



Oneida Business Committee

Special Meeting
8:30 AM Friday, January 18, 2019
BC Conference Room, 2nd floor, Norbert Hill Center

Agenda

Meeting agenda is available here: oneida-nsn.gov/government/business-committee/agendas-packets/. Materials for the "General Tribal Council" section of the agenda, if any, are available to enrolled members of the Oneida Nation; to obtain a copy, visit the BC Support Office, 2nd floor, Norbert Hill Center and present a valid Tribal I.D. or go to <https://goo.gl/uLp2jE>. Scheduled times are subject to change.

I. CALL TO ORDER

II. OPENING

III. ADOPT THE AGENDA

IV. STANDING COMMITTEES

A. LEGISLATIVE OPERATING COMMITTEE

- 1. Approve the adoption packet for Sanctions and Penalties law for consideration at the February 24, 2019, special GTC meeting**
Sponsor: David P. Jordan, Councilman

V. GENERAL TRIBAL COUNCIL

A. PETITIONER GINA D. POWLESS - RESCINDING THE REMOVAL LAW

- 1. Accept the legal review**
Sponsor: Jo Anne House, Chief Counsel
- 2. Accept the fiscal impact statement**
Sponsor: Larry Barton, Chief Financial Officer

B. PETITIONER SCOTT KOSBAB - CREATING A TERM LIMITS LAW

1. **Accept the legal review**
Sponsor: Jo Anne House, Chief Counsel
2. **Accept the fiscal impact statement**
Sponsor: Larry Barton, Chief Financial Officer

C. MEETING NOTICE AND MATERIALS

1. **Approve notice and materials for February 24, 2019, tentatively scheduled special GTC meeting**
Sponsor: Lisa Summers, Secretary

VI. ADJOURN

Posted on the Oneida Nation's official website, www.oneida-nsn.gov pursuant to the Open Records and Open Meetings law (§ 107.14.)

The meeting packet of the open session materials for this meeting is available by going to the Oneida Nation's official website at: oneida-nsn.gov/government/business-committee/agendas-packets/

For information about this meeting, please call the Business Committee Support Office at (920) 869-4364 or (800) 236-2214

Oneida Business Committee Agenda Request

Approve the adoption packet for Sanctions and Penalties law for consideration at the February 24, 2019

1. Meeting Date Requested: 01 / 18 / 19

2. General Information:

Session: ☒ Open ☐ Executive - See instructions for the applicable laws, then choose one:

Agenda Header:

☐ Accept as Information only

☒ Action - please describe:

Include the approved adoption packet for the Sanction and Penalties law in the February 24, 2019 GTC special meeting materials, for the General Tribal Council's consideration

3. Supporting Materials

☐ Report ☐ Resolution ☐ Contract

☒ Other:

1.

3.

2.

4.

☐ Business Committee signature required

4. Budget Information

☐ Budgeted - Tribal Contribution

☐ Budgeted - Grant Funded

☐ Unbudgeted

5. Submission

Authorized Sponsor / Liaison:

Primary Requestor/Submitter:

Your Name, Title / Dept. or Tribal Member

Additional Requestor:

Name, Title / Dept.

Additional Requestor:

Name, Title / Dept.



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



TO: General Tribal Council
FROM: David P. Jordan, Legislative Operating Committee Chairperson
DATE: February 24, 2019
RE: Sanctions and Penalties Law

Please find the following attached backup documentation for your consideration of the Sanctions and Penalties law:

1. Resolution: Sanctions and Penalties Law
2. Statement of Effect: Sanctions and Penalties Law
3. Sanctions and Penalties Law Legislative Analysis
4. Sanctions and Penalties Law
5. Sanctions and Penalties Law Fiscal Impact Statement
6. Sanctions and Penalties Law PowerPoint Presentation Slides

Overview

If an elected or appointed official of the Nation engages in misconduct while in office the only remedy available to hold the official accountable is to remove that official from his or her position. The removal of an elected official is required to follow the process contained in the Nation's Removal law, which includes a petition, a preliminary review and hearing by the Nation's Judiciary, and ultimately a determination by General Tribal Council. [1 O.C. 104]. The removal of an appointed official is governed by the Boards, Committees, and Commissions law which provides that the Oneida Business Committee can terminate the appointment of an official with a two-thirds (2/3) majority vote. [1 O.C. 105.7-4].

Other than removal or termination of appointment, the Nation does not currently have a formal process to issue warnings, reprimands, or corrective actions against elected and appointed officials. The Legislative Operating Committee recognizes that not all instances of misconduct by an elected or appointed official may rise to the level of removal or termination of appointment. The Legislative Operating Committee also determined that a more effective government can be obtained if officials are provided the opportunity to take accountability for their actions and correct the behavior that resulted in misconduct, which may result in the individual becoming a better official.

Providing an elected or appointed official the opportunity to correct misconduct and improve behavior aligns with traditional Oneida ways. The Legislative Operating Committee learned through discussions with the Cultural Heritage Department that in the past a chief would be provided three (3) warnings in hope of improving the chief's behavior before the chief was dehorned or removed from his position of prominence. The focus of the warnings before the removal of the official was to provide an opportunity for corrective action to be taken that had the potential to result in a better official before removal of that official was sought. The Legislative Operating Committee is seeking the adoption of this Sanctions and Penalties law in an effort to

provide a mechanism for utilizing corrective actions to address the misconduct of officials and allow an opportunity for growth and improvement before removal or termination of appointment.

Additionally, during the special election held on July 9, 2016, a referendum question which asked, “*Should the BC develop a law which provides for sanctions and due process for elected officials?*” was included on the ballot. This referendum question was approved by a vote of one hundred and seventy-eight (178) to fifty-nine (59). This positive referendum further demonstrates the Nation’s desire to develop a process to address misconduct of officials prior to seeking removal or termination of appointment.

This resolution adopts the proposed Sanctions and Penalties law which establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official. The Sanctions and Penalties law will:

- Require an elected or appointed official of the Nation to behave in a manner that promotes the highest ethical and moral standard [1 O.C. 120.4-1];
- Subject an elected or appointed official of the Nation to sanctions and penalties for behaving in a manner that constitutes misconduct, which is defined as:
 - a violation of the Constitution or any of the Nation’s laws, policies, or rules;
 - a violation of the bylaws, standard operating procedures or other internal operating documents that govern the entity upon which the official serves;
 - 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
 - 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];
- Provide a process for filing a complaint, including:
 - who may file a complaint [1 O.C. 120.5-1];
 - when a complaint may be filed, [1 O.C. 120.5-2];
 - where a complaint may be filed [1 O.C. 120.5-4]; and
 - the necessary contents of a complaint [1 O.C. 120.5-3];
- Prohibit retaliation against any individual who makes a complaint, is a witness to a complaint, or offers testimony or evidence [1 O.C. 120.5-5];
- Require all complaints alleged against an elected or appointed official to be handled in a confidential manner [1 O.C. 120.5-7];
- Delegate the responsibility to handle complaints alleged against an appointed official to the Oneida Business Committee, due to the fact that an appointed official serves at the discretion of the Oneida Business Committee, through a process which includes:
 - The opportunity for mediation between the complainant and the official [1 O.C. 120.6-3];
 - The opportunity for the official to provide an answer to the complaint [1 O.C. 120.6-4];
 - The requirement that an Oneida Business Committee member that has a conflict of interest in a complaint brought before the Oneida Business Committee immediately recuse himself or herself and shall not participate in any portion of the complaint process [1 O.C. 120.6-5];
 - An initial review by the Oneida Business Committee to determine whether or not

- the allegation made within the complaint has merit [1 O.C. 120.6-6];
- An investigatory hearing held by the Oneida Business Committee to determine if there is enough evidence to substantiate the allegations of misconduct [1 O.C. 120.6-8];
- Deliberation and determination by the Oneida Business Committee on whether there is clear and convincing evidence that the official engaged in misconduct, and therefore appropriate sanctions and/or penalties shall be imposed [1 O.C. 120.6-9, 120.6-10];
- Delegate the responsibility to handle complaints alleged against an elected official to the Trial Court [1 O.C. 120.7-1];
- Allow for an individual to appeal the decision of the Oneida Business Committee or Trial Court to the Nation's Court of Appeals [1 O.C. 120.6-11, 120.7-4];
- Provide various sanctions and penalties that may be imposed against an elected or appointed official [1 O.C. 120.8-2];
- Provide factors to be used by the Oneida Business Committee and the Trial Court when determining the appropriate sanctions and/or penalties to impose [1 O.C. 120.8-3];
- Clarify that the imposition of sanctions or penalties does not exempt an official from individual liability for the underlying misconduct, and does not limit any penalties that may be imposed in accordance with other laws [1 O.C. 120.8-5];
- Discuss the effect of a resignation by an elected or appointed official [1 O.C. 120.9]; and
- Require that the Business Committee Support Office maintain a record of conduct in office for each elected or appointed official [1 O.C. 120.10].

The Legislative Operating Committee developed the proposed Sanctions and Penalties law through the review of various laws of the Nation, in addition to the laws of seven (7) other tribal nations. The Business Committee Support Office, Records Management Department, Human Resources Department, Cultural Heritage Department, and various boards, committees, and commissions of the Nation were consulted in the development of this law. Additionally, the Legislative Operating Committee held a community meeting on May 3, 2018, to gather input, ideas, and concerns from members of the community. Sixteen (16) people attended this community meeting and participated in the development of this law.

