trial Court. [1 O.C. 120.9-1].

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

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

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

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

LOC Consideration

The Legislative Operating Committee believes the Law is both fair to the individual making a complaint, and to the official that is accused of misconduct. Therefore, the Legislative Operating Committee determined there is no revision to the Law necessary based on this comment.

Comment 12 – Who May File a Complaint:

120.5. Filing of a Complaint

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

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

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

Response

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

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

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee believes that the response adequately clarifies the commenter's question, and no revision to the Law is needed based on this comment.

Comment 13 – Statute of Limitations:

120.5. Filing of a Complaint

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

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

Response

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

There is no recommended revision based on this comment.

LOC Consideration

Due to the fact that the Law provides that a complaint may be filed as long as the alleged misconduct has occurred, or was discovered to have occurred, within the previous ninety (90) days, the Legislative Operating Committee determined that no revision to the Law is needed based on this comment.

Comment 14 – Where to File a Complaint:

120.5. Filing of a Complaint

120.5-4. *Where to File.*

- (a) *Appointed Official.* Complaints against an appointed official shall be filed with the Business Committee Support Office.
- (b) *Elected Official.* Complaints against an elected official shall be filed with the Nation's Trial Court.

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

Response

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

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

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

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

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

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee agrees that no conflict exists between the legislative analysis and the proposed draft of the Law. Therefore, the Legislative Operating Committee determined that no revision to the Law is necessary based on this comment.

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

120.5. Filing of a Complaint

120.5-4. Where to File.

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

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

Response

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

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

There is no revision recommended based on this comment.

LOC Consideration

The Legislative Operating Committee is confident in the policy determination that complaints against an elected official should be filed and heard by the Trial Court. Therefore, the Legislative Operating Committee determined that no revision to the Law is necessary based on this comment.

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

120.5. Filing of a Complaint

120.5-4. Where to File.

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

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

Rae Skenandore (written): Complaints. For more minor infractions, has the Committee considered pushing some authority down to the BCC's Chairperson? That person is in a leadership role and has some responsibility for the actions of those on their BCC. For more major infractions the Chair or the entire BCC should be required to be a mandatory reporter. Again, some sort of training of unacceptable behaviors/action should be offered. Again, the development of an expected code of conduct for elected or appointed officials.

Response

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

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

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

1. The Legislative Operating Committee decided not to delegate authority to boards, committees, and commissions to handle allegations of misconduct against a fellow member due to the potential for conflicts of interest to arise. The Legislative Operating Committee had concerns that the individual making the complaint would fear that a complaint will not be taken seriously if it is submitted to someone who works closely with the individual alleged to have engaged in misconduct.
2. The Legislative Operating Committee decided not to delegate authority to boards, committees, and commissions to handle allegations of misconduct against a fellow member due to the desire for consistency in how complaints made against an official are handled. There are currently nearly twenty (20) different elected or appointed entities. Instead of allowing for the potential for allegations of misconduct to be addressed in different ways and by different standards by each entity, the Legislative Operating Committee determined that all complaints for appointed officials should go to the Oneida Business Committee, and all complaints against elected officials should go to the Trial Court. This results in only two (2) bodies handling allegations of misconduct and interpreting this Law instead of upwards of twenty (20). This will lead to consistency in how allegations of misconduct are filed and handled, and how sanctions and penalties are imposed.
3. The Legislative Operating Committee decided not to delegate authority to boards, committees, and commissions to handle allegations of misconduct against a fellow member due to the fact that the Boards, Committees, and Commissions law already allows a board, committee, or commission of the Nation to develop standards in their bylaws that address specific behavioral expectations and how the entity will enforce those behavioral expectations. [1 O.C. 105.10-3(d)(1)]. This means that a board, committee, or commission of the Nation already has the authority to create and enforce internal processes on handling complaints of misconduct. Although each board, committee, or commission of the Nation has the ability to set standards for misconduct for officials and how misconduct will be addressed as an individual entity, the Legislative Operating Committee still felt it was important to provide an impartial and consistent process for those who wish to make a complaint of misconduct outside of the individual entity on which the official serves. Although the Boards, Committees, and Commissions law does not apply to every official of the Nation, there is nothing that prohibits any other entity of the Nation from developing internal policies and procedures that address this issue.

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

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

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee echoes the response to this comment, and believes that an adequate explanation as to why the Legislative Operating Committee did not choose to delegate authority to the chairperson of a board, committee, or commission to handle complaints against a fellow elected or appointed official was provided.

