Oneida Tribe of Indians of Wisconsin

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Statement of Effect

Emergency Amendments to the Judiciary Law

Summary

This Resolution adopts an emergency amendment to the Judiciary Law to clarify the requirements for an individual to be eligible to run for the position of Chief Judge. The proposed amendments would add specific fields of study to the Chief Judge bachelor degree requirement, as those fields of study were inadvertently left out of the law, even though it was the intent of the General Tribal Council to have those requirements.

Analysis from Legislative Reference Office

On January 7, 2013 the General Tribal Council (GTC) adopted the Judiciary Law which became effective January 1, 2014 and which will be implemented as of November 1, 2014. Based on that timeline, the Judges for the new Judiciary are to be elected during the 2014 General Election. The caucus for the 2014 General Election is scheduled for April 12, 2014. At the caucus, the Election Board is required to present to the community the qualifications required for each position that is up for election.

During meetings to discuss the transition from the Oneida Tribal Judicial System to the new Judiciary, the Judiciary transition team became aware of an unintended error in the draft of the Law. The GTC made it clear, prior to and during the GTC meeting of January 7, 2013, that if any judge only possessed a bachelor's degree that it should be within certain fields of study. The GTC approved the specific fields of study. However, upon a review of the Law, the specific fields of study are only listed in Section 150.11-1(c) under non-chief judges, but not listed in Section 150.11-1(b) for Chief Judges. Again, this error was inadvertent.

The Resolution adopts only that change to the Judiciary based on the GTC's intent. This Law specifically states that it can only be amended by the General Tribal Council. However, the Oneida Business Committee (OBC) has the authority under the Legislative Procedures Act to make emergency amendments to a Law if the amendments are necessary for the preservation of the general welfare of the reservation population. Due to the fact that the caucus is only one (1) month away, there is not enough time to take this amendment to the GTC for approval. It is imperative that the correct qualifications be set forth at the caucus to ensure only qualified candidates are running for these positions. It would be contrary to the public's interest to require this amendment to go through the potentially lengthy legislative process at this time. However, to make these amendments permanent, this will have to go to the GTC for final approval.

Conclusion

There are no legal bars to adopting the Resolution.

Hand out at BC Meeting

BC Resolution _____

Emergency Amendments to the Judiciary Law

Regarding item# IX. A. 2

WHEREAS, the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin; and

WHEREAS, Oneida Business Committee Resolution 5-02-90 established the Administrative Procedures Act, Oneida Tribal Judicial System and the authority to establish regulations to enhance the Oneida judicial decision making process; and

WHEREAS, on August 19, 1991, the Oneida General Tribal Council adopted Resolution 8-19-91-A and an addendum to the Resolution, which reauthorized the adoption of the Administrative Procedures Act and the creation of the Oneida Appeals Commission, also known as the Oneida Tribal Judicial System; and

WHEREAS, the Oneida Tribal Judicial System has, through Tribal law, been given additional authority to hear and adjudicate additional civil and regulatory matters; and

WHEREAS, the General Tribal Council adopted the Legislative Procedures Act, repealing those related portions of the Administrative Procedures Act, on January 7, 2013 for implementation on March 7, 2013; and

WHEREAS, the General Tribal Council adopted the Judiciary, repealing those related portions of the Administrative Procedures Act and the Addendum to GTC-8-19-91-A creating the Oneida Tribal Judicial System on January 7, 2013 for implementation on November 1, 2014; and

WHEREAS, the intent of the General Tribal Council was clear that in setting out the qualifications for Judges, that if the Judge only had a bachelor's degree, there were specific fields of study that were required; and

WHEREAS, section 150.11-1(c) listed the specific fields of study for non-chief judges, however, there was an error in the draft, and the fields of study were inadvertently left out in section 150.11-1(b) for Chief Judges; and

WHEREAS, the caucus for elections for the Judge position within the new Judiciary is scheduled for April 12, 2014 and the primary is scheduled for May 10, 2014, it is urgent that this matter be resolved for the upcoming election to ensure that all applicants are properly qualified to become candidates; and

WHEREAS, the Legislative Procedures Act authorizes the Oneida Business Committee to enact legislation on an emergency basis; and

WHEREAS, emergency adoption of this amendment to the Judiciary Law is necessary for the preservation of the public health, safety, or general welfare of the reservation population, and observance o of the adoption requirements under the Legislative Procedures Act for passage of laws and policies would be contrary to public interest.

NOW THEREFORE BE IT RESOLVED, that the attached emergency amendments to the Judiciary Law which include the required fields of study for a bachelor's degree in Section 150.11-1(b) is hereby adopted and shall take effect immediately.

CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; ____ members were present at a meeting duly called, noticed and held on the ____ day of _____, 2014; that the foregoing resolution was duly adopted at such meeting by a vote of ____ members for; ____ members against; and ____ members not voting; and that said resolution has not been rescinded or amended in any way.

_____
Patricia Hoeft, Tribal Secretary
Oneida Business Committee

*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."

Chapter 150
JUDICIARY

Tsi?latiliwahslu·nihe kayanlahsla?
Of the place they make matters or issues right

150.1. Purpose and Policy
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150.3. Definitions
150.4. General Provisions
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150.6. Peacemaking and Mediation Division
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150.11. Judges
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Preamble

IN THE WAYS OF OUR ANCESTORS, and to honor and perpetuate our way of life for future generations; we the Oneida Tribe of Indians of Wisconsin, a sovereign, self-governing people in honor of our Haudenosaunee traditions, heritage, and cultural values, do hereby codify and establish through this law a comprehensive and impartial judiciary for the fair, harmonious and peaceful resolution of all matters affecting our members and our posterity.

It is the obligation of the Oneida Tribe, as a sovereign nation, to safeguard the individual human rights of our members and of others who may come within the jurisdiction of our Tribal government. In honoring our ancestors and generations yet to come, we preserve our heritage while adapting to the present world around us; respecting Oneida traditions, language, religious beliefs and practices, and utilizing these legacies to promote the present physical, educational, cultural, social and economic well-being of all Oneida people.

In accordance with these sacred responsibilities, this Judiciary shall serve to establish and administer justice in a consistent fashion, considering the context of all relevant circumstances, and through the fair application and interpretation of Tribal laws and policies, rules of court, decisional law, tribal tradition and custom, and common sense.

150.1. Purpose and Policy

150.1-1. The purpose of this law is to establish a Judiciary, and to provide for the administration of law, justice, judicial procedures and practices by the Oneida Tribe as a sovereign nation by exercising the inherent power to make, execute, apply and enforce its own law, and to apply its own customs and traditions in matters affecting the Oneida people.

150.1-2. It is the policy of the Tribe to provide a fair and impartial forum for the resolution of all matters that come before it pursuant to a grant of authorization by law.

150.2. Adoption, Amendment, Repeal

150.2-1. This law is adopted by the Oneida General Tribal Council by resolution GTC #01-07-13-B.

150.2-2. This law may only be amended by the Oneida General Tribal Council in accordance

with Tribal law.

150.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

150.2-4. Any law, policy, regulation, rule, resolution or motion, or portion thereof, which directly conflicts with the provisions of this law is hereby repealed to the extent that it is inconsistent with or is contrary to this law. Specifically, the following shall be repealed effective March 1, 2015:

(a) That portion of GTC # 8-19-91-A and Addendum which reauthorized the creation of the Oneida Appeals Commission.

(b) That portion of BC #5-2-90 which created the Oneida Appeals Commission.

(c) Sections 1.9-1 through 1.16-1 of the Administrative Procedures Act.

150.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

150.2-6. Case law precedent that has been established through a prior decision of the Oneida Appeals Commission/Oneida Tribal Judicial System shall remain precedent unless overturned or otherwise modified by a decision of the Judiciary, or by a law adopted by the Oneida Business Committee or Oneida General Tribal Council. The principles of Yonikúhlihsa?ahtú (a decision is made) shall apply to all matters before the Judiciary. This includes the precedent set by the Oneida Appeals Commission/Oneida Tribal Judicial System of accepting appeals from Personnel Commission decisions. Where precedent for a particular matter has not been established, the Judges may refer to established Wisconsin or federal case law precedent or laws for guidance.

150.3. Definitions

150.3-1. The definitions below shall govern the words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense:

(a) "Agency" means any Tribal board, committee, commission, department, or officer acting on behalf of such an entity and where relevant, a hearing body of such an entity.

(b) "Background investigation" means the process utilized by the Tribe's Background Investigations Department.

(c) "Benefit" means money, a service, or thing of value, to which a person is entitled by Tribal law upon the satisfaction or fulfillment of named requirements.

(d) "Constitution" means the Constitution and Bylaws of the Oneida Tribe of Indians of Wisconsin as amended.

(e) "Court" means the specific court being referred to in any particular section. For example, if the section covers the Trial Court, the term shall mean that court.

(f) "Indian" means any person who is a member of any federally recognized Indian Tribe.

(g) "Interlocutory appeal" means an appeal that occurs before the Trial Court issues a final ruling on a case.

(h) "Judge" means a Judge or Chief Judge who sits on either the Trial Court or Court of Appeals within the Judiciary.

(i) "Non-Oneida judgment" means a judgment, decree, or order of a court of Wisconsin, or of the United States or of any other court which may be entitled to full faith and credit

by the Judiciary.

(j) "Peacemaker" means an individual appointed by a Judge from the Trial Court who works with parties in a court matter to attempt to resolve a dispute in a peaceful manner, in accordance with the customs of the Tribe.

(k) "Person" means an individual or group of individuals and any firm, association, organization, partnership, estate, trust, company, or corporation.

(l) "Pro Tem Judge" means a decision maker that is not currently seated on the Judiciary, but that is appointed on a temporary (*pro tempore*), case-by-case basis to hear and decide matters in the Trial Court, Court of Appeals, and/or judicial disciplinary panels.

(m) "Reservation" means all land within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

(n) "Tribe" means the Oneida Tribe of Indians of Wisconsin.

(o) "Tribal law" means a code, act, statute, rule, regulation, policy or ordinance enacted by the Oneida General Tribal Council or Oneida Business Committee.