In accordance with the Legislative Procedures Act, a public meeting on the proposed Sanctions and Penalties law was held on October 4, 2018. Six (6) members of the community attended the public meeting with three (3) people providing oral comments. The public comment period closed on October 11, 2018. The Legislative Operating Committee received four (4) submissions of written comments during the public comment period. All sixty-four (64) public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on October 17, 2018, and October 25, 2018. Any changes made based on those comments have been incorporated into this draft. Additional information regarding the comments received during the public comment period and the Legislative Operating Committee's consideration of those comments can be found at <https://oneida-nsn.gov/government/register/public-meetings/>.

Requested Action

Adopt the Resolution: Sanctions and Penalties Law.

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

GTC Resolution # _____ Sanctions and Penalties Law

- 1
2
3 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
4 recognized by the laws of the United States of America; and
5
6 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
7
8 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
9 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
10
11 **WHEREAS,** the purpose of the Sanctions and Penalties law ("the Law") is to establish a consistent set
12 of sanctions and penalties that may be imposed upon elected and appointed officials of the
13 Nation for misconduct in office for the purpose of providing an opportunity for the official to
14 take corrective action to address the misconduct and promote accountability and improved
15 performance of the official; and
16
17 **WHEREAS,** the Law will require an elected or appointed official of the Nation to behave in a manner
18 that promotes the highest ethical and moral standard; and
19
20 **WHEREAS,** the Law will subject an elected or appointed official of the Nation to sanctions and penalties
21 for behaving in a manner that constitutes misconduct; and
22
23 **WHEREAS,** the Law will provide a process for filing a complaint alleging misconduct against an elected
24 or appoint official, including who may file a complaint, when to file a complaint, where a
25 complaint may be filed, and the necessary contents of a complaint; and
26
27 **WHEREAS,** the Law will prohibit retaliation against any individual who makes a complaint, is a witness
28 to a complaint, or offers testimony or evidence; and
29
30 **WHEREAS,** the Law will require all complaints alleged against an elected or appointed official to be
31 handled in a confidential manner; and
32
33 **WHEREAS,** the Law will delegate the responsibility to handle complaints alleged against an appointed
34 official to the Oneida Business Committee, due to the fact that an appointed official serves
35 at the discretion of the Oneida Business Committee; and
36
37 **WHEREAS,** the Law will delegate the responsibility to handle complaints alleged against an elected
38 official to the Judiciary - Trial Court; and
39
40 **WHEREAS,** the Law will allow an appeal of a decision of the Oneida Business Committee or Judiciary
41 - Trial Court to be made to the Nation's Court of Appeals; and
42

43 **WHEREAS,** the Law provides the various sanctions and penalties that may be imposed against an
44 elected or appointed official, and the factors that shall be used when determining the
45 appropriate sanctions and/or penalties to impose; and
46

47 **WHEREAS,** the Law will clarify that the imposition of sanctions and/or penalties does not exempt an
48 official from individual liability for the underlying misconduct, and does not limit any
49 penalties that may be imposed in accordance with other laws; and
50

51 **WHEREAS,** the Law will provide for the effect of a resignation by an elected or appointed official; and
52

53 **WHEREAS,** the Law will require that the Business Committee Support Office maintain a record of
54 conduct in office for each elected or appointed official; and
55

56 **WHEREAS,** a public meeting on the proposed Law was held on October 4, 2018, in accordance with
57 the Legislative Procedures Act, and the public comments were reviewed and accepted by
58 the Legislative Operating Committee on October 17, 2018 and October 25, 2018; and
59

60 **NOW THEREFORE BE IT RESOLVED,** that the Sanctions and Penalties law is hereby adopted and shall
61 become effective ten (10) business days after the date of the adoption of this resolution.
62
63



Statement of Effect *Sanctions and Penalties Law*

Summary

This resolution adopts a Sanctions and Penalties law for the purpose of establishing a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Date: January 7, 2019

Analysis by the Legislative Reference Office

The Legislative Procedures Act (“the LPA”) was adopted by the General Tribal Council through resolution GTC-01-07-13-A for the purpose of providing a process for the adoption of laws of the Nation. [1 O.C. 109.1-1]. This resolution adopts a Sanctions and Penalties law, which complies with all processes and procedures required by the LPA, including the development of a legislative analysis, a fiscal analysis, and the opportunity for public review during a public meeting and public comment period. [1 O.C. 109.6, 109.7, 109.8].

This resolution adopts the proposed Sanctions and Penalties law which will establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official. The Sanctions and Penalties law will:

- Require an elected or appointed official of the Nation to behave in a manner that promotes the highest ethical and moral standard [1 O.C. 120.4-1];
- Subject an elected or appointed official of the Nation to sanctions and penalties for behaving in a manner that constitutes misconduct [1 O.C. 120.4-2];
- Provide a process for filing a complaint, including:
 - who may file a complaint [1 O.C. 120.5-1];
 - when a complaint may be filed, [1 O.C. 120.5-2];
 - where a complaint may be filed [1 O.C. 120.5-4]; and
 - the necessary contents of a complaint [1 O.C. 120.5-3];
- Prohibit retaliation against any individual who makes a complaint, is a witness to a complaint, or offers testimony or evidence complying with directives under this law [1 O.C. 120.5-5];
- Require all complaints alleged against an elected or appointed official to be handled in a confidential manner [1 O.C. 120.5-7];
- Delegate the responsibility to handle complaints alleged against an appointed official to the Oneida Business Committee, due to the fact that an appointed official serves at the

discretion of the Oneida Business Committee, through a process which includes:

- The opportunity for mediation between the complainant and official whom is the subject of the complaint [1 O.C. 120.6-3];
- The opportunity for the official who is the subject of the complaint to provide an answer to the complaint [1 O.C. 120.6-4];
- The requirement that an Oneida Business Committee member that has a conflict of interest in a complaint brought before the Oneida Business Committee immediately recuse himself or herself and shall not participate in any portion of the complaint process [1 O.C. 120.6-5];
- An initial review by the Oneida Business Committee to determine whether or not the allegation made within the complaint has merit [1 O.C. 120.6-6];
- An investigatory hearing held by the Oneida Business Committee to determine if there is enough evidence to substantiate the allegations of misconduct by clear and convincing evidence [1 O.C. 120.6-8];
- Deliberation and determination by the Oneida Business Committee on whether there is clear and convincing evidence that the official engaged in misconduct, and therefore appropriate sanctions and/or penalties shall be imposed [1 O.C. 120.6-9, 120.6-10];
- Delegate the responsibility to handle complaints alleged against an elected official to the Trial Court [1 O.C. 120.7-1];
- Allow for an individual to appeal the decision of the Oneida Business Committee or Trial Court to the Nation's Court of Appeals [1 O.C. 120.6-11, 120.7-4];
- Provide sanctions and penalties that may be imposed against an elected or appointed official [1 O.C. 120.8-2];
- Provide factors to be used when determining the appropriate sanctions and/or penalties to impose [1 O.C. 120.8-3];
- Clarify that the imposition of sanctions and/or penalties does not exempt an official from individual liability for the underlying misconduct, and does not limit any penalties that may be imposed in accordance with other laws [1 O.C. 120.8-5];
- Discuss the effect of a resignation by an elected or appointed official [1 O.C. 120.9]; and
- Require that the Business Committee Support Office maintain a record of conduct in office for each elected or appointed official [1 O.C. 120.10].

In accordance with the LPA, a public meeting on the proposed Sanctions and Penalties law was held on October 4, 2018. Six (6) members of the community attended the public meeting with three (3) people providing oral comments. The public comment period closed on October 11, 2018. The Legislative Operating Committee received four (4) submissions of written comments during the public comment period. All sixty-four (64) public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on October 17, 2018, and October 25, 2018.

The Sanctions and Penalties law will become effective ten (10) business days after the adoption of the resolution by the General Tribal Council.

Conclusion

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



SANCTIONS AND PENALTIES LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Oneida Business Committee	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	To increase accountability among elected and appointed officials of the Nation, including members of the Oneida Business Committee. This new law creates a formal complaint process and allows for corrective actions against officials who engage in misconduct.		
Purpose	To establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official <i>[see Sanctions and Penalties, 1 O.C. 120.1-1]</i> .		
Affected Entities	All elected and appointed officials of the Nation; Any individual 18 years and older who has knowledge that an official has committed misconduct; Oneida Business Committee; Judiciary Trial Court; Judiciary Court of Appeals; Business Committee Support Office. This law does not apply to the judges of the Oneida Judiciary, whose misconduct process is located within the Judiciary Law. This law does not apply to members of corporate boards.		
Affected Legislation	Rules of Civil Procedure; Rules of Appellate Procedure; Code of Ethics; Boards, Committees and Commissions Law; Garnishment Law; Per Capita Law; and any of the Nation's laws and bylaws that may be violated by an official.		
Enforcement/Due Process	Sanctions and penalties against appointed officials will be imposed by the Business Committee. Sanctions and penalties against elected officials will be imposed by the Trial Court. Officials accused of misconduct have the right to be represented by an attorney or advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to appear at the investigatory hearing to answer the allegations, provide witness testimony, documents and evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.		
Public Meeting	A public meeting was held on October 4, 2018.		
Fiscal Impact	See fiscal impact statement prepared by Finance Dept. in accordance with the Legislative Procedures Act.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 A. When an official of the Nation commits misconduct while in office, there are few remedies available
- 3 for the Nation to discipline that official. Currently, appointed officials may have their appointment
- 4 terminated by the Business Committee, and elected officials may be removed in accordance with the
- 5 Removal Law. However, there may be instances of misconduct that do not rise to the level of removal.
- 6 In these cases, other remedies such as verbal reprimands, fines, or suspensions may be more
- 7 appropriate.

