

Title 8. Judiciary - Chapter 802
ONEIDA TRIBAL JUDICIARY CANONS OF JUDICIAL CONDUCT
Twayantlahslun·nihe kanyo twátstah yukwaliwáshuha okhalé yukwayantlahsla?
We all make matters right, when we use our customs and our laws.

Preamble

Canon #1. A Judge shall uphold and promote the independence, integrity and impartiality of the Judiciary; and shall avoid impropriety and the appearance of impropriety.

Canon #2. A Judge shall hear and decide all matters assigned to the Judge, except when disqualification is necessary or where a substitution is requested and granted.

Canon #3. The duties of Judicial office shall take precedence over all of a Judge's personal and extrajudicial activities. A Judge shall conduct personal and extrajudicial activities in

such a manner as to minimize the risk of conflicts with the obligations of judicial office.

Canon #4. A Judge shall avoid financial and business dealings that tend to reflect adversely on his or her impartiality or interfere with the performance of his or her judicial responsibilities.

Canon #5. Judges and Judicial Candidates shall affirm and display the respectful integrity and dignity of a person qualified to hold a position on the Judiciary, and shall refrain from any political activity which might interfere with the performance of his or her judicial duties.

Preamble

Many centuries ago, the Onáyote?á·ká joined with other nations to form the Iroquois Confederacy. Together, our nations established the Great Law of Peace, which set forth the rules that would govern the Confederacy and maintain our relationships. One of the provisions of the Great Law of Peace set forth instructions for the representative leaders who would be responsible for the affairs of the Haudenosaunee:

“You shall now become a mentor of the people of the Five Nations. The thickness of your skin shall be seven spans -- which is to say that you shall be proof against anger, offensive actions and criticism. Your heart shall be filled with peace and good will and your mind filled with a yearning for the welfare of the people of the Confederacy. With endless patience you shall carry out your duty and your firmness shall be tempered with tenderness for your people. Neither anger nor fury shall find lodgment in your mind and all your words and actions shall be marked with calm deliberation. In all of your deliberations ... in all your official acts, self-interest shall be cast into oblivion. Cast not over your shoulder behind you the warnings of the nephews and nieces should they chide you for any error or wrong you may do, but return to the way of the Great Law which is just and right. Look and listen for the welfare of the whole people and have always in view not only the present but also the coming generations, even those whose faces are yet beneath the surface of the ground -- the unborn of the future Nation.”

-From the twenty-eighth wampum, Great Law of Peace

These words represent the values and ideals that the nations of the Confederacy agreed should be embodied in those responsible for their affairs. To this day, those words continue to embody the values and ideals of the Judges responsible for the affairs of the Onáyote?á·ká.

The Judiciary recognizes a sacred obligation not only to preserve and maintain those values and ideals; but also to honor and perpetuate the customs and traditions that have bound our nation together as the Onáyote?á·ká since the beginning of time.

Oneida traditional justice methods focused on adjusting the differences of equals, mediation, and the free discussion of problems, to resolve them by consent. At common law, our system does not rely upon a superior decision-maker who imposes decisions upon others. Our common law is not based upon coercion or force, but upon an agreed need for harmony and maintaining order in the community. Our common law is also based on Twahwahtsilayá - the understanding that all of us are family. And always, in all that is done, the impact on the seventh generation is considered.

Oneida common law has existed from time immemorial. Much like the Oneida People, our common law has withstood the onslaught of outside influence and survived as a distinct, immutable body. Even as the Tribal system adapts and evolves to comport with the adversarial system of justice; our common law, values, principles and traditions remain unchanged. They are immutable; they part of our yukwatsístay_Δ - our fire, our spirit within each one of us.

It is the responsibility of our decision makers to find harmony and achieve a successful compromise between our common law and the contemporary adversarial system. That compromise is a central consideration in establishing Canons of Judicial Conduct. Ethical values are a reflection of Oneida fundamental views of right and wrong; principles for the well-being of a society and the relationships of its members. These Canons seek to reflect and incorporate both those values, as well as the rules which underlie the adjudication method of the state court model.

“All of the representative leaders of the Five Nations Confederacy must be honest in all things. They must not idle or gossip, but be men possessing those honorable qualities that make true royaneh. It shall be a serious wrong for anyone to lead a leader into trivial affairs, for the people must ever hold their leaders high in estimation out of respect to their honorable positions.”