(p) "Yonikúhlihsa?ahtú" means a decision is made/*stare decisis,* the legal principle establishing that Judges and other hearing body officers are bound to recognize the precedent set by previous decisions, and should generally maintain that precedent and apply such precedent in later matters.

150.4. General Provisions

150.4-1. *Establishment.* There is hereby established a Judiciary, which shall administer the judiciary authorities and responsibilities of the Tribe. The Judiciary shall support a separation of Tribal governmental powers.

150.4-2. The Judiciary shall consist of the following:

(a) The Trial Court as provided under 150.5, which shall include the following divisions:

(1) Peacemaking and Mediation Division as provided under 150.6.

(2) General Civil Division as provided under 150.7.

(3) Such other courts or divisions that may be created by Tribal law.

(b) The Court of Appeals as provided under 150.8.

150.4-3. *Seals of the Courts.* The Trial Court and the Court of Appeals shall each adopt a seal to be used to authenticate their respective judgments and other documents.

150.4-4. *Court Open to the Public.* The proceedings of the Trial Court and Court of Appeals shall be public and members of the general public may freely attend the same, except for peacemaking or mediation proceedings or if expressly prohibited by law; provided that, in any case where the presiding Judge determines that there are safety or confidentiality concerns the Judge may exclude from the proceedings all individuals not necessarily present as parties or witnesses.

150.4-5. *Civil Contempt.* The following provisions shall apply to the courts of the Judiciary.

(a) Any person who willfully disrupts, obstructs or otherwise interferes with the conduct of any proceeding by any court, or who obstructs or interferes with the administration of justice by any court, or who disobeys or resists or interferes with any lawful summons, subpoena, process, order, rule, decree or command of any court shall be subject to punishment for contempt of court.

(b) Any person found in contempt of court may be fined in an amount not to exceed one thousand dollars ($1,000) per act of contempt, and not to exceed five thousand dollars ($5,000) per instance of continuing contempt. In instances of continuing contempt, each day shall constitute a separate act of contempt.

150.4-6. *Court Personnel.* Court personnel shall serve and shall be terminated in accordance with the Tribe's employment laws.

(a) *Court Administrator.* The Chief Judge of the Court of Appeals shall hire a Court Administrator subject to the Tribe's Human Resources processes.

(b) *Clerks of Court.* The Chief Judges shall each hire a person through the Tribe's Human Resources processes to serve as the clerk of his or her Court.

(c) *Employment Grievances.* Employment grievances shall be heard in accordance with the Tribe's personnel policies and procedures.

(d) Court personnel positions shall be contingent upon funding availability.

150.5. Trial Court

150.5-1. *Judges.* The Trial Court shall consist of a full-time Chief Judge and three (3) full-time Judges.

150.5-2. *Subject Matter Jurisdiction.* The Tribe is a sovereign nation and reserves all sovereign rights, authority and jurisdiction consistent with being a sovereign nation. The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following:

(a) Tribal laws which specifically authorize the Trial Court to exercise jurisdiction.

(b) the Constitution.

(c) where an agency has denied a person a benefit or has provided a person with an incorrect or incomplete benefit, or has imposed a fine on a person, and the person has exhausted the process provided by law, if any, for review of the action, and

(1) a hearing body has not been designated by law for the purpose of an appeal; or

(2) there is no law providing that the agency's decision is final and/or not appealable.

(d) where a disagreement over the terms, interpretation or enforcement of a written contract, where at least one (1) of the parties is an agency or where both parties meet the personal jurisdiction requirements listed in 150.5-4.

(1) *Statute of Limitations.* In all cases requiring interpretation or enforcement of a contract, the suit must be filed within twenty-four (24) months of either:

(A) the date a party breaches the terms of the contract; or

(B) in actions for declaratory relief, the date a dispute arises as to the interpretation of the contract.

(e) where a declaratory judgment is sought to determine the validity of a Tribal law. The Trial Court shall render a declaratory judgment in such action only when it appears from the petition and the supporting evidence that the law or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the petitioner. The Trial Court shall declare the law invalid if it finds that:

(1) the law violates Constitutional provisions; or

(2) the law was adopted without compliance with law making procedures

required under Tribal law.

(f) small claims actions where the amount in controversy is five thousand ($5,000) or less.

150.5-3. *Territorial Jurisdiction.* The territorial jurisdiction of the Trial Court shall extend to the Reservation and all lands held in trust by the United States for the benefit of the Tribe within the State of Wisconsin.

150.5-4. *Personal Jurisdiction.*

(a) *Indians.* The Trial Court shall have jurisdiction over all Indians.

(b) *Non-Indians.* The Trial Court shall have jurisdiction over non-Indians who have consented to the jurisdiction of the Tribe or Trial Court or as otherwise consistent with federal law.

(1) *Consent to Jurisdiction.* For purposes of subsection 150.5-4(b) above, a person shall have consented to the jurisdiction of the Trial Court by:

(A) entering into a consensual relationship with the Tribe, Tribal entities, Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or

(B) other facts which the Trial Court determines manifest an intent to consent to the authority of the Tribe or the jurisdiction of the Trial Court, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.

(c) *Long-arm Jurisdiction.* Consistent with 150.5-4(a) and (b), in any case in which the Trial Court has subject matter jurisdiction, the Trial Court may exercise jurisdiction over any person who has sufficient contacts with the Reservation or Tribal trust land. Such sufficient contacts can be demonstrated where a person purposefully avails himself of the Reservation such that he or she could reasonably anticipate being haled into the forum for the resolution of a case or controversy.

150.5-5. *Full Faith and Credit or Comity.* The Trial Court shall give full faith and credit to the orders and judgments of the courts of other tribes, states, and local governments unless:

(a) The court in question does not recognize the orders and judgments of the Trial Court;

(b) The court in question did not have jurisdiction over the case or a party or parties to it;

(c) The order or judgment was based on fraud;

(d) To do so would violate the public policy of the Tribe or would be likely to harm the culture, traditions, or sovereignty of the Tribe; or

(e) The order or judgment is on appeal or is being contested in another jurisdiction.

150.5-6. *Non-Oneida Judgments.* A certified copy of any non-Oneida judgment may be filed with the Clerk of Court. Except as provided under 150.5-5, the Clerk of Court shall treat the non-Oneida judgment in the same manner as a judgment of the Judiciary. A judgment so filed shall have the same effect and is subject to the same procedures and status as a judgment of the Judiciary, and may be enforced or satisfied in like manner, except that the Judiciary shall reserve the right to review and modify any non-Oneida order for the enforcement of a judgment, including but not limited to garnishment orders.

150.5-7. *Judicial Panels.* Except as otherwise provided by Tribal law, cases shall be heard by one (1) Judge.

150.5-8. *Chief Judge: Duties.* In addition to his or her other judicial duties, the Chief Judge

shall have the duty of administering the courts of the Trial Court, which shall include the following:

(a) oversee the assignment of cases and ensure proper and impartial management of the Court's calendar and business;

(b) submit an annual budget for consideration by the Oneida General Tribal Council;

(c) supervise the Clerk of Courts and other administrative court personnel;

(d) appoint Pro Tem Judges to preside over matters where the required number of Judges is not otherwise available;

(e) prescribe standards concerning the training and continued education for Judges of the Court;

(f) recruit and select individuals to serve as peacemakers and mediators; and

(g) other duties as prescribed by Tribal law or internal court rules.

150.5-9. *Writs, Orders and Judgments.* The Trial Court may issue all writs, orders, and judgments necessary in aid of its jurisdiction. All writs, orders, and judgments issued by the Court shall be in the name of the Tribe, shall bear the date and the day they are issued, the seal of the Court, and be attested to in the name of the Judge who issued it.

150.6. Peacemaking and Mediation Division

150.6-1. There is hereby established a Peacemaking and Mediation Division, under the jurisdiction of the Trial Court, to provide a forum for the use of peacemaking and mediation to resolve disputes in a fair manner. Peacemaking and mediation shall be available at all stages of litigation, including appeals.

(a) In addition to the requirements set forth in this law, the Trial Court shall ensure that, where necessary, procedural rules governing the operation of peacemaking and mediation are promulgated in accordance with Tribal law, except that culturally sensitive information may be omitted from such rules.

150.6-2. A Judge of the Trial Court shall inform the parties of every case of the availability of peacemaking and mediation to resolve their dispute and, except where prohibited by law, may refer the parties to peacemaking or mediation if the parties agree to attend peacemaking or mediation.

(a) The Judge shall not refer the parties to peacemaking or mediation if attending the session will cause undue hardship or would endanger the health or safety of a party.

(b) When the parties attend peacemaking or mediation based on a referral, the Trial Court shall be responsible for the costs of the peacemaking or mediation.

150.6-3. *Peacemaking*

(a) When peacemaking is provided, it shall be provided to the parties by peacemakers recognized by the Cultural Heritage Department of the Tribe or by the Trial Court. The parties shall determine whether they want to utilize a peacemaker recognized by the Cultural Heritage Department or one recognized by the Trial Court.

(b) A peacemaker's authority shall be limited to those authorities specifically delegated to him or her by the court under Tribal law. A peacemaker shall not be authorized to act in matters of contempt or to issue subpoenas and other processes of the court.

150.6-4. *Mediation.* The Judiciary may provide mediation to parties, by any person or public or private entity recognized by the Trial Court and contracted to conduct mediation. Every

mediator provided by the Judiciary shall have not less than twenty-five (25) hours of mediation training or not less than three (3) years of experience in dispute resolution.

(a) *Private Mediator.* The parties may, at their own expense, receive mediation services from a mediator other than the mediator they are referred to by the Judge. Parties who receive services from a private mediator shall be responsible for the cost and shall sign and file with the appropriate Clerk of Court a written notice stating the mediator's name and the date of the first meeting with the mediator.

(b) Powers and Duties of a Mediator. A mediator may:

(1) require a party to provide written disclosure of facts relating to any legal issue; and/or

(2) suspend mediation when necessary; and/or

(3) terminate mediation if a party does not cooperate or if mediation is not appropriate.