- 8 **B.** This law creates a formal complaint process that gives all tribal members an opportunity to file
 9 complaints while ensuring that due process rights for those accused are protected. This law also creates
 10 a range of potential sanctions and penalties for officials who violate the laws of the Nation or commit
 11 other forms of misconduct.
- 12 **C.** During the Special Election held on July 9, 2016, the following referendum question was approved by
 13 a vote of 178 to 59: “Should the BC develop a law which provides for sanctions and due process for
 14 elected officials?” The Election Law requires the Oneida Business Committee to present referendum
 15 questions that receive a majority vote to the General Tribal Council (GTC) for discussion and action
 16 *[see Election Law 1 O.C. 102.12-9(c)]*.
- 17 **D.** This law will apply to elected and appointed officials of the Nation, including members of the following
 18 entities:
 19

ELECTED	APPOINTED
<ul style="list-style-type: none"> ▪ Oneida Business Committee ▪ Oneida Election Board ▪ Oneida Gaming Commission ▪ Oneida Land Claims Commission ▪ Oneida Land Commission ▪ Oneida Nation Commission on Aging (ONCOA) ▪ Oneida Nation School Board ▪ Trust Enrollment Committee ▪ GTC Legal Resource Center Advocates and Attorney 	<ul style="list-style-type: none"> ▪ Anna John Resident Centered Care Community Board (AJRCCC) ▪ Audit Committee (1 community member seat) ▪ Environmental Resource Board (ERB) ▪ Finance Committee (1 community member seat) ▪ Oneida Community Library Board ▪ Oneida Nation Arts Board ▪ Oneida Personnel Commission ▪ Oneida Police Commission ▪ Oneida Pow Wow Committee ▪ Oneida Nation Veterans Affairs Committee (ONVAC) ▪ Pardon and Screening Forgiveness Committee ▪ Southeastern WI Oneida Tribal Services Advisory Board (SEOTS) ▪ Oneida Youth Leadership Institute Board of Directors

20 *This law does not apply to members of the Judiciary or corporate entities of the Nation.

21 **SECTION 3. CONSULTATION AND OUTREACH**

- 22 **A.** The Rules of Civil Procedure, Rules of Appellate Procedure, Judiciary Law, Code of Ethics, Open
 23 Meetings and Open Records Law, and the Boards, Committees and Commissions Law were reviewed
 24 in drafting this analysis. In addition, the following laws were reviewed in drafting this analysis:
- 25 ▪ Ho Chunk Nation Code of Ethics 2 HCC 1;
 - 26 ▪ Oglala Sioux Tribe Code of Ethics Ordinance No. 08-11;
 - 27 ▪ Pokagon Band of Potawatomi Indians Ethics Code;
 - 28 ▪ Rosebud Sioux Tribal Code of Ethics Ordinance 86-04;
 - 29 ▪ Siletz Tribal Council Ethics Ordinance –Siletz Tribal Code 2.200;
 - 30 ▪ Skokomish Code of Ethics S.T.C. 1.05;
 - 31 ▪ Pit River Tribal Government Code of Conduct Section 80.
- 32 **B.** The Business Committee Support Office, Records Management Department, Human Resources
 33 Department and representatives from the following Boards, Committees and Commissions were
 34 consulted in the development of this law and analysis:

- 35 ▪ Anna John Resident Centered Care Community Board (AJRCCC);
- 36 ▪ Election Board;
- 37 ▪ Environmental Resource Board (ERB);
- 38 ▪ Gaming Commission;
- 39 ▪ Land Commission;
- 40 ▪ Police Commission;
- 41 ▪ Pow-wow Committee;
- 42 ▪ Trust Enrollment Committee;
- 43 ▪ Oneida Nation Veterans Affairs Committee (ONVAC).
- 44 C. A community pot-luck meeting was held on May 3, 2018 to gather community input on this law. Sixteen
- 45 (16) people attended this meeting.
- 46

47 **SECTION 4. PROCESS**

- 48 A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- 49 B. The law was originally added to the Active Files List on October 15, 2014 and was carried over from
- 50 the previous term. The law was re-added to the Active Files List on September 6, 2017.
- 51 C. At the time this legislative analysis was developed, the following work meetings had been held
- 52 regarding the most recent efforts to develop this law and legislative analysis:
- 53 ▪ September 6, 2017: LOC work meeting.
- 54 ▪ November 1, 2017: LOC work meeting with representatives from the following boards, committees
- 55 and commissions: Police Commission, Trust Enrollment Committee, Election Board, Land
- 56 Commission, Oneida Gaming Commission, Pow-wow Committee. All boards, committees and
- 57 committees were invited to attend this work meeting.
- 58 ▪ December 6, 2017: LOC work meeting.
- 59 ▪ March 9, 2018: LOC work meeting.
- 60 ▪ May 3, 2018: Community pot-luck meeting with LOC, Oneida community members, BC Support
- 61 Office, and representatives from the following boards, committees and commissions: Police
- 62 Commission, ONVAC, ERB, AJRCCC, and Gaming Commission. All boards, committees and
- 63 commissions were invited to attend this meeting.
- 64 ▪ May 11, 2018: LOC work meeting.
- 65 ▪ July 9, 2018: Work meeting with BC Support Office.
- 66 ▪ August 1, 2018: LOC work meeting.
- 67 ▪ October 17, 2018: LOC work meeting.
- 68 ▪ October 25, 2018: LOC work meeting.
- 69 ▪ December 20, 2018: Work meeting with Cultural Heritage.
- 70

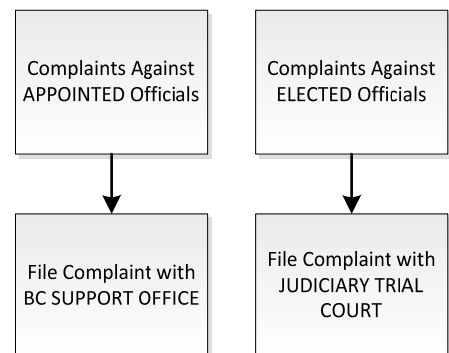
71 **SECTION 5. CONTENTS OF THE LEGISLATION .**

- 72 A. *What Qualifies as Misconduct.* The Oneida Nation expects elected and appointed officials to uphold
- 73 high ethical and moral standards. Officials who engage in misconduct may be subject to sanctions and
- 74 penalties. This section describes what behaviors could be considered misconduct *[see Sanctions and*
- 75 *Penalties 120.4]*. Under this law, the definition of misconduct is very broad and includes any of the
- 76 following:
- 77 ▪ Violating the Oneida Constitution or any law, policy or rule of the Oneida Nation.

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

B. *Filing a Complaint.* Under this law, anyone eighteen (18) years or older who believes that an official has committed misconduct can file a complaint. The person filing the complaint does not need to be an enrolled tribal member. Examples of individuals who might file complaints include community members, employees of the Nation, and fellow officials. The complaint must be filed within 90 days of when the alleged misconduct occurred or was discovered [*see Sanctions and Penalties 120.5*].

