

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

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2 **120.1. Purpose and Policy**  
3 120.1-1. *Purpose.* The purpose of this law is to establish a consistent set of sanctions and  
4 penalties that may be imposed upon elected officials of the Nation for misconduct in office in  
5 order to provide an opportunity for the official to take corrective action to address the  
6 misconduct and promote accountability and improved performance of the official.

7 (a) *Exclusion.* This law does not apply to judges of the Oneida Nation Judiciary or  
8 members of corporate entities of the Nation.

9 120.1-2. *Policy.* It is the policy of the Nation to ensure that elected officials who commit  
10 misconduct while in office be subject to appropriate sanctions and penalties; and to ensure that  
11 there is a fair process in place that enables officials to fairly respond to allegations of  
12 misconduct.

13 120.1-3. It is the intent of the Nation that all elected officials strive to exhibit and uphold the  
14 Nation's core values of The Good Mind as expressed by Onayote'a'ka, which includes:

- 15 (a) Kahletsyalúsła. The heart felt encouragement of the best in each of us.  
16 (b) Kanolukhwásła. Compassion, caring, identity, and joy of being.  
17 (c) Ka'nikuhli'yó. The openness of the good spirit and mind.  
18 (d) Ka'tshatstásła. The strength of belief and vision as a People.  
19 (e) Kalihwi'yó. The use of the good words about ourselves, our Nation, and our future.  
20 (f) Twahwahtsíláyλ. All of us are family.  
21 (g) Yukwatsístayλ. Our fire, our spirit within each one of us.  
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23 **120.2. Adoption, Amendment, Repeal**

24 120.2-1. This law was adopted by the General Tribal Council by resolution GTC-\_\_-\_\_-\_\_-\_\_.

25 120.2-2. This law may be amended or repealed by the General Tribal Council pursuant to the  
26 procedures set out in the Legislative Procedures Act.

27 120.2-3. Should a provision of this law or the application thereof to any person or circumstances  
28 be held as invalid, such invalidity shall not affect other provisions of this law which are  
29 considered to have legal force without the invalid portions.

30 120.2-4. In the event of a conflict between a provision of this law and a provision of another law,  
31 the provisions of this law shall control.

32 120.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.  
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34 **120.3. Definitions**

35 120.3-1. This section shall govern the definitions of words and phrases used within this law. All  
36 words not defined herein shall be used in their ordinary and everyday sense.

- 37 (a) “Business day” means Monday through Friday 8:00 a.m. – 4:30 p.m., excluding  
38 holidays recognized by the Nation.  
39 (b) “Clear and convincing evidence” means evidence that demonstrates it is substantially  
40 more likely than not that the facts presented are true.  
41 (c) “Complainant” means an individual who has made a complaint.  
42 (d) “Constitution” means the Constitution and By-Laws of the Oneida Nation.  
43 (e) “Court of Appeals” means the Court of Appeals of the Oneida Nation Judiciary.  
44 (f) “Entity” means a board, committee, commission, office, or other group of the Nation  
45 an individual may be elected to serve a position on, including the Oneida Business  
46 Committee.  
47 (g) “Government Administrative Office” means the office that provides administrative  
48 support for the Oneida Business Committee and various other governmental operations.  
49 (h) “Misconduct” means wrongful, improper, or unlawful conduct or behavior.  
50 (i) “Nation” means the Oneida Nation.  
51 (j) “Official” means any person who is elected to serve a position for the Nation,  
52 including, but not limited to, a position on a board, committee, commission, or office of  
53 the Nation, including the Oneida Business Committee.  
54 (k) “Restitution” means compensation to an individual or entity for an injury, damage, or  
55 loss.  
56 (l) “Stipend” means the amount paid by the Oneida Nation to elected individuals serving  
57 on boards, committees and commissions of the Nation to offset the expenses of being a  
58 member on the board, committee or commission.  
59 (m) “Substantiate” means to find that the complaint or allegation in the complaint is  
60 valid because there is clear and convincing evidence.  
61 (n) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the  
62 judicial system that was established by Oneida General Tribal Council resolution GTC-  
63 01-07-13-B, and then later authorized to administer the judicial authorities and  
64 responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-  
65 17-A.

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67 **120.4. Misconduct**

68 120.4-1. It shall be the obligation of every official to behave in a manner that promotes high  
69 standards of conduct. High standards of conduct amongst officials of the Nation are essential to  
70 the conduct of government.

71 120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which  
72 constitutes misconduct. Misconduct includes:

- 73 (a) a violation of the Constitution or any of the Nation’s laws, policies, or rules;  
74 (b) a violation of the bylaws, standard operating procedures, or other internal operating  
75 documents that govern the entity upon which the official serves; and  
76 (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a  
77 felony under federal law or Wisconsin law.  
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79 **120.5. Filing of a Complaint**

80 120.5-1. *Who May File.* Any individual at least eighteen (18) years of age or older who is an  
81 enrolled member of the Nation or an employee of the Nation, or an entity, who in good faith, has  
82 knowledge or reason to believe that an official has committed misconduct, may file a written  
83 complaint.