150.6-5. *Agreement.* Any agreement that resolves issues between the parties and that is reached as a result of peacemaking or mediation shall be prepared in writing, reviewed by the attorney, if any, for each party and submitted to the Judge to be included in the order as a stipulation. The peacemaker or mediator shall certify that the written agreement accurately reflects the agreement made between the parties.

(a) If, after peacemaking or mediation, the parties do not reach an agreement on all issues in dispute; the parties, the peacemaker, or the mediator shall so notify the Judiciary. The parties may return to peacemaking or mediation at any time during the litigation, including appeals.

(b) Violation of an order that is entered as a result of a peacemaking or mediation agreement is punishable as contempt of court.

150.7. General Civil Division

150.7-1. There is hereby established a General Civil Division, under the jurisdiction of the Trial Court, to provide a forum for the resolution of all civil actions and proceedings, unless jurisdiction is given to some other division or court.

150.8. Court of Appeals

150.8-1. *Judges.*

(a) The Court of Appeals shall consist of a full-time Chief Judge and four (4) part-time Judges.

(b) The Court of Appeals shall sit in panels of three (3) Judges to dispose of appeals cases on their merits, unless either party requests five (5) Judges, in which event five (5) Judges shall hear the appeal. Motions and other proceedings other than a dispositive appeal hearing may be heard by one (1) Judge.

150.8-2. *Jurisdiction.*

(a) The jurisdiction of the Court of Appeals shall be limited to review of:

(1) final orders, sentences and judgments of the Trial Court;

(2) appeals of agency decisions or administrative decisions where a provision of Tribal law expressly vests such jurisdiction in the Court of Appeals; and

(3) interlocutory appeals of an intermediate ruling, judgment or order during an

original hearing, that wishes to seek intermediate relief. The Court of Appeals shall implement rules that address the timelines for the initial review of an interlocutory appeal, criteria for acceptance of an interlocutory appeal, and procedures for the hearing of such an appeal.

(b) The Court of Appeals shall be the court of final appeal within the Tribe.

150.8-3. *Scope of Appellate Review.*

(a) *Scope of Review.* In hearing an appeal, the Court of Appeals shall not substitute its judgment or wisdom of the credibility of testimony or the weight of evidence for that of the original hearing body.

(1) The Court of Appeals' review shall be limited to matters of record in the case, and may reject a finding of fact only where it determines that the finding is clearly erroneous. Where the rejected finding is necessary for the resolution of the issues, the Court of Appeals shall issue an order of reversal. Where the Court of Appeals determines that the original hearing body erred in not admitting relevant evidence, or in admitting irrelevant and prejudicial evidence, the Court of Appeals shall not take additional evidence or make its own judgment, but shall remand the matter to the original hearing body to reconsider the matter on a proper evidentiary basis.

(2) Except as otherwise provided by law or rule, the Court of Appeals shall not hear new or additional facts, and issues not raised in the proceedings from which an appeal is taken shall be deemed waived and shall not be considered on appeal.

(b) *Burden of Persuasion.* The appellant shall have the burden of persuasion.

(c) *Harmless Error and Discretionary Decisions.* Without limiting the appropriate standard of review, the Court of Appeals shall give due deference to the rule of harmless error and discretionary decisions of the Tribe or any Tribal agency.

150.8-4. *The Appellate Decision.* The Court of Appeals' decision shall consist of a written opinion setting forth the reasoning by the Court in resolving the issues of the appeal and an order that shall affirm the decision below, remand the case for further proceedings, including proceedings to supplement the record, or reverse the decision below, in whole or in part, if substantial rights have been denied because the decision of the lower hearing body:

(a) Violates applicable provisions of the Constitution;

(b) Violates provisions, substantive or procedural, of applicable Tribal law or applicable federal law;

(c) Is an administrative decision that is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with applicable law; or

(d) Is not supported by the substantial evidence on the record taken as a whole.

150.8-5. *Writs or Orders.* The Court of Appeals may issue all writs and orders necessary in the aid of its jurisdiction. A writ or order issued from the Court shall be in the name of the Tribe, shall bear the date it is issued, the seal of the Court, and be attested to in the names of the Judges who issued it.

150.8-6. *The Chief Judge of the Court of Appeals: Duties.* In addition to his or her other judicial duties, the Chief Judge of the Court of Appeals shall have the duty of administering the Court of Appeals, which shall include the following:

(a) to oversee proper and impartial management of the Court's calendar and business;

(b) to appoint Pro Tem Judges to preside over matters where the required number of Judges is not otherwise available;
(c) to supervise the Court Administrator, the Court of Appeals Clerk of Court and other Court of Appeals personnel;
(d) to prescribe standards concerning the training and continued education for Judges of the Court of Appeals; and
(e) other duties as prescribed by Tribal law or the Judiciary's internal operating procedures.

150.9. Internal Operating Procedures

150.9-1. *Internal Operating Procedures.* The Judiciary is authorized to establish internal operating procedures governing the operation of the court. The procedures shall not affect substantive rights and shall not conflict with existing law, the Rules of Procedure, or other rules enacted or approved by the Oneida Business Committee or Oneida General Tribal Council.

150.10. Rules of Pleading, Practice and Procedure

150.10-1. The Judiciary shall create rules of pleading, practice and procedure to regulate all hearings conducted before it. Prior to the Oneida Business Committee approval to adopt, amend, or repeal a rule, the Judiciary shall provide public notice and an opportunity of at least ten (10) business days to submit written comments on the rule. All submitted comments shall be considered by the Judiciary prior to forwarding the rule to the Oneida Business Committee for final action on the rule.
150.10-2. The Oneida Business Committee shall adopt, amend or repeal a rule by majority vote.
150.10-3. Rules of pleading, practice, and procedure shall be codified as part of the Oneida Code of Laws.
150.10-4. This section shall not abridge the right of the Oneida General Tribal Council or the Oneida Business Committee to adopt, amend, or repeal rules relating to pleading, practice, or procedure in accordance with the Tribe's lawmaking procedures.
150.10-5. Rules of pleading, practice, and procedure which are in effect on the date of implementation of this law shall remain valid and in effect until amended or repealed under the provisions of this law.

150.11. Judges

150.11-1. *Qualifications for Judges.* All candidates for, or individuals who may be appointed to, the position of Judge shall submit to a thorough background investigation which shall be completed prior to placement on the ballot or being considered for appointment.

(a) A person shall be eligible to stand for election, or be eligible for appointment in accordance with 150.11-9, and to serve as a Judge if such individual:

(1) Is an enrolled member of the Tribe and is at least thirty (30) years of age on the date of the election or appointment; and

(2) Agrees to attend mandatory training, upon election or appointment, as required by the Judiciary training requirements; and

(3) Has not been convicted of, or entered a plea of guilty or *nolo contendere* to, any offense involving fraud or misrepresentation or any felony, unless:

(A) a pardon has been granted in accordance with the Tribe's pardon law at least ten (10) years before the election is held or the appointment is made; or

(B) the conviction has been removed from his or her record by executive pardon or state court order at least ten (10) years before the election is held or the appointment is made.

(4) Is not mentally disabled or mentally unstable.

(b) *Chief Judges.* In addition to satisfying the requirements of 150.11-1(a)(1) through (3), candidates for election or appointment to serve as a Chief Judge shall hold at least one (1) of the following from an accredited institution:

(1) a master's degree;

(2) a juris doctor degree; or

(3) a bachelor's degree in one of the following fields and shall have three (3) years of experience as a Judge.

(A) Criminal Justice
(B) Education
(C) Political Science, including Government, Politics or Public Policy
(D) Human Rights
(E) Journalism
(F) Legal Studies
(G) Native American Studies
(H) Psychology
(I) Sociology
(J) Public Administration
(K) History
(L) Business Administration
(M) Economics or Finance
(N) Philosophy
(O) Judicial Studies
(P) Paralegal Studies
(Q) Family Law

(c) *Non-Chief Judges.* In addition to satisfying the requirements of 150.11-1(a)(1) through (3), candidates for election or appointment to serve as a non-Chief Judge shall hold at least one (1) of the following from an accredited institution:

(1) a master's degree;

(2) a juris doctor degree; or

(3) a bachelor's degree in one (1) of the following fields of study, provided that a degree in a similar field of study shall also qualify:

(A) Criminal Justice
(B) Education
(C) Political Science, including Government, Politics or Public Policy
(D) Human Rights
(E) Journalism
(F) Legal Studies

(G) Native American Studies
(H) Psychology
(I) Sociology
(J) Public Administration
(K) History
(L) Business Administration
(M) Economics or Finance
(N) Philosophy
(O) Judicial Studies
(P) Paralegal Studies
(Q) Family Law

150.11-2. *Disclosure.* Prior to placement on a ballot, or prior to appointment to fill a vacancy, candidates seeking to serve as a Judge shall disclose to the Election Board, or the Oneida Business Committee in case of appointment, all previous convictions, including those for which a pardon has been granted, which may disqualify the candidate from serving on the Judiciary.

150.11-3. *Prohibitions.*

(a) While serving a term of office, no Judge may:

(1) Be elected or appointed to serve on any Tribal board, committee or commission, including a Tribally-chartered board, committee or commission; or

(2) Be otherwise employed by the Tribe.

(b) Candidates elected or appointed to the Judiciary shall resign from any applicable board, committee or commission, or from any paid position with the Tribe, with such resignation to be effective prior to that candidate taking the Judicial oath of office.

150.11-4. *Election of Judges.*

(a) The Judiciary shall consist of nine (9) Judges who, except as provided in 150.11-4(b), shall be elected to terms of six (6) years. Candidates for the office of Judge shall identify the specific judicial office for which they are a candidate: Trial Court Judge, Trial Court Chief Judge, Appellate Court Judge or Appellate Court Chief Judge.

(b) Judges elected in the first judicial election shall serve terms as provided by resolution. Terms shall be staggered such that every three (3) years, either four (4) or five (5) seats will be up for election.

(c) In the event that the swearing-in of a successor is delayed, the successor's term of office shall be diminished by the length of the delay, in order to maintain the staggered terms.

(d) Any Judge selected by special election shall meet the qualifications listed in 150.11-1.