-From the twenty-seventh wampum, Great Law of Peace

The strength and effectiveness of a Judiciary rests upon the respect given to it by the members of the community; and judicial ethics are a critical element in preserving that respect. Public acceptance of the moral authority and integrity of a judicial system contributes to the maintenance of the rule of law and promotes good governance. The public perception of each Judge contributes to the public acceptance of the entire Judiciary.

It is with those principles in mind that these Canons are created.

Application

These Canons are intended to govern the conduct of Judges and Judicial Candidates and to be binding upon them. The concept of ethical conduct encompasses action as well as inaction, and requires self-regulation to a greater extent than most other types of laws, rules and policies.

The Canons also identify aspirational goals for Judges. To implement fully the principles articulated in the Canons, Judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

These Canons and supporting Rules are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and with due regard for all relevant circumstances. Violations of these Canons shall be addressed through the disciplinary panel process established in the Judiciary Law. However, these Canons are not intended as an exhaustive guide – Judges and Judicial Candidates shall also be governed in their judicial and personal conduct by general ethical standards.

It is not intended that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

Further, these Canons are not designed or intended as a basis for civil liability or criminal prosecution, nor are the Canons intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

Finally, the Canons are to be construed so as not to impinge on the essential independence of Judges in making judicial decisions.

Limited Judicial Immunity

Independence is essential to the proper performance of the Judiciary. A decision-maker should be free to act independently and impartially, without being affected by outside influences; including the fear of consequences from unsatisfied litigants. The public confidence in the Judiciary would be substantially weakened if a judge's decisions were, or appeared to be, affected by fear of civil liability. Imposing such a burden on judges could potentially lead to intimidation instead of principled and fearless decision-making.

For this reason - and notwithstanding any other provision of law - judges shall be immune from civil liability, including attorney's fees awards, for judicial acts that are within the Judge's discretion and within the scope of the Judge's jurisdiction.

This immunity is extended only to judicial and adjudicative functions normally performed by a Judge. Judicial immunity does not apply to purely executive or administrative acts, such as evaluating judicial officers or employment decisions - although these acts may require some discretion, it is not discretion that bears on independent decision-making; and holding judges liable for such acts does not threaten judicial independence in the adjudicative process.

This limited judicial immunity extends only to civil liability and injunctive relief. It is not intended to leave parties without recourse if they have been wronged. Alleged errors made by a trial court judge may be corrected on appeal; and actual ethical violations committed by a Judge may be addressed through the judicial disciplinary process identified in the Judiciary Law and/or the Removal Law.

Because of the special nature of their responsibilities, judicial immunity shall also be extended to pro tem judges, peacemakers, mediators, guardians ad litem, and to any other person properly acting in a judicial or quasi-judicial capacity as an agent of the Judiciary, where such persons exercise discretionary judgment as part of their function in a manner functionally comparable to that of a judge.

Note: Defining "Immediate Family"

Throughout these Canons, there are various references to a Judge's "immediate family". For the purposes of these canons, the term "immediate family" shall be defined as husband, wife, mother, father, son, daughter, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law, first or second cousin, step-parent, or someone who is recognized by the Oneida General Tribal Council and/or its delegate as a member of the Judge's extended family.

Canon #1. A Judge shall uphold and promote the independence, integrity and impartiality of the Judiciary; and shall avoid impropriety and the appearance of impropriety.

"... they shall select one who is trustworthy, of good character, of honest disposition, one who manages his own affairs, supports his own family, if any, and who has proven a faithful man to his Nation."

-From the fifty-third wampum, Great Law of Peace

Ka'thsatstásla – the strength and belief and vision as a People.

-From the Philosophies of the Good Mind, as expressed by Onlayote'a'ká

It is these qualities which embody a true leader; one who is worthy of resolving the disputes of the People and the conflicts of the Nation. The Judges of the Oneida Tribe must be honorable, independent, and good; and they must also be fierce protectors of ka'thsatstásla and remember it in all they do.

Nowhere will a Judge's actions be more relevant than in the courtroom setting, and so this Canon and the following Rules are created to guide each Judge in the performance of his or her official duties.

