

*Amend  
2005-0002  
amended  
01-26-06*

LUMBEE TRIBE OF NORTH CAROLINA  
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*7/1/06*  
ORDINANCE NO. 2006-0001  
S/B 2005-0002

DATE: January 26, 2006  
*Formerly 2005-002*

**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 VII, Section 1 of the Constitution of the Lumbee Tribe of North Carolina delegates all legislative authority to the Tribal Council; and

**WHEREAS**, Article XI, Section 2 of the Constitution of the Lumbee Tribe of North Carolina states the first Tribal Council elected under this Constitution shall adopt an ordinance proscribing conflicts of interests in the performance of duties by elected and appointed tribal officials, and which ordinance shall require a tribal official to reclude him or herself from any decision or vote affecting his or her pecuniary interest or a family member.

**WHEREAS**, the Council has determined that the Ethics and Conflict of Interest Ordinance shall guide the actions of all persons who has a relationship with the Tribal Government and provide guidance for conducting business, protect the interests of Tribal members and protect the reputation and integrity of Tribal government.

**THEREFORE**, Be it enacted by the Tribal Council of the Lumbee Tribe of North Carolina the following ordinance that shall be cited as "ETHICS AND CONFLICT OF INTEREST."

**SECTION 1: ETHICS IN PERFORMANCE OF DUTY**

1. The Tribal Chairperson, Council member, officer, appointee, employee or any person or entity that provides contractual services:
  - a. Shall not use the authority of his office or position, directly or indirectly, in a manner intended to compel or coerce any person or other public servant to provide himself, any other public servant, or other person with anything of economic value.
  - b. Shall not use information that is gained in the execution of his or her office or employment that is not available to the general public to further or seek to further the person's private or personal interest

- c. Shall not use his or her office or employment to further private or personal interest by seeking to influence a decision that is made by another person,
  - i. Elected and appointed members of the Legislative and Judicial Branches and the tribal chairperson shall not be eligible for employment with the Lumbee Tribe within two years of the end of their service.
- d. Shall not accept a fee, gift or personal benefit, except compensation authorized by tribal law, that is connected directly or indirectly with the performance of his or her duties of office or employment,
- e. Shall not use the authority of his office or position, directly or indirectly, in a manner intended to compel or coerce any person to engage in political activity.
- f. Shall not disclose or use confidential information or information concerning economic development, perspective grants, or technology research or development which was received in his or her official tribal government capacity to further his or her personal or pecuniary interests.
  - i. Anyone entrusted with Tribal funds or equipment for carrying out Tribal business shall be subject to the following requirements and procedures, in order to provide a uniform system and to avoid actual or apparent impropriety.
    1. Held personally accountable and liable for Tribal monies entrusted to their control in performance of official Tribal duties.
    2. Tribal funds withdrawn for specific authorized purposes by anyone shall be used for those specific purposes only.
    3. In all cases, Tribal funds not expended for authorized purposes must be repaid by the responsible person within seven (7) working days after the date on which such funds were to have been expended.
    4. A person shall be held personally accountable and liable for all equipment entrusted to them in the performance of Tribal business, if damages occur, due to negligence or recklessness.
    5. A person shall not use, or authorize the use of, tribally owned or leased vehicles or equipment and other

transportation equipment for purposes other than those officially authorized.

## **SECTION 2: CONFLICT OF INTEREST IN PERFORMANCE OF DUTY**

1. A person as identified in Section 1 must not exercise an official power or perform an official duty or function if the person has a conflict of interest or an apparent conflict of interest.
2. A person as identified in Section 1 who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Lumbee Tribal Government or any committee, shall:
  - a. Upon knowledge of the conflict by any written or oral communication, disclose the general nature of the conflict of interest according to the laws of the Tribal Government and/or any funding agency involved.
  - b. Withdraw from any meeting or discussion if he or she becomes knowledgeable that a conflict exists and shall not vote or participate in the discussion or consideration of the matter. If a person withdraws or recuses him or herself from the meeting because of a conflict of interest, he or she is still counted for purposes of a quorum, except in the matter of a Tribal Council meeting.
3. If anyone withdraws from discussion because of a conflict of interest, a written record shall be made that includes the withdrawal of the person from the meeting and that a conflict of interest was discussed.
4. A person or entity as identified in Section 1 should not represent the interests of a third party who has an actual or potentially adversarial relationship with the Lumbee Tribe (i.e. as legal counsel, trustee, general agent or consultant)
5. A person or entity as identified in Section 1 shall not work for, be an agent or consultant of any entity that competes for the same contracts, grants, and/or services as the Lumbee Tribe of North Carolina without prior approval of a two-thirds vote of the Tribal Council.
6. A Judge shall not be qualified to act as such in any case where she/ he has any direct interest, or where any party involved in the case is a relative by marriage or blood in the first or second degree.
7. A Judge may be disqualified to act in any case upon his/ her own motion.