150.11-5. *Appointment of Lead Judges within the Trial Court.* Within fourteen (14) days of a Judge taking the Judicial oath of office, the Chief Judge of the Trial Court shall appoint a Lead Judge for the General Civil Division of the Trial Court.

150.11-6. *Oath of Office.* Every elected or appointed Judge shall take and file an oath to uphold the Constitution, abide by the Canons of Judicial Ethics, and impartially administer justice.

150.11-7. *Duties of Judges.* Judges shall represent the Judiciary with professionalism and competence. In addition to all other duties imposed by this and other Tribal laws, Judges shall:

(a) hear and adjudicate cases in accordance with Tribal law;

(b) abide by all court rules, Tribal laws, and applicable state and federal laws;

(c) complete assignments given by the appropriate Chief Judge;

(d) represent the Judiciary at functions and meetings where appropriate;

(e) maintain the integrity of the system by upholding the Canons of Judicial Ethics, acting ethically and honestly both in private and in public; and

(f) remain informed about changes to Tribal, state and federal laws, and state and federal court and administrative hearing body decisions that may impact Indian country.

150.11-8. *Vacancies.* If a Judge dies, resigns, is removed from office, becomes incapacitated for a period in excess of one hundred eighty (180) consecutive days, or is declared incompetent by a court of competent jurisdiction, the office of such Judge shall be declared vacant by the Oneida Business Committee and:

(a) A special election shall be held to fill the office for the remainder of the Judge's term of office, if two hundred seventy (270) days or more remain in the term of office; or

(b) The Oneida Business Committee shall appoint a successor to fill the office for the remainder of the Judge's term of office, if fewer than two hundred seventy (270) days, but more than one hundred eighty (180) days, remain in the term.

150.11-9. *Eligibility for Appointment.* Only those persons who meet the requirements of 150.11-1 are eligible to be appointed by the Oneida Business Committee to fill a vacancy on the court.

150.11-10. *Compensation and Benefits.*

(a) Compensation for Judges shall be initially established through the passage of a resolution by the Oneida General Tribal Council. Future compensation shall be in accordance with the Tribal budget process, upon approval from the Oneida General Tribal Council.

(b) The compensation of Judges shall not be diminished during their term of office, unless a majority of a particular court votes to reduce that entire Court's own compensation equally for that Court's term.

(c) Full-time Judges shall receive the same fringe benefits that are provided to Tribal employees in accordance with established Tribal policy.

(d) Part-time Judges shall receive stipends for their services.

150.11-11. *Pro Tem Judges.*

(a) Pro Tem Judges shall be appointed as follows:

(1) Where the necessary number of Judges is unable to hear a matter due to conflict of interest, extended absence, or for any other reason, the appropriate Chief Judge shall appoint Pro Tem Judges to hear the matter.

(A) Any person who has previously heard cases as a Commissioner with the Oneida Appeals Commission, Judicial Officer with the Oneida Tribal Judicial System or Tribal Judge who was not removed or retired for physical or mental disability from office may hear the case. If no such Commissioner, Judicial Officer or Judge is available, then

(B) Any sitting or former Judge from another tribal court of a federally-recognized tribe or nation located in Wisconsin, or from another Haudenosaunee tribe or nation may hear the case.

(2) Where a complaint against a Judge has been filed, the Judiciary shall appoint Pro Tem Judges to sit on a disciplinary panel to hear the complaint.

(A) A disciplinary panel shall be comprised of five (5) Pro Tem Judges who are currently serving as a Judge for any tribal court located in the state of Wisconsin, except for Oneida Tribal courts. Enrolled members of the Oneida Tribe shall be disqualified from serving on a disciplinary panel.

(B) An individual shall not serve on a disciplinary panel as a Pro Tem Judge where that individual:

(i) is related to either the Judge facing the complaint, or to the complainant. For purposes of this section, "related to" shall include spouses, parents and parents-in-law, children and son-or-daughter in-law, grandparents, grandchildren, siblings, half siblings, siblings-in-law, first cousins, aunts, uncles, nieces, nephews, step-parents and stepchildren; or

(ii) currently maintains, or has previously maintained, a personal or professional relationship with either the Judge facing the complaint, or with the complainant, whereby the Pro Tem Judge could know of facts unrelated to the proceeding that could cause the Judge to be biased or that could cause the appearance of bias. For the purposes of this section, "a personal or professional relationship" shall include romantic and/or domestic relationships, caretaker/dependent, attorney/client, counselor/patient and similar relationships.

(b) While hearing a matter, Pro Tem Judges shall be afforded the same authority and decision making power as an elected or appointed Judge, and shall abide by the requirements of 150.11-7.

(c) *Compensation.* Until such time as the Judiciary establishes a payment schedule, Pro Tem Judges shall be compensated in the same manner as part-time Judges and shall be reimbursed for travel and accommodations at the same rate that Tribal employees are compensated under the Travel and Expense Policy. Any payment schedule shall require ratification by the Oneida Business Committee prior to going into effect.

150.12. Reprimand, Suspension and Removal of Judges

150.12-1. Each Judge shall be subject to reprimand; suspension without pay for a definite period of time, not to exceed six (6) months; or removal from office, as set forth in this section for:

(a) willful misconduct in office;

(b) willful disregard of or failure to perform his or her duties, including upholding Tribal law;

(c) habitual intemperance;

(d) conviction of a crime involving moral turpitude;

(e) conduct prejudicial to the administration of justice that brings the judicial office into disrepute; and/or

(f) violating the Canons of Judicial Ethics.

150.12-2. Any person aggrieved by the conduct of a Judge may file a complaint with the Judiciary, requesting that the Judge be disciplined for violating 150.12-1.

(a) Where a complaint has been filed, the Judiciary shall convene a disciplinary panel in accordance with 150.11-11(a)(2). The disciplinary panel shall conduct an initial hearing to determine if probable cause exists to believe that the Judge has engaged in misconduct. The Judiciary shall, by rule, provide for initial and formal hearing procedures for disciplinary panels.

(b) In serving on a disciplinary panel, Pro Tem Judges shall abide by the requirements of 150.11-7.

150.12-3. If the disciplinary panel does not find probable cause to believe that the Judge has engaged in misconduct, the panel shall dismiss the complaint. All papers filed with, and proceedings before and during the initial hearing shall remain confidential. The filing of a complaint and other papers and the testimony given before the panel during an initial hearing shall be deemed a privileged communication, unless probable cause is found.

150.12-4. If the disciplinary panel does find probable cause, the panel shall provide formal notice of the complaint and finding of probable cause to the Judge and:

(a) issue the Judge a reprimand in accordance with 150.12-5; or

(b) hold a formal hearing in accordance with 150.12-6, to determine the appropriate discipline.

150.12-5. *Reprimand.* If the disciplinary panel deems it appropriate, and the Judge consents, the disciplinary panel shall discipline the Judge by issuing a reprimand after finding probable cause. A reprimand shall be read to the Judge in question, in a closed session, in the presence of the assembled body of the Judges within the Judiciary.

(a) The reprimand shall contain:

(1) a recitation of the allegations;

(2) the findings of the disciplinary panel; and

(3) a statement of reprimand.

(b) An official copy of the reprimand shall be provided to the Judge in question and shall be an open record, maintained in accordance with the Open Records and Open Meetings Law.

150.12-6. *Formal Hearing.* If the disciplinary panel deems a reprimand is inappropriate, or the Judge does not agree to a reprimand, the panel shall hold a formal hearing, with a record preserved of the proceedings, to determine whether the Judge should be disciplined. At any such hearing, which shall be open to the public, the complainant and the Judge shall have the opportunity to present testimony and other evidence, and the Judge shall have the opportunity to cross-examine adverse witnesses.

(a) Where the disciplinary panel determines that a formal hearing shall be held, the panel shall have discretion to order a Judge to cease performing judicial duties, without loss of salary, pending the formal hearing and release of an official disciplinary report.

(b) The disciplinary panel shall announce formal hearings by publication in two (2) consecutive issues of the Kalihwisaks. The announcement shall contain information:

(1) confirming that a complaint has been filed;

(2) stating the subject and nature of the complaint;

(3) providing the date and time of the hearing, including procedural aspects; and

(4) reciting the right of a Judge to a fair hearing.

(c) If, after a formal hearing, and after considering the record, the disciplinary panel finds that the charges are established by clear and convincing evidence, the disciplinary panel shall make specific factual findings based upon the record, and shall issue an official disciplinary report, which shall include a report of the formal hearing, the factual findings made based on the hearing, and identifying any specific penalties to be imposed. This decision shall be final.

(d) Disciplinary reports shall be submitted to the Judiciary within thirty (30) days after the formal hearing is concluded. The Judiciary shall immediately carry out any and all disciplinary action ordered in the disciplinary report.

(1) *Reprimand.* Where a disciplinary report recommends a reprimand, a reprimand shall be read to the Judge in question and shall contain the same information and be available as if the Judge had consented to a reprimand under 150.12-5.

(2) *Suspension.* Where a disciplinary report recommends a suspension, the Judge shall draw no salary and shall perform no judicial functions during the period of suspension. Suspension shall not create a vacancy in the office of Judge, and the Judge may resume his or her office upon the completion of the suspension and the satisfaction of any other requirements that may be imposed as a pre-condition of resuming office.

(3) *Removal.* Where a disciplinary report recommends that a Judge be removed from office, removal proceedings shall be commenced in accordance with applicable removal law.

(e) On a semi-annual basis, the Judiciary shall provide a report to the Oneida General Tribal Council identifying all disciplinary panels conducted, including findings of misconduct and all disciplinary action ordered and taken against any Judge.

150.12-7. *Additional Grounds for Suspension and Removal.*

(a) *Suspension.* The Judiciary shall order a Judge to immediately cease performing judicial duties, without loss of salary, while there is a pending indictment or information charging him or her with any offense involving fraud or misrepresentation or a crime punishable as a felony.

(b) *Ineligible for Election or Appointment.* The Judiciary shall immediately begin removal proceedings against a Judge when the Judge no longer meets the qualifications of 150.11-1 to be a candidate for or appointed to the Judgeship which he or she holds.