84 120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has  
85 occurred, or was discovered to have occurred, within the previous sixty (60) days.

86 120.5-3. *Contents of the Complaint.* The complaint alleging misconduct by an official shall  
87 include the following information:

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

102 120.5-4. *Where to File.* Complaints against an official shall be filed with the Nation's Trial  
103 Court pursuant to the Nation's Rules of Civil Procedure.

104 120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or  
105 party or witness to a complaint is prohibited. This protection shall also be afforded to any person  
106 offering testimony or evidence or complying with directives authorized under this law.  
107 Retaliation shall include any form of adverse or punitive action by, or caused by, any official.

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

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## 113 **120.6. Complaint Procedure**

114 120.6-1. *Jurisdiction of the Trial Court.* The Trial Court shall have jurisdiction to hear  
115 complaints of alleged misconduct of officials.

116 120.6-2. Any official who is the subject of a complaint has the right to be represented by an  
117 attorney or advocate, at their own expense, for any actions or proceedings related to the  
118 complaint.

119 120.6-3. *Burden of Proof.* In a civil action against an official for misconduct, the complainant  
120 has the burden of proving by clear and convincing evidence that the official engaged in  
121 misconduct.

122 120.6-4. *Confidentiality.* All complaints alleged against an official of the Nation shall be  
123 handled in a confidential manner.

- 124 (a) All hearings and/or proceedings related to a complaint shall be closed to the general  
125 public.
- 126 (b) All records of hearings and/or proceedings shall not be subject to public review or  
127 inspection except that a decision of the Judiciary regarding a complaint alleged against an  
128 official, and any sanctions and/or penalties that are imposed against an official, shall be  
129 public information.

130 120.6-5. *Determination of the Trial Court.* In making a final determination, the Trial Court shall  
131 determine if there is enough evidence to substantiate the allegations of misconduct by the official  
132 by clear and convincing evidence.

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

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

138 120.6-6. *Appeal.* The complainant and the official who is the subject of the complaint shall both  
139 have the right to appeal the Trial Court's decision to the Court of Appeals pursuant to the  
140 Nation's Rules of Appellate Procedure. The appeal shall be limited to review of the record, and  
141 the Trial Court's decision may only be overturned if the Court of Appeals determines that:

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

144 or

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

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#### 147 **120.7. Sanctions and Penalties**

148 120.7-1. A sanction or penalty, or any combination of sanctions and/or penalties, may be  
149 imposed upon the Nation's officials for misconduct in office, in accordance with this law.

150 120.7-2. Sanctions and penalties may include:

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

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

156 (2) To impose the verbal reprimand, the presiding Oneida Business Committee  
157 Chairperson, or another Oneida Business Committee member if the verbal  
158 reprimand is imposed against the presiding Oneida Business Committee  
159 Chairperson, shall read the following statement:

160 (A) *[Insert name of official] who serves on [Insert name of entity] is*  
161 *receiving this reprimand because they have been found by the Nation's*  
162 *Judiciary to have engaged in misconduct. High standards of conduct*  
163 *amongst officials of the Nation are essential to the conduct of government.*  
164 *[Insert name of official's] behavior did not rise to the high standards of*  
165 *conduct that is expected of the Nation's elected officials. The following are*  
166 *the findings from the Trial Court regarding [Insert name of official's]*  
167 *misconduct: [identify the judicial findings regarding the misconduct.] Any*  
168 *future misconduct may result in the imposition of additional sanctions or*  
169 *penalties.*

170 (b) *Public Apology.* The official may be ordered to make a public apology.

171 (1) The Trial Court shall submit written notices to both the official and to the  
172 Government Administrative Office of the specific date, time, and location of the  
173 public apology. The public apology shall occur at an Oneida Business Committee  
174 meeting and/or a General Tribal Council meeting.

175 (2) The public apology made by the official shall identify the judicial findings  
176 regarding the official's misconduct and include a clear and unambiguous apology  
177 from the official for the misconduct.

178 (c) *Written Reprimand.* A written reprimand may be imposed on the official by  
179 publication on the Nation's official media outlets, as determined by the Oneida Business  
180 Committee.

181 (1) The Trial Court may publish a written reprimand which includes the same  
182 statement as required for the verbal reprimand as stated in section 120.7-  
183 2(a)(2)(A).

184 (d) *Suspension.* An official may be suspended from performing their duties as an official  
185 for a period of time not to exceed two (2) regular meetings, or fifteen (15) business days  
186 if the official serves in a full-time capacity.

