



*Poarch Creek Indians
Tribal Council Ordinance*

FCO 2011-004

ENACTMENT OF ETHICS CODE REVISIONS

WHEREAS, the Poarch Band of Creek Indians is a federally recognized Tribe organized pursuant to 25 C.F.R. 83;

WHEREAS, the Constitution of the Poarch Band of Creek Indians authorizes its Tribal Council to enact, amend or repeal an ordinance;

WHEREAS, the Tribal Council wishes to amend the Ethics Code to clarify that an Ethics Board member who chooses to become a candidate for a Tribal Council position should not be automatically removed or need to resign from his or her Ethics Board position during that election season, but that the Ethics Board member must recuse himself or herself from any issue arising out of or related to that election season;

WHEREAS, the Tribal Council wishes to clarify that the Ethics Board has jurisdiction over any complaints alleging campaign violations;

WHEREAS, the Tribal Council wishes to impose certain restrictions on service on boards and committees and employment to minimize any potential ethical issues; and

WHEREAS, the Tribal Council wishes to specify a time period for the Tribal Council's review of an appeal of the Ethics Officer's decision not to file an ethics complaint.

NOW THEREFORE BE IT ORDAINED that the Tribal Council enacts the following amendments to the Ethics Code:

**§ 28
ETHICS**

§ 28-1-1 Title

This Section of the Poarch Band of Creek Indians Tribal Code shall be known as the "Ethics Code."

§ 28-1-2 Purpose

The purpose of this Ethics Code is to establish the highest standards of ethical conduct for all tribal officials and employees of tribal government and tribal enterprises and to provide a mechanism whereby the Tribe may hold such officials and employees accountable for their conduct in performing the duties and responsibilities of tribal office or employment.

§ 28-1-3 Intent

This Ethics Code is intended to protect the tribal government and enterprises from undue influences, conflicts of interest, and other ethical improprieties and to place the social and economic welfare of the Tribe above the personal and economic interests of those officials and employees whose duties and responsibilities are to protect the Tribe.

§ 28-1-4 Definitions

For purposes of this Ethics Code, the following terms shall have the meanings provided below:

- (a) *Administrative hearing* means the proceedings before the Ethics Board, which is formed to hear allegations of violations of this Ethics Code.
- (b) *Advisory opinion* means an interpretation of the provisions of this Ethics Code to guide one's conduct on how the Ethics Board may rule on a matter should an ethics complaint be filed.
- (c) *Affinity* means a relationship by marriage.
- (d) *Consanguinity* means a relationship by blood.
- (e) *Constitution* means the Constitution of the Poarch Band of Creek Indians.
- (f) *Economic interest* means any interest in which there exists a likelihood for direct or indirect gain of any kind, including, but not limited to, employment contracts, benefits, salaries, funding, or ownership or investment held by a Tribal Official, employee, or immediate family member of a Tribal Official or employee.
- (g) *Employee* means any full or part-time employee of tribal government or tribal enterprises.
- (h) *Ethics Board* means the Ethics Board of the Poarch Band of Creek Indians, as established by this Ethics Code.
- (i) *Ex parte communication* means any oral or written, off-the record communication made to or by a member of the Ethics Board or personnel of the Ethics Office, without notice to the other party, that is directed to influence the merits or outcome of a case.
- (j) *Gift* means any gratuity, special discount, favor, honorarium, hospitality, payment, loan, subscription, economic opportunity, advance, deposit of money, services, or other benefit received, directly or indirectly, which the recipient did not obtain for fair market value or lawful equivalent consideration.
- (k) *Immediate family member* means spouse (including common law relationship), parent, child, sibling, grandparent, and/or grandchild. These relationships are determined by consanguinity, affinity, adoption, foster care, or legal wardship.
- (l) *Key employee* means (a) any administrator, any executive director of tribal government, an authority, or a commission, any tribal attorney, any procurement officer, any president, vice-president, chief executive officer, chief financial officer, or general manager, or (b) other member of senior management of a tribal entity who has decision-making authority regarding tribal funds or property and who has been designated as a key employee by the hiring authority or the Tribal Council.

- (m) *Official meeting* means any workshop or regular or special called meeting of the Tribal Council, board, committee, or other tribal entity.
- (n) *Quasi-judicial body* means an individual or organization that has powers resembling those of a court of law or judge and is able to remedy a situation or impose legal penalties on a person or organization.
- (o) *Sexual harassment* means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature used by an Tribal Official to affect hiring, evaluation, promotion or any aspects of the Tribal Official or employee's employment or performance of official tribal duties and conduct that unreasonably interferes with an individual's performance of official or professional duties or creates an intimidating, hostile or offensive working environment.
- (p) *Tribe* means the Poarch Band of Creek Indians.
- (q) *Tribal Council* means the nine-member body elected by the General Council.
- (r) *Tribal member* means any enrolled member of the Poarch Band of Creek Indians.
- (s) *Tribal funds or property* means any sum of money, property, or other resource set aside for a particular purpose by tribal government or tribal enterprises, including, but not limited to, any monetary instrument, credit card, real estate, building, or vehicle.
- (t) *Tribal Council candidate* means any person who is a candidate in an election for any Tribal Council position.
- (u) *Tribal Official* means any person who has been elected or appointed to the Tribal Council, committee, commission, authority, board and/or any other organization under the auspices of the Tribe.