Chart 2. Where to File Complaints



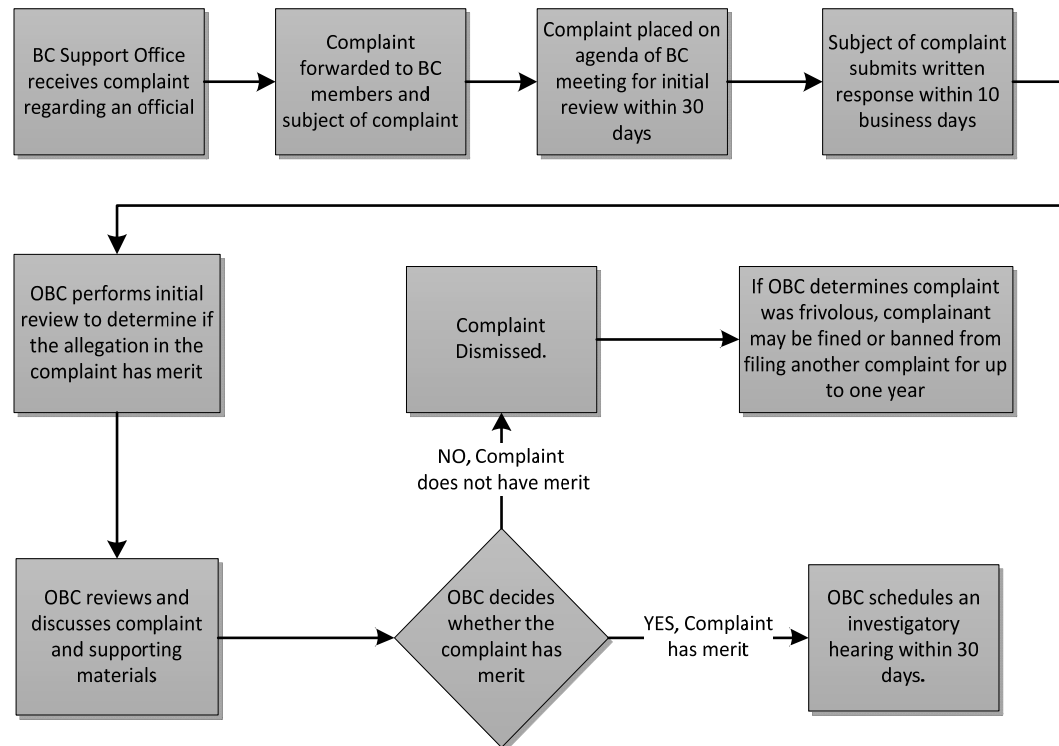
- ***Contents of the Complaint.*** Complaints must include the following information [*see 120.5-3*]:
 - Information about the official, including the official's name and the entity they serve on.
 - Information about the alleged misconduct, including date, time, location and specific details.
 - The specific law, policy, rule or bylaw that the official violated.
 - Information about any witnesses or others with knowledge of the violation.
 - Contact information of the individual filing the complaint.
 - Supporting documents and any other information required by the Rules of Civil Procedure.
 - The Rules of Civil Procedure must be followed for complaints against elected officials, which are filed in the Trial Court. More detail on the Rules of Civil Procedure is included later in this analysis.
- ***Where to File Complaints.*** Complaints against appointed officials are filed with the Business Committee (BC) Support Office, which is currently located at the Norbert Hill Center. Complaints against elected officials are filed with the Trial Court, which is located within the Oneida Judiciary.
- ***Retaliation.*** Retaliation against someone who files a complaint or cooperates with a misconduct investigation is not allowed.
- ***Right to an Attorney or Advocate.*** Any official who has been accused of misconduct has the right to be represented by an attorney or an advocate, at their own expense.
 - ***Legal Resource Center.*** The Legal Resource Center Law established an office to provide legal advice and representation to Tribal members and employees in cases before the Judiciary.
- ***Confidentiality.*** All complaints against officials of the nation will be handled confidentially, with hearings and proceedings regarding the complaint closed to the public. Records of the hearings will be kept confidential. However, the final decision of the Business Committee or Judiciary and any sanctions and penalties imposed against an official will be public information [*see 120.5-7*].
 - ***Judiciary Law.*** The Judiciary Law states that proceedings of the court are open to the public except for peacemaking, mediation, proceedings where the judge has safety or

confidentiality concerns, or “if expressly prohibited by law” [see Judiciary Law 8 O.C. 801.4-4].

C. ***Complaints Against an Appointed Official.*** Complaints against an appointed official will be filed with the Business Committee (BC) Support Office. Appointed officials serve at the discretion of the Oneida Business Committee (BC), who may terminate appointments at any time by 2/3 majority vote [see *Boards, Committees Commissions 1 O.C. 105.7-4*]. The LOC has determined that because the BC is responsible for selecting and appointing officials, the BC should be responsible for holding appointed officials accountable through sanctions and penalties. The following is a description of the complaint process for appointed officials [see 120.6].

- ***Receipt of Complaint.*** When the BC Support Office receives a complaint, it will forward copies of the complaint to all members of the Oneida Business Committee (BC) for review, and to the official the complaint has been made against. The BC Support Office will place the complaint on the agenda of a Business Committee meeting within thirty (30) days.
- ***Mediation.*** The individual who filed the complaint or the official accused of misconduct may request mediation within five (5) business days of the complaint being filed. If both parties agree to mediation, the BC Support Office will schedule a meeting with a trained mediator to attempt to resolve the complaint. If the complaint is resolved by mediation, the complaint will be formally dismissed. If the complaint is not resolved, the initial review will proceed [see 120.6-3].
- ***Answer to the Complaint.*** The official who has been accused of misconduct will have ten (10) business days to respond in writing to the complaint. The official may admit to the misconduct, deny the misconduct, or provide an affirmative defense. An affirmative defense means that an official admits they committed the alleged acts, but that they were justified in doing so.
- ***Conflict of Interest & Recusal.*** 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.
- ***Initial Review.*** The Oneida Business Committee (BC) will review the complaint, the official’s written response, and any documentation. The BC will discuss and decide whether the complaint has merit by majority vote. If the BC decides the complaint has merit, they will schedule an investigatory hearing. If BC decides the complaint does not have merit, the complaint will be dismissed.
 - ***Frivolous Complaints.*** If the BC decides that an individual filed a complaint that was frivolous, false, or made with malicious intent, they may fine that individual up to \$500 or ban them from filing another complaint for up to 1 year. In addition, the official the frivolous complaint was filed against may also file a civil suit in the Trial Court.

Chart 3. Complaint Process Against Appointed Officials: Receipt and Initial Review of Complaint.



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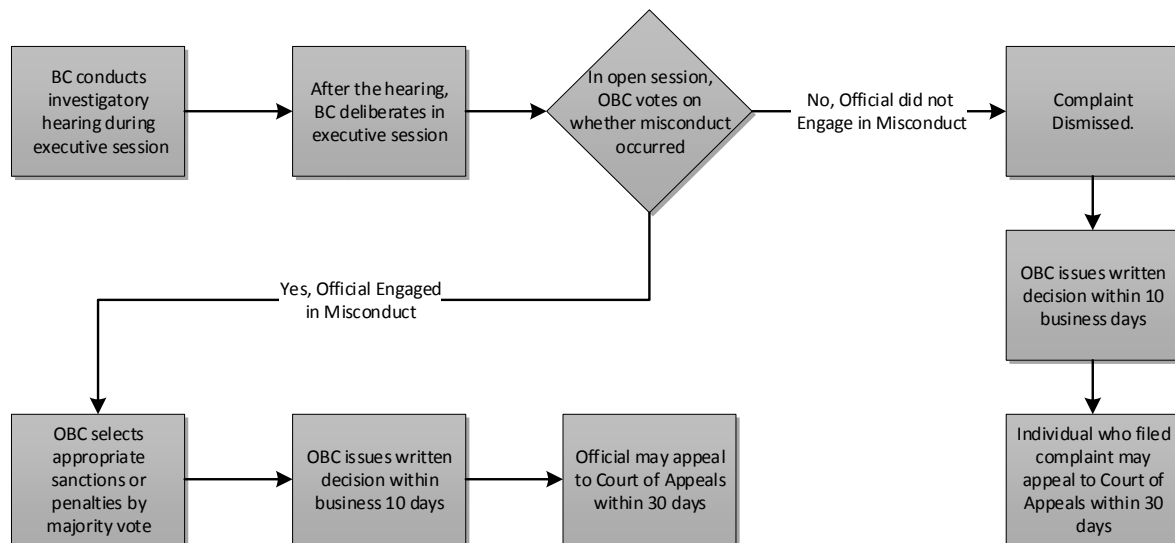
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- Investigatory Hearing. The BC will conduct an investigatory hearing during executive session of a regular or special BC meeting. During this hearing, the BC will determine whether there is enough evidence to substantiate the allegations by clear and convincing evidence.

 - o *Burden of Proof.* The burden of proof for allegations made under this law is “clear and convincing evidence.” This is the same standard the Nation uses in misconduct cases against judges in the Oneida Judiciary [see 8 O.C. Judiciary Law 801.12-6(c)]. This means that the person filing the complaint must provide evidence “indicating that the [allegation] to be proved is highly probably or reasonably certain” [see *Black’s Law Dictionary*]. This is a greater burden than “preponderance of the evidence,” the standard in most civil trials, but less than evidence “beyond a reasonable doubt,” which is used for criminal trials.
 - o *Testimony.* The BC will have the authority to call witnesses to provide testimony and physical evidence under oath. The official accused of misconduct will have the opportunity to answer allegations, provide witness testimony and evidence on their own behalf. The individual who filed the complaint will also have an opportunity to answer questions, provide witness testimony and information to support their claim. The hearing will be informal.
- Deliberation.* After the investigatory hearing, the BC will remain in executive session to discuss the evidence and information provided. The BC will also discuss which sanctions and penalties to impose, if appropriate.
- Determination.* During an open session of a special or regular Oneida Business Committee meeting, the BC will vote to decide whether the allegations of misconduct have been proven by clear and convincing evidence. If the BC finds that the official has engaged in misconduct, then they will also decide the appropriate sanction or penalty by majority vote. The BC must issue a

written decision within 10 days of the investigatory hearing, and provide copies of the decision to the person who made the complaint, the official accused of misconduct, and the BC Support Office.

- **Appeal.** Both the official accused of misconduct and the individual who filed the complaint have the right to appeal the decision of the Oneida Business Committee. The appeal must be filed with the Court of Appeals in accordance with the Rules of Appellate Procedure.
 - *Timeline for Appeal.* The Rules of Appellate Procedure require parties to file an appeal within thirty (30) days of the original judgment [see *Rules of Appellate Procedure*, 8 O.C. 805.5-2(a)].