Ultimately, the Legislative Operating Committee determined that no revision to the Law is necessary based on this comment.

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

120.6. Complaints Alleged Against an Appointed Official

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

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

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

Response

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

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

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

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

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

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

LOC Consideration

The Legislative Operating Committee determined that complaints against appointed officials should remain with the Oneida Business Committee, as is currently drafted in the Law. The Legislative Operating Committee also discussed the fact that the process will be consistent because there are only two bodies handling complaints.

Comment 18 – Retaliation Based on a Complaint:

120.5. Filing of a Complaint

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

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

Response

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

The Law addresses this very issue and prohibits retaliation against any individual who makes a complaint or is a party or witness to a complaint. [1 O.C. 120.5-5]. This protection from retaliation

is also afforded to any person offering testimony or evidence or complying with directives authorized under this Law. [1 O.C. 120.5-5]. The Law then clarifies that retaliation is any form of adverse or punitive action by or caused by, any official. [1 O.C. 120.5-5].

There is no recommended revision based on this comment.

LOC Consideration

Due to the fact that the Law already addresses retaliation, the Legislative Operating Committee determined that no revision to the Law would be necessary based on this comment.

Comment 19 – Enforcement of Prohibition of Retaliation:

120.5. Filing of a Complaint

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

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

Response

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

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

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

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

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

LOC Consideration

The Legislative Operating Committee determined that Law should be revised to include clarifying information on how retaliations will be handled, and therefore, the following revisions should be made to the Law:

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

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

Comment 20 – Timelines for Initial Review:

120.6. Complaints Alleged Against an Appointed Official

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

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

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

Response

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

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

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

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

LOC Consideration

The Legislative Operating Committee determined the following revision should be made to the Law to clarify that the initial review is to occur within thirty (30) days after the receipt of a complaint:

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

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

Comment 21 – Recusal Based on Conflict of Interest:

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

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

Travis Wallenfang (written): *[Referencing Lines 132 133, 134,135, Conflict of Interest. If a member of the Oneida Business Committee (BC) has a conflict of interest regarding a complaint, they must recuse themselves and not participate in the review or hearings. If a member of the BC fails to recuse themselves, that member may be subject to sanctions and penalties under this law. (Page 5)].*

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

Response

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

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

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

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

LOC Consideration

The Legislative Operating Committee determined the following revision should be made to the Law to clarify that an Oneida Business Committee member that recuses himself or herself due to a conflict of interest, shall not participate in any part of the complaint process:

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

Comment 22– Notice of Investigatory Hearing:

120.6. Complaints Alleged Against an Appointed Official

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

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

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

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

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

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

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

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

Response

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

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

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

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

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

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

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

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

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

LOC Consideration

The Legislative Operating Committee determined the following revision should be made to the Law to add a provision that requires the Business Committee Support Office to notice the complainant and official of the investigatory hearing:

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

Comment 23 – Recording of an Investigatory Hearing:

120.6. Complaints Alleged Against an Appointed Official

120.6-6. *Investigatory Hearing.* The investigatory hearing shall occur within thirty (30) days after the initial review has concluded. The investigatory hearing shall take place during the executive session portion of the agenda of a regular or special meeting of the Oneida Business Committee. The purpose of the investigatory hearing is for the Oneida Business Committee

to determine if there is enough evidence to substantiate the allegations of misconduct by clear and convincing evidence.

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

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

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

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

120.10. Record of Conduct in Office

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

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

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

(b) the outcome of the complaint, and

(c) any sanctions or penalties imposed upon an official.

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

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

Response

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

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

The Nation's Open Records and Open Meetings law recognizes that there are discussions during meetings and/or records produced in the course of governmental business that are sensitive in

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

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

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

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

LOC Consideration

The Legislative Operating Committee discussed the fact that the recording of the Oneida Business Committee's investigatory hearing falls in line with the requirement that proceedings at the Trial Court be generally recorded by audio, video, or other means such that an accurate transcript may be produced when needed or requested. [8 O.C. 803.32-1]. The Legislative Operating Committee wanted to ensure that there would be a record of the investigatory hearing that could be utilized in the future if necessary, much like there is a recording of the Trial Court's hearings. The Legislative Operating Committee intended that the recording of the investigatory hearing would be maintained by the Business Committee Support Office in the official's record of conduct. The Legislative Operating Committee determined the following revision should be made to the Law to clarify that records from hearings and proceedings will be included in the official's record of conduct:

- 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) recording and/or transcript from any hearings and/or proceedings;
 - ~~(b)~~ (c) the outcome of the complaint, and
 - ~~(c)~~ (d) any sanctions or penalties imposed upon an official.