§ 28-1-5 Standards of Conduct for Tribal Officials and Key Employees

All Tribal Officials and key employees shall endeavor to avoid any action or situation in which there may exist the appearance of impropriety, and all Tribal Officials and key employees shall adhere to the following standards of ethical conduct:

- (a) *Conflict of Interest*
 - (1) *Tribal Official*

No Tribal Official shall participate in (including being present for the discussion of or voting on) any issue involving a business, transaction or professional activity of the tribal government or tribal enterprises in which an economic interest of the Tribal Official or his or her immediate family member will affect, or could be reasonably expected to affect, the Tribal Official's judgment in executing his or her official duties.

(A) *Exceptions to Conflict of Interest Standard*

The following matters are excepted from this conflict of interest standard:

- (i) A Tribal Official may participate in (including being present for the discussion of and voting on) any decision or meeting involving a benefit or program offered to tribal members or tribal employees, which may include the Tribal Official and/or his or her immediate family member, if the selection of recipients (1) is based on objective criteria established by the Tribal Council

or the relevant tribal or federal authority and (2) does not require the exercise of any discretion; and

(ii) A Tribal Council member may participate in (including being present for the discussion of and voting on) the establishment of and approval of compensation for the Tribal Council and annual budgets in accordance with the Constitution.

(B) *Disclosure of Conflict of Interest*

If a Tribal Official is or becomes aware of an actual or potential conflict of interest described above, he or she must immediately disclose on the record the existence of the conflict to the Tribal Council or his or her board members and recuse himself or herself from any further participation in the matter.

(2) *Key Employees*

No key employee shall participate in (including being present for the discussion of or voting on) any issue within the scope of his or her employment involving a business, transaction or professional activity of the tribal government or tribal enterprises in which an economic interest of the key employee or his or her immediate family member will affect, or could reasonably be expected to affect, the key employee's judgment in executing his or her professional duties.

(A) *Exceptions to Conflict of Interest Standard*

The following matters are excepted from this conflict of interest standard:

(i) A key employee may participate in (including being present for the discussion of and the voting on) any issue if (1) the issue affects only the economic interest of that department or entity, such as presentation of budgets and policies; (2) another key employee in a different department or entity has or would have the same type of economic interest in such an issue; and (3) the key employee is the person in the department or entity who has the duty to act on the issue in the ordinary course of business;

(ii) A key employee may participate in (including being present for the discussion of and voting on) any issue involving a benefit or program offered to tribal members or tribal employees, which may include the key employee and/or his or her immediate family member, if the selection of recipients (1) is based on objective criteria established by the Tribal Council or the relevant tribal or federal authority and (2) does not require the exercise of any discretion.

(B) *Disclosure of Conflict of Interest*

If a key employee is or becomes aware of an actual or potential conflict of interest described above, he or she must immediately disclose the existence and nature of the conflict to his or her supervisor, who should notify all persons and entities in his or her chain of command.

(i) *Daily activities*

If a key employee discloses a conflict, then the key employee's supervisor shall confer with all persons and entities in the key employee's chain of command and attempt to resolve the conflict by taking the following types of affirmative actions: changing a reporting requirement, delegating the specific duty or matter to another employee, changing the organizational structure, or any other action that would eliminate the conflict.

(ii) *Official meetings*

If a key employee is or becomes aware of an actual or potential conflict of interest while attending an official meeting, he or she must immediately disclose on the record the existence of the conflict to the Tribal Council or his or her board members and recuse himself or herself from any further participation in the situation and if the matter would require further action by the key employee in the ordinary course of business, then the key employee shall follow the process in § 28-1-5(a)(2)(B)(i).

(b) *Misuse of Confidential Information*

No Tribal Official or key employee shall use any information, to which he or she has access in his or her official or professional capacity and which has not been made public, to (i) acquire an economic interest in any property, transaction, or enterprise which may be affected by such information, (ii) speculate or wager on the basis of such information, (iii) damage a person's reputation, (iv) further political advancement, or (v) aid another to do any of the foregoing.

(c) *Solicitations and Gifts*

No Tribal Official or key employee shall solicit or accept any gift from any single source having a market value of more than \$150.00 at any one time (1) from any person or organization that is seeking official or professional action or preferential treatment from that Tribal Official or key employee or (2) from any person or organization seeking a contractual, financial, or other business relationship with the Tribe.

(1) *Exceptions to the Solicitation and Gift standard*

The following are excepted from this solicitation and gift standard:

(A) Gifts for social or traditional events;

(B) Gifts of a trivial or nominal value, such as complimentary items offered to members of the public at large, promotional items, or items received as a result of mass advertising mailings or attendance at a conference or convention;

(C) Gifts received on the behalf of the Tribe in the course of diplomatic relations with other tribal, state, or federal governments;

(D) Awards or honors customarily and publicly presented in recognition of public service;

(E) Food and beverages consumed at banquets, receptions, business dinners, conferences, or similar events; and

(F) Political contributions made in accordance with applicable election laws.

