

**Habematolel
Pomo of Upper Lake**

**Code of Ethics
Ordinance**

Ordinance Effective: June 12, 2004
Revisions:

HABEMATOLEL POMO OF UPPER LAKE

EXECUTIVE COUNCIL CODE OF ETHICS ORDINANCE

PURPOSE .

While acting under the Habematolel Pomo of Upper Lake (The Tribe), all Executive Council Members are vested with authority to represent and act on behalf of the Tribal Membership and the Habematolel Pomo of Upper Lake Tribe. The Executive Council exercises broad legislative authority and exclusive legislative authority under the Tribal Constitution. As such, Executive Council Members have been invested with the sacred trust of the Tribal Membership. The purpose of this ordinance is to maintain and protect this solemn obligation by stating the ethical obligations of Executive Council Members, and setting forth the consequences for violating said obligations.

POLICY.

Executive Council Members shall maintain high standards of honesty, integrity, fairness and impartiality in their conduct as Executive Council Members, and shall avoid any actions in their role as Executive Council Members, which would adversely reflect on the Executive Council itself or the Habematolel Pomo of Upper Lake Tribe as a whole. Executive Council Members shall take action in the best interest of The Tribe and its Tribal Membership, not for their individual or collective personal interests. Executive Council Members shall carry out their duties and responsibilities in the highest ethical manner. Violation of this ordinance may constitute “neglect of duty” or “gross misconduct” as those terms are defined in Article VIII Section 1 - page 7 of the Habematolel Pomo of Upper Lake Constitution.

AUTHORITY.

This Ordinance Code is adopted pursuant to the legislative authority granted by Article X. Powers Section 2. Reserved Powers of the Habematolel Pomo of Upper Lake Constitution.

DEFINITIONS.

“Closed Session” shall be defined as a session of the Executive Council, which is not open to the general public, but instead is limited to Tribal Members, their families, Tribal employees, contractors and consultants, and other persons invited to attend by the Executive Council.

- (a) **“Conflict of Interest”** for purposes of this ordinance shall be defined as an action taken by a Member of the Executive Council, which is in conflict with the Executive Council Member’s obligation to act in the best interest of the Tribe and it’s Tribal Membership. In most instances a conflict of interest arises when an Executive Council Member takes an action which promotes his/her own personal interest(s) rather than acting in the interest of the Tribe and/or its Tribal Membership as a whole. A conflict of interest does not arise when Executive Council Members disagree about a course of action or the decision to address a particular issue, when an Executive Council Member holds a sincere belief on the issue that differs from other Executive Council Members.
- (b) **“Executive Session”** as the term appears in Article X of the Habematolel Pomo of Upper Lake Constitution shall be defined as a session of the Executive Council which is closed to all persons except: Executive Council Members, necessary staff as designated by the Executive Council, and expressed invitees. Executive Council sessions shall be commenced and adjourned by motion, duly passed and shall not be recorded, except by Note of the Executive Council. No final or official Executive Council action shall be taken in Executive Session, without ratification of all actions/motions stated on the record once Executive Session is adjourned and the standard meeting is reconvened.
- (c) **“Immediate Family”** shall be defined as a father, mother, son, daughter, husband, wife, brother, sister, granddaughter, grandson, any other person in a similar relationship, and/or any person living in the Executive Council Member’s household.

DEFINITIONS.

- (d) **“Personal Interest”** for purposes of this Ordinance Code shall be defined as an action taken by an Executive Council Member, which is intended to, directly or indirectly, benefit the Executive Council Member and/or his/her immediate family, rather than the Tribe or its Tribal Membership as a whole. An example of “personal interest,” is when an Executive Council Member acts on a matter involving a general class of the Tribal Membership ~~if~~ providing that the Executive Council Member’s action was intended to benefit his/herself and/or his/her immediate family, regardless if the action also benefited other Tribal members. Personal interest does not necessarily occur when the Executive Council acts on a matter or issue that results in an incidental benefit to the Executive Council Member or his/her immediate family. Personal interest may be determined by an objective review of all of the circumstances surrounding and factors relevant to an action taken by the Executive Council Member.
- (e) **“Special Advisor”** shall be defined as any person or entity, other than the Executive Council ad hoc committee, appointed by the Executive Council to investigate an allegation of unethical conduct against an Executive Council Member. The Executive Council may contract with an outside entity of person(s) to be a Special Advisor.
- (f) **“Council Chairperson”** shall be defined as the Chairperson of the Tribe’s Executive Council. In any matter under this Ordinance Code where the Council Chairperson is the Executive Council Member alleged to have engaged in unethical conduct, the Vice-Chairperson shall, act in the capacity of the Chairperson under this Ordinance Code. If both the Chairperson and Vice-Chairperson are accused of such conduct, the Secretary/Treasurer shall act in the capacity of the Chairperson under this Ordinance Code or the remaining Executive Council Members at Large shall approve one of their Members to act in the capacity of the Chairperson for purposes of this Ordinance Code.