187 (1) During a suspension, the official shall not:

188 (A) attend meetings, trainings or any other event as part of the entity;

189 (B) attend conferences or other events on behalf of, or as a representative  
190 of, the entity;

191 (C) vote or participate in any activities of the entity;

192 (D) perform work on behalf of the entity; or

193 (E) be eligible for any compensation, including regular pay, stipends, or  
194 mileage reimbursement.

195 (2) When an official is suspended, the Trial Court shall submit written notices to  
196 the official, the Government Administrative Office, Finance Administration, and  
197 the Human Resources Department, when applicable, of the specific start and end  
198 date of the suspension.

199 (3) If a suspension is imposed on multiple officials of the same entity at one time,  
200 the Trial Court may impose the suspensions of the officials on a staggered basis to  
201 avoid an interruption of the official business and function of the entity.

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

206 (f) *Fines.* An official may be ordered to pay a fine not to exceed two thousand and five  
207 hundred dollars (\$2,500).

208 (1) Fines shall be paid to the Trial Court.

209 (2) Community service may be substituted for part or all of any fine at the  
210 minimum wage rate of the Nation for each hour of community service. The use of  
211 community service as a substitution for a fine shall be approved and monitored by  
212 the Trial Court.

213 (3) Fines shall be paid within ninety (90) days after the order is issued or upheld  
214 on final appeal, whichever is later. If the fine is not paid by this deadline, the Trial  
215 Court may seek to collect the money owed through garnishment either through the  
216 procedures provided in the Nation's Garnishment law or through garnishment  
217 procedures of other jurisdictions, and/or per capita attachment in accordance with  
218 the Per Capita law.

219 (g) *Loss of Stipend.* An official may be ordered to forfeit a stipend for their service on an  
220 entity not to exceed two (2) meetings.

221 (1) When an official is ordered to forfeit a stipend, the Trial Court shall submit  
222 written notices to the official and the Government Administrative Office.

223 (h) *Mandatory Participation in Training.* An official may be ordered to participate in  
224 and complete a training class or program at their own expense that will assist the official  
225 in addressing and improving their behaviors and/or actions.

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

229 (i) *Removal.* The Trial Court may recommend that the process for removing an elected  
230 official as contained in the Nation's laws and/or policies governing removal be initiated.

231 120.7-3. *Factors in Determining an Appropriate Sanction and/or Penalty.* When determining  
232 the appropriate sanction or sanctions to impose, the Trial Court may consider all factors it deems  
233 relevant, including but not limited to:

234 (a) the seriousness or severity of the misconduct;

235 (b) whether the conduct was intentional or not;

236 (c) the likelihood of repetition;

237 (d) the extent of probable damage to the finances or reputation of the Nation, the  
238 complainant, the entity, or to any other person or organization;

239 (e) whether the official or their family personally profited, financially or otherwise, from  
240 the prohibited conduct;

241 (f) the official's remorse, or

242 (g) the official's willingness and ability to take steps to mitigate the harm caused by the  
243 violation, and

244 (h) the record of conduct of an official.

245 120.7-4. The Trial Court may impose a sanction and/or penalty on a conditional basis, whereas  
246 compliance with a specific sanction and/or penalty shall prevent the imposition of a more  
247 stringent or burdensome sanction and/or penalty.

248 120.7-5. The imposition of sanctions and/or penalties in accordance with this law does not  
249 exempt an official from individual liability for the underlying misconduct, and does not limit any  
250 penalties that may be imposed in accordance with other applicable laws. In addition to any  
251 sanctions and penalties that may be imposed in accordance with this law, officials who commit  
252 misconduct in office may be subject to other consequences; including but not limited to:

253 (a) removal in accordance with the Nation's laws and/or policies governing removal;

254 (b) criminal prosecution, for misconduct that also violates applicable criminal law;

255 (c) civil liability, in accordance with the applicable law of any jurisdiction; and/or

256 (d) penalties for specific misconduct as authorized by any other law of the Nation.

257 120.7-6. An official who does not comply with a sanction and/or penalty that has been imposed  
258 against him or her by the Trial Court may be subject to the following:

259 (a) additional sanctions and/or penalties that result from a complaint of misconduct filed  
260 in accordance with this Law based on the non-compliance;

261 (b) removal in accordance with the Nation's laws and policies governing removal.

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## 263 **120.8. Effect of Resignation by an Official**

264 120.8-1. The resignation of an official after a complaint has been filed against the official shall  
265 not affect the status of the hearing and determination by the Trial Court.

266 120.8-2. An official who resigns may still be subject to sanctions and/or penalties at the  
267 discretion of the Trial Court.

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**120.9. Record of Conduct**

120.9-1. The Judiciary shall maintain a record of conduct for each official. An official’s record of conduct shall only be made available for review by the Judiciary.

120.9-2. The record of conduct 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.

120.9-3. The record of conduct for each official shall be maintained for a period of no less than seven (7) years.

*End.*

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Adopted – GTC- \_\_ - \_\_ - \_\_ - \_\_