### **SECTION 3: CONFLICT OF INTEREST IN PUBLIC CONTRACTING FOR SERVICES AND GOODS**

1. A person or entity shall not seek to induce the Tribal Chairperson, Tribal Council, officer, appointee or employee to procure goods and/or services from the spouse or family member or from the client or principal of the Tribal Chairman, Council member, officer, or employee.
2. The following shall be considered conflict of interest relationships in contracting for bids and services:
  - a. An employee, officer or agent involved in making the award
  - b. His/her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepson, stepdaughter, stepsister, half brother, and half sister) and any spousal relationship
  - c. His/her partner or
  - d. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment or any of the above.

### **SECTION 4: JUDGMENT OF CONFLICT OF INTEREST**

A conflict of interest exists if there is substantial interest by the person or entity identified in Section 1 and shall be judged by the following:

1. Ownership by a person, or by the person's spouse or dependent child, collectively, including ownership as the beneficiary of a trust, of an interest or 10% or more in a business entity,
2. Annual income, or expected annual income, by the person or by the person's spouse (or relationship) or dependent child, collectively, or more than \$5,000 from a business entity. Annual includes earned income only if the person, or the person's spouse or dependent child, will receive a bonus, commission or other payment in any amount directly as a result of a contract with or purchase by the Lumbee Tribal Government. Income does not include income from capital gains.
3. Service by the person or the person's spouse or spousal relationship or dependent child, as an officer, trustee, director or employee of a business entity except that uncompensated service as a director, officer, or trustee of a not-for-profit corporation is not a substantial interest.

## **SECTION 5: PROCEDURES TO HANDLE CONFLICT OF INTEREST AND ETHICS VIOLATION**

1. To file a complaint, a person must have reasonable grounds to believe that an individual or entity as listed in Section 1 (excluding employee) is in violation of this Ordinance and shall:
  - a. In writing, state the grounds for the belief and the nature of the alleged violation and present the written statement to the Chairperson of the Ethics Committee, and may chose to present the complaint to all members of the Ethics Committee.
    - i. Any person, including tribal member, who has reasonable grounds to believe that an employee is in violation of this Ordinance shall follow the employee policy handbook to report the employee's violation.
    - ii. Any interested party can file an affidavit setting forth facts establishing, by reason of bias or prejudice of the Judge to whom the case is assigned, that the party cannot have a fair trial. Such affidavit shall be filed not later than ten (10) days before the trial, addressed directly to the judiciary at which time the Supreme Court Judicial Code of Ethics shall be applied.
  - b. The Chairperson of the Ethics Committee shall convene a meeting within ten (10) days of receiving the complaint in order to consider the information.
  - c. If the Chairperson of the Ethics Committee fails or is unable to convene a meeting, the Vice Chair of the Committee shall convene a meeting within ten (10) days of becoming aware of the need to convene a meeting.
  - d. The alleged violator is to be notified within five (5) business days, and may be present at any committee meeting that is convened to hear the facts on the allegation, to provide facts or arguments that he or she did not violate this Ordinance. The complainant, (accuser) shall be required to be present at any hearing convened for hearing his or her complaint.
  - e. At the next scheduled Council meeting or at a special called meeting, the Committee shall render an opinion to the Tribal Council regarding the compliance of the person with the provisions of this Ordinance.
  - f. The Council shall render a determination in writing in five (5) business days, including its evidentiary findings, which must be approved by a simple majority of the Council members voting and in which any accused Council Member shall not vote in this determination.

2. If the Ethics Committee fails to convene a meeting to hear the complaint, a person can take the complaint to any lower court with jurisdiction, and may be appealed to the Supreme Court.

## **SECTION 6: SANCTIONS**

1. Any person identified in Section 1 (excluding employee) found guilty of violating this Ordinance shall be notified in writing by the Speaker of the Tribal Council of the findings and the sanctions which may be one or more of the following actions:
  - a. To reprimand or censure the person in writing which shall be a part of the official minutes.
  - b. To prohibit the person from holding any further committee or assignments of office or authority.
  - c. To remove the person from any position or office held in accordance with the Constitution and any Ordinance on removal of members.
2. If the findings show that the Tribal Chairman has violated this Ordinance, the Tribal Chairman may be subject to the same sanctions.
3. If the Tribal Chairman finds that the Tribal Administrator or an employee has violated this Ordinance, the Tribal Chairman shall report the violation to the Tribal Council. The Tribal Administration shall report any violation of this Ordinance by an employee to the Tribal Chairman.
4. The Chairperson and Tribal Council may use the same sanctions (a – c), (Section 6), or remove the Tribal Administrator, as they deem appropriate.
5. An employee, with the exception of the Tribal Administrator, violating this Ordinance shall be subject to disciplinary action by the Tribal Administrator, which may include immediate termination of employment if circumstances warrant, provided, however,
  - a. If the Tribal Administrator violates the prohibitions set out under this section, he or she shall be subject to disciplinary action by the Tribal Chairperson and Council, which may include immediate termination of employment if circumstances warrant.
  - b. Employees disciplined according to this section shall have recourse to the grievance procedures set out in the Personnel Manual.