- 1.1. A Judge shall honor and respect the customs and traditions of the Oneida People by incorporating these into all aspects of decision making. A Judge shall uphold and apply the law. To the greatest extent possible, a Judge should focus on consensus, repairing rifts, and on kahletsyalúsla - the heartfelt encouragement of the best in each of us.
- 1.2. Except as authorized by the Fifth Canon, a Judge shall maintain the separation between the Judicial branch and the other branches of the Tribal government; refraining from any other service or activities that cross the bounds separating the powers of the Tribe's government. A Judge shall not attend meetings of the General Tribal Council except for the purposes of presenting Judiciary business, presentations, and/or budgets.
- 1.3. A Judge shall comply with Oneida concepts of propriety and decency. A Judge shall reinforce the standards of the Judiciary at all times, both within and outside of the Judiciary. This responsibility goes beyond judicial decision making and encompasses all forms of expression, including but not limited to: behavior, language, comments and gestures; and interactions with friends, relations and the general public.
- 1.4. A Judge shall be faithful to the law and professional standards in every aspect of Judicial service. A Judge shall maintain professional competence in the judicial profession; continuously striving to expand and improve his or her legal knowledge and skills utilized in the performance of judicial duties.
- 1.5. A Judge shall strive for prompt, efficient and fair disposition of the Judiciary's business; and shall present the thoroughness and preparation reasonably necessary to perform judicial responsibilities.
- 1.6. A Judge shall execute the administrative duties of judicial office with diligence and professionalism. A Judge shall cooperate with other Judges and court officials in the operation of Judiciary business; and should take great care to maintain respectful relationships with the other Judges of the Judiciary.
- 1.7. A Judge shall ensure that all court proceedings are conducted impartially and respectfully, and that due regard is given to each party's rights; and shall strive to resolve cases in an atmosphere of reason, rather than contention. A Judge shall require and maintain order and

decorum in proceedings before the court. A Judge shall require court staff, court officials, and others subject to the Judge's direction and control to act in a manner consistent with the Judge's obligations under these Canons and Rules.

- 1.8. A Judge shall maintain high ethical behavior while on travel status, conducting himself or herself in such a way that reflects positively on the Oneida Tribe and on the Judiciary. A Judge on approved travel status shall attend all meetings or work sessions relating to the activity he or she is attending, unless the Judge is ill or circumstances exist beyond his or her control.
- 1.9. A Judge shall protect the privileged information to which he or she has access in the course of his or her duties, and shall not discuss the proceedings of any case outside of the chambers or the courtroom; with the following exceptions:
 - 1.9.1. A Judge may engage in ex parte communications if necessary and expressly authorized by section 1.12.2.
 - 1.9.2. A Judge may disclose information where disclosure is necessary to protect the health or safety of the Judge or another person.
 - 1.9.3. A Judge may discuss procedural and jurisdictional aspects of proceedings with the staff and officials from the courts of other jurisdictions, whenever it is necessary to address and resolve matters related to jurisdiction and/or the transfer of cases
- 1.10. A Judge may not, while a proceeding is pending in any court, make any public comment that may reasonably be expected to affect the outcome or impair the fairness of a matter before the Judge or before the Judiciary.
- 1.11. A Judge shall guard against, and repudiate, any expression or act of bias, prejudice or discrimination based on race, gender, age, religion, national origin, language, appearance, sexual orientation, tribal affiliation or any other defining human characteristic.
- 1.12. A Judge shall not allow his or her own decision making to be influenced by outside information, and shall not attempt to influence another Judge's decision making.
 - 1.12.1. A Judge shall not investigate facts in a matter independently, and shall consider only the applicable or relevant sources of law, any evidence presented, and any facts that may properly be judicially noticed.
 - 1.12.2. A Judge shall not initiate, permit, condone or consider ex parte communications with parties, counsel or interested persons, or other communications made to the Judge outside the presence of the parties and their lawyers, concerning a pending or impending matter, except that the following types of ex-parte communications may be allowed, if in accordance with adopted Judiciary regulations:
 1. Deliberations with other Judges seated on the same panel of Judges, if applicable.
 2. Communication for non-substantive matters such as for scheduling, administrative, or emergency purposes.
 3. Consultation with court staff and court officials whose functions are to aid the Judge in carrying out the Judge's adjudicative responsibilities.

4. Consultation with other Judges on pending matters, but not with any Judge that has been disqualified from hearing the matter, or that would have appellate jurisdiction over the matter.
5. Communications with a party or attorney where the matter does not and would not involve adversarial proceedings (e.g. name changes).
6. Written advice from a disinterested expert on law or tribal custom or tradition, or on other sources of applicable law; where the parties are given written notice and afforded a reasonable opportunity to object and/or respond to such information.
7. A Judge may consult ethics advisory committees, outside counsel, or legal experts concerning compliance with these Canons, or regarding the compliance of any lawyer or advocate with applicable Rules of Conduct or Ethics.
8. Other communications as allowed by specialized local rules; for example in Peacemaking, where the Peacemaker has a more involved role.