(d) *Unauthorized Compensation*

No Tribal Official or key employee shall solicit or knowingly accept any form of compensation, monetary or otherwise, directly or indirectly, for performing his or her duties of office or employment in excess of authorized compensation.

(e) *Campaign Activity*

No Tribal Official or key employee shall coerce or attempt to coerce any individual into making a political contribution or commitment in return for employment, favors, or other preferential treatment.

(f) *Sexual Harassment*

No Tribal Official shall engage in sexual harassment of any fellow Tribal Official or employee.

(g) *False Claims and Retaliation*

(1) No Tribal Official, tribal member, or key employee shall file a report of an ethics violation when he or she has no good faith belief that a violation has occurred and when the primary motivation is harassment.

(2) No Tribal Official or key employee shall retaliate in any way against any person who files a report of an ethics violation in good faith.

(h) *Abuse of Authority*

(1) No Tribal Official or key employee shall knowingly make any decisions or enter into promises of any kind that may be binding upon the Tribe unless he or she is properly authorized.

(2) No Tribal Official or key employee shall use his or her authority or position to intimidate or improperly influence any fellow Tribal Officials or employees to act in a way that violates any applicable law, policies, or procedures.

(i) *Preferential Treatment*

No Tribal Official or key employee shall show greater regard in making any decision or taking any action for the personal advantage or interest of such Tribal Official or key employee, his or her immediate family member, or any person, group, or organization with whom he or she has a personal or business relationship than for the interest of other tribal members or employees (other than preferences authorized by applicable law, policy, or procedure).

(j) *Nepotism*

No Tribal Official or key employee shall supervise, hire, promote, appoint, or participate in (including being present for the discussion of or voting on) the supervision, hiring, promotion, or appointment of any immediate family member.

(k) *Financial Disclosure*

Any Tribal Official or key employee against whom an ethics complaint has been filed alleging financial impropriety shall file a financial disclosure statement on a form approved by the Tribal Council. Upon review of the financial disclosure statement, the Ethics Officer may seek an order from the Ethics Board for an audit of the Tribal

Official's or key employee's finances. Failure to file the financial disclosure statement, submit to an ordered audit, or provide truthful information on the financial disclosure statement shall be a violation of this Code.

(l) *Disclosure of a Business Interest*

(1) All individuals applying for a board or committee shall disclose to the Tribal Council any existing direct or indirect financial interest in a contractual or business relationship with the entity that he or she seeks to represent.

(2) No Tribal Official who serves on a board or committee shall develop a new direct or indirect financial interest in a contractual or business relationship business, or significantly alter the nature of his or her existing interest in a contractual or business relationship, with the entity that the board or committee member serves, unless the Tribal Official fully discloses the financial interest in writing to the Tribal Council prior to any solicitation.

§ 28-1-6 Standards of Conduct for Tribal Employees

(a) All tribal employees shall adhere to the standards of ethical conduct outlined in the personnel policies and procedures issued to the employee by the appropriate Human Resources department or division and such other ethical conduct standards as may be set out in any individual employee's contract of employment. The ethical conduct requirements set out in all personnel policies and procedures of the Tribe or any tribal authority, commission, board or enterprise shall at a minimum include the standards of conduct outlined in § 28-1-5(a)-(k).

(b) The standards of ethical conduct set out in all personnel policies and procedures of the Tribe or any tribal authority, commission, board or enterprise shall also require Key Employees as defined at § 28-1-4(l) to, at a minimum,

(1) disclose in writing to Human Resources any direct or indirect financial interest in a contractual or business relationship with the entity when applying for employment; and

(2) disclose in writing to Human Resources and all supervisors in his or her chain of command, including an entity's supervisory board, any new direct or indirect financial interest in a contractual or business relationship business, or significant change in the nature of his or her existing interest in a contractual or business relationship, with the tribal entity employer prior to any solicitation.

(c) Key employees as defined at § 28-1-4(l) are also subject to this Ethics Code and its enforcement procedures; provided, that

(1) if conduct that could have given rise to an ethics complaint against a key employee under this Code has been handled by a key employee's supervisory board before an ethics complaint is filed under this Code, that same conduct shall not provide the basis for the filing of an ethics complaint hereunder, if the supervisory board discloses the issue and any disciplinary actions taken to the Ethics Officer and the Tribal Council.

(2) if, at the time conduct that could have given rise to an ethics complaint against a key employee under this Code comes to the attention of the supervisory board, an ethics complaint has already been filed, the supervisory board shall defer to the Ethics Board proceedings and shall not take any independent action to investigate or impose discipline regarding that particular conduct.

§ 28-1-7 Ethics Board

The Tribal Council hereby establishes the Ethics Board. The purpose of the Ethics Board is to ensure that Tribal Officials and employees are held to the highest standards of ethical conduct and to provide for fair, honest, and effective government of the Tribe through review, recommendation, sponsorship, and enforcement of appropriate standards of conduct.

(a) *Membership*

The Ethics Board shall be composed of five tribal members appointed by the Tribal Council for a term of five (5) years. All Board members shall be appointed by the Tribal Council for staggered five (5) year terms, and each Board member elected shall hold office until such Board member's successor is appointed and qualified. In order to implement the initial staggering of terms, the current Board of members will randomly select the numbers one (1) through (5), which will establish the initial term for each Board member. In order to be eligible for appointment to the Ethics Board, a candidate must meet the following objective qualifications:

- (1) forty (40) years of age or older;
- (2) no felony convictions to be cleared by a background check;
- (3) not a current employee or Tribal Official (if serving as a Tribal Official, the Tribal Official may resign from that position in order to accept an Ethics Board position); and
- (4) successful completion of an ethics assessment.