Comment 24 – Who Imposes a Sanction:

120.6. Complaints Alleged Against an Appointed Official

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

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

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

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

(1) the complainant,

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

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

120.7. Complaints Alleged Against an Elected Official

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

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

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

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

Response

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

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

There is no recommended revision based on this law.

LOC Consideration

The Legislative Operating Committee determined that the Law is clear that Oneida Business Committee shall determine and impose appropriate sanctions and/or penalties against appointed officials, and the Trial Court shall determine and impose any sanctions and/or penalties against elected officials. Therefore, no revision to the Law is necessary based on this comment.

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

120.7. Complaints Alleged Against an Elected Official

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

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

Response

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

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee determined that there was no revision to the Law necessary based on this comment.

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

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

Response

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

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

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

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

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee has determined that there is no revision to the Law needed based on this comment.

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

120.8. Sanctions and Penalties

120.8-2. Sanctions and penalties may include:

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

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

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

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

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

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

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

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

Response

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

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

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

LOC Consideration

The Legislative Operating Committee agreed with the commenter that the Law should be clarified to provide for who would read a verbal reprimand if it is the Oneida Business Committee Chairperson who is being reprimanded. The Legislative Operating Committee wanted the Law to be more flexible than the recommended revision, and directed that the following revision be made to the Law:

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

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

120.8. Sanctions and Penalties

120.8-2. Sanctions and penalties may include:

(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.

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

Response

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

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

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

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

3. Proceeding with fulfilling the requirements for termination of appointment pursuant to the Boards, Committees, and Commissions law, if an appointed official.

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

LOC Consideration

The Legislative Operating Committee determined that the Law could be clarified to state the options for responding to an official who does not comply with the provisions of this Law. The Legislative Operating Committee determined the following revision should be made to the Law:

120.8-5. An official who does not comply with a sanction and/or penalty that has been imposed against him or her by either the Oneida Business Committee or Trial Court may be subject to the following:

- (a) additional sanctions and/or penalties that result from a compliant of misconduct filed in accordance with this Law based on the non-compliance;
- (b) termination of appointment by the Oneida Business Committee in accordance with the Nation's laws and policies governing boards, committees, and commissions, if the official was appointed to his or her position; and/or
- (c) removal in accordance with the Nation's laws and policies governing removal, if the official was elected to his or her position.

Comment 29 – Conditional Use of Public Apologies:

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

Response

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

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

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

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

LOC Consideration

Although the Legislative Operating Committee determined that the conditional use of certain sanctions and/or penalties could occur without revisions to the Law, that Legislative Operating Committee wanted to ensure that this point is included in the Law so that all future readers of the Law are aware that the conditional use of a sanction and/or penalty is possible. Therefore, the Legislative Operating Committee determined that the following revision should be made to the Law based on this comment:

120.8-4. The Oneida Business Committee and/or the Trial Court may impose a sanction and/or penalty on a conditional basis, whereas compliance with a specific sanction and/or penalty shall prevent the imposition of a more stringent or burdensome sanction and/or penalty.

Comments 30 through 31 – Simplify Suspension Language:

120.8. Sanctions and Penalties

120.8-2. Sanctions and penalties may include:

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

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

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

sixty (60) days. The period of time must run consecutively. Suspensions may be imposed once per complaint.

Response

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

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

LOC Consideration

The Legislative Operating Committee determined that the language in this section of the Law could be simplified, and therefore the following revision should be made:

120.8-2. Sanctions and penalties may include:

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

Comments 32 through 33 – Timeframe for Suspensions:

120.8. Sanctions and Penalties

120.8-2. Sanctions and penalties may include:

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

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

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

Response

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

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

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

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

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

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

120.8-2. Sanctions and penalties may include:

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

LOC Consideration

The Legislative Operating Committee agreed with the commenters that the sixty (60) maximum suspension time could be considered excessive. Boards, committees, and commissions of the Nation provide important government functions, the Legislative Operating Committee does not want the work of a board, committee, or commission to be affected, due to a loss of quorum or other reasons, for up to sixty (60) days due to a suspension. The Legislative Operating Committee

determined that suspensions should be allowed for a maximum of fifteen (5) business days, which would be consistent with the suspension policy for employees of the Nation.