1.13. A Judge shall take action to address known impairment or misconduct among judicial colleagues or members of the legal profession; and shall cooperate and be candid and honest with judicial, lawyer regulation, and other disciplinary agencies; including Judiciary disciplinary panels.

1.13.1. A Judge shall not retaliate, directly or indirectly, against a person known or suspected to have filed a complaint, or to have assisted or cooperated with an investigation of a Judge, lawyer, advocate, or of any court staff.

1.13.2. A Judge having a reasonable belief that the performance of a lawyer or another Judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action to help the Judge or lawyer in question address the problem and prevent harm to the justice system. Appropriate action may range from a private discussion with the impaired person to reporting the impaired person to the appropriate supervisor or disciplinary body.

1.13.3. A Judge shall report to the appropriate disciplinary authority the known misconduct of another Judge or a lawyer, where such misconduct raises a substantial question regarding the honesty, trustworthiness, or fitness of that Judge or lawyer. However, a Judge shall not be required to report conduct disclosed through participation in a group therapy or support group setting, where confidentiality is expected and the disclosure is made in the course of the person seeking assistance. In those situations, a Judge shall only report if reporting is necessary to prevent reasonably foreseeable future harm or to mitigate the consequences of the conduct; and where the necessity of reporting outweighs the necessity of general confidentiality expected by the group.

Canon #2. A Judge shall hear and decide all matters assigned to the Judge, except when disqualification is necessary or where a substitution is requested and granted.

Ka'nikuhli·yó – the openness of the good spirit and mind.

-From the Philosophies of the Good Mind, as expressed by Onlayote'a:ká

One of the most fundamental values of the Oneida People is ka'nikuhli·yó. Ka'nikuhli·yó is also a critical quality for a decision maker. Judges must have an open mind and good spirit so

that they can make the right decisions, based on the right information. This Canon establishes Rules to help ensure that a Judge makes decisions with an open mind and good spirit.

Although there are often situations where only the Judge would be able to know whether he or she could hear a matter with a good spirit and open mind, the following Rules also identify many situations where a Judge would be required to withdraw, in order to preserve the public perception of the Judiciary - to ensure the Community remains confident in the *kaʼnikuhli·yó* of the decision maker, and therefore, in the decision issued by that decision maker.

2.1. A Judge shall avoid improper influence and shall strive to avoid any situation that could cause a reasonable person to perceive that the Judge is improperly influenced. A Judge shall be disqualified from any proceeding where the impartiality of the Judge might reasonably be questioned.

2.1.1. A Judge shall keep himself or herself informed of the Judge's own personal and fiduciary economic interests and make a reasonable effort to keep informed of the personal economic interests of members of the Judge's household, in order to be aware of potential conflicts. A Judge shall inform immediate family and household members of the relevant ethical constraints established by these Rules, and shall discourage such persons from engaging in financial and business activities that may cause a conflict of interest for the Judge.

2.1.2. A Judge shall disclose on the record information that the Judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the Judge believes there is no basis for disqualification.

2.1.3. A Judge may recuse himself or herself from presiding over a matter in order to avoid the appearance of impropriety. If a Judge refuses to withdraw from presiding over a matter but a reasonable person could find that there is an appearance of impropriety, then other Judges may require that Judge to withdraw.

2.1.4. *Exceptions.*

1. A Judge subject to disqualification under this Rule may disclose on the record the basis for such disqualification and may ask the parties and their lawyers and/or advocates to consider whether to waive disqualification. If the parties and lawyers or advocates all agree that the Judge should not be required to recuse himself or herself, then the Judge may participate in the proceeding.

2. The rule of necessity may override the rule of disqualification. In matters that require immediate emergency action, the Judge shall disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another Judge as soon as practicable.