(b) *Alternates*

The Tribal Council shall appoint a first alternate and a second alternate to be available to serve on the Ethics Board for a term of five (5) years. The alternates shall meet the qualifications in § 28-1-7(a). In the event that (1) an Ethics Board member has a conflict of interest on a particular matter, (2) a complaint is filed for a violation of Section 28-1-7 and an Ethics Board member is or was a Tribal Council candidate during that election season, or (3) the Ethics Board is not fully constituted because of a death or resignation, the first alternate and, if necessary, the second alternate shall serve on the Board to address the specific ethics complaint or respond to a request for an advisory opinion.

(c) *Constitution of Board for Decisions*

Only a full Ethics Board panel composed of five (5) board members, which may include designated alternate(s), shall have authority to address ethics complaints or respond to any request for advisory opinions. However, the Ethics Board may conduct any other Ethics Board business with a quorum as established by its bylaws.

(d) *Removal, Resignation and Vacancy*

Once appointed, if a Board member or alternate ceases to meet qualifications (2) or (3) in § 28-1-7(a), the member or alternate shall be automatically removed from the Ethics Board. Any Board member or alternate may be removed from office at any time with or without cause, by a vote of two-thirds of the Tribal Council. Further, upon a Board member's or alternate's death or disability, the Chairman of the Tribal Council shall declare a vacancy and request that the Tribal Council act to fill it. Any vacancy occurring in the Board due to the removal, resignation of a Board member, or declaration of vacancy shall be filled by the Tribal Council in a manner prescribed by the Tribal Council following the advertisement of the position for at least thirty (30) days, and the Board member or alternate shall assume office for the balance of the same term as the Board member or alternate that he or she is replacing.

(e) *Duties and Responsibilities*

The Ethics Board shall have all the powers necessary and proper to carry out the purposes set forth in this Code and the authority to perform the following:

- (1) To appoint and remove officers of the Ethics Board by a majority vote;
- (2) To recommend the adoption and amendment of rules and regulations to implement this Code and carry out its duties and responsibilities;
- (3) To provide for preservation of all statements and information filed pursuant to this Code, including, but not limited to, financial disclosures and the complete record of all hearings, for not less than five years from the date of filing;
- (4) To issue written advisory opinions to guide the conduct of Tribal Officials and employees when requested by Tribal Official or employees;
- (5) To receive and review complaints filed by the Ethics Officer with the Tribal Court Clerk's Office;
- (6) To administer oaths and to issue subpoenas to compel attendance of witnesses or to produce any documents relevant to the matter before the Ethics Board;
- (7) To conduct administrative hearings on alleged violations of noncompliance with this Code;
- (8) To hold in contempt any person found disobeying any lawful order or direction of the Ethics Board; and
- (9) To impose sanctions and/or penalties for violations in accordance with §28-1-15(e).

(f) *Ethics Board Advisor*

An attorney, who shall have no other affiliation with the Ethics Officer and who shall be recommended by the Ethics Board and approved by the Tribal Council, shall serve as the Ethics Board Advisor. The Ethics Board Advisor shall have the authority to perform the following:

- (1) To provide legal advice to the Ethics Board;
- (2) To provide recommendations to the Ethics Board regarding rules and regulations to implement this Code;
- (3) To coordinate with the Tribal Court Clerk's Office on scheduling and securing the issuance of notices regarding administrative hearings on complaints over which the Ethics Board has jurisdiction;
- (4) To assist the Ethics Board in preparation for any hearings regarding allegations of non-compliance or violation and in preparation of advisory opinions;
- (5) To draft and revise written advisory opinions, findings, and decisions of the Ethics Board;

- (6) To represent the Ethics Board in any litigation filed against the Board, its members or staff other than for appeals filed per §28-1-15(i), provided, that the Tribe's Attorney General's office shall also provide assistance to and representation of the Ethics Board in collaboration with or lieu of the Ethics Board Advisor if and as requested by the Ethics Board; and
- (7) To keep all files and records respecting Ethics Board complaints and advisory opinions maintained by the Ethics Board Advisor strictly segregated from all other files and held in strict confidence.

(g) *Recusal by the Ethics Board Advisor*

If the Ethics Board Advisor has an ongoing attorney-client relationship with the tribal entity with whom the respondent is associated or had such a relationship at the time the events giving rise to the complaint occurred, then the Ethics Board Advisor shall recuse himself or herself from participation. If the Ethics Board Advisor has to recuse himself or herself, then the Tribal Council shall appoint an attorney to serve as the Ethics Board Advisor for the matter.

(h) *Funding*

The members of the Ethics Board shall be eligible to receive stipends for their service in an amount to be determined by the Tribal Council. In addition, the Ethics Board and Ethics Board Advisor shall be funded at a level sufficient to perform their obligations under this Code.