Additionally, the Legislative Operating Committee determined that the Law should be amended to address the fact that there are some officials that serve in a full-time capacity, and reference suspensions in terms of days and meetings.

The Legislative Operating Committee decided the following revision should be made to the Law as a result of these comments:

(d) *Suspension.* An official may be suspended from performing his or her duties as an official for ~~one (1) consecutive~~ a period of time, not to exceed two (2) meetings, or fifteen (15) sixty (60) days, if the official serves in a full-time capacity.

Comment 34 – Community Service instead of Suspension:

120.8. Sanctions and Penalties

120.8-2. Sanctions and penalties may include:

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

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

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

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

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

Response

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

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

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

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

LOC Consideration

The Legislative Operating Committee determined that it is sufficient that the Law allows for community service as an alternative to paying a fine, therefore, no additional revision to the Law is needed based on this comment.

Comment 35 – Should Suspension be a Sanction:

120.8. Sanctions and Penalties

120.8-2. Sanctions and penalties may include:

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

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

Response

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

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

The Legislative Operating Committee made an effort to include a wide variety of potential sanctions and penalties that could be imposed against an official in an effort to provide options to address any potential act of misconduct that may arise. The Law allows the Oneida Business Committee and the Trial Court the opportunity to impose a single sanction and/or penalty, or a

combination of sanctions and/or penalties. [1 O.C. 120.8-1]. The Law then provides guidance to the Oneida Business Committee and the Trial Court in what factors to consider when determining the appropriate sanction and/or penalty to impose. [1 O.C. 120.8-3].

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

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

LOC Consideration

The Legislative Operating Committee determined that suspension should remain in the Law as a potential sanction and penalty that may be imposed against an official. The Legislative Operating Committee wanted to ensure that there were a variety of options for sanctions and/or penalties available under the Law so that every act of misconduct can be addressed in the most appropriate way.

Although the intent of the Law is not to prevent an official from serving in his or her official capacity, the Legislative Operating Committee recognized that there might be a situation that arises in which a more serious sanction such as suspension would be needed to address the action of the official, and to ensure the official does not engage in that behavior again.

When reviewing this comment, the Legislative Operating Committee discussed the possibility of an individual filing a complaint against all members of a board, committee, or commission at the same time, and therefore the possibility that a suspension could be imposed against all members of a board, committee, or commission. The Legislative Operating Committee determined that in the interest of protecting a board, committee, or commission's ability to conduct business, a provision should be added to the Law that states if multiple members of a board, committee, or commission are suspended the suspensions should be staggered.

The Legislative Operating Committee determined the following provision should be added to the Law:

(d) *Suspension.* An official may be suspended from performing his or her duties as an official for a period of time, not to exceed two (2) meetings, or fifteen (60) business days if the official serves in a full-time capacity.

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

Comment 36 – Restitution:

120.8. Sanctions and Penalties

120.8-2. Sanctions and penalties may include:

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

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

Response

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

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

LOC Consideration

The Legislative Operating Committee agrees that the revision be made to the Law.

Comments 37 through 38 - Amount of Fines:

120.8. Sanctions and Penalties

120.8-2. Sanctions and penalties may include:

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

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

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

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

Response

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

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

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

LOC Consideration

The Legislative Operating Committee discussed at length what the maximum amount for a fine should be and was split in regards to opinions on how to move forward with this policy consideration.

Some members of the Legislative Operating Committee agreed with the commenters that the five thousand dollar (\$5,000) maximum fine could be considered excessive, and if an official engages in misconduct that warrants a five thousand dollar (\$5,000) fine, that official should probably face termination or removal.

Other members of the Legislative Operating Committee felt the five thousand dollar (\$5,000) maximum fine amount should remain in the Law due to the fact that even if the misconduct of the official rises to the level that termination of appointment or removal is sought, that should not prevent a fine from being imposed in addition to that termination of appointment or removal.

Ultimately, the Legislative Operating Committee compromised amongst themselves and determined the following revision should be made to the Law based on these comments:

120.8-2. Sanctions and penalties may include:

- (f) *Fines.* An official may be ordered to pay a fine not to exceed ~~five~~ two thousand ~~and~~ five hundred dollars (~~\$25,500~~) per act of misconduct.