2.2. A Judge shall withdraw from any matter where the Judge has or could be perceived to have a conflict of interest, regardless of whether a motion to disqualify is filed. A Judge shall withdraw in any situation where his or her impartiality could reasonably be questioned, including but not limited to:

2.2.1. Personal bias or prejudices concerning a party or a party's representative;

2.2.2. Personal knowledge of relevant facts or other information which the Judge would be unable to disregard;

- 2.2.3. Personal, professional, or fiduciary relationships between the Judge, or an immediate family member of the Judge; and any party to the proceeding;
- 2.2.4. Where the Judge is participating or has participated in the proceeding or dispute as a lawyer, advocate, arbitrator, mediator, peacemaker, expert, commissioner or Judge; regardless of the forum, court level or jurisdiction in which such involvement has occurred or occurs;
- 2.2.5. Where, in a prior or separate proceeding, including Peacemaking, the Judge has received information about any party that is relevant to the matter before the Judge;
- 2.2.6. Where a Judge is likely to be a material witness in the proceeding; or to have a spouse, immediate family or household member appear as a material witness in the proceeding;
- 2.2.7. Where the Judge or an immediate family or household member has a financial interest, either personally or as a fiduciary, that could be substantially affected by the outcome of the proceeding;
- 2.2.8. Where the Judge has made a public statement other than in a court proceeding, judicial decision, or opinion, that addresses the merits or otherwise appears to commit the Judge to reach a particular result or rule in a particular way in a matter; and
- 2.2.9. A Judge shall be disqualified from hearing any matter involving any Tribal corporation, board, business unit or other Tribal entity if a member of the Judge's immediate family or household is employed by, or conducting business with, that Tribal entity.

2.3. In situations where a panel of Judges is convened to hear a matter, no Judge on the panel may be immediately related to any other Judge also serving on that panel.

Canon #3. The duties of judicial office shall take precedence over all of a Judge's personal and extrajudicial activities. A Judge shall conduct personal and extrajudicial activities in such a manner as to minimize the risk of conflicts with the obligations of judicial office.

Kanolukhwásla – compassion, caring, identity and joy of being.

-From the Philosophies of the Good Mind, as expressed by Onayote'a:ká

It is important for a Judge to be involved in the community, because familiarity with the community is essential to a Judge's role as a decision maker. Community involvement also fosters kanolukhwásla – compassion, caring, identity and joy of being.

Gatherings of all kind help to preserve our common identity and joy of being by bringing us together, reminding us of what we share, and allowing us to forge new experiences together, reinforcing our bonds and ties so that they may exist into the future.

Community involvement also helps the Judge to gain a deeper view of society; so that the Judge may know and understand the factors, circumstances and influences that have shaped the people who appear before the Judiciary. In every decision a Judge makes; and in every solution a Judge proposes, the effects will ripple outward. Just as a Judge must consider the seventh generation; so must a Judge also reflect upon the effects to the community; and this cannot be done without a deep familiarity with that community.

At the same time, the Judge must remember his or her obligation to preserve and maintain the dignity of the Judiciary – in order for the People to respect the Judiciary, the People must respect the Judges. Therefore, when attending events, functions or other community

gatherings, a Judge must take care to act in a way that brings no disrepute upon the Judge, Judiciary or Tribe, or that could negatively affect the public's perception of the Judge's ability to be a fair and impartial decision maker.

3.1. *Educational Activities.* A Judge should participate in and support legal education and law-related activities within the community. A Judge may also speak, write, lecture, teach and participate in extrajudicial activities concerning both legal and non-legal subjects.

3.2. *Organizational Activities and Affiliation.* A Judge is encouraged to join, support, and/or engage in activities sponsored by charitable, fraternal, civic, educational, religious, social and recreational organizations; provided that such affiliation, support and/or involvement does not violate these Canons.

3.2.1. A Judge shall not participate in activities sponsored or hosted by an organization, nor maintain any association with the organization, where:

1. The nature of the Judge's participation or association with the organization will lead to frequent disqualification of the Judge, or
2. The nature of the Judge's participation or association with the organization will in any manner abuse, exploit, or bring disrepute upon the prestige of judicial office or the Judge's judicial position, or
3. The organization is in opposition to Tribal values of respect for the dignity of each individual and the value of the extended family.

3.2.2. A Judge shall not hold membership in any organization that improperly discriminates on the basis of race, sex, gender, religion, national origin, ethnicity, sexual orientation, or any other personal characteristic. However, nothing in these Canons shall be construed as prohibiting a Judge from affiliating with, using the facilities of, or attending events sponsored by organizations that support Native American issues, exercise Tribal or Indian Preference, or that are dedicated to the preservation of traditional Tribal or cultural values.