§ 28-1-8 Ethics Officer

(a) *Duties and Responsibilities*

An attorney who shall have no other affiliation with the Ethics Board Advisor, shall be appointed by the Tribal Council to serve as the Ethics Officer. The Ethics Officer shall have the authority to perform the following:

- (1) To receive, review, and investigate reports of ethics violations and determine whether they warrant the filing of an ethics complaint with the Ethics Board;
- (2) To forward such reports (with the reporting party's identity redacted) to the person accused of the ethics violation and invite their comments or response which shall be taken into account in determining whether the Ethics Officer will file an ethics complaint;
- (3) To provide a written explanation to any person who has filed a report of an ethics violation per §28-1-13 of why no ethics complaint was or will be filed with the Ethics Board upon such report, if that is his or her determination and send a copy of such explanation to the person who was accused of the ethics violation and the Tribal Council;
- (4) To receive requests for Ethics Advisory Opinions and refer such requests to the Ethics Board Advisor;
- (5) To file ethics complaints with the Tribal Court Clerk's Office when a determination has been made that a particular report of an ethics violation warrants the filing of an ethics complaint with the Ethics Board; copies of all such complaints shall be served on the Ethics Board Advisor and the respondent;

- (6) To negotiate dispositions with respondents in accordance with §28-1-14;
- (7) To represent the Tribe in ethics complaint hearings;
- (8) To represent the Tribe in any appeals from Ethics Board decisions or the dismissal of Ethics complaints;
- (9) To issue cautionary letters to Tribal Officials and key employees regarding the need to endeavor to avoid an appearance of impropriety, with notice also being sent to the immediate supervisor of the key employee or the Tribal Council for a Tribal Official; and
- (10) To keep all files and records respecting Ethics Board complaints and advisory opinions maintained by the Ethics Officer strictly segregated from all other files and held in strict confidence.

(b) *Recusal by the Ethics Officer*

If the Ethics Officer has an ongoing attorney-client relationship with the tribal entity with whom the respondent is associated or had such a relationship at the time the events giving rise to the complaint occurred, then the Ethics Officer shall recuse himself or herself from participation. If the Ethics Officer has to recuse himself or herself, then the Tribal Council shall appoint an attorney to serve as the Ethics Officer for the matter.

(c) *Funding*

The Ethics Officer shall be funded at a level sufficient to perform his or her obligations under this Code.

§ 28-1-9 *Tribal Court Clerk's Office*

The Tribal Court Clerk's Office shall perform only clerical and administrative duties for the Ethics Board, including, but not limited to:

- (a) Receiving ethics complaints as filed by the Ethics Officer;
- (b) Coordinate with the Ethics Board Advisor in scheduling and issuing notice for administrative hearings on ethics complaints;
- (c) Transmitting relevant notices and subpoenas to or from the Ethics Board, Ethics Board Advisor, Ethics Officer, respondents, and other appropriate individuals or entities;
- (d) Maintaining complete and current written records of resolutions, rules, regulations, decisions, opinions, and other official documents relating to this Code and to make available such records as required; and
- (e) Keeping all files and records respecting Ethics Board complaints and proceedings strictly segregated from all other court files and holding all Ethics Board files in strict confidence. No person other than the Ethics Board, Ethics Board Advisor, Ethics Officer or the respondent or his or her legal counsel shall have access to ethics complaint files maintained by the Tribal Court Clerk's Office.

§ 28-1-10 Advisory Opinions

(a) *Initial Request*

Any Tribal Official, employee, or tribal entity may seek an advisory opinion from the Ethics Board regarding any situation that may potentially fall under this Code. The request for an advisory opinion, together with a description of the facts at issue, should be submitted in writing to the Ethics Officer, whose contact information shall be published in the tribal newsletter on a quarterly basis and maintained by the Chairman's Office, Legal Department, and the Tribal Court Clerk's Office. The Ethics Board will issue an advisory opinion within fourteen days.

(b) *Reconsideration*

Within fourteen (14) days of the Ethics Board's issuance of an advisory opinion, the Tribal Official, employee, or tribal entity which requested the advisory opinion may ask the Ethics Board to reconsider its advisory opinion if (1) the Tribal Official, employee, or tribal entity has new facts that may alter the outcome of the advisory opinion, or (2) one or more of the factual findings of the Ethics Board was erroneous. Ten (10) days after the request for reconsideration is received by the Ethics Office, the Ethics Board shall issue its response to the request for reconsideration. If three (3) or more Ethics Board members vote in favor of reconsideration, the Ethics Board shall reconsider the advisory opinion and issue a supplemental advisory opinion no later than ten (10) days from issuing its response to the request for reconsideration.

(c) *Tribal Council Consideration*

If the Ethics Board denies the request for reconsideration, the Tribal Official, employee, or tribal entity may submit the advisory opinion to the Tribal Council and request that the Tribal Council consider clarifying or revising this Code to resolve any concerns with the Ethics Board's interpretation of any provision of this Code.

(d) *Confidentiality of Advisory Opinions*

An advisory opinion shall remain confidential, unless the Tribal Official, employee, or tribal entity seeking the advisory opinion signs a written consent for the advisory opinion to be (1) available to the public for review upon request and/or (2) published in the tribal newsletter.