Comment 39 – Fines Per Act of Misconduct:

120.8. Sanctions and Penalties

120.8-2. Sanctions and penalties may include:

- (f) *Fines.* An official may be ordered to pay a fine not to exceed five thousand dollars (\$5,000) per act of misconduct.
- (1) Fines shall be paid to the Trial Court.
 - (2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later. Cash shall not be accepted for payment of fines. If the fine is not paid by this deadline, the Trial Court may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process.
 - (3) Money received from fines shall be deposited into the General Fund.

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

Lisa Liggins (written): Line 293 - regarding Fines. This section states fines can be imposed "per act". This is the only sanction or penalty that is specifically imposed "per act". Is it the intent that the others are imposed "per complaint"? If so, then maybe language should be added to line 242 of the main section which indicates all except fines may imposed "per complaint". Or could any of the other sanctions and penalties also be imposed "per act"? Another option might be to include "per complaint" or "per act" language to each sanction or penalty.

Response

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

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

120.8-2. Sanctions and penalties may include:

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

LOC Consideration

The Legislative Operating Committee made the decision to remove the qualifier that fines are imposed per act of misconduct due to the fact that a sanction or sanctions will be imposed as a result of a complaint as a whole. The Legislative Operating Committee determined the following revision should be made to the Law as a result of this comment:

120.8-2. Sanctions and penalties may include:

- (f) *Fines.* An official may be ordered to pay a fine not to exceed two thousand and five hundred dollars (\$2,500) ~~per act of misconduct~~.

Comment 40 – Cultural Context of Fines:

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

Response

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

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

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

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

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

LOC Consideration

The Legislative Operating Committee determined that fines should remain in the Law as a potential sanction that can be imposed against an official who engaged in misconduct, and therefore no revision to the Law is necessary based on this comment.

Comment 41 – Loss of Stipends:

120.8. Sanctions and Penalties

120.8-2. Sanctions and penalties may include:

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

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

Response

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

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

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

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

LOC Consideration

The Legislative Operating Committee determined that the Law should be amended to make the maximum amount of time an official may be ordered to forfeit a stipend consistent with the maximum amount of time an official may be ordered to be suspended for. The Legislative Operating Committee directed that the following revision be made to the Law:

120.8-2. Sanctions and penalties may include:

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

Comment 42 – Application of the Loss of Stipend:

120.8. Sanctions and Penalties

120.8-2. Sanctions and penalties may include:

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

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

what difference would it make if they had the stipend withheld from each until the twelve (12) were met?

Response

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

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

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

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

LOC Consideration

The Legislative Operating Committee determined that the Law should remain as currently drafted and not address whether the time period for the loss of stipends should apply to only the entity the official serves on that was related to the complaint or apply to all entities an official may serve on. The Legislative Operating Committee made this decision based on the desire to allow for flexibility and discretion in the Oneida Business Committee or Trial Court's decision of whether the loss of stipends only applies to meetings of one position or meetings of all positions of an official, in recognition of the fact that a multitude of situations may arise that could potentially be addressed in a variety of manners.

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

120.8. Sanctions and Penalties

120.8-2. Sanctions and penalties may include:

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

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

Response

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

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

The Law provides a variety of potential sanctions and penalties that can be applied to officials of the Nation that engage in misconduct, and the discretion to determine which sanction and/or penalty is appropriate is left up to either the Oneida Business Committee or the Trial Court. [1 O.C. 120.8]. Not every sanction will be applicable to every elected or appointed official, and not every sanction has to be used.

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

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

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

LOC Consideration

The Legislative Operating Committee made the determination that the Law should remain as currently drafted due to the fact that although the loss of a stipend sanction would not apply to the Oneida Business Committee or Oneida Gaming Commission members who serve in a full-time capacity, there are other sanctions and penalties that would apply. The Legislative Operating Committee understands that not every sanction allowed under the Law will be appropriate for every official.

Comment 44 – Prohibition from Office:

120.8. Sanctions and Penalties

120.8-2. Sanctions and penalties may include:

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

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

Response

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

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

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

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

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

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

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

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

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

The Legislative Operating Committee determined that a prohibition from office could be a sanction that is imposed against appointed officials that are terminated from office due to the fact that appointed officials serve at the discretion of the Oneida Business Committee. [1 O.C. 105.7-4, 1 O.C. 120.6-1]. Therefore, it is within the authority of the Oneida Business Committee to make a decision that an individual will not be reconsidered to serve an appointment for a period of time.