Chart 4. Complaint Process Against Appointed Officials: Investigatory Hearing & Decision



D. Complaints Against an Elected Official.

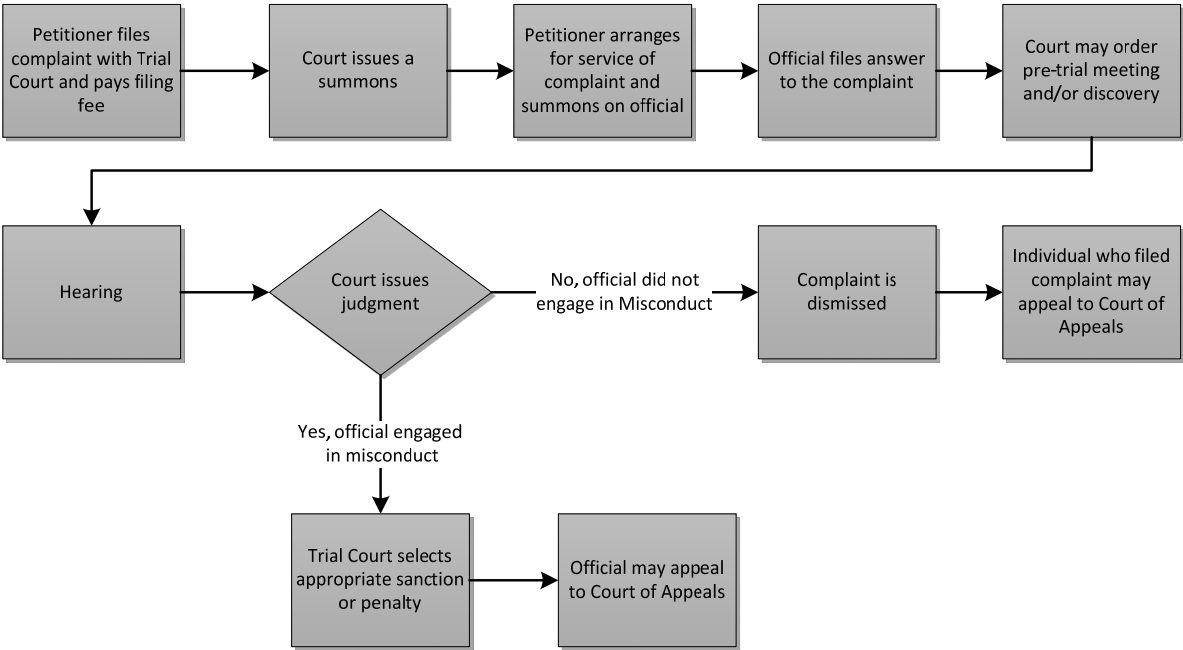
- Complaints against elected officials, including members of the Oneida Business Committee, will be heard by the Nation's Trial Court. Because elected officials are chosen by the tribal membership, it has been determined that complaints against these officials should go to the Nation's Trial Court [see *Sanctions and Penalties* 120.7].
- All complaints must follow the Judiciary Rules of Civil Procedure. The following is a brief overview of how a civil case is processed by the Trial Court using the Rules of Civil Procedure. For full and complete information regarding the trial court process, see the Judiciary Rules of Civil of Civil Procedure.
 - *Petitioner Files a Complaint with the Trial Court and Pays Filing Fee.* The Trial Court has a standard complaint form with instructions to fill out the complaint.
 - *Complaint.* At the time this analysis was drafted, the Rules of Civil Procedure require the complaint to include the full name and address of the plaintiff and defendant, why the defendant is being sued, facts supporting each claim, why the trial court has jurisdiction, specifically what relief is sought from the defendant, and a summons [see *Oneida Judiciary Rules of Civil Procedure* 803.5-1].
 - *Filing Fee.* The Oneida Judiciary Trial Court currently charges a \$50 filing fee to file a general civil case. However, individuals may request a fee waiver from the court for the following reasons: unemployed, health/medical, or below poverty level.

Note that this fee applies only to cases filed against elected officials. Complaints against appointed officials will be filed with the BC Support Office, which does not charge a filing fee.

- *Summons*: A summons is a document ordering a defendant to appear before a judge. The Trial Court has a standard summons form.

- *Complaint and Summons are served on official*. The complaint and summons must be delivered to the official within 30 days after the complaint is filed. In addition, for complaints against officials, notice must also be served to the Secretary's office [see 8 O.C. Rules of Civil Procedure 803.5].
- *Petitioner Files Proof of Service*. The petitioner must provide proof to the Court that the complaint and summons were delivered to the defendant within 10 days of delivery. If proof of service is not completed, then the case will be dismissed. [see Rules of Civil Procedure 803.5-3].
- *Official Files an Answer*. The official responds to the complaint by filing an answer. The official can either admit to or deny the allegations made in the complaint and provide defenses to each claim made in the complaint.
- *Pre-Trial Meeting*. A pre-trial meeting may be scheduled between the judge, petitioner and defendant. The purpose for this meeting could include preparing for the trial, creating a plan regarding discovery, or facilitating a settlement, such as peacemaking [see Rules of Civil Procedure 803.12].
- *Discovery*. The petitioner may make efforts to obtain information relevant to the case, such as documents and electronic information. The judge may place limitations on the information.
- *Hearing*. Hearings are conducted in accordance with the Rules of Civil Procedure, which may include opening statements, presentation of the parties' cases, rebuttals and closing statements [see Rules of Civil Procedure 803.38].
- *Judgment*. If the Trial Court determines by clear and convincing evidence that the official engaged in misconduct, then the Trial Court will impose sanctions and penalties that they deem appropriate.
- *Appeals*. Both the official accused of misconduct and the individual who filed the complaint have the right to appeal the decision of the Trial Court. The appeal must be filed with the Court of Appeals in accordance with the Rules of Appellate Procedure.

Chart 5. Complaint Process Against Elected Officials – Overview of Rules of Civil Procedure.



- E. Sanctions and Penalties.** This law includes a list of sanctions and penalties that may be imposed on an official for misconduct in office. The Trial Court is responsible for imposing sanctions on an elected official. The Oneida Business Committee is responsible for imposing sanctions on an appointed official. Officials may receive one or more of the following penalties. The Trial Court or BC will select whichever penalty they feel is appropriate. [see Sanctions and Penalties 120.8]
- **Conditional Penalties.** Sanctions and penalties can also be imposed on a conditional basis. For example, an official could be ordered to make a public apology and attend mandatory training, or otherwise face suspension [see 120.8-4].
 - **Failure to Comply.** If an official fails to comply with a sanction or penalty imposed against them, that official can face additional sanctions as a result of additional misconduct complaints under this law, termination of appointment, or removal in accordance with the Removal Law. An example would be an official failing to pay a fine or violating the terms of their suspension [see 120.8-6].

Chart 5. List of Potential Sanctions and Penalties

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

- 285 ▪ **Verbal Reprimand.** During a BC or GTC meeting, the Nation’s chairperson will read a statement
- 286 describing the official’s misconduct. The chairperson will also state that the official’s behavior was
- 287 unacceptable and direct the official not to engage in misconduct again.
- 288 ▪ **Public Apology.** An official may be ordered to make a public apology at a BC or GTC meeting.
- 289 The apology must include a description of the misconduct, a statement that the actions were wrong,
- 290 a description of the harm caused by the misconduct, and a “clear and unambiguous” apology.
- 291 ▪ **Written Reprimand.** The Oneida Business Committee or Judiciary Trial Court may publish a
- 292 written reprimand in the Nation’s official media outlets. The Nation’s official media outlets are the
- 293 Oneida Nation website and the Kalihwisaks newspaper [see BC Resolution #03-22-17-B]. The
- 294 written reprimand will include the same information as a verbal reprimand.
- 295 ▪ **Suspension.** The BC or Trial Court may suspend part-time officials for up to two (2) meetings.
- 296 Full-time officials, such as members of the Business Committee or Gaming Commission, may be
- 297 suspended for up to fifteen (15) business days. During a suspension, the official cannot attend
- 298 meetings, trainings, or conferences. The official also cannot vote or perform work for the board. In
- 299 addition, the official cannot earn any stipends, salary or mileage during the suspension.
- 300 ○ *Multiple Suspensions on One Entity.* If multiple officials on the same entity are suspended
- 301 at the same time, the suspensions must be imposed on a staggered basis to avoid loss of a
- 302 quorum. For example, if multiple members of the Business Committee are suspended, each
- 303 member will be suspended one at a time on a staggered basis [see 120.8-2(d)(3)].
- 304 ▪ **Restitution.** An official can be ordered to pay restitution, which means paying back any improperly
- 305 received benefit, such as stolen money or items or replacing damaged property. The point of
- 306 restitution is to make someone whole. Examples of restitution include paying back money that was
- 307 improperly taken or paying to repair or replace damaged items.
- 308 ▪ **Fines.** An official can be ordered to pay a fine for each act of misconduct. Unlike restitution, a
- 309 fine is a punishment. The maximum amount of each fine is \$2500.
- 310 ○ *Fine Process.* All fines will be paid to the trial court and deposited into the Nation’s
- 311 General Fund. Officials must pay their fine within 90 days after the fine is issued or upheld
- 312 on final appeal. If the fine is not paid on time, the Nation may collect the money through
- 313 garnishment or the official’s per capita payment.
- 314 ○ *Community Service Alternative.* An official can complete community service to make up
- 315 all or part of their fine. The rate earned for community service will be the Nation’s
- 316 minimum wage, which is currently \$10.10 per hour. The Nation currently allows
- 317 community service for fines issued in the Hunting, Fishing and Trapping Law [see Hunting
- 318 Fishing and Trapping 406.10-5(a)].
- 319 ▪ **Loss of Stipend.** An official may lose their stipend for up to two (2) meetings. Members of
- 320 appointed boards are eligible for only one meeting stipend per month, so this could amount to two
- 321 month’s worth of stipends [see Boards, Committees and Commission Law 1 O.C. 105.13-3(a)].
- 322 Members of elected boards may receive up to two (2) meeting stipends per month, so this could
- 323 amount to one month’s worth of stipends for a board that meets twice monthly [see Boards,
- 324 Committees and Commissions Law 1 O.C. 105.13-3(b)].
- 325 ▪ **Mandatory Training.** An official can be ordered to complete mandatory training program to
- 326 address their behavior. Examples include anger management or sexual harassment training.