§ 28-1-11 Report and Investigation Procedures

(a) *Filing of Reports*

Any Tribal Official, tribal employee, or tribal member, who, in good faith, believes or has reason to believe that a Tribal Official or employee has violated any provision of this Code may file a report of an ethics violation with the Ethics Officer. The ethics report may be hand-delivered, mailed, faxed, or emailed to the Ethics Officer, whose contact information shall be published in the tribal newsletter on a quarterly basis and maintained by the Chairman's Office, Legal Department, and the Tribal Court Clerk's Office. The name of the person filing the report will remain confidential unless the Ethics Officer files a complaint with the Ethics Board based on the report.

(b) *Contents of Report*

All reports shall include the name of the person whose alleged violation is being reported, a statement of facts to support the allegations being made, including, but not limited to, the date, time, place, and the persons involved and/or who may have knowledge of the alleged violation, and a signed statement that the information the reporting party has provided is true, accurate, and complete to the best of his or her knowledge.

(c) *Withdrawal of Report*

The reporting party may withdraw his or her report at any time prior to the Ethics Officer filing an ethics complaint with the Ethics Board.

(d) *Investigation Process*

No later than seven days after the receipt of the report, the Ethics Officer shall initiate the investigation of the alleged ethics violation. Each investigation shall include the following:

- (1) An interview of all witnesses who may have information regarding the allegations;
- (2) Review of any evidence provided by the reporting party or from witnesses that is relevant to the complaint;
- (3) An interview of the respondent if he or she wishes to provide information and any witnesses proposed by the respondent who have not already been interviewed; and
- (4) Receipt of any additional evidence the respondent wishes to provide.

In the event that the Ethics Officer is unable to obtain relevant documents due to the refusal of any person, a subpoena may be issued by the Chair of the Ethics Board.

(e) *Conclusion of Investigation*

Within thirty (30) days after the initiation of the investigation, the Ethics Officer shall either (1) file an ethics complaint in accordance with the provisions in § 28-1-13, or (2) notify the reporting party and the Tribal Council in writing that he or she will not file an ethics complaint because (1) the Ethics Board lacks jurisdiction, (2) the Ethics Officer did not find sufficient evidence to file a complaint, or (3) the Ethics Officer has been notified that the supervisory board handled the matter pursuant to Section 28-1-6(b)(1).

(f) *Statute of Limitations*

No complaint shall be filed by the Ethics Officer if more than one year has passed since the alleged violation occurred.

§ 28-1-12 Appeal by Reporting Party if No Ethics Complaint is Filed

(a) *Filing of Appeal*

If the Ethics Officer notifies the reporting party that the Ethics Officer will not file an ethics complaint, the reporting party may appeal to the Tribal Council for reconsideration of the report. The appeal shall be filed in writing with the Tribal Council Liaison no later than fourteen (14) days after the receipt of notification from the Ethics Officer.

(b) *Contents of Appeal*

The appeal shall include a copy of the notification received from the Ethics Officer and the reasons that the reporting party disagrees with the Ethics Officer's decision.

(c) *Notification of Ethics Officer*

The Tribal Council Liaison shall notify the Ethics Officer of the appeal no later than five (5) days after the appeal is received by the Tribal Council Liaison. Fourteen (14) days after the Ethics Officer is notified of the appeal, he or she shall file with the Tribal Council Liaison a copy of the initial report filed with the Ethics Officer and a report of the Ethics Officer's investigation, including but not limited to, a summary of all interviews conducted and all documentary evidence reviewed.

(d) *Tribal Council Review*

(1) Tribal Council members shall be given an opportunity to review the information provided in support of the reporting party's appeal and the information provided by the Ethics Officer. Based on that review, the Tribal Council shall, within ten (10) business days of receipt of the information from the Ethics Officer, have the option (A) to uphold the Ethics Officer's decision not to file an ethics complaint (B) to order the Ethics Officer to file an ethics complaint no later than ten (10) days from the Ethics Officer's receipt of the Tribal Council's order or (3) to take no action on the appeal, in which event the decision of the Ethics Officer shall stand. The Tribal Council shall not receive additional testimony or evidence in rendering decisions under this provision.

(2) Information submitted to the Tribal Council in connection with an appeal under this section shall be held in confidence by the Council and the Tribal Council Liaison.

§ 28-1-13 Ethics Complaint and Hearing Procedures

(a) *Filing and Contents of the Complaint*

The Ethics Officer shall file ethics complaints with the Tribal Court Clerk's Office. All complaints shall include the name of the person whose alleged violation is being reported; a statement of facts to support the allegations being made, including, but not limited to, the date, time, place; the standards of conduct that were allegedly violated; a list of witnesses that may be called at a hearing; and a signed statement that the information the Ethics Officer has provided is true, accurate, and complete to the best of his or her knowledge. The Ethics Officer shall file a certificate of service with the Court Clerk attesting that a true and correct copy of the complaint has been served upon the Ethics Board Advisor and the respondent.

(b) *Recusal by Board Members*

Any Ethics Board member who has a conflict of interest with respect to a matter before the Board shall disclose the conflict to the other Board members and recuse himself or herself from participation. In the event that a Board member recuses himself or herself, an alternate shall serve in the member's stead.

