



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

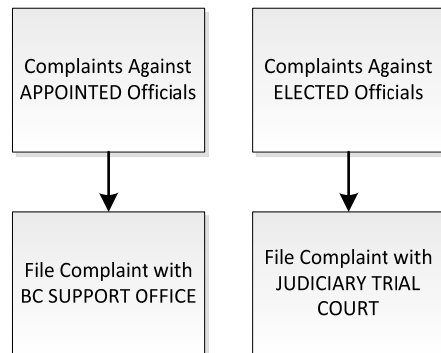
71 **SECTION 5. CONTENTS OF THE LEGISLATION .**

- 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.

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

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

Chart 2. Where to File Complaints



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

122 confidentiality concerns, or “if expressly prohibited by law” [see Judiciary Law 8 O.C.
123 801.4-4].

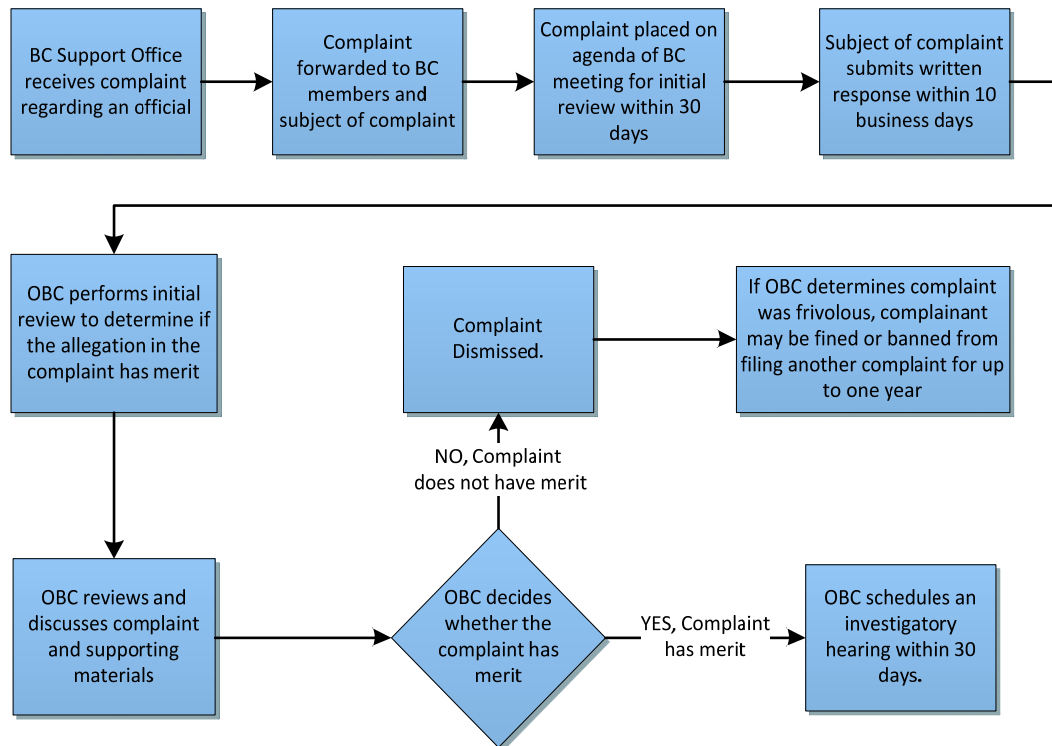
124 **C. *Complaints Against an Appointed Official.*** Complaints against an appointed official will be filed with
125 the Business Committee (BC) Support Office. Appointed officials serve at the discretion of the Oneida
126 Business Committee (BC), who may terminate appointments at any time by 2/3 majority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