- 327 ▪ **Termination of Appointment.** The Oneida Business Committee can terminate the appointment of
- 328 any appointed official at any time by 2/3 majority vote. All appointed members serve at the
- 329 discretion of the BC [*see Boards, Committees and Commissions 1 O.C. 105.7-4*].
- 330 ▪ **Removal.** The Trial Court can recommend that the removal process be initiated for an official in
- 331 accordance with the Removal Law. However, this would only be a recommendation. The Removal
- 332 Law provides a strict process that must be followed to remove elected officials:
- 333 ○ *Removal Law Process.* In order to remove an elected official, an eligible voter must file a
- 334 petition with the Secretary signed by at least 30% of the vote cast in the previous general
- 335 election. For example, the number of votes cast in the 2017 general election was 1612, so
- 336 the number of signatures needed to initiate removal is 484. Then, the Judiciary conducts a
- 337 preliminary review to determine whether there is sufficient grounds for removal. If so, the
- 338 Judiciary holds a hearing. If the Judiciary determines that sufficient grounds for removal
- 339 has been proven, the findings are forwarded to the Nation's Chair, who schedules a GTC
- 340 meeting. At the GTC meeting, an elected official may be removed from office after a 2/3
- 341 vote [*see Removal Law 1 O.C. 104*].

342 **F. Factors in Determining Appropriate Sanction and/or Penalty.** The Trial Court and Oneida Business

343 Committee may consider the following when deciding which sanction or penalty to apply [*see*

344 *Sanctions and Penalties 120.8-3*].

- 345 ▪ How severe the misconduct was, whether it was intentional, and how likely the official is to repeat
- 346 the misconduct.
- 347 ▪ The damage to the finances or reputation of the Nation, the entity, or any person or organization.
- 348 ▪ Whether the official has expressed remorse and is willing to take steps to correct the harm done.
- 349 ▪ Whether any prior complaints have been filed against the official. For example, is this the first
- 350 complaint against the official or does it represent a pattern of behavior.

351 **G. Civil Liability and Criminal Prosecution.** In addition to the sanctions and penalties in this law, an

352 official who commits misconduct may also suffer other consequences [*see Sanctions and Penalties*

353 *120.8-4*]. These include:

- 354 ▪ Removal from office or termination of appointment.
- 355 ▪ Criminal prosecution, if the official violated a criminal law. For example, criminal charges for theft
- 356 or violent acts.
- 357 ▪ Civil liability, in accordance with any applicable law of any jurisdiction. For example, a lawsuit for
- 358 damages.
- 359 ▪ Any other penalties listed in another law of the Oneida Nation.
- 360 ○ For example, a violation of the Computer Resources Ordinance may result in loss of access
- 361 to the Nation's computer resources [*see Computer Resources Ordinance 2 O.C. 215.9-1*].

362 **H. Effect of Resignation by an Official.** If an official resigns from office after a complaint has been filed,

363 that complaint will still be investigated and sanctions and penalties may still be pursued. Resigning

364 from office does not end or prevent an investigation [*see Sanctions and Penalties 120.9*].

365 **I. Record of Conduct in Office.** A record of conduct for each official will be maintained by the BC

366 Support Office, which will include copies of complaints filed against the official, outcome of the

367 complaints, and any sanctions and penalties the official received. This record will be maintained for at

368 least seven (7) years [*see Sanctions and Penalties 120.10*].

- 369 ▪ *Public Access to Record of Conduct.* The record of conduct maintained by the BC Support Office
- 370 will only be made available for review to the Oneida Business Committee and the Trial Court. The

purpose of the record of conduct is so that the Trial Court or Business Committee can review previous complaints against the official when determining a potential sanction or penalty [see *Sanctions and Penalties 102.5-7(c)*].

- *Public Access to BC & Trial Court Decisions.* However, the decisions of the Trial Court and Oneida Business Committee regarding a complaint against an elected official and any sanctions and penalties imposed against an official will be public information [see *Sanctions and Penalties 102.5-7(c)*].

SECTION 6. EFFECT ON EXISTING LEGISLATION

A. *References to the Other Laws of the Nation:* The following laws of the Nation are referenced in this law. This law does not conflict with any of the referenced laws.

- *Rules of Civil Procedure.*
- *Rules of Appellate Procedure.*
- *Garnishment Law.*
- *Per Capita Law.*

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

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

SECTION 8. ENFORCEMENT AND ACCOUNTABILITY

A. Sanctions and penalties against appointed officials will be imposed by the Business Committee. Sanctions and penalties against elected officials will be imposed by the Nation's Trial Court.

SECTION 9. OTHER CONSIDERATIONS

A. *Code of Ethics.* Most other tribal, municipal and state governments place sanctions and penalties within their Code of Ethics law. This makes sense, as the Code of Ethics and Sanctions and Penalties are closely related. The Code of Ethics is currently on the LOC's Active Files List for potential amendments. Updating the Code of Ethics would provide clear guidance to officials, individuals filing complaints, the Business Committee and the Judiciary when they begin hearing complaints under this law.

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

- *Recommendation:* Given the uncertainty regarding the number of potential complaints, the Business Committee, BC Support Office and Judiciary should be prepared to potentially process a large number of complaints upon passage of this law.

C. *Impact of Suspension on Full-Time Officials.* Members of the Oneida Business Committee and Oneida Gaming Commission are full-time elected officials. Therefore, suspension of these officials would impact salaries, benefits such as health insurance, and access to buildings. The Human Resources

Department reports that they have a suspension procedure in place for employees of the Nation, and that this procedure could be applied or modified for suspension of full-time officials.

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

D. Comparison to Other Nations. Research of other tribal nations and municipalities indicate that there are many different processes for sanctions and penalties of public officials. There is not a single standard used by all tribal governments. Examples of other sanctions and penalties processes are provided for information:

Chart 6. Sanctions and Penalties Process of other Tribal Nations

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

*Note that "Tribal Council" refers to an elected body similar to the Oneida Business Committee.

- E. Create a Standard Complaint Form.** The BC Support Office and Judiciary may want to consider drafting standard complaint forms to provide to individuals who wish to file a complaint against officials under this law. This form could include the information required under 120.5-3, instructions, and clearly state where complaints against elected officials or appointed officials must be filed. The Nation's Trial Court has a standard civil complaint packet which could be used as an example.
- F. Complaints against Judiciary.** The Judiciary Law already contains a process for reprimand, suspension and removal of judges [see Judiciary Law 8 O.C. 801.12]. Therefore, the Judiciary is not included in this law.
- G. Rules of Civil Procedure.** Complaints filed in the Judiciary Trial Court must follow the Judiciary Rules of Civil Procedure. At the time this analysis was drafted, the Judiciary Rules of Civil Procedure is on the LOC's Active Files List and may be amended in the future.
- H. Fiscal Impact.** Please refer to the fiscal impact statement for any fiscal impacts.
- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [see Legislative Procedures Act 1 O.C. 109.6-1].
 - A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee [see Legislative Procedures Act 1 O.C. 109.6-1(a and b)].

Title 1. Government and Finances - Chapter 120**SANCTIONS AND PENALTIES****Kalihwahníla'tú Okhale? Atatlihwá'thlewáhtu Kayanl'ásla***Giving strength to the issues and Forgiving oneself for the issue at hand Laws*

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|--|--|
| 120.1. Purpose and Policy | 120.7. Complaint Alleged Against an Elected Official |
| 120.2. Adoption, Amendment, Repeal | 120.8. Sanctions and Penalties |
| 120.3. Definitions | 120.9. Effect of Resignation by an Official |
| 120.4. Misconduct. | 120.10. Record of Conduct in Office |
| 120.5. Filing of a Complaint | |
| 120.6. Complaint Alleged Against an Appointed Official | |

120.1. Purpose and Policy

120.1-1. *Purpose.* The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

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

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

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

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

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

(a) Kahletsyal'ásla. The heart felt encouragement of the best in each of us.

(b) Kanolukhwásla. Compassion, caring, identity, and joy of being.

(c) Ka'níkuhli'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) Twahwahtsíláyá. All of us are family.

(g) Yukwatsístáyá. Our fire, our spirit within each one of us.