(c) *Overturned Convictions.* If the conviction for which the Judge is removed is later overturned, a Judge shall not be reinstated, provided that, the overturned conviction shall not prevent the Judge from seeking future election.

150.12-8. Judges shall at all times be subject to removal. The complaint process established in this section shall not supersede or otherwise affect the rights of eligible voters to petition for removal of a Judge in accordance with applicable removal law.

150.13. Retirement

150.13-1. A Judge may be retired for physical or mental disability seriously interfering with the performance of his or her duties if such disability is determined to be permanent or reasonably

likely to become permanent.

(a) Initial and formal hearings regarding the retirement of a Judge for physical or mental disability shall be closed to the public, and the record of such proceedings shall be confidential.

(b) The Judiciary shall, by rule, provide for additional initial and formal hearing procedures for this section.

150.13-2. *Initial Hearing.* Any person aggrieved by the conduct of a Judge may file a complaint requesting that the Judge be retired for disability. In such event the remaining Judges of the respective court shall convene a panel and conduct an initial hearing to determine if probable cause exists to believe that the Judge suffers from mental or physical disability which seriously interferes with the performance of his or her duties.

(a) If the panel does not find probable cause, the panel shall dismiss the complaint.

(b) If the panel does make a finding of probable cause, the panel shall provide formal notice of the complaint and finding to the Judge, as well as notice including the date and time of a formal hearing, within ten (10) days after finding probable cause.

150.13-3. *Formal Hearing.* Formal hearings shall be recorded and shall be scheduled no sooner than thirty (30) days after the Judge receives formal notice of the complaint and finding. At such a hearing, the panel shall convene to determine whether the Judge suffers from mental or physical disability which seriously interferes with the performance of his or her duties.

(a) The panel shall consider, in confidence, any evidence that presents sufficient information to support an allegation of possible medical incapacity, and may require that relevant medical and mental health records be provided.

(b) The complainant and the Judge shall have the opportunity to present testimony and other evidence, and the Judge shall have the opportunity to cross-examine adverse witnesses.

(c) If the panel finds, by a standard of clear and convincing evidence, that the Judge suffers from mental or physical disability which seriously interferes with the performance of his or her duties, the panel shall retire the Judge.

(d) Upon being retired by the panel, the Judge shall thereby be retired with the same rights and privileges as if he or she had retired voluntarily.

End.

Adopted- GTC-01-07-13-B

March 19, 2014
Draft 1- Emergency Amendment

Chapter 150
JUDICIARY

Tsi?latiliwahslu·nihe kayanlahsla?
Of the place they make matters or issues right

150.1. Purpose and Policy
150.2. Adoption, Amendment, Repeal
150.3. Definitions
150.4. General Provisions
150.5. Trial Court
150.6. Peacemaking and Mediation Division
150.7. General Civil Division
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Preamble

IN THE WAYS OF OUR ANCESTORS, and to honor and perpetuate our way of life for future generations; we the Oneida Tribe of Indians of Wisconsin, a sovereign, self-governing people in honor of our Haudenosaunee traditions, heritage, and cultural values, do hereby codify and establish through this law a comprehensive and impartial judiciary for the fair, harmonious and peaceful resolution of all matters affecting our members and our posterity.

It is the obligation of the Oneida Tribe, as a sovereign nation, to safeguard the individual human rights of our members and of others who may come within the jurisdiction of our Tribal government. In honoring our ancestors and generations yet to come, we preserve our heritage while adapting to the present world around us; respecting Oneida traditions, language, religious beliefs and practices, and utilizing these legacies to promote the present physical, educational, cultural, social and economic well-being of all Oneida people.

In accordance with these sacred responsibilities, this Judiciary shall serve to establish and administer justice in a consistent fashion, considering the context of all relevant circumstances, and through the fair application and interpretation of Tribal laws and policies, rules of court, decisional law, tribal tradition and custom, and common sense.

150.1. Purpose and Policy

150.1-1. The purpose of this law is to establish a Judiciary, and to provide for the administration of law, justice, judicial procedures and practices by the Oneida Tribe as a sovereign nation by exercising the inherent power to make, execute, apply and enforce its own law, and to apply its own customs and traditions in matters affecting the Oneida people.
150.1-2. It is the policy of the Tribe to provide a fair and impartial forum for the resolution of all matters that come before it pursuant to a grant of authorization by law.

150.2. Adoption, Amendment, Repeal

150.2-1. This law is adopted by the Oneida General Tribal Council by resolution GTC #01-07-13-B.
150.2-2. This law may only be amended by the Oneida General Tribal Council in accordance

with Tribal law.

150.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

150.2-4. Any law, policy, regulation, rule, resolution or motion, or portion thereof, which directly conflicts with the provisions of this law is hereby repealed to the extent that it is inconsistent with or is contrary to this law. Specifically, the following shall be repealed effective March 1, 2015:

(a) That portion of GTC # 8-19-91-A and Addendum which reauthorized the creation of the Oneida Appeals Commission.

(b) That portion of BC #5-2-90 which created the Oneida Appeals Commission.

(c) Sections 1.9-1 through 1.16-1 of the Administrative Procedures Act.

150.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

150.2-6. Case law precedent that has been established through a prior decision of the Oneida Appeals Commission/Oneida Tribal Judicial System shall remain precedent unless overturned or otherwise modified by a decision of the Judiciary, or by a law adopted by the Oneida Business Committee or Oneida General Tribal Council. The principles of Yonikúhlihsaʔahtú (a decision is made) shall apply to all matters before the Judiciary. This includes the precedent set by the Oneida Appeals Commission/Oneida Tribal Judicial System of accepting appeals from Personnel Commission decisions. Where precedent for a particular matter has not been established, the Judges may refer to established Wisconsin or federal case law precedent or laws for guidance.

150.3. Definitions

150.3-1. The definitions below shall govern the words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense:

(a) "Agency" means any Tribal board, committee, commission, department, or officer acting on behalf of such an entity and where relevant, a hearing body of such an entity.

(b) "Background investigation" means the process utilized by the Tribe's Background Investigations Department.

(c) "Benefit" means money, a service, or thing of value, to which a person is entitled by Tribal law upon the satisfaction or fulfillment of named requirements.

(d) "Constitution" means the Constitution and Bylaws of the Oneida Tribe of Indians of Wisconsin as amended.

(e) "Court" means the specific court being referred to in any particular section. For example, if the section covers the Trial Court, the term shall mean that court.

(f) "Indian" means any person who is a member of any federally recognized Indian Tribe.

(g) "Interlocutory appeal" means an appeal that occurs before the Trial Court issues a final ruling on a case.

(h) "Judge" means a Judge or Chief Judge who sits on either the Trial Court or Court of Appeals within the Judiciary.

(i) "Non-Oneida judgment" means a judgment, decree, or order of a court of Wisconsin, or of the United States or of any other court which may be entitled to full faith and credit

by the Judiciary.

(j) "Peacemaker" means an individual appointed by a Judge from the Trial Court who works with parties in a court matter to attempt to resolve a dispute in a peaceful manner, in accordance with the customs of the Tribe.

(k) "Person" means an individual or group of individuals and any firm, association, organization, partnership, estate, trust, company, or corporation.

(l) "Pro Tem Judge" means a decision maker that is not currently seated on the Judiciary, but that is appointed on a temporary (*pro tempore*), case-by-case basis to hear and decide matters in the Trial Court, Court of Appeals, and/or judicial disciplinary panels.

(m) "Reservation" means all land within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

(n) "Tribe" means the Oneida Tribe of Indians of Wisconsin.

(o) "Tribal law" means a code, act, statute, rule, regulation, policy or ordinance enacted by the Oneida General Tribal Council or Oneida Business Committee.

(p) "Yonikúhlihsaʔahtú" means a decision is made/*stare decisis,* the legal principle establishing that Judges and other hearing body officers are bound to recognize the precedent set by previous decisions, and should generally maintain that precedent and apply such precedent in later matters.

150.4. General Provisions

150.4-1. *Establishment.* There is hereby established a Judiciary, which shall administer the judiciary authorities and responsibilities of the Tribe. The Judiciary shall support a separation of Tribal governmental powers.

150.4-2. The Judiciary shall consist of the following:

(a) The Trial Court as provided under 150.5, which shall include the following divisions:

(1) Peacemaking and Mediation Division as provided under 150.6.

(2) General Civil Division as provided under 150.7.

(3) Such other courts or divisions that may be created by Tribal law.

(b) The Court of Appeals as provided under 150.8.

150.4-3. *Seals of the Courts.* The Trial Court and the Court of Appeals shall each adopt a seal to be used to authenticate their respective judgments and other documents.

150.4-4. *Court Open to the Public.* The proceedings of the Trial Court and Court of Appeals shall be public and members of the general public may freely attend the same, except for peacemaking or mediation proceedings or if expressly prohibited by law; provided that, in any case where the presiding Judge determines that there are safety or confidentiality concerns the Judge may exclude from the proceedings all individuals not necessarily present as parties or witnesses.

150.4-5. *Civil Contempt.* The following provisions shall apply to the courts of the Judiciary.

(a) Any person who willfully disrupts, obstructs or otherwise interferes with the conduct of any proceeding by any court, or who obstructs or interferes with the administration of justice by any court, or who disobeys or resists or interferes with any lawful summons, subpoena, process, order, rule, decree or command of any court shall be subject to punishment for contempt of court.

(b) Any person found in contempt of court may be fined in an amount not to exceed one thousand dollars ($1,000) per act of contempt, and not to exceed five thousand dollars ($5,000) per instance of continuing contempt. In instances of continuing contempt, each day shall constitute a separate act of contempt.

150.4-6. *Court Personnel.* Court personnel shall serve and shall be terminated in accordance with the Tribe's employment laws.

(a) *Court Administrator.* The Chief Judge of the Court of Appeals shall hire a Court Administrator subject to the Tribe's Human Resources processes.

(b) *Clerks of Court.* The Chief Judges shall each hire a person through the Tribe's Human Resources processes to serve as the clerk of his or her Court.