- 131 ■ *Receipt of Complaint.* When the BC Support Office receives a complaint, it will forward copies of
132 the complaint to all members of the Oneida Business Committee (BC) for review, and to the official
133 the complaint has been made against. The BC Support Office will place the complaint on the agenda
134 of a Business Committee meeting within thirty (30) days.
- 135 ■ *Mediation.* The individual who filed the complaint or the official accused of misconduct may
136 request mediation within five (5) business days of the complaint being filed. If both parties agree
137 to mediation, the BC Support Office will schedule a meeting with a trained mediator to attempt to
138 resolve the complaint. If the complaint is resolved by mediation, the complaint will be formally
139 dismissed. If the complaint is not resolved, the initial review will proceed [see 120.6-3].
- 140 ■ *Answer to the Complaint.* The official who has been accused of misconduct will have ten (10)
141 business days to respond in writing to the complaint. The official may admit to the misconduct,
142 deny the misconduct, or provide an affirmative defense. An affirmative defense means that an
143 official admits they committed the alleged acts, but that they were justified in doing so.
- 144 ■ *Conflict of Interest & Recusal.* If a member of the Oneida Business Committee (BC) has a conflict
145 of interest regarding a complaint, they must recuse themselves and not participate in the review or
146 hearings. If a member of the BC fails to recuse themselves, that member may be subject to sanctions
147 and penalties under this law.
- 148 ■ *Initial Review.* The Oneida Business Committee (BC) will review the complaint, the official’s
149 written response, and any documentation. The BC will discuss and decide whether the complaint
150 has merit by majority vote. If the BC decides the complaint has merit, they will schedule an
151 investigatory hearing. If BC decides the complaint does not have merit, the complaint will be
152 dismissed.
 - 153 ○ *Frivolous Complaints.* If the BC decides that an individual filed a complaint that was
154 frivolous, false, or made with malicious intent, they may fine that individual up to \$500 or
155 ban them from filing another complaint for up to 1 year. In addition, the official the
156 frivolous complaint was filed against may also file a civil suit in the Trial Court.

157
158
159
160
161
162
163
164
165

166
167

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



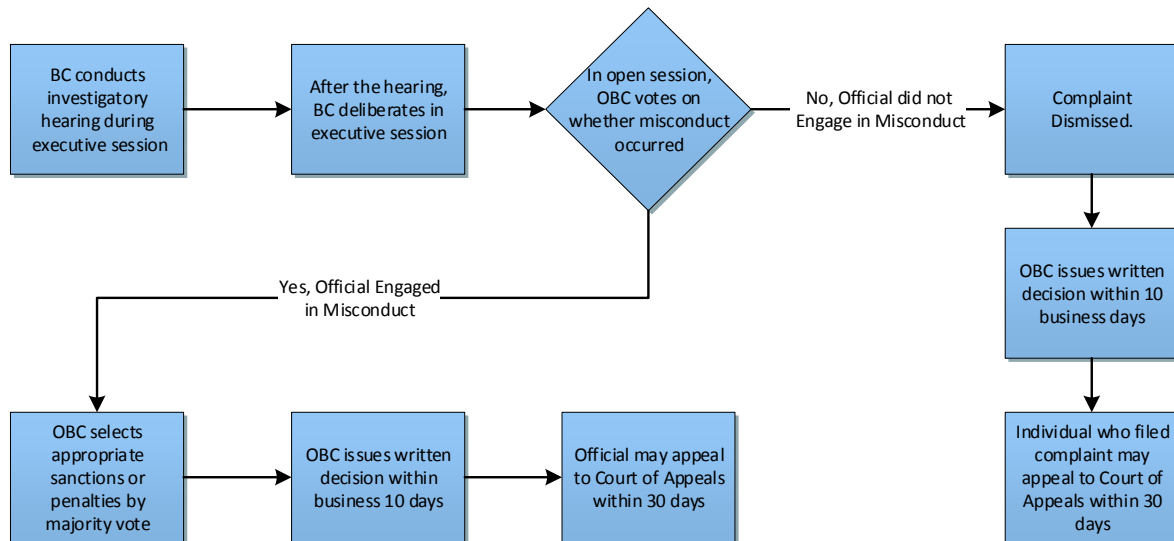
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191

- **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.
 - **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.
 - **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.