ETHICAL OBLIGATIONS.

- (a) An Executive Council Member shall comply with all current laws, directives, rules, policies and procedures in effect, and including those which may be hereafter issued, providing that they apply to said Executive Council Member in his/her status as a Tribal Member or as a Member of the Executive Council.
- (b) An Executive Council Member shall not act as a representative of the Executive Council or make statements to the media without express authorization of the Executive Council as a whole or the Council Chairperson. The Council Chairperson is the official representative of the Tribe and the Executive Council, unless that authority is otherwise delegated. This provision shall not prohibit an Executive Council Member from: making public statements in the course of their official duties; explaining procedures of the Executive Council for public information; defending him/herself from a criminal charge or civil claim; testifying as a witness in a legal proceeding; or from responding to allegations concerning conduct made pursuant to this Ordinance Code.
- (c) An Executive Council Member shall not take any official action, whether in an Executive Council meeting, committee meeting, or otherwise, in which the Executive Council Member has a personal interest, which is or could possibly be affected by said action. When a conflict of interest exists for an Executive Council Member with regard to a particular issue, the Member shall abstain from participating in any discussion or action with regard to such matter(s).
- (d) An Executive Council Member shall attend all regular and special Executive Council meetings, all Tribal Membership meetings, and all scheduled Executive Council work sessions. A Member shall notify the Council Chairperson prior to any meeting that they will be unable to ~~not~~ attend, due to a valid excuse. Two (2) unexcused absences during a Member's term shall constitute a violation of this Ordinance Code.
- (e) An Executive Council Member, who is convicted of any felony involving moral turpitude, while a Member, shall be guilty of violating this Ordinance Code.

ETHICAL OBLIGATIONS.

- (e) A plea of no contest, a plea to a lesser charge or a conviction of a lesser charge may constitute a conviction for purposes of this subsection. Providing if the facts supporting the said plea or conviction would be sufficient, in a civil context, to support a judgment against the said Executive Council Member with regard to the original felony charge.
- (f) An Executive Council Member shall not disclose of any materials presented, or considered, or discussed in Executive or Closed session, to any persons outside of the Executive/Closed Session, except by consensus of the full Executive Council.
- (g) An Executive Council Member shall not accept on his/her own behalf individual gifts valued at over \$ 100.00. Gifts valued at over \$ 100.00 shall become the property of the Tribe, and shall be turned over to the Tribal Property Officer/Fiscal Officer.
- (h) An Executive Council Member shall continue any and all appointments obtained in his or her capacity as an Executive Council Member only so long as he or she continues in office. A Member shall immediately resign from all such appointments upon completion of his/her Executive Council term, or upon otherwise leaving office.
- (i) An Executive Council Member shall return all records/Tribal documents, Tribal equipment, supplies and any other Tribal property to the Tribe within forty-eight (48) hours/2-days of completing office.

VIOLATION PROCEDURE.

Alleged violations of this Ordinance Code shall be processed in the following manner:

- (a) **“Roles of the Executive Council.”** The Executive Council shall be responsible for processing alleged ethical violations under this Ordinance Code.
- (b) **“Ethical Allegations.”** Allegations of unethical conduct as defined in this ordinance by an Executive Council Member shall be presented to the Executive Council and processed in the following manner:

VIOLATION PROCEDURE.