(c) *Employment Grievances.* Employment grievances shall be heard in accordance with the Tribe's personnel policies and procedures.

(d) Court personnel positions shall be contingent upon funding availability.

150.5. Trial Court

150.5-1. *Judges.* The Trial Court shall consist of a full-time Chief Judge and three (3) full-time Judges.

150.5-2. *Subject Matter Jurisdiction.* The Tribe is a sovereign nation and reserves all sovereign rights, authority and jurisdiction consistent with being a sovereign nation. The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following:

(a) Tribal laws which specifically authorize the Trial Court to exercise jurisdiction.

(b) the Constitution.

(c) where an agency has denied a person a benefit or has provided a person with an incorrect or incomplete benefit, or has imposed a fine on a person, and the person has exhausted the process provided by law, if any, for review of the action, and

(1) a hearing body has not been designated by law for the purpose of an appeal; or

(2) there is no law providing that the agency's decision is final and/or not appealable.

(d) where a disagreement over the terms, interpretation or enforcement of a written contract, where at least one (1) of the parties is an agency or where both parties meet the personal jurisdiction requirements listed in 150.5-4.

(1) *Statute of Limitations.* In all cases requiring interpretation or enforcement of a contract, the suit must be filed within twenty-four (24) months of either:

(A) the date a party breaches the terms of the contract; or

(B) in actions for declaratory relief, the date a dispute arises as to the interpretation of the contract.

(e) where a declaratory judgment is sought to determine the validity of a Tribal law. The Trial Court shall render a declaratory judgment in such action only when it appears from the petition and the supporting evidence that the law or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the petitioner. The Trial Court shall declare the law invalid if it finds that:

(1) the law violates Constitutional provisions; or

(2) the law was adopted without compliance with law making procedures

required under Tribal law.

(f) small claims actions where the amount in controversy is five thousand ($5,000) or less.

150.5-3. *Territorial Jurisdiction.* The territorial jurisdiction of the Trial Court shall extend to the Reservation and all lands held in trust by the United States for the benefit of the Tribe within the State of Wisconsin.

150.5-4. *Personal Jurisdiction.*

(a) *Indians.* The Trial Court shall have jurisdiction over all Indians.

(b) *Non-Indians.* The Trial Court shall have jurisdiction over non-Indians who have consented to the jurisdiction of the Tribe or Trial Court or as otherwise consistent with federal law.

(1) *Consent to Jurisdiction.* For purposes of subsection 150.5-4(b) above, a person shall have consented to the jurisdiction of the Trial Court by:

(A) entering into a consensual relationship with the Tribe, Tribal entities, Tribal corporations, or Tribal members, including but not limited to contracts or other agreements; or

(B) other facts which the Trial Court determines manifest an intent to consent to the authority of the Tribe or the jurisdiction of the Trial Court, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.

(c) *Long-arm Jurisdiction.* Consistent with 150.5-4(a) and (b), in any case in which the Trial Court has subject matter jurisdiction, the Trial Court may exercise jurisdiction over any person who has sufficient contacts with the Reservation or Tribal trust land. Such sufficient contacts can be demonstrated where a person purposefully avails himself of the Reservation such that he or she could reasonably anticipate being haled into the forum for the resolution of a case or controversy.

150.5-5. *Full Faith and Credit or Comity.* The Trial Court shall give full faith and credit to the orders and judgments of the courts of other tribes, states, and local governments unless:

(a) The court in question does not recognize the orders and judgments of the Trial Court;

(b) The court in question did not have jurisdiction over the case or a party or parties to it;

(c) The order or judgment was based on fraud;

(d) To do so would violate the public policy of the Tribe or would be likely to harm the culture, traditions, or sovereignty of the Tribe; or

(e) The order or judgment is on appeal or is being contested in another jurisdiction.

150.5-6. *Non-Oneida Judgments.* A certified copy of any non-Oneida judgment may be filed with the Clerk of Court. Except as provided under 150.5-5, the Clerk of Court shall treat the non-Oneida judgment in the same manner as a judgment of the Judiciary. A judgment so filed shall have the same effect and is subject to the same procedures and status as a judgment of the Judiciary, and may be enforced or satisfied in like manner, except that the Judiciary shall reserve the right to review and modify any non-Oneida order for the enforcement of a judgment, including but not limited to garnishment orders.

150.5-7. *Judicial Panels.* Except as otherwise provided by Tribal law, cases shall be heard by one (1) Judge.

150.5-8. *Chief Judge: Duties.* In addition to his or her other judicial duties, the Chief Judge

shall have the duty of administering the courts of the Trial Court, which shall include the following:

(a) oversee the assignment of cases and ensure proper and impartial management of the Court's calendar and business;

(b) submit an annual budget for consideration by the Oneida General Tribal Council;

(c) supervise the Clerk of Courts and other administrative court personnel;

(d) appoint Pro Tem Judges to preside over matters where the required number of Judges is not otherwise available;

(e) prescribe standards concerning the training and continued education for Judges of the Court;

(f) recruit and select individuals to serve as peacemakers and mediators; and

(g) other duties as prescribed by Tribal law or internal court rules.

150.5-9. *Writs, Orders and Judgments.* The Trial Court may issue all writs, orders, and judgments necessary in aid of its jurisdiction. All writs, orders, and judgments issued by the Court shall be in the name of the Tribe, shall bear the date and the day they are issued, the seal of the Court, and be attested to in the name of the Judge who issued it.

150.6. Peacemaking and Mediation Division

150.6-1. There is hereby established a Peacemaking and Mediation Division, under the jurisdiction of the Trial Court, to provide a forum for the use of peacemaking and mediation to resolve disputes in a fair manner. Peacemaking and mediation shall be available at all stages of litigation, including appeals.

(a) In addition to the requirements set forth in this law, the Trial Court shall ensure that, where necessary, procedural rules governing the operation of peacemaking and mediation are promulgated in accordance with Tribal law, except that culturally sensitive information may be omitted from such rules.

150.6-2. A Judge of the Trial Court shall inform the parties of every case of the availability of peacemaking and mediation to resolve their dispute and, except where prohibited by law, may refer the parties to peacemaking or mediation if the parties agree to attend peacemaking or mediation.

(a) The Judge shall not refer the parties to peacemaking or mediation if attending the session will cause undue hardship or would endanger the health or safety of a party.

(b) When the parties attend peacemaking or mediation based on a referral, the Trial Court shall be responsible for the costs of the peacemaking or mediation.

150.6-3. *Peacemaking*

(a) When peacemaking is provided, it shall be provided to the parties by peacemakers recognized by the Cultural Heritage Department of the Tribe or by the Trial Court. The parties shall determine whether they want to utilize a peacemaker recognized by the Cultural Heritage Department or one recognized by the Trial Court.

(b) A peacemaker's authority shall be limited to those authorities specifically delegated to him or her by the court under Tribal law. A peacemaker shall not be authorized to act in matters of contempt or to issue subpoenas and other processes of the court.

150.6-4. *Mediation.* The Judiciary may provide mediation to parties, by any person or public or private entity recognized by the Trial Court and contracted to conduct mediation. Every

mediator provided by the Judiciary shall have not less than twenty-five (25) hours of mediation training or not less than three (3) years of experience in dispute resolution.

(a) *Private Mediator.* The parties may, at their own expense, receive mediation services from a mediator other than the mediator they are referred to by the Judge. Parties who receive services from a private mediator shall be responsible for the cost and shall sign and file with the appropriate Clerk of Court a written notice stating the mediator's name and the date of the first meeting with the mediator.

(b) Powers and Duties of a Mediator. A mediator may:

(1) require a party to provide written disclosure of facts relating to any legal issue; and/or

(2) suspend mediation when necessary; and/or

(3) terminate mediation if a party does not cooperate or if mediation is not appropriate.

150.6-5. *Agreement.* Any agreement that resolves issues between the parties and that is reached as a result of peacemaking or mediation shall be prepared in writing, reviewed by the attorney, if any, for each party and submitted to the Judge to be included in the order as a stipulation. The peacemaker or mediator shall certify that the written agreement accurately reflects the agreement made between the parties.

(a) If, after peacemaking or mediation, the parties do not reach an agreement on all issues in dispute; the parties, the peacemaker, or the mediator shall so notify the Judiciary. The parties may return to peacemaking or mediation at any time during the litigation, including appeals.

(b) Violation of an order that is entered as a result of a peacemaking or mediation agreement is punishable as contempt of court.

150.7. General Civil Division

150.7-1. There is hereby established a General Civil Division, under the jurisdiction of the Trial Court, to provide a forum for the resolution of all civil actions and proceedings, unless jurisdiction is given to some other division or court.

150.8. Court of Appeals

150.8-1. *Judges.*

(a) The Court of Appeals shall consist of a full-time Chief Judge and four (4) part-time Judges.

(b) The Court of Appeals shall sit in panels of three (3) Judges to dispose of appeals cases on their merits, unless either party requests five (5) Judges, in which event five (5) Judges shall hear the appeal. Motions and other proceedings other than a dispositive appeal hearing may be heard by one (1) Judge.

150.8-2. *Jurisdiction.*

(a) The jurisdiction of the Court of Appeals shall be limited to review of:

(1) final orders, sentences and judgments of the Trial Court;

(2) appeals of agency decisions or administrative decisions where a provision of Tribal law expressly vests such jurisdiction in the Court of Appeals; and

(3) interlocutory appeals of an intermediate ruling, judgment or order during an

original hearing, that wishes to seek intermediate relief. The Court of Appeals shall implement rules that address the timelines for the initial review of an interlocutory appeal, criteria for acceptance of an interlocutory appeal, and procedures for the hearing of such an appeal.

(b) The Court of Appeals shall be the court of final appeal within the Tribe.

150.8-3. *Scope of Appellate Review.*

(a) *Scope of Review.* In hearing an appeal, the Court of Appeals shall not substitute its judgment or wisdom of the credibility of testimony or the weight of evidence for that of the original hearing body.