- 194 ■ **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.
 - 198 ○ *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)*].

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



202
203 **D. Complaints Against an Elected Official.**

- 204 ■ 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*].
- 208 ■ 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.
 - 212 ○ *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.
 - 214 - *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*].
 - 219 - *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.

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

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

227 ○ *Complaint and Summons are served on official*. The complaint and summons must be
228 delivered to the official within 30 days after the complaint is filed. In addition, for
229 complaints against officials, notice must also be served to the Secretary's office [*see 8 O.C.*
230 *Rules of Civil Procedure 803.5*].

231 ○ *Petitioner Files Proof of Service*. The petitioner must provide proof to the Court that the
232 complaint and summons were delivered to the defendant within 10 days of delivery. If
233 proof of service is not completed, then the case will be dismissed. [*see Rules of Civil*
234 *Procedure 803.5-3*].

235 ○ *Official Files an Answer*. The official responds to the complaint by filing an answer. The
236 official can either admit to or deny the allegations made in the complaint and provide
237 defenses to each claim made in the complaint.

238 ○ *Pre-Trial Meeting*. A pre-trial meeting may be scheduled between the judge, petitioner
239 and defendant. The purpose for this meeting could include preparing for the trial, creating
240 a plan regarding discovery, or facilitating a settlement, such as peacemaking [*see Rules of*
241 *Civil Procedure 803.12*].

242 ○ *Discovery*. The petitioner may make efforts to obtain information relevant to the case, such
243 as documents and electronic information. The judge may place limitations on the
244 information.

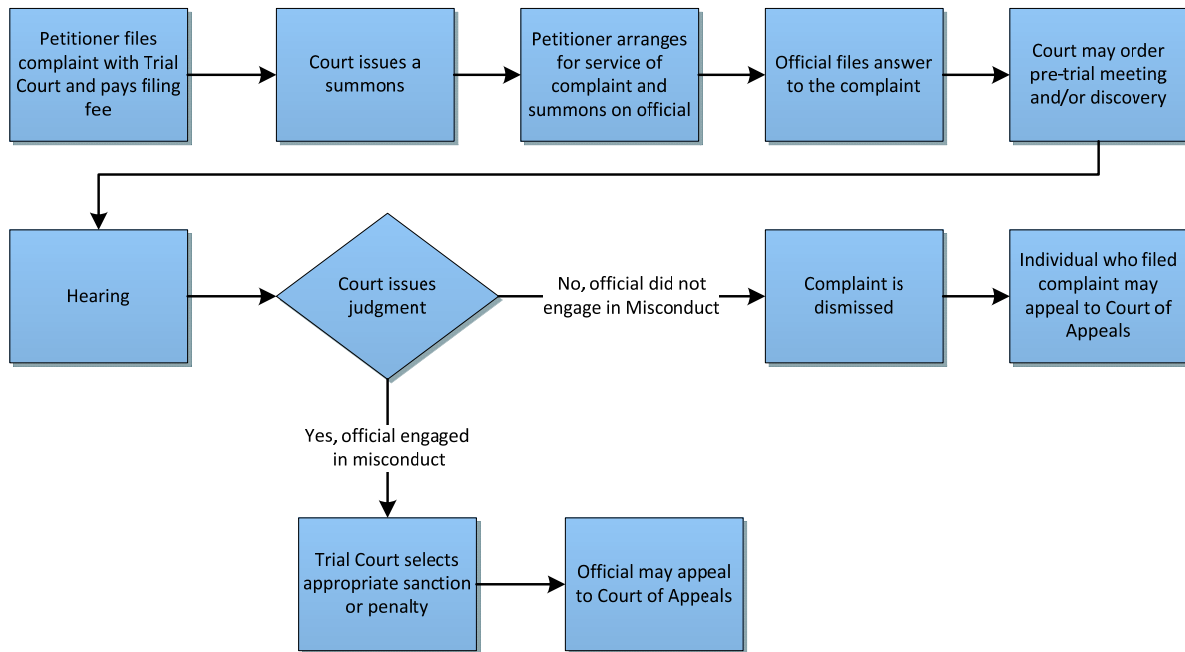
245 ○ *Hearing*. Hearings are conducted in accordance with the Rules of Civil Procedure, which
246 may include opening statements, presentation of the parties' cases, rebuttals and closing
247 statements [*see Rules of Civil Procedure 803.38*].