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

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

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

LOC Consideration

During the discussion of this comment, the Legislative Operating Committee echoed their original concerns of not inhibiting a person's right to run for an elected position of the Nation. In an effort to eliminate any concerns about consistency, the Legislative Operating Committee made the decision to eliminate this provision from the Law.

120.8. Sanctions and Penalties

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

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

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

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

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

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

Response

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

Through the development of this Law the Legislative Operating Committee spent a lot of time discussing how sanctions and penalties should be imposed upon officials who have been found to have participated in some form of misconduct. The Legislative Operating Committee debated

whether the Law should provide an exhaustive list of potential misconduct, and then prescribe specific sanctions and penalties for each type of misconduct. Ultimately, the Legislative Operating Committee made the decision to keep what constitutes misconduct and what sanctions and penalties should be imposed against an official as open as possible to allow for flexibility in addressing whatever situation arises.

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

1. the seriousness or severity of the misconduct;
2. whether the conduct was intentional or not;
3. the likelihood of repetition;
4. the extent of probable damage to the finances or reputation of the Nation, the complainant, the entity, or to any other person or organization;
5. whether the official or his or her family personally profited, financially or otherwise, from the prohibited conduct;
6. the official's remorse, or
7. the official's willingness and ability to take steps to mitigate the harm caused by the violation, and
8. any prior complaints filed, including any previous sanctions and penalties imposed upon the official while serving on an entity.

[1 O.C. 120.8-3].

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

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

LOC Consideration

During the discussion of this comment the Legislative Operating Committee considered the many discussions that had taken place throughout the development of this Law regarding how to impose sanctions. The Legislative Operating Committee ultimately decided that the Law should remain as drafted and allow for discretion and flexibility in the Oneida Business Committee and Trial Court's determination of what sanction and/or penalty should be imposed on an official.

The Legislative Operating Committee made this decision based on the fact that the intent of this Law is to find a sanction and/or penalty that would most appropriately addresses the specific misconduct of the official. It would be impossible to come up with an exhaustive list of behaviors and actions that constitute misconduct to match up with prescribed sanctions. The Legislative Operating Committee therefore, cannot determine all behaviors and actions that may constitute

misconduct and what sanction and/or penalty would be most appropriate based on the facts of the complaint, it would be better for the Law to allow for flexibility.

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

120.10. Record of Conduct in Office

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

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

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

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

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

Response

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

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

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

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

LOC Consideration

The Legislative Operating Committee reflected on the fact that the ten (10) year requirement was originally included in the Law in the desire to ensure that the record of conduct was maintained for a period of time that spanned a couple terms, with the understanding the average term length is three (3) years.

The Legislative Operating Committee ultimately determined that the following revision should be made to the Law to make the provisions of this Law consistent with the requirement that the

Records Management Department maintain all records for a period of at least seven (7) years in accordance with the Nation's Open Records and Open Meetings law:

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

Comment 49 – Mistreatment of Record of Conduct in Office:

120.10. Record of Conduct in Office

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

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

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

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

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

Response

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

The Law requires the Business Committee Support Office to maintain an official's record of conduct in office for a period of no less than ten (10) years. [1 O.C. 120.10-3]. If a member of the Oneida Business Committee directed the destruction or alteration of a record before the ten (10) year timeframe required by this Law has expired, then that would be a direct violation of this Law and the official would be subject to sanctions and/or penalties under this Law.

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

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

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comment 50 – Confidentiality:

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

Response

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

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

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

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

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

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

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

LOC Consideration

The Legislative Operating Committee discussed the issue of confidentiality and determined that a provision should be added to the Law to clarify that all complaints alleged against an official should be treated as confidential. All hearings and proceedings, whether with the Oneida Business Committee or the Trial Court, should be closed to the public, and the only information that should be available to the public is the result of the complaint and what, if any, sanctions are imposed on an official. The Legislative Operating Committee desires to prevent any frivolous or unfounded complaints from damaging the reputation of an official.

The Legislative Operating Committee determined the following revision should be made to the Law:

120.5-7. Confidentiality. All complaints alleged against an official of the Nation shall be handled in a confidential manner.

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

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

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

Comment 51 – Conflict Resolution Alternatives:

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

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

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

Response

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

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

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

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

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

LOC Consideration

The Legislative Operating Committee determined that a provision should be added to the Law to allow for mediation during the process of handling complaints against an appointed official, much like the Trial Court allows for mediation or peacemaking during the process of handling a complaint against an elected official. The Legislative Operating Committee discussed the fact that mediation and/or peacemaking falls in line with traditional values, and therefore, should be provided as an option.