(1) The Court of Appeals' review shall be limited to matters of record in the case, and may reject a finding of fact only where it determines that the finding is clearly erroneous. Where the rejected finding is necessary for the resolution of the issues, the Court of Appeals shall issue an order of reversal. Where the Court of Appeals determines that the original hearing body erred in not admitting relevant evidence, or in admitting irrelevant and prejudicial evidence, the Court of Appeals shall not take additional evidence or make its own judgment, but shall remand the matter to the original hearing body to reconsider the matter on a proper evidentiary basis.

(2) Except as otherwise provided by law or rule, the Court of Appeals shall not hear new or additional facts, and issues not raised in the proceedings from which an appeal is taken shall be deemed waived and shall not be considered on appeal.

(b) *Burden of Persuasion.* The appellant shall have the burden of persuasion.

(c) *Harmless Error and Discretionary Decisions.* Without limiting the appropriate standard of review, the Court of Appeals shall give due deference to the rule of harmless error and discretionary decisions of the Tribe or any Tribal agency.

150.8-4. *The Appellate Decision.* The Court of Appeals' decision shall consist of a written opinion setting forth the reasoning by the Court in resolving the issues of the appeal and an order that shall affirm the decision below, remand the case for further proceedings, including proceedings to supplement the record, or reverse the decision below, in whole or in part, if substantial rights have been denied because the decision of the lower hearing body:

(a) Violates applicable provisions of the Constitution;

(b) Violates provisions, substantive or procedural, of applicable Tribal law or applicable federal law;

(c) Is an administrative decision that is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with applicable law; or

(d) Is not supported by the substantial evidence on the record taken as a whole.

150.8-5. *Writs or Orders.* The Court of Appeals may issue all writs and orders necessary in the aid of its jurisdiction. A writ or order issued from the Court shall be in the name of the Tribe, shall bear the date it is issued, the seal of the Court, and be attested to in the names of the Judges who issued it.

150.8-6. *The Chief Judge of the Court of Appeals: Duties.* In addition to his or her other judicial duties, the Chief Judge of the Court of Appeals shall have the duty of administering the Court of Appeals, which shall include the following:

(a) to oversee proper and impartial management of the Court's calendar and business;

(b) to appoint Pro Tem Judges to preside over matters where the required number of Judges is not otherwise available;
(c) to supervise the Court Administrator, the Court of Appeals Clerk of Court and other Court of Appeals personnel;
(d) to prescribe standards concerning the training and continued education for Judges of the Court of Appeals; and
(e) other duties as prescribed by Tribal law or the Judiciary's internal operating procedures.

150.9. Internal Operating Procedures

150.9-1. *Internal Operating Procedures.* The Judiciary is authorized to establish internal operating procedures governing the operation of the court. The procedures shall not affect substantive rights and shall not conflict with existing law, the Rules of Procedure, or other rules enacted or approved by the Oneida Business Committee or Oneida General Tribal Council.

150.10. Rules of Pleading, Practice and Procedure

150.10-1. The Judiciary shall create rules of pleading, practice and procedure to regulate all hearings conducted before it. Prior to the Oneida Business Committee approval to adopt, amend, or repeal a rule, the Judiciary shall provide public notice and an opportunity of at least ten (10) business days to submit written comments on the rule. All submitted comments shall be considered by the Judiciary prior to forwarding the rule to the Oneida Business Committee for final action on the rule.
150.10-2. The Oneida Business Committee shall adopt, amend or repeal a rule by majority vote.
150.10-3. Rules of pleading, practice, and procedure shall be codified as part of the Oneida Code of Laws.
150.10-4. This section shall not abridge the right of the Oneida General Tribal Council or the Oneida Business Committee to adopt, amend, or repeal rules relating to pleading, practice, or procedure in accordance with the Tribe's lawmaking procedures.
150.10-5. Rules of pleading, practice, and procedure which are in effect on the date of implementation of this law shall remain valid and in effect until amended or repealed under the provisions of this law.

150.11. Judges

150.11-1. *Qualifications for Judges.* All candidates for, or individuals who may be appointed to, the position of Judge shall submit to a thorough background investigation which shall be completed prior to placement on the ballot or being considered for appointment.

(a) A person shall be eligible to stand for election, or be eligible for appointment in accordance with 150.11-9, and to serve as a Judge if such individual:

(1) Is an enrolled member of the Tribe and is at least thirty (30) years of age on the date of the election or appointment; and
(2) Agrees to attend mandatory training, upon election or appointment, as required by the Judiciary training requirements; and
(3) Has not been convicted of, or entered a plea of guilty or *nolo contendere* to, any offense involving fraud or misrepresentation or any felony, unless:

(A) a pardon has been granted in accordance with the Tribe's pardon law at least ten (10) years before the election is held or the appointment is made; or

(B) the conviction has been removed from his or her record by executive pardon or state court order at least ten (10) years before the election is held or the appointment is made.

(4) Is not mentally disabled or mentally unstable.

(b) *Chief Judges.* In addition to satisfying the requirements of 150.11-1(a)(1) through (3), candidates for election or appointment to serve as a Chief Judge shall hold at least one (1) of the following from an accredited institution:

(1) a master's degree;

(2) a juris doctor degree; or

(3) a bachelor's degree in one of the following fields and shall have three (3) years of experience as a Judge.

(A) Criminal Justice
(B) Education
(C) Political Science, including Government, Politics or Public Policy
(D) Human Rights
(E) Journalism
(F) Legal Studies
(G) Native American Studies
(H) Psychology
(I) Sociology
(J) Public Administration
(K) History
(L) Business Administration
(M) Economics or Finance
(N) Philosophy
(O) Judicial Studies
(P) Paralegal Studies
(Q) Family Law

(c) *Non-Chief Judges.* In addition to satisfying the requirements of 150.11-1(a)(1) through (3), candidates for election or appointment to serve as a non-Chief Judge shall hold at least one (1) of the following from an accredited institution:

(1) a master's degree;

(2) a juris doctor degree; or

(3) a bachelor's degree in one (1) of the following fields of study, provided that a degree in a similar field of study shall also qualify:

(A) Criminal Justice
(B) Education
(C) Political Science, including Government, Politics or Public Policy
(D) Human Rights
(E) Journalism
(F) Legal Studies

(G) Native American Studies
(H) Psychology
(I) Sociology
(J) Public Administration
(K) History
(L) Business Administration
(M) Economics or Finance
(N) Philosophy
(O) Judicial Studies
(P) Paralegal Studies
(Q) Family Law

150.11-2. *Disclosure.* Prior to placement on a ballot, or prior to appointment to fill a vacancy, candidates seeking to serve as a Judge shall disclose to the Election Board, or the Oneida Business Committee in case of appointment, all previous convictions, including those for which a pardon has been granted, which may disqualify the candidate from serving on the Judiciary.

150.11-3. *Prohibitions.*

(a) While serving a term of office, no Judge may:

(1) Be elected or appointed to serve on any Tribal board, committee or commission, including a Tribally-chartered board, committee or commission; or

(2) Be otherwise employed by the Tribe.

(b) Candidates elected or appointed to the Judiciary shall resign from any applicable board, committee or commission, or from any paid position with the Tribe, with such resignation to be effective prior to that candidate taking the Judicial oath of office.

150.11-4. *Election of Judges.*

(a) The Judiciary shall consist of nine (9) Judges who, except as provided in 150.11-4(b), shall be elected to terms of six (6) years. Candidates for the office of Judge shall identify the specific judicial office for which they are a candidate: Trial Court Judge, Trial Court Chief Judge, Appellate Court Judge or Appellate Court Chief Judge.

(b) Judges elected in the first judicial election shall serve terms as provided by resolution. Terms shall be staggered such that every three (3) years, either four (4) or five (5) seats will be up for election.

(c) In the event that the swearing-in of a successor is delayed, the successor's term of office shall be diminished by the length of the delay, in order to maintain the staggered terms.

(d) Any Judge selected by special election shall meet the qualifications listed in 150.11-1.

150.11-5. *Appointment of Lead Judges within the Trial Court.* Within fourteen (14) days of a Judge taking the Judicial oath of office, the Chief Judge of the Trial Court shall appoint a Lead Judge for the General Civil Division of the Trial Court.

150.11-6. *Oath of Office.* Every elected or appointed Judge shall take and file an oath to uphold the Constitution, abide by the Canons of Judicial Ethics, and impartially administer justice.

150.11-7. *Duties of Judges.* Judges shall represent the Judiciary with professionalism and competence. In addition to all other duties imposed by this and other Tribal laws, Judges shall:

(a) hear and adjudicate cases in accordance with Tribal law;

(b) abide by all court rules, Tribal laws, and applicable state and federal laws;

(c) complete assignments given by the appropriate Chief Judge;

(d) represent the Judiciary at functions and meetings where appropriate;

(e) maintain the integrity of the system by upholding the Canons of Judicial Ethics, acting ethically and honestly both in private and in public; and

(f) remain informed about changes to Tribal, state and federal laws, and state and federal court and administrative hearing body decisions that may impact Indian country.

150.11-8. *Vacancies.* If a Judge dies, resigns, is removed from office, becomes incapacitated for a period in excess of one hundred eighty (180) consecutive days, or is declared incompetent by a court of competent jurisdiction, the office of such Judge shall be declared vacant by the Oneida Business Committee and:

(a) A special election shall be held to fill the office for the remainder of the Judge's term of office, if two hundred seventy (270) days or more remain in the term of office; or

(b) The Oneida Business Committee shall appoint a successor to fill the office for the remainder of the Judge's term of office, if fewer than two hundred seventy (270) days, but more than one hundred eighty (180) days, remain in the term.

150.11-9. *Eligibility for Appointment.* Only those persons who meet the requirements of 150.11-1 are eligible to be appointed by the Oneida Business Committee to fill a vacancy on the court.

150.11-10. *Compensation and Benefits.*

(a) Compensation for Judges shall be initially established through the passage of a resolution by the Oneida General Tribal Council. Future compensation shall be in accordance with the Tribal budget process, upon approval from the Oneida General Tribal Council.

(b) The compensation of Judges shall not be diminished during their term of office, unless a majority of a particular court votes to reduce that entire Court's own compensation equally for that Court's term.

(c) Full-time Judges shall receive the same fringe benefits that are provided to Tribal employees in accordance with established Tribal policy.