3.3. *Outside Employment.* A Judge may accept outside employment while concurrently serving as a Judge, but only where such outside employment:

- 3.3.1. Does not reflect adversely on the public perception of the Judge, Judiciary or Tribe.
- 3.3.2. Will not create conflicts of interest or otherwise cause the Judge to be disqualified from hearing matters that would normally be assigned to the Judge.
- 3.3.3. Is not incompatible with the performance of the Judge's duties, responsibilities, or Judiciary work schedule, including regularly scheduled meetings.
- 3.3.4. Will not cause the Judge to violate any Canon or Rule herein.

3.4. *Practice of Law.* A Judge shall not practice law, serve as an advocate, or provide any other functions related to dispute resolution in any capacity within the Oneida Tribal Judicial System where such function falls outside of the Judge's official duties; unless expressly authorized within these Canons or by adopted Judiciary regulations.

3.4.1. A Judge may accept an appointment to serve as a *pro tem* judge in the courts of another jurisdiction, where such appointment does not conflict with these Canons. When serving as a *pro tem* judge in another jurisdiction, a Judge shall execute his or her duties in accordance with these Canons.

1. A Judge who has the honor of appearing in another tribe's court or tribunal shall respect the culture and traditions of that tribe.

2. When presiding over a matter being heard before any other hearing body, a Judge shall respect the integrity of that court; and of Judges who have either previously presided in the matter, or will preside in later proceedings. Prior procedural rulings shall be binding unless clearly unjust or they violate fundamental principles of law or equity.

3.4.2. This Rule shall not prohibit a Judge from bringing or answering an action as an interested party, from being called as a witness, or from serving on a jury or similar panel as a member of the community. A Judge may also represent himself or herself *pro se* in legal actions.

3.4.3. For family members, a Judge may provide legal advice, and basic services such as drafting or reviewing legal documents, where such advice or services are provided without compensation and do not require actual representation.

3.4.4. In addition to performing his or her regular judicial duties, a Judge may be trained and authorized to perform mediation and arbitration services, as well as traditional Peacemaking functions through a program or programs formally established by the Judiciary. Provided that, a Judge shall not become involved in a matter as a Judge if he or she has any prior involvement in the matter as an arbitrator, mediator, and/or Peacemaker.

3.5. *Governmental Service.* Under no circumstances may a Judge serve in any other Oneida Tribal governmental capacity while serving as a Judge. However, a Judge may be appointed or elected to serve on federal, tribal, state, and local governmental boards, committees, commissions and similar entities outside the jurisdiction of the Tribe, if such service is in accordance with these Canons.

Canon #4. A Judge shall avoid financial and business dealings that tend to reflect adversely on his or her impartiality or interfere with the performance of his or her judicial responsibilities.

Yukwahwa'tsile? – our family and our Nation.

-From the Philosophies of the Good Mind, as expressed by Onʌyote?a'ká

This Canon is based on the Good Mind principle of yukwahwa'tsile?. For the Oneida People, the Nation is the family; and all members of the nation-family have a constitutionally-protected right to participate in the economic resources and activities of the Tribe. But because the Oneida Tribal membership is smaller and more close-knit than the communities in other jurisdictions; particular problems may arise in regards to financial and business dealings. This Canon is intended to balance the rights of a Judge to participate in the Tribe's economic resources and activities, while still preserving the integrity of the Judiciary by eliminating situations where decision making could appear to be affected by the Judge's self-interest.

4.1. A Judge shall neither use nor permit use the prestige of judicial office to advance his or her personal interests, nor to gain personal advantage or deferential treatment of any kind, nor to advance the personal or economic interests of other persons or organizations or other entities.

- 4.2. A Judge shall not take or direct any official action, or participate in a decision with respect to a matter if it will have a direct and predictable effect on the financial interest of the Judge; or on the financial interest of an immediate family member or member of the Judge's household, unless the Judge's financial interest is one that is shared by every other adult member of the Tribe, such as an issue relating to per capita payments or General Tribal Council meeting stipends.
- 4.3. A Judge shall manage personal investments and other financial interests so as to minimize the number of cases in which the Judge's disqualification is required. A Judge shall not become involved in any fiduciary or business activity that involves the Judge in frequent transactions or continuing business relationships with those lawyers, advocates or other persons likely to come before the Judiciary.
- 4.4. A Judge shall not accept a gift, bequest, favor, or loan that would affect or reasonably appear to affect the Judge's impartiality in judicial proceedings, or compromise the appearance of fairness. A Judge shall adhere to all adopted Judiciary regulations governing the acceptance of such items, and shall make reasonable efforts to ensure that immediate family and household members abide by the same requirements.