120.2. Adoption, Amendment, Repeal

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

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

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

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

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

120.3. Definitions

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

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

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

(c) “Business Committee Support Office” means the office that provides administrative support for the Oneida Business Committee and various other governmental operations.

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

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

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

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

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

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

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

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

(l) “Nation” means the Oneida Nation.

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

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

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

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

(q) “Trial Court” means the Trial Court of the Oneida Nation Judiciary.

120.4. Misconduct

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

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

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

(b) a violation of the bylaws, standard operating procedures or other internal operating documents that govern the entity upon which the official serves;

- (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law; and
- (d) any other activity that is incompatible with the high moral and ethical standards that are expected of the Nation's officials.

120.5. Filing of a Complaint

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

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

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

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

120.5-4. *Where to File.*

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

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

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

- (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.

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

120.5-7. *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.

120.6. Complaints Alleged Against an Appointed Official

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

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

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

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

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

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

120.6-3. *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.

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

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

120.6-5. *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 himself or herself and shall not participate in any portion of the complaint process.

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

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

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

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

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

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

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

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

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

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

120.6-7. *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) business days before the investigatory hearing.

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

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

- (1) appear at the hearing to provide testimony under oath and/or information relevant to the allegations against the official; and/or
(2) produce physical evidence that is relevant to the allegations.

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

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

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

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

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

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

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

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

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

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

(1) the complainant,

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

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

120.6-11. *Appeal.* The complainant and the official who is the subject of the complaint shall both have the right to appeal the Oneida Business Committee's decision to the Court of Appeals pursuant to the Nation's Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Oneida Business Committee's decision may only be overturned if the Court of Appeals determines that:

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

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

120.7. Complaints Alleged Against an Elected Official

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

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

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

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

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

120.7-4. *Appeal*. The complainant and the official who is the subject of the complaint shall both have the right to appeal the Trial Court's decision to the Court of Appeals pursuant to the Nation's Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Trial Court's decision may only be overturned if the Court of Appeals determines that:

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

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

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

120.8. Sanctions and Penalties

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

120.8-2. Sanctions and penalties may include:

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

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

(2) To impose the verbal reprimand, the 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:

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

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

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

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

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

- 312 (1) identify the specific misconduct committed by the official;
313 (2) recognize that the official's actions or inactions were wrong;
314 (3) identify the effects of the official's misconduct; and
315 (4) include a clear and unambiguous apology from the official.
- 316 (c) *Written Reprimand*. A written reprimand may be imposed on the official by publication
317 on the Nation's official media outlets, as determined by the Oneida Business Committee.
318 The Oneida Business Committee or the Trial Court may publish a written reprimand which
319 includes the information required for the verbal reprimand as stated in section 120.8-
320 2(a)(2)(A)-(D).
- 321 (d) *Suspension*. An official may be suspended from performing his or her duties as an
322 official for a period of time not to exceed two (2) meetings, or fifteen (15) business days if
323 the official serves in a full-time capacity.
- 324 (1) During a suspension, the official shall not:
- 325 (A) attend meetings, trainings or any other event as part of the entity;
326 (B) attend conferences or other events on behalf of, or as a representative
327 of, the entity;
328 (C) vote or participate in any activities of the entity;
329 (D) perform work on behalf of the entity; or
330 (E) be eligible for any compensation, including regular pay, stipends, or
331 mileage reimbursement.
- 332 (2) When an official is suspended, the Oneida Business Committee or Trial Court
333 shall submit written notices to both the official and to the Business Committee
334 Support Office of the specific start and end date of the suspension.
- 335 (3) If a suspension is imposed on multiple officials of the same entity at one time,
336 the Oneida Business Committee or the Trial Court shall impose the suspensions of
337 the officials on a staggered basis to avoid an interruption of the official business
338 and function of the entity.
- 339 (e) *Restitution*. An official may be ordered to pay restitution, which may include the
340 repayment of any improperly received benefit, or any other payment which is intended to
341 make another whole after suffering losses as a result of the official's misconduct.
- 342 (f) *Fines*. An official may be ordered to pay a fine not to exceed two thousand and five
343 hundred dollars (\$2,500).
- 344 (1) Fines shall be paid to the Trial Court.
- 345 (2) Fines shall be paid within ninety (90) days after the order is issued or upheld
346 on final appeal, whichever is later. Cash shall not be accepted for payment of fines.
347 If the fine is not paid by this deadline, the Trial Court may seek to collect the money
348 owed through the Nation's garnishment and/or per capita attachment process.
- 349 (3) Money received from fines shall be deposited into the General Fund.
- 350 (4) Community service may be substituted for part or all of any fine at the minimum
351 wage rate of the Nation for each hour of community service.
- 352 (g) *Loss of Stipend*. An official may be ordered to forfeit a stipend for his or her service
353 on an entity not to exceed two (2) meetings.
- 354 (h) *Mandatory Participation in Training*. An official may be ordered to participate in and
355 complete a training class or program that will assist the official in addressing and
356 improving his or her behaviors and/or actions.

- 357 (1) The mandated training class or program may address a variety of topics
358 including, but not limited to, anger management, sexual harassment, or other
359 sensitivity training.
- 360 (i) *Termination of Appointment.* An appointed official may have his or her appointment
361 terminated by the Oneida Business Committee in accordance with the Nation's laws and/or
362 policies governing boards, committees, and commissions.
- 363 (j) *Removal.* The Trial Court may recommend that the process for removing an elected
364 official as contained in the Nation's laws and/or policies governing removal be initiated.
- 365 120.8-3. *Factors in Determining an Appropriate Sanction and/or Penalty.* When determining the
366 appropriate sanction or sanctions to impose, the Oneida Business Committee or the Trial Court
367 may consider all factors it deems relevant, including but not limited to:
- 368 (a) the seriousness or severity of the misconduct;
369 (b) whether the conduct was intentional or not;
370 (c) the likelihood of repetition;
371 (d) the extent of probable damage to the finances or reputation of the Nation, the
372 complainant, the entity, or to any other person or organization;
373 (e) whether the official or his or her family personally profited, financially or otherwise,
374 from the prohibited conduct;
375 (f) the official's remorse, or
376 (g) the official's willingness and ability to take steps to mitigate the harm caused by the
377 violation, and
378 (h) any prior complaints filed, including any previous sanctions and penalties imposed
379 upon the official while serving on an entity.
- 380 120.8-4. The Oneida Business Committee and/or the Trial Court may impose a sanction and/or
381 penalty on a conditional basis, whereas compliance with a specific sanction and/or penalty shall
382 prevent the imposition of a more stringent or burdensome sanction and/or penalty.
- 383 120.8-5. The imposition of sanctions and/or penalties in accordance with this law does not exempt
384 an official from individual liability for the underlying misconduct, and does not limit any penalties
385 that may be imposed in accordance with other applicable laws. In addition to any sanctions and
386 penalties that may be imposed in accordance with this law, officials who commit misconduct in
387 office may be subject to other consequences; including but not limited to:
- 388 (a) removal in accordance with the Nation's laws and/or policies governing removal, if an
389 elected official;
390 (b) termination of appointment by the Oneida Business Committee, if an appointed official;
391 (c) criminal prosecution, for misconduct that also violates applicable criminal law;
392 (d) civil liability, in accordance with the applicable law of any jurisdiction; and/or
393 (e) penalties for specific misconduct as authorized by any other law of the Nation.
- 394 120.8-6. An official who does not comply with a sanction and/or penalty that has been imposed
395 against him or her by either the Oneida Business Committee or Trial Court may be subject to the
396 following:
- 397 (a) additional sanctions and/or penalties that result from a complaint of misconduct filed
398 in accordance with this Law based on the non-compliance;
399 (b) termination of appointment by the Oneida Business Committee in accordance with the
400 Nation's laws and policies governing boards, committees, and commissions, if the official
401 was appointed to his or her position; and/or
402 (c) removal in accordance with the Nation's laws and policies governing removal, if the
403 official was elected to his or her position.

120.9. Effect of Resignation by an Official

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

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

120.10. Record of Conduct in Office

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

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

- (a) a copy of each complaint filed against the official;
- (b) recording and/or transcript from any hearings and/or proceedings;
- (c) the outcome of the complaint, and
- (d) 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 seven (7) years.

End.

Adopted – GTC-__-__-__-__

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

TO: Larry Barton, Chief Financial Officer
 Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

FROM: Rae Skenandore, Financial Management Analyst

DATE: December 27, 2018

RE: **Fiscal Impact of the Sanctions and Penalties Law**

I. Estimated Fiscal Impact Summary

Law: Sanctions and Penalties Law		Draft 4
Implementing Agency	Oneida Business Committee Business Committee Support Office Oneida Judiciary	
Estimated time to comply	In compliance with the Legislative Procedure Act	
Estimated Impact	Current Fiscal Year	Ten Year Estimate
Total Estimated Fiscal Impact	None	None

II. Background

Legislative History

This is a new Law that was originally placed on the Legislative Operating Committee active files list on October 15, 2014. A public meeting was held on October 4, 2018.

Summary of Content

A summary of the Law is as follows;

- A. 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.
- B. The Law applies to all elected or appointed Boards, Committees, and Commissions.

C. This law does not apply to members of the Judiciary or corporate entities of the Nation.

D. The definition of misconduct contained in the Law includes but it not limited to the following violations of Oneida Laws, policies, rules, by-laws, SOP's, other operating documents, Federal and State Criminal or Civil law and expected moral and ethical standards.