(c) *Scheduling of hearing*

No later than five (5) days after the receipt of the ethics complaint by the Tribal Court Clerk's Office, the Ethics Board shall schedule a hearing that shall occur no later than thirty (30) days after the filing of the complaint.

(d) *Procedure Upon Receipt of Complaint*

The Tribal Court Clerk's Office shall provide the respondent notice of the filing of the ethics complaint and notice of the hearing by certified mail or personal service by the tribal police no less than seven (7) days after the receipt of the complaint. Notice shall include the following:

- (1) The complaint number;
- (2) A copy of the complaint and any supporting documents;
- (3) Time, date, and place of hearing;
- (4) Statement of consequences for failure to appear;
- (5) Names of witnesses who may be called by the Ethics Officer; and
- (6) A copy of the administrative hearing procedures.

(e) *Parties to Proceedings*

The only parties to the Ethics Board proceedings shall be the Ethics Officer acting on behalf of the Tribe and the respondent. The original reporting party shall not be a party, but may be called as a witness in an Ethics Board proceeding.

§ 28-1-14 Negotiated Disposition

(a) If at any time prior to commencement of the administrative hearing on the complaint, the respondent acknowledges ethical violations and wishes to negotiate an agreed private disposition of the complaint, the respondent may submit a written request to the Ethics Officer. If the Ethics Officer and the respondent can reach agreement on a disposition of the complaint, the proposed disposition shall be submitted to the Attorney General's Office for approval. If the Attorney General's Office does not approve the proposed disposition or some other agreed disposition, the Ethics Officer shall continue to present the complaint at the administrative hearing or proceed as set forth in § 28-1-16(b).

(b) If at any time after the administrative hearing begins but prior to the rendering of an Ethics Board decision on a complaint, the respondent acknowledges ethical violations and wishes to negotiate an agreed private disposition of the complaint, the respondent may submit a written request to the Ethics Officer. If the Ethics Officer and the respondent can reach agreement on a disposition of the complaint, the proposed disposition shall be submitted to the Ethics Board for approval. If the Ethics Board does not approve the proposed disposition or some other agreed disposition, the Ethics Board shall proceed to render its decision.

§ 28-1-15 Administrative Hearing Procedures

The Ethics Board, as a quasi-judicial body, shall serve as the hearing body for all matters brought before them. Administrative hearings shall be held in accordance with the following procedures:

(a) *Ex Parte Communication*

Neither the respondent nor any of the witnesses nor the Ethics Officer shall have any oral or written communication regarding the complaint with members of the Ethics Board. Any such communication shall be reported in writing to the Ethics Board Advisor who, in turn, will report the communication to the other members of the Ethics Board, so that necessary and appropriate measures may be taken, including, but not limited to, disqualification from participation in the proceedings.

(b) *Subpoenas*

The Ethics Board shall be empowered to issue subpoenas to compel attendance of witnesses and to produce relevant documents. All subpoenas shall be signed by the Chair of the Ethics Board and issued seven (7) days prior to a hearing. Persons failing to obey such subpoenas shall be subject to contempt proceedings by the Ethics Board.

(c) *Representation*

A respondent may be represented by legal counsel or other appropriate representative of his or her choice.

(d) *Conduct of Hearings*

- (1) All hearings shall be conducted privately in the Tribal Courtroom;
- (2) The Chair shall preside over the hearing and begin the proceedings by reading the allegations of the complaint into the official record;
- (3) Witnesses shall be excluded from the hearing until such time as they are called upon to testify. Witnesses will be sworn under oath by the Chair or court reporter prior to testifying;
- (4) The Ethics Officer may give an opening statement;
- (5) The respondent may give an opening statement;
- (6) The Ethics Officer may call any witnesses and submit any documentary evidence in support of the complaint and the respondent shall be afforded the opportunity to cross-examine each witness;
- (7) The respondent may call any witnesses and submit any documentary evidence in support of his or her position and the Ethics Officer shall be afforded the opportunity to cross-examine each witness;
- (8) The Ethics Board need not strictly adhere to the rules of evidence, but shall ensure that due process is afforded to the respondent;
- (9) Any sworn testimony by a respondent or witness may be used for impeachment or as a party admission in any further civil or criminal proceedings in accordance with the rules of evidence otherwise applicable in such other proceedings;
- (10) Upon the conclusion of the testimony and receipt of evidence, the Ethics Officer shall be afforded the opportunity to give a closing statement in support of his or her position;
- (11) Upon the conclusion of the testimony and receipt of evidence, the respondent may give a closing statement in support of his or her position; and
- (12) The Ethics Board shall convene in executive session to deliberate and determine whether the allegations are supported by a preponderance of the evidence; and, if so, to determine what sanctions and/or penalties the Board believes are warranted.

(e) *Sanctions and/or Penalties*

- (1) Based on the severity of the violation, the Board may determine what sanctions and/or penalties it believes are warranted, including, but not limited to, the following:
 - (A) No sanctions or penalty;
 - (B) Issuance of a private reprimand;
 - (C) Issuance of a written public reprimand, and/or if a key employee, entered into such person's personnel file in accordance with applicable tribal procedures;
 - (D) Restitution of any improperly received benefit;
 - (E) Suspension from or termination of employment by the relevant supervisory authority;
 - (F) Suspension or removal from office by the Tribal Council;
 - (G) Disqualification from service or employment with tribal government or tribal enterprises for a period of time; and/or
 - (H) Any other sanction and/or penalty the Ethics Board deems necessary to carry out the purposes of this Code; however, the sanction and/or penalty may not violate any applicable laws.