The Legislative Operating Committee directed the following revision be made to the Law regarding mediation:

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

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

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

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

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

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

The Legislative Operating Committee also discussed the commenter's suggestion to allow for mandatory participation in trainings to be imposed against an official as a sanction and/or penalty. The Legislative Operating Committee determined that it is important to have a wide range of potential sanctions and/or penalties available to address whatever situation of misconduct arises in the future. Therefore, the Legislative Operating Committee decided to amend the Law to allow for mandatory participation in training to be used as a potential sanction, and directed that the following revision be made to the Law based on this comment:

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

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

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

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

Response

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

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

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

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

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

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

There is no recommended revision based on this law.

LOC Consideration

The Legislative Operating Committee agrees that there is no revision to the Law needed based on this comment due to the fact that a reference to the Oneida Judiciary Rules of Civil Procedure, instead of the duplication of process, allows the most flexibility for this Law to remain current and consistent with the procedures and processes the Trial Court utilizes.

Comment 53 – Judiciary:

Rae Skenandore (written): Judiciary. Title 8. Judiciary - Chapter 801 Section 801.12. Reprimand, Suspension and Removal of Judges along with the Canons of Judicial Ethics contains a process and criteria for complaints against Judges. Sanctions and penalties should have mirrored the already established process & not attempted to reinvent the wheel. Instead of sanctions and

penalties, what should have been updated/created first is a Governmental Ethics Ordinance that includes all of these areas and a standard of conduct for elected officials.

Response

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

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

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

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee determined that there is no recommended revision based on this comment.

The Legislative Operating Committee also wished to highlight the fact that the complaint process for judges which is currently included in the Judiciary law requires that when a complaint is filed against a judge a disciplinary panel of five (5) pro tem judges shall handle the complaint and be comprised of individuals who:

1. Are currently serving as a judge for any tribal court located in the state of Wisconsin, but not the Nation's Judiciary;
2. Are not enrolled members of the Nation;
3. Are not related to the judge or complainant involved in the complaint; and
4. Does not maintain or has not previously maintained a personal or professional relationship with either the judge facing the complaint, or with the complainant.

[8 O.C. 801.11-11(a)(2)]

The Legislative Operating Committee determined it would be unnecessary to subject a complaint against an official of the Nation to the stringent requirements for the creation of a disciplinary panel as required for a complaint against a judge.

Comments 54 through 56 – Code of Ethics:

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

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

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

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

Response

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

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

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

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

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

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

1. Boards, Committees, and Commissions law [1 O.C. 105];
2. Removal law [1 O.C. 104];
3. Conflict of Interest law [2 O.C. 217];
4. Social Media Policy [2 O.C. 218]; and
5. Oneida Travel and Expense Policy [2 O.C. 219].

There is no recommended revision based on these comments.

LOC Consideration

The Legislative Operating Committee determined that no revision to the Law, or to the plan to bring this law forward for General Tribal Council's consideration, is needed based on this comment due to the fact that the Nation already has a Code of Ethics, as well as many other laws that address expectations for the behavior of an official.

Additionally, the Legislative Operating Committee has already made the effort to add the Code of Ethics to the Active Files List with the intent of updating the Law, and will be working on improving this piece of legislation.

Comment 57 – Ethics Training :

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

Response

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

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

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

LOC Consideration

The Legislative Operating Committee made the decision that at this point in time there will be no creation of an ethics training for officials of the Nation.

The Legislative Operating Committee based this decision on a discussion surrounding the fact that it is not the responsibility of this Law to build character in officials of the Nation, as this Law simply provides for how misconduct is addressed when it occurs. Every official of the Nation is provided the standards he or she will be expected to meet through the various laws, policies, and bylaws of the Nation, and it will be up to that individual person to ensure that his or her behavior meets those standards.

The Legislative Operating Committee then discussed the fact that information on the various expectations an official is required to meet can be provided by the specific board, committee, or commission of the Nation when an official is sworn in.

