

Tribal Ordinance on Removal of Enrolled Members

Lumbee Tribe of North Carolina
PO Box 2709
Pembroke, NC 28372
910-521-7861

Tribal Ordinance No. 2004-0002

DATE: October 21, 2004

WHEREAS, the Lumbee Tribe of North Carolina, a recognized Indian Tribe of the State of North Carolina, subject to the Constitution of the Lumbee Tribe of North Carolina and its inherent powers of self-government; and

WHEREAS, Article II, Section 2 of the Constitution of the Lumbee Tribe of North Carolina provides "Enrolled members may be disenrolled for failure to maintain contact with the Tribe, in accordance with a tribal ordinance adopted under this Constitution.",

WHEREAS, the Office of the Tribal Clerk determines the adequacy of a member or tribal member applicant's contact/social ties in consultation with the Elders Review Council for purposes of enrollment or removal, and

WHEREAS, there are or may be enrolled tribal members who do not meet the tribal membership criteria and should be removed from tribal rolls;

THEREFORE, Be it enacted by the Council of the Lumbee Tribe of North Carolina the following Ordinance that shall be cited as "**ORDINANCE ON THE REMOVAL OF ENROLLED TRIBAL MEMBERS**".

Section 1. The Office of the Tribal Clerk shall remove any enrolled member for one or more reasons:

- a. the person legally belongs to or is duly enrolled in another governmentally recognized Indian tribe or band, domestic or foreign; or
- b. enrollment of the person in the Tribe was procured by fraud or enrolled in error; or

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- c. the person has no meaningful contact/social ties within the Lumbee tribe.

Section 2. The Office of the Tribal Clerk shall provide timely notification to any individual removed under Section 1 by certified mail and the notice shall state the reason for removal and provide information on appealing the decision of the Office.

Section 3. In event the person cannot be notified by certified mail (e.g. address unknown), the Office of the Tribal Clerk shall publish a notice in a local newspaper stating the cause of action, the name of the person subject to the action, and right of appeal.

Section 4. The person subject to the removal may appeal to the Supreme Court of the Lumbee Tribe, or to a lower tribal court with jurisdiction over the subject matter. The appeal must be filed not less than 30 days and no more than 60 calendar days from date of returned receipt or publication except where an extension for time for cause has been granted by the Court.

Section 5. In event the person subject to the removal fails to appeal within the allowed time frame, that person shall forfeit all rights of appeal.

Section 6. In the event the decision is made by a lower tribal court, the decision of the lower court may be appealed by either party to the Supreme Court of the Lumbee Tribe :

- a. the decision of the lower court shall be final, unless appealed to the Supreme Court of the Lumbee Tribe.
- b. the decision of the Supreme Court of the Lumbee Tribe shall constitute final action. In event the Supreme Court refuses to hear the matter, the decision of the lower court shall constitute final action.

Section 7. There shall be a presumption, rebuttable by the appellant, that the Office of the Tribal Clerk has acted properly, consistent with the facts of the case, all applicable tribal ordinances, and the Constitution of the Lumbee Tribe of North Carolina.

Section 8. Appellants, or Petitioners, shall have the burden of proving their case by clear and convincing evidence. The Petitioner and the Respondent shall have the right to examine all evidentiary evidence offered by the opposing party. The Court in ruling on an appeal shall strictly construe provisions of this Ordinance.

- a. The only remedy that the Court may order under this Ordinance is

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re-instatement of tribal membership.

- b. At the hearing all relevant evidence, written or oral, shall be considered by the court. The appellant shall have the burden of proving by preponderance of the evidence that the Petition should be granted.

Section 9. A parent or legal guardian may act on behalf of a minor (under eighteen years of age) or mentally incompetent person subject to the removal action.

Section 10. Nothing in these regulations shall prohibit the Office of the Tribal Clerk from removing any individual because the individual fails to meet the Lumbee criteria for Enrollment and/or has failed to maintain meaningful contact /social ties within the tribe while an appeal is in progress, except that such individual(s) shall be fully re-instated in event of a final decision favorable to the individual subject to such action.

CERTIFICATION:

This Ordinance was duly adopted by the Council of the Lumbee Tribe of North Carolina on this the 21st day of October, 2004 by a vote of 17 Yes, 0 No, and 0 Abstentions.

Sarman L. Mitchell 10-28-2004
Secretary, Council of the Lumbee Tribe of North Carolina Date:

Jimmy Goins 10-28-04
Mr. Jimmy Goins, Tribal Chairman Date:

Ordinance posted on Oct. 21, 2004 by Ruth Locklear
[Signature of Tribal Clerk]