E. Complaint Process and Requirements

1. Individuals must be over 18 years old to file a complaint.
2. Allegations must have occurred within the last 90 days.
 - a) The Law outlines the requirement for the content of the complaint and where to file
3. Prohibits retaliation
4. Allows for an attorney or advocate
5. Is held confidential until/unless a final determination and sanctions and/or penalties are imposed.
6. The process differentiates complaints against appointed official's vs elected officials.

F. Complaints against appointed officials

1. The complaint process is conducted through the Oneida Business Committee and includes the following:
 - a) Filing with the Business Committee Support Office.
 - (1) Notification requirements;
 - (2) Allowance for mediation;
 - (3) Timelines to respond;
 - (4) Recusal requirements for a conflict of interest.
 - b) An Initial review to determine a finding of merit
 - (1) An investigatory hearing shall be held within 30 days for a complaint determined to have merit.
 - (2) Where there are findings of no merit, the Business Committee shall review the complaint for a determination of frivolous, false, or malicious complaint. If found, the complainant may be subject to the following:

- (3) be fined up to five hundred dollars (\$500);
 - (4) be banned from filing a complaint for up to one year;
 - (5) be subject to a civil suit.
 - c) Investigatory hearing.
 - (1) The Oneida Business Committee shall have the broadest grant of authority to compel any person or organization within the Nation to
 - (a) appear at the hearing to provide testimony under oath and/or information relevant to the allegations against the official; and/or
 - (b) produce physical evidence that is relevant to the allegations
 - (2) Within the investigatory hearing section, the law contains criteria for deliberations, determination, and appeals.
 - (a) The standard for the complaint is “clear and convincing evidence”.
 - (b) The Oneida Business Committee determines and imposes appropriate sanctions and/or penalties.
- G. Complaints against elected officials
 - 1. Complaints are filed with the Trial Court pursuant to the Nations Rules of Civil Procedures.
 - 2. Decisions on filed complaints against elected officials may be appealed to the Court of Appeals pursuant to the Nation’s Rules of Appellate Procedure.
 - 3. Official court records must be submitted to the Business Committee Support Office.
- H. Sanctions and Penalties may include the following:
 - 1. Verbal reprimand.
 - 2. Public apology.
 - 3. Written reprimand.
 - 4. Suspension.
 - 5. Restitution.

6. Fines not to exceed two thousand five hundred dollars (\$2,500) per act of misconduct.
7. Loss of stipend.
8. Mandatory participation in training.
9. Termination of appointment.
10. Removal.

I. The Law contains the factors to be used in determining appropriate Sanctions and/or Penalty as the following:

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.

J. The Law states that the imposition of sanctions and penalties does not exempt officials from individual liability which may include but is not limited to:

1. removal in accordance with the Nation's laws and/or policies governing removal;
2. termination of appointment by the Oneida Business Committee;
3. criminal prosecution, for misconduct that also violates applicable criminal law;
4. civil liability, in accordance with the applicable law of any jurisdiction; and/or penalties for specific misconduct as authorized by any other law of the Nation.

K. Non-compliance may result in the following;

1. Additional sanctions and/or penalties.

2. Termination of appointment.
3. Removal in accordance with the Nation's laws.

L. Resignation does not impact the process or exempt individuals from sanctions and penalties.

M. Records of conduct shall be maintained by the Oneida Business Committee Support Office for no less than seven years.

III. Methodology and Assumptions

A "Fiscal Impact Statement" means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.

Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

The analysis was completed based on the information provided as of the date of this memo.

III. Executive Summary of Findings

The separation of the complaint process duplicates this function within two areas of the Nation. However, aside from the additional duties, there are no other apparent startup, personnel, office, or documentation costs associated with duplicating this function with the approval of this legislation.

III. Financial Impact

No fiscal impact.

IV. Recommendation

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

Sanctions and Penalties Law

Presentation to GTC by
Legislative Operating Committee

February 24, 2019

Why Sanctions & Penalties?

- If an official of the Nation engages in misconduct in office, there are few remedies to hold that official accountable.
 - Removal Law (if elected)
 - Termination of Appointment (if appointed)
- Not all violations rise to level of removal or termination.
- The Nation currently has no formal process to issue warnings, reprimands, or corrective actions against elected and appointed officials.
- Increased accountability and opportunity to correct behavior and become a better official.

Cultural Background

- Great Law of Peace.
- Chief receives up to three warnings from Clan Mother.
 - Try to steer leader on the right path.
 - Opportunity to correct actions.
- After three warnings, the chief is dehorned, or removed.
- Goal is not to shame but to move forward in a good way.

Current Landscape

- Most governments (tribal, local, state and federal) have some sort of sanctions process.
- Sanctions for officials discussed by GTC, previous Business Committees, and community as far back as 1998.
- During the Special Election held on July 9, 2016, the following referendum question was approved by a vote of 178 to 59:
“Should the BC develop a law which provides for sanctions and due process for elected officials?”

Development

- Research
- Work Meetings
 - Meetings w/Boards, Committees and Commissions
- Public Outreach
 - Community Potluck Meeting
 - Public Meeting

What is Misconduct?

- Violating the Oneida Constitution or any law, policy or rule of the Nation;
 - For example, the Code of Ethics or Conflict of Interest Law
- Violating the bylaws or standard operating procedures of the entity the official serves on;
- Being convicted of a felony under federal or Wisconsin law;
- Any other activity that does not uphold the moral and ethical standards expected of the Nation's officials.

Who Can be Sanctioned?

- Elected Officials of the Nation.
 - Including members of the Oneida Business Committee.
- Appointed Officials of the Nation.
- This law does not apply to:
 - Corporate entities of the Nation.
 - Judges of the Oneida Nation Judiciary.
 - Complaint Process for Judges located in Judiciary Law.

Elected Officials

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

Appointed Officials

- Anna John Resident Centered Care Community Board
- Audit Committee (1 community member seat)
- Environmental Resource Board (ERB)
- Finance Committee (1 community member seat)
- Oneida Community Library Board
- Oneida Nation Arts Board
- Oneida Personnel Commission
- Oneida Police Commission
- Oneida Pow Wow Committee
- Oneida Nation Veterans Affairs Committee (ONVAC)
- Pardon and Screening Forgiveness Committee
- Southeastern WI Oneida Tribal Services Advisory Boards (SEOTS)
- Oneida Youth Leadership Institute Board of Directors

Filing a Complaint

- **Who Can File:** Anyone 18 years and older who, in good faith, has knowledge or reason to believe that an official has committed misconduct may file a written complaint.
- **When To File:** Within 90 days of when the alleged misconduct occurred or was discovered to have occurred.
- **Where to File:**
 - Elected Officials – Judiciary Trial Court.
 - Appointed Officials – BC Support Office.

Filing a Complaint



Complaint Process: Elected Officials

- Complaint filed with the Nation's Judiciary Trial Court.
- Case proceeds according to Judiciary Rules of Civil Procedure:
 - Official files answer to the complaint.
 - Court may order pre-trial meeting and/or discovery.
 - Court holds a hearing.
 - Court issues judgment.
- If Trial Court finds official committed misconduct, the Trial Court selects appropriate sanction or penalty.
- Either party may appeal decision to Judiciary Court of Appeals.

Complaint Process: Appointed Officials

- Complaint filed with BC Support Office.
- Complaint forwarded to BC Members and the Official.
- Official submits written response to complaint.
- BC performs initial review to determine if complaint has merit. If complaint has merit, BC schedules a hearing.
- BC holds investigatory hearing during executive session. After the hearing, BC deliberates.
- In open session, BC votes on whether misconduct occurred and selects appropriate sanction or penalty by majority vote.
- Either party may appeal decision to Judiciary Court of Appeals

List of Sanctions & Penalties

- Verbal Reprimand
- Public Apology
- Written Reprimand
- Suspension
- Restitution
- Fines
- Loss of Stipend
- Mandatory Training
- Termination of Appointment
- Removal, in Accordance with Removal Law

Additional Consequences

- Nothing in this law exempts an official from individual liability or penalties imposed in accordance with other laws.
- For example, officials who commit misconduct may be subject to other consequences, including but not limited to:
 - Criminal Prosecution, for misconduct that violates applicable criminal law.
 - Civil Liability, in accordance with applicable law.
 - Penalties for specific misconduct as authorized by any other law of the Nation.

How is Penalty Selected?

- When imposing a sanction or penalty, the OBC or Judiciary may consider the following:
 - How severe the misconduct was, whether it was intentional, and how likely the official is to repeat the misconduct.
 - The damage to the finances or reputation of the Nation, entity, or any person or organization.
 - Whether the official has expressed remorse and is willing to take steps to correct the harm done.
 - Whether any prior complaints have been filed against the official.

Protecting Due Process

- Officials accused of misconduct have the right to be represented by an attorney or advocate.
- Officials have the right to submit a written response to complaints against them, appear at the investigatory hearing to answer the allegations, provide witness testimony, documents and evidence on their behalf.
- Complaints against officials must be proven by clear and convincing evidence.
- Appeals to Judiciary Court of Appeals

Requested Action

Motion to adopt the Sanction and Penalties Law Resolution

Yaw^ko