248 ○ *Judgment*. If the Trial Court determines by clear and convincing evidence that the official
249 engaged in misconduct, then the Trial Court will impose sanctions and penalties that they
250 deem appropriate.

251 ○ *Appeals*. Both the official accused of misconduct and the individual who filed the
252 complaint have the right to appeal the decision of the Trial Court. The appeal must be filed
253 with the Court of Appeals in accordance with the Rules of Appellate Procedure.

254
255
256
257
258
259
260
261
262
263
264
265

266 **Chart 5. Complaint Process Against Elected Officials – Overview of Rules of Civil Procedure.**
267



268
269

270 **E. Sanctions and Penalties.** This law includes a list of sanctions and penalties that may be imposed on
271 an official for misconduct in office. The Trial Court is responsible for imposing sanctions on an elected
272 official. The Oneida Business Committee is responsible for imposing sanctions on an appointed official.
273 Officials may receive one or more of the following penalties. The Trial Court or BC will select
274 whichever penalty they feel is appropriate. [see *Sanctions and Penalties 120.8*]

- 275 ■ *Conditional Penalties.* Sanctions and penalties can also be imposed on a conditional basis. For
276 example, an official could be ordered to make a public apology and attend mandatory training, or
277 otherwise face suspension [see *120.8-4*].
- 278 ■ *Failure to Comply.* If an official fails to comply with a sanction or penalty imposed against them,
279 that official can face additional sanctions as a result of additional misconduct complaints under this
280 law, termination of appointment, or removal in accordance with the Removal Law. An example
281 would be an official failing to pay a fine or violating the terms of their suspension [see *120.8-6*].

282
283

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**

284

- 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

371 purpose of the record of conduct is so that the Trial Court or Business Committee can review
372 previous complaints against the official when determining a potential sanction or penalty [see
373 *Sanctions and Penalties 102.5-7(c)*].
374 ■ *Public Access to BC & Trial Court Decisions.* However, the decisions of the Trial Court and Oneida
375 Business Committee regarding a complaint against an elected official and any sanctions and
376 penalties imposed against an official will be public information [see *Sanctions and Penalties 102.5-*
377 *7(c)*].
378

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

380 **A. *References to the Other Laws of the Nation:*** The following laws of the Nation are referenced in this
381 law. This law does not conflict with any of the referenced laws.
382 ■ *Rules of Civil Procedure.*
383 ■ *Rules of Appellate Procedure.*
384 ■ *Garnishment Law.*
385 ■ *Per Capita Law.*
386

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

388 **A. *Due Process.*** Officials accused of misconduct have the right to be represented by an attorney or
389 advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to
390 appear at the investigatory hearing to answer the allegations, provide witness testimony, documents and
391 evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.
392

393 **SECTION 8. ENFORCEMENT AND ACCOUNTABILITY**

394 **A.** Sanctions and penalties against appointed officials will be imposed by the Business Committee.
395 Sanctions and penalties against elected officials will be imposed by the Nation's Trial Court.
396

397 **SECTION 9. OTHER CONSIDERATIONS**

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

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

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

410 **C. *Impact of Suspension on Full-Time Officials.*** Members of the Oneida Business Committee and
411 Oneida Gaming Commission are full-time elected officials. Therefore, suspension of these officials
412 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’ 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)].