Comment 58 – Additional Research:

Travis Wallenfang (written): *[Referencing Lines 23,24,25,26,27,28,29,30,31,32,33,34, SECTION 3. CONSULTATION AND OUTREACH - A. The Rules of Civil Procedure, Rules of Appellate Procedure, Judiciary Law, Code of Ethics, Open Meetings and Open Records Law, and Comprehensive Policy on Boards Committees and Commissions were reviewed in drafting this analysis. In addition, the following laws were reviewed in drafting this analysis: (Page 2)*

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

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

Response

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

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

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

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

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comment 59 – Additional Research Specific to Culture:

Travis Wallenfang (written): Proof of Oneida Custom Tradition, & Culture- all components are essential In determining what if any limitations period applies under Oneida Nations law, the laws and rules interpretations of such laws and rules as the law of the Oneida Nation of Wisconsin, the Oneida Nation needs to discuss the a application of customary law to identify methods of finding, analyzing and applying customary Law in order to discern the strengths and weakness of their methods.

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

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

Response

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

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comment 60 – SOP Instead of a Law:

Brian Doxtator (oral): I also talked to previous leaders, whether they be a board, committee or commission or the Business Committee and one of the recommendations was to take just the

sanctions and penalties, create an SOP and implement it immediately, let it run for about a three year period of time, just on the Business Committee, not other boards, committees and commissions. At the end of that election period assess it to see what worked, what didn't work and then draft a law for consideration of the new Business Committee, then to be placed across the realm of the Nation of all appointed boards, committees and commissions and elected officials. So I guess it feels like when we start implementing the large fines and the suspensions and all this stuff it went against, not against, I apologize, it kind of became more of a big huge book and a really nice undertaking of the LRO as well as the LOC, I am recommending going back to just the sanctions and penalties, applying it just to the Business Committee immediately and not all other boards, committees and commissions. Move forward and then assess it at the end of this term and then give to the next Business Committee the consideration to adopt this recommended law and so forth. That's my thinking.

Response

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

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

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

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comment 61 – Officials are not Employees:

Brian Doxtator (oral): The other thing is this understanding in our current system is to file a complaint and that kind of took me into a different realm again in treating our elected officials as employees. They are not employees. I've never considered any elected official an employee and

I don't like that whole thought that we are all equal to be treated the same way. I disagree in that whole idea of filing a complaint is how we deal with employees, I don't like the idea.

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

Response

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

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

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

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comments 62 through 63 – Cultural Context of the Law:

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

Travis Wallenfang (written): Good morning, I would like to give submit my comments in regard to the Sanctions & Penalties Law. Before establishing the set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation, including members of the Oneida

Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties.

It is my recommendation that when establishing the Sanctions and Penalties Law portions that we take a look at the not only our Oneida Constitutional and Oneidas Traditional Laws but also take a look at the Haudenosaunee Confederacy before making any decisions on establishing any sanctions and penalties. This is to be sure to intergrade the cultural and traditional aspects into sanctions and penalties to help identify the best balanced application of Traditional laws & Anglo American Laws before establishing any code of law, sanctions, ordinances, and penalties. Take a look at the Navajo Law structures as well to reference information.

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

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

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

Response

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

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

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

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

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

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

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

LOC Consideration

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment.

Comment 64 – Legislative Process:

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

Response

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

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

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

1. The Legislative Operating Committee is the legislative committee of the Nation that is responsible for the development of laws of the Nation. [1 O.C. 109.4-1, 109.4-2].
1. The Legislative Operating Committee handles requests for legislation and determines if the request for the development of legislation should be accepted or denied. [1 O.C. 109.5].
2. The Legislative Operating Committee will direct an agency of the Nation to complete a fiscal impact statement for all legislation. [1 O.C. 109.6].
3. A legislative analysis shall be completed by the Legislative Reference Office and provided to the Legislative Operating Committee. [1 O.C. 109.7].
4. The Legislative Operating Committee will hold open a public comment period with a public meeting, and then consider fully all comments received. [1 O.C. 109.8].
5. The Legislative Operating Committee shall forward the legislation, legislative analysis and fiscal impact statement to the Oneida Business Committee when legislation is ready for consideration. [1 O.C. 109.9-1].
6. The Oneida Business Committee shall consider the adoption of the legislation, or forward the legislation to the General Tribal Council for consideration. [1 O.C. 109.9-1].

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

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

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

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

There is no recommended revision based on this comment.

LOC Consideration

The Legislative Operating Committee agreed there is no conflict of interest in the members of the Legislative Operating Committee participating in the drafting and development of law, and then participating in the approval and adoption of that law as members of the Oneida Business Committee.