Canon #5. Judges and Judicial Candidates shall affirm and display the respectful integrity and dignity of a person qualified to hold a position on the Judiciary, and shall refrain from any political activity which might interfere with the performance of his or her judicial duties.

“Should any man of the Nation assist with special ability or show great interest in the affairs of the Nation, if he proves himself wise, honest and worthy of confidence, the leaders may elect him to a seat with them and he may sit in the Confederate Council. He shall be proclaimed a “Pine Tree sprung up for the Nation[...].”

“Should he ever do anything contrary to the rules of the Great Peace, he may not be deposed from office - no one shall cut him down - but thereafter everyone shall be deaf to his voice and his advice.”

-From the thirty-fifth wampum, Great Law of Peace

Kalihwi'yó – the use of the good words about ourselves, our Nation and our Future.

-From the Philosophies of the Good Mind, as expressed by Onáyote'a'ká

In accordance with the Great Law of Peace; in order to be elected and proclaimed A Pine Tree Sprung Up For the Nation; a man must prove he is wise, honest and worthy of confidence. After he is elected, if he then goes against the Great Law of Peace, everyone will then be deaf to his voice and his advice.

The same principle still applies for the Onáyote'a'ká today – in order to be elected as a Judge, a person must prove he or she is wise, honest and worthy of confidence. Only now, Judges are elected by the People; and if the People lose confidence in the Judge, then the People will then be deaf to that Judge's voice and advice. This does not just affect the Judge; it affects the People's confidence in the entire Judiciary.

For this reason, it is critical that a Judicial Candidate conduct campaign activities in a manner that will preserve the public confidence in the Judiciary. He or she should use good words about ourselves, our Nation, and our Future, and should consider how his or her

statements and actions in campaigning will impact the public confidence in the Tribal Judicial System.

Judges and Judicial Candidates should also consider how their political activity could impact the public confidence in the Judiciary. Traditionally, all members of the community had a voice in the decision making process, and decisions were reached by consensus. This holds true still today - Judges and Judicial Candidates do not lose the right to vote or to otherwise be involved in the political process as a citizen. However, by seeking or taking office, Judicial Candidates and Judges must remain free from – and appear to be free from - political influence and political pressure. This imposes two additional obligations on their rights as citizens: first, Judges and Judicial Candidates must be careful not to lend the prestige of judicial office to personal statements, endorsements, or other actions; and second, Judges and Judicial Candidates must avoid statements and activity that could undermine the People’s confidence in their impartiality as a decision maker.

5.1. As long as such activity does not compromise the appearance of independence and impartiality of the Judge or Judicial Candidate, or of the Judiciary; Judges, as individuals may have and express personal opinions on matters of public interest. However, a Judge may not comment on any issues before the Judiciary or likely to come before the Judiciary.

5.2. A Judge shall not participate in, comment upon, advocate, or permit the use of the Judge's name for, lobbying before any executive, legislative, policymaking or rulemaking body, or government official. A Judge may, in his or her official capacity; testify, consult with, or advocate any position before, an executive or a legislative body, or government official, but only when expressly authorized to do so by the Judiciary.

5.3. A Judicial Candidate may campaign publicly on his or her own behalf, and may participate and speak on behalf of his or her candidacy in any manner authorized by the Election Law and adopted Judiciary Regulations. Judges and Judicial Candidates shall comply with these Canons in conducting all campaign activity, including for positions and offices other than a Judge of the Judiciary; and shall comply with the Oneida Election Law and any other applicable laws, policies, and Judiciary rules governing elections and campaigning. Every Judge and Judicial Candidate should scrupulously adhere to the rules of fair play while engaged in a campaign for judicial office.

5.4. Every Judicial Candidate should maintain, in campaign conduct, the dignity appropriate to judicial office and the integrity and independence of the Judiciary. A Judicial Candidate shall maintain a high standard of impartiality during the campaigning process, refraining from making any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending before the Judiciary. A Judicial Candidate shall not make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

5.5. A Judicial Candidate shall not appeal to partisanship and shall avoid partisan activity in the spirit of a nonpartisan Judiciary.

End.

Adopted – BC-06-12-13-D
Amended – BC-06-11-14-B