(d) Part-time Judges shall receive stipends for their services.

150.11-11. *Pro Tem Judges.*

(a) Pro Tem Judges shall be appointed as follows:

(1) Where the necessary number of Judges is unable to hear a matter due to conflict of interest, extended absence, or for any other reason, the appropriate Chief Judge shall appoint Pro Tem Judges to hear the matter.

(A) Any person who has previously heard cases as a Commissioner with the Oneida Appeals Commission, Judicial Officer with the Oneida Tribal Judicial System or Tribal Judge who was not removed or retired for physical or mental disability from office may hear the case. If no such Commissioner, Judicial Officer or Judge is available, then

(B) Any sitting or former Judge from another tribal court of a federally-recognized tribe or nation located in Wisconsin, or from another Haudenosaunee tribe or nation may hear the case.

(2) Where a complaint against a Judge has been filed, the Judiciary shall appoint Pro Tem Judges to sit on a disciplinary panel to hear the complaint.

(A) A disciplinary panel shall be comprised of five (5) Pro Tem Judges who are currently serving as a Judge for any tribal court located in the state of Wisconsin, except for Oneida Tribal courts. Enrolled members of the Oneida Tribe shall be disqualified from serving on a disciplinary panel.

(B) An individual shall not serve on a disciplinary panel as a Pro Tem Judge where that individual:

(i) is related to either the Judge facing the complaint, or to the complainant. For purposes of this section, "related to" shall include spouses, parents and parents-in-law, children and son-or-daughter in-law, grandparents, grandchildren, siblings, half siblings, siblings-in-law, first cousins, aunts, uncles, nieces, nephews, step-parents and stepchildren; or

(ii) currently maintains, or has previously maintained, a personal or professional relationship with either the Judge facing the complaint, or with the complainant, whereby the Pro Tem Judge could know of facts unrelated to the proceeding that could cause the Judge to be biased or that could cause the appearance of bias. For the purposes of this section, "a personal or professional relationship" shall include romantic and/or domestic relationships, caretaker/dependent, attorney/client, counselor/patient and similar relationships.

(b) While hearing a matter, Pro Tem Judges shall be afforded the same authority and decision making power as an elected or appointed Judge, and shall abide by the requirements of 150.11-7.

(c) *Compensation.* Until such time as the Judiciary establishes a payment schedule, Pro Tem Judges shall be compensated in the same manner as part-time Judges and shall be reimbursed for travel and accommodations at the same rate that Tribal employees are compensated under the Travel and Expense Policy. Any payment schedule shall require ratification by the Oneida Business Committee prior to going into effect.

150.12. Reprimand, Suspension and Removal of Judges

150.12-1. Each Judge shall be subject to reprimand; suspension without pay for a definite period of time, not to exceed six (6) months; or removal from office, as set forth in this section for:

(a) willful misconduct in office;

(b) willful disregard of or failure to perform his or her duties, including upholding Tribal law;

(c) habitual intemperance;

(d) conviction of a crime involving moral turpitude;

(e) conduct prejudicial to the administration of justice that brings the judicial office into disrepute; and/or

(f) violating the Canons of Judicial Ethics.

150.12-2. Any person aggrieved by the conduct of a Judge may file a complaint with the Judiciary, requesting that the Judge be disciplined for violating 150.12-1.

(a) Where a complaint has been filed, the Judiciary shall convene a disciplinary panel in accordance with 150.11-11(a)(2). The disciplinary panel shall conduct an initial hearing to determine if probable cause exists to believe that the Judge has engaged in misconduct. The Judiciary shall, by rule, provide for initial and formal hearing procedures for disciplinary panels.

(b) In serving on a disciplinary panel, Pro Tem Judges shall abide by the requirements of 150.11-7.

150.12-3. If the disciplinary panel does not find probable cause to believe that the Judge has engaged in misconduct, the panel shall dismiss the complaint. All papers filed with, and proceedings before and during the initial hearing shall remain confidential. The filing of a complaint and other papers and the testimony given before the panel during an initial hearing shall be deemed a privileged communication, unless probable cause is found.

150.12-4. If the disciplinary panel does find probable cause, the panel shall provide formal notice of the complaint and finding of probable cause to the Judge and:

(a) issue the Judge a reprimand in accordance with 150.12-5; or

(b) hold a formal hearing in accordance with 150.12-6, to determine the appropriate discipline.

150.12-5. *Reprimand.* If the disciplinary panel deems it appropriate, and the Judge consents, the disciplinary panel shall discipline the Judge by issuing a reprimand after finding probable cause. A reprimand shall be read to the Judge in question, in a closed session, in the presence of the assembled body of the Judges within the Judiciary.

(a) The reprimand shall contain:

(1) a recitation of the allegations;

(2) the findings of the disciplinary panel; and

(3) a statement of reprimand.

(b) An official copy of the reprimand shall be provided to the Judge in question and shall be an open record, maintained in accordance with the Open Records and Open Meetings Law.

150.12-6. *Formal Hearing.* If the disciplinary panel deems a reprimand is inappropriate, or the Judge does not agree to a reprimand, the panel shall hold a formal hearing, with a record preserved of the proceedings, to determine whether the Judge should be disciplined. At any such hearing, which shall be open to the public, the complainant and the Judge shall have the opportunity to present testimony and other evidence, and the Judge shall have the opportunity to cross-examine adverse witnesses.

(a) Where the disciplinary panel determines that a formal hearing shall be held, the panel shall have discretion to order a Judge to cease performing judicial duties, without loss of salary, pending the formal hearing and release of an official disciplinary report.

(b) The disciplinary panel shall announce formal hearings by publication in two (2) consecutive issues of the Kalihwisaks. The announcement shall contain information:

(1) confirming that a complaint has been filed;

(2) stating the subject and nature of the complaint;

(3) providing the date and time of the hearing, including procedural aspects; and

(4) reciting the right of a Judge to a fair hearing.

(c) If, after a formal hearing, and after considering the record, the disciplinary panel finds that the charges are established by clear and convincing evidence, the disciplinary panel shall make specific factual findings based upon the record, and shall issue an official disciplinary report, which shall include a report of the formal hearing, the factual findings made based on the hearing, and identifying any specific penalties to be imposed. This decision shall be final.

(d) Disciplinary reports shall be submitted to the Judiciary within thirty (30) days after the formal hearing is concluded. The Judiciary shall immediately carry out any and all disciplinary action ordered in the disciplinary report.

(1) *Reprimand.* Where a disciplinary report recommends a reprimand, a reprimand shall be read to the Judge in question and shall contain the same information and be available as if the Judge had consented to a reprimand under 150.12-5.

(2) *Suspension.* Where a disciplinary report recommends a suspension, the Judge shall draw no salary and shall perform no judicial functions during the period of suspension. Suspension shall not create a vacancy in the office of Judge, and the Judge may resume his or her office upon the completion of the suspension and the satisfaction of any other requirements that may be imposed as a pre-condition of resuming office.

(3) *Removal.* Where a disciplinary report recommends that a Judge be removed from office, removal proceedings shall be commenced in accordance with applicable removal law.

(e) On a semi-annual basis, the Judiciary shall provide a report to the Oneida General Tribal Council identifying all disciplinary panels conducted, including findings of misconduct and all disciplinary action ordered and taken against any Judge.

150.12-7. *Additional Grounds for Suspension and Removal.*

(a) *Suspension.* The Judiciary shall order a Judge to immediately cease performing judicial duties, without loss of salary, while there is a pending indictment or information charging him or her with any offense involving fraud or misrepresentation or a crime punishable as a felony.

(b) *Ineligible for Election or Appointment.* The Judiciary shall immediately begin removal proceedings against a Judge when the Judge no longer meets the qualifications of 150.11-1 to be a candidate for or appointed to the Judgeship which he or she holds.

(c) *Overturned Convictions.* If the conviction for which the Judge is removed is later overturned, a Judge shall not be reinstated, provided that, the overturned conviction shall not prevent the Judge from seeking future election.

150.12-8. Judges shall at all times be subject to removal. The complaint process established in this section shall not supersede or otherwise affect the rights of eligible voters to petition for removal of a Judge in accordance with applicable removal law.

150.13. Retirement

150.13-1. A Judge may be retired for physical or mental disability seriously interfering with the performance of his or her duties if such disability is determined to be permanent or reasonably

likely to become permanent.

(a) Initial and formal hearings regarding the retirement of a Judge for physical or mental disability shall be closed to the public, and the record of such proceedings shall be confidential.

(b) The Judiciary shall, by rule, provide for additional initial and formal hearing procedures for this section.

150.13-2. *Initial Hearing.* Any person aggrieved by the conduct of a Judge may file a complaint requesting that the Judge be retired for disability. In such event the remaining Judges of the respective court shall convene a panel and conduct an initial hearing to determine if probable cause exists to believe that the Judge suffers from mental or physical disability which seriously interferes with the performance of his or her duties.

(a) If the panel does not find probable cause, the panel shall dismiss the complaint.

(b) If the panel does make a finding of probable cause, the panel shall provide formal notice of the complaint and finding to the Judge, as well as notice including the date and time of a formal hearing, within ten (10) days after finding probable cause.

150.13-3. *Formal Hearing.* Formal hearings shall be recorded and shall be scheduled no sooner than thirty (30) days after the Judge receives formal notice of the complaint and finding. At such a hearing, the panel shall convene to determine whether the Judge suffers from mental or physical disability which seriously interferes with the performance of his or her duties.

(a) The panel shall consider, in confidence, any evidence that presents sufficient information to support an allegation of possible medical incapacity, and may require that relevant medical and mental health records be provided.

(b) The complainant and the Judge shall have the opportunity to present testimony and other evidence, and the Judge shall have the opportunity to cross-examine adverse witnesses.

(c) If the panel finds, by a standard of clear and convincing evidence, that the Judge suffers from mental or physical disability which seriously interferes with the performance of his or her duties, the panel shall retire the Judge.

(d) Upon being retired by the panel, the Judge shall thereby be retired with the same rights and privileges as if he or she had retired voluntarily.

End.

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