- c. If the person, including member, is not satisfied with the decision rendered regarding the employee's violation, then he or she can appeal to the judiciary system.

## **SECTION 7: ESTABLISHMENT OF THE ETHICS COMMITTEE AS A STANDING COMMITTEE**

This Ordinance establishes the Ethics Committee as a Standing Committee that shall follow the guidelines for all committees established by the Tribal Council.

## **SECTION 8: ACTIVITIES ON BEHALF OF CONSTITUENTS**

This Ordinance does not prohibit the activities in which members normally engage on behalf of constituents.

### **Definitions:**

**Conflict of Interest** - A member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private and/or personal interest.

**Apparent Conflict of Interest** - A member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been (or can be) affected by his or her private and/or personal interest.

**Ethics Committee** - A Committee of tribal council members who shall be responsible for the designated task written in this Ordinance along with any other responsibility established by the Tribal Government.

**Political Activity** - an effort to support or oppose the election or appointment of a person for political office in an election or appointment.

**Spouse** - a person who is married to a member or a person who is living with a member as husband and wife but does not include a husband or a wife who is separated and living apart from a member and who

1. Has entered into a written agreement under which they have agreed to live apart, or
2. Is subject to an order of the court recognizing the separation, and whose agreement or court order shall not be affected by any action between the spouse and the member

Child - includes a person to whom a member has demonstrated a settled intention to treat as a child of his or her family

Spousal Relationship - although not married, male and female living, as husband and wife

Officer/official/representative of the tribe - the person elected, appointed, or employed  
Service - the end of a term or upon resignation

Interested Party - plaintiff, defendant, any other person having standing

Private interest - does not include an interest arising from the exercise of an official power or the performance of an official duty or function that

1. Applies to the general public,
2. Affects a member as one of a broad class of electors, or
3. Concerns the remuneration and benefits of a member or an office or employee.

Ethics - in this context is that contained in Black's Law Dictionary: "professionally right or befitting; conforming to professional standards of conduct."

**CERTIFICATION**

THIS CONFLICT OF INTEREST ORDINANCE ADOPTED THIS THE 26<sup>th</sup> DAY OF JANUARY, 2006 AT A MEETING OF TRIBAL COUNCIL OF THE LUMBEE TRIBE OF NORTH CAROLINA BY A VOTE OF 18 FOR, 0 AGAINST.

Wendy Moore Graham 01/30/06  
Secretary of the Tribal Council of the Lumbee Tribe of North Carolina.



**VETO**

**VETO**

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Tribal Chairman of the Lumbee Tribe of North Carolina

**POSTING**

This Ordinance duly posted in the Office of the Lumbee Tribe of North Carolina on this the 9 day of Feb, 2006.

Ruth B. Locklear

Ruth B. Locklear, Tribal Clerk

This ordinance was duly adopted on January 26, 2006 by a vote of 18 for and 0 against.



## **CERTIFICATION OF VETO OVERRIDE**

THIS VETO OVERRIDE OF "ETHICS AND CONFLICT OF INTEREST", TRIBAL ORDINANCE 2006-0002 WAS CERTIFIED AT A MEETING OF THE 21 SEATED MEMBER TRIBAL COUNCIL OF THE LUMBEE TRIBE OF NORTH CAROLINA WHERE 20 MEMBERS WERE PRESENT, CONSITUTING A QUORUM, THIS THE 23<sup>RD</sup> DAY OF MARCH, 2006 BY A VOTE OF 16 FOR, 4 AGAINST, AND 0 ABSENTIONS.

**ROLL CALL VOTE RESULTS TO ADOPT  
TRIBAL ORDINANCE CLL0-2006-0002  
"ETHICS AND CONFLICT OF INTEREST"  
16 YES, 4 AGAINST, AND 0 ABSENTIONS**

District 1: Larece Hunt	YES
District 2: Sharon Hunt	YES
District 2: Gerald Goolsby	NO
District 3: David Carter	ABSENT
District 3: Pam Spaulding	YES
District 4: Sanford Locklear	NO
District 5: Kent Hunt	YES
District 5: John Lowery	NO
District 6: Frances Chavis	YES
District 6: Lawrence Locklear	YES
District 7: Joel Garth Locklear	YES
District 7: James Harold Locklear	NO
District 7: Wendy Moore-Graham	YES
District 8: Jerl Locklear	YES
District 9: Linda Hammonds	YES
District 10: Jimmy McNeil	YES
District 11: Richard Locklear	YES
District 12: Danita Locklear	YES
District 12: Shelly Strickland	YES
District 13: Ricky Burnett	YES
District 14: Welford Clark	YES

[Signature not required by Tribal Ordinance 2002-001]

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ATTEST: Lawrence Locklear

Speaker, Tribal Council of the Lumbee Tribe of North Carolina

  
ATTEST: Wendy Moore-Graham

Secretary, Tribal Council of the Lumbee Tribe of North Carolina