

Proposed Tribal Ordinance on Establishment of an Administrative Court

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

Tribal Ordinance No. 2004-0003

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;

WHEREAS, Article IX, Section 1 of the Constitution of the Lumbee Tribe of North Carolina authorizes the Council to establish inferior or lower courts, and

WHEREAS, tribal members or those seeking tribal membership are entitled to due process when adverse decisions are made with regard to services and enrollment,

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 ESTABLISHMENT OF AN ADMINISTRATIVE COURT**".

SECTION I. COMPOSITION AND QUALIFICATIONS.

- A. The Court shall consist of five (5) sitting judges and two (2) alternate judges who shall serve five-year terms after the first term of office as described in Section 2.
- B. These judges shall have the following qualifications:
 - 1. Minimum age of thirty (30) years at time of appointment;
 - 2. Reside inside the tribal territory;
 - 3. Be an enrolled tribal member,

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4. Possess experience in state, local, and/or federal programs and knowledge of tribal laws as demonstrated by past experience or work vocation,
 5. Must possess at least a GED diploma.
 6. Meet all other qualifications established by tribal law
- C. No person shall serve on the Administrative Court who, for the past one year, was employed by or serving the Tribal Government by virtue of appointment or election.

SECTION II. TERM.

- A. With exception of alternate judges who shall serve a five (5) year term, the first Court shall serve staggered terms with one judge serving a one-year term, one judge a two-year term, one judge a three year term, one judge a four year term, and another judge serving a five year term. A method of chance shall be used to determine the term of office under this Section. Thereafter, each appointed judge shall serve a five-year term. Alternates shall be appointed as judges when a seated judge is replaced or the judge's term has expired. If neither alternate wants to be a judge, the process of appointment will follow Section III.
- B. Judges may serve no more than two (2) consecutive term(s).

SECTION III. APPOINTMENT AND REMOVAL

- A. In order to appoint Judges that are geographically representative of the tribal territory, the Tribal Chairperson shall bring forth for consideration, the name of one (1) Judge from each of the Districts listed below, and to the extent possible, avoid adjacent communities. The Tribal Chairperson shall bring forth for consideration the name of a fifth (5) Judge from anyone of the Districts listed below:
- a. District I shall include all of Philadelphus, Burnt Swamp, Raft Swamp, Back Swamp, Thompson, Union, Red Springs 1 & 2, and Lumberton 1 – 8.
 - b. District II shall include all of North Pembroke, Parkton, Rennert, Shannon, Lumber Bridge, Oxendine, Maxton, Alfordsville and Prospect.
 - c. District III shall include all of Rowland, South Pembroke, Gaddys, Whitehouse, Sterlings, Orrum, Britts, Fairmont 1 & 2, Smyrna, Wisharts, East and West Howellsville, Saddletree, North and South St. Pauls.
 - d. District IV shall include Scotland, Hoke, and Cumberland Counties
- B. The Tribal Council shall confirm the appointment of all judges by a majority vote of the seated tribal council after a confirmation hearing has

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been held by the seated Tribal Council. In the case of an Alternate that is to fill a vacancy or expired term, the confirmation hearing may be waived with a 2/3 vote of the seated Tribal Council.

- C. A judge may be removed from Office with a 2/3 vote of the seated Tribal Council by the procedures set forth in the tribal ordinance on removal of elected and appointed positions. The Tribal Chairperson can recommend removal but has no voting power in the removal of administrative judges.
- D. A judge may hear a case in which he or she has a conflict of interest provided that he or she has fully disclosed the interest to all parties and all parties are agreeable to the judge hearing the case.

1. Where a judge is prevented from presiding over a case by virtue of disqualification, illness, or absence, the Tribal Chairperson shall use a flip of the coin to designate one of the alternate judges for the particular case or to fill a vacated seat.

2. The official proceedings of the case shall document any conflict of interest and the resolution of the conflict.

SECTION IV. JURISDICTION. The lower court shall hear all complaints arising from the administration of tribal programs, including denial of tribal membership and removal, except the Court may decline any case upon a majority vote of the judges.

- A. Prior to filing in Administrative Court, petitioners or appellants are required to exhaust whatever non-judicial remedies may exist.
- B. Nothing in this section shall prohibit a person from appealing an declination or adverse decision to the Supreme Court of the Lumbee Constitution, providing such an appeal is duly filed with the Supreme Court not less than 30 days and no more than 60 calendar day from date of notification of an adverse tribal decision.
- C. If all tribal courts decline to hear the case, the action of the Executive Branch of Tribal Government shall constitute final action.
- D. A majority decision of the Court shall consist of three judges voting in like manner. Alternate judges cast no vote except when serving in the place of a judge as described in Section III, Part C.

SECTION V. TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS

- A. A written complaint must be filed with the court before a temporary restraining order may be issued. A temporary restraining order may be granted by any Administrative Judge where the applicant can show clear and convincing evidence that immediate and irreparable injury, loss, or

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damage will result to the applicant if the temporary restraining order is not granted.

B. Every temporary restraining order shall:

1. Set forth, in writing, the reasons for its issuance;
2. Be specific in its terms;
3. Describe with specificity the act or acts that are to be restrained;
4. Define the injury and state why it is irreparable;
5. State the date and hour of its issuance;
6. Expire at a definite time, not to exceed ten working days, unless extended for good cause, or by consent of the adverse party.

C. Every injunction shall:

1. Set forth, in writing, the reasons for its issuance;
2. Be specific in its terms;
3. Describe with specificity the act or acts that are to be stopped;
4. Define the injury and state why its irreparable;
5. State the date and hour of its issuance.

SECTION VI. RULES OF THE COURT. The lower court shall develop rules for its internal operations and conduct of hearings.

ATTESTED:

This Ordinance was duly adopted by the Council of the Lumbee Tribe of North Carolina on this the 21 day of October, 2004 by a vote of 17

Yes, 0 No, and 0 Abstentions.

Sharon Louise Mitchell 10-28-04
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 [unclear]