(f) *Tribal Council Review of Sanctions and/or Penalties*

(1) If the Ethics Board recommends sanctions and/or penalties other than a private letter reprimand, then the Ethics Board shall submit its decision and recommendations for sanctions and/or penalties to the Tribal Council within thirty (30) days after the administrative hearing. No later than thirty (30) days after the submission of the decision and recommended sanctions and/or penalties, the Tribal Council shall either (i) approve the sanctions and/or penalties as determined by the Ethics Board and issue notice of such approval to the Ethics Board or (ii) remand the matter to the Ethics Board with instructions for reduction of the sanctions and/or penalties, or (iii) take no action on the Ethics Board submission, in which event the decision of the Ethics Board shall stand.

(2) Information submitted to the Tribal Council in connection with a submission from the Ethics Board under this section shall be held in confidence by the Council and the Tribal Council Liaison.

(g) *Decision of the Ethics Board*

Within fifteen (15) days after the Ethics Board receives notification from the Tribal Council regarding the sanctions and/or penalties or if the Tribal Council has taken no action regarding such sanctions or penalties under the preceding section, the Ethics Board shall render their findings of fact and conclusions in written form to the respondent together with the sanctions and/or penalties, if any. The decision of the Ethics Board shall be final. Only a redacted copy of the final decision of the Ethics Board shall be public after the exhaustion of all appeals.

(h) *Default*

If a respondent, after being properly notified of an administrative hearing, fails to appear for the hearing, the Ethics Board may enter a default decision against the respondent and impose appropriate sanctions and/or penalties and order the respondent to show cause why he or she failed to appear. If a witness who was properly subpoenaed

fails to appear, he or she may also be cited for contempt and be required to show cause why he or she did not appear.

(i) *Appeal*

- (1) The respondent may seek judicial review in the tribal court within fourteen days of receipt of such decision.
- (2) In order to appeal a final decision to the tribal court, the person appealing shall file a written notice of appeal, which shall include the date of the final decision and the specific grounds for the appeal. The notice of appeal shall be served on the Ethics Officer.
- (3) If the tribal court determines that a timely and proper notice of appeal was filed, then the tribal court shall issue a notice of acceptance of appeal to the parties within seven (7) days of the filing of the notice of appeal. Upon acceptance of the appeal, the Ethics Board shall forward the record, including, but not limited to, the complaint, the final decision, any documentary evidence accepted, and transcript of the administrative hearing, if any, within seven (7) days of receipt of the notice of acceptance.
- (4) The tribal court shall provide both the Ethics Officer and the respondent with a copy of the record within ten (10) days of receipt of the record from the Ethics Board.
- (5) Upon a showing of good cause, the Tribal Court may allow the parties to supplement the record.
- (6) All other appellate procedures shall be governed by the Tribal Rules of Appellate Procedure.
- (7) The tribal courts shall uphold the Ethics Board's decision unless the respondent can show that the final decision was:
 - (A) contrary to law;
 - (B) not supported by substantial evidence;
 - (C) arbitrary and capricious; or
 - (D) clearly erroneous.

(j) *Enforcement*

The appropriate supervisory person or entity shall enforce the final decision of the Ethics Board after the exhaustion of all appeals.

§ 28-1-16 Notices and Filings

(a) Unless stated otherwise, any notice required under this Code may be accomplished by hand-delivery or regular mail.

(b) Unless stated otherwise, any filing required under this Code may be accomplished by hand-delivery or regular mail.

(c) Any notice that is accomplished by regular mail shall be presumed to be delivered three (3) days after the sender places the notice in the mail.

§ 28-1-17 Time Computation

In computing any period of time prescribed by this Code, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the designated period shall be included in computation, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than (10) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this definition, legal holiday includes any holiday where tribal government offices are closed.

§ 28-1-18 Prior Inconsistent Law

Upon the effective date of this Code, any prior, inconsistent resolutions, policies, ordinances and/or procedures of the tribal government and tribal enterprises are hereby superseded and/or amended to comply with this Code. All amendments to this Code shall apply to all ethics complaints or reports of ethics violations pending on or filed after the amendments' effective date, no matter when the conduct in question occurred.

APPROVAL

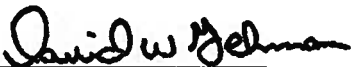
I, the Chairman of the Poarch Band of Creek Indians, hereby affix my signature to the ordinance authorizing it to become official this 7th day of April, 2011.



Buford L. Rolin, Chairman
Poarch Band of Creek Indians

CERTIFICATION

I, the Secretary of the Poarch Band of Creek Indians, certify that the foregoing is a true extract from the minutes of the Tribal Council meeting of the Poarch Band of Creek Indians, comprised of nine members with 8 in attendance on the 7th day of April, 2011, and that the above is in conformity with the provisions therein adopted by a vote of 8 in favor, and 0 against, 0 abstentions.



David W. Gehman, Secretary
Poarch Band of Creek Indians