- (1) Allegations of unethical conduct against an Executive Council Member shall be made in writing and submitted to the Council Chairperson. Providing that an allegation is made against the Council Chairperson, the said allegation shall be filed with the Vice-Chairperson. Submission to the Executive Council Secretary shall be construed as delivery to the appropriate Executive Council Officer.
 - (2) Any person who believes that an Executive Council Member has engaged in unethical conduct as defined by this Ordinance Code may submit a written complaint. The complaint shall specify the Executive Council Member against whom a complaint of unethical conduct is being made, and the conduct that is alleged to be unethical.
 - (3) An Executive Council Member may make an oral allegation of unethical conduct against another Executive Council Member during a regular or special Executive Council meeting. Also as such a Tribal Member may make an oral allegation of unethical conduct against an Executive Council Member during a scheduled Tribal Membership meeting. Such an oral allegation shall be treated the same as the submission of a written allegation. The Council Chairperson may ask the person making such an oral allegation questions sufficient to clarify: 1. The Executive Council Member against whom the allegation is being made; 2. the nature of the allegation; or 3. to reduce the allegation to writing.
 - (4) If an allegation of unethical conduct on the part of an Executive Council Member involves action which allegedly wronged a person and the allegation is made by someone other than the person against whom the unethical conduct allegedly occurred, the person against whom the unethical conduct allegedly occurred shall be notified in writing of the allegation and asked to submit their views on the said allegation.
- (c) **“Initial Review of Allegation.”** The Executive Council shall perform an initial review in Executive Session of any allegation of unethical conduct on the part of an Executive Council Member.

VIOLATION PROCEDURE.

- (c) **“Initial Review of Allegation.”** This initial review may be conducted at the time the allegation is made, or at any subsequent time during a regular or special Executive Council meeting, provided that such review shall take place no later than thirty-one (31) days after it has been submitted. The purpose of the initial review shall be to determine whether the allegation made falls within the scope of this Ordinance Code and whether, assuming the facts alleged are true, said facts would support a determination of unethical conduct. The Executive Council Member against whom the allegation is made shall not participate in the initial review.
- (d) **“Investigation.”** If the Executive Council, upon completion of the initial review, determines that the allegation falls within the scope of this Ordinance Code and alleges facts, which, if true, might support a determination of unethical conduct, the Executive Council shall refer the allegation for investigation as specified below. The Executive Council Member against whom the allegation is made shall be provided with a copy of the allegation, or if made orally, a written summary of the allegation. Executive Council’s determination that an allegation requires further investigation shall not be a final decision of the Executive Council, which must be made in Open Session.
 - (1) Such investigation may be performed by an ad hoc committee of the Executive Council or by a Special Advisor approved by the Executive Council. If the Executive Council does not approve a Special Advisor, the Council Chairperson shall appoint one.
 - (2) The Investigator, whether an ad hoc Executive Council committee or Special Advisor, shall have the authority to take testimony under oath, to issue subpoenas, and to compel the production of documents and other evidence. The Executive Council Member against whom an allegation is made, the person allegedly wronged by the Executive Council Member’s action, if any, Members of the Executive Council and the Tribal attorney shall have the right to be present when sworn testimony is given.

VIOLATION PROCEDURE.

- (e) **Hearing.** The results of the investigation shall be presented to the Executive Council in Executive Session, in a hearing at which the Executive Council Member against whom the allegation is made, his/her spokesperson, the Tribal attorney, the complainant, and the person allegedly wronged by the Executive Council Member's action, if any, may be present and may present evidence, cross examine witnesses, and question the Investigator.
- (1) The Investigator shall notify the Council Chairperson of the completion of the investigation or of a date when the investigation will be completed. If the investigation will take longer than thirty days (30) to complete, the investigator shall obtain the approval of the Council Chairperson to extend the investigation for a specified period of time.
 - (2) Any investigation performed under this Ordinance Code shall be completed by the issuance of a written report which summarizes the evidence, gives an opinion on the issue of whether the allegation is true or false and, if the said opinion is that the allegation is true, recommends a sanction, if any, to be imposed on the Executive Council Member.
 - (3) Upon receipt of the investigation report, the Council Chairperson shall send notice, by certified mail, to the Executive Council Member accused of the ethical violation, the complainant, and the person allegedly wronged by the Executive Council Member's actions, if any, setting a hearing date and time at a Executive Council meeting not less than ten (10) and not more than forty-five (45) days from the date of the notice, at which the investigation report will be presented and the hearing will take place. A copy of the investigation report shall be included with such notice, along with a statement declaring that the report shall be kept confidential and not disclosed to any other person except the Executive Council Member's spokesperson.
 - (4) The hearing shall take place in Executive Session, and shall be recorded. Only the Executive Council, Executive Council Secretary, Tribal attorney, complainant, person allegedly wronged by the Executive Council Member's actions, if any, Executive Council Member accused of an ethical violation and

his/her spokesperson shall be present during the hearing, provided, that witnesses may be called into the Executive Council Executive Session to testify.

- (f) **Deliberation.** At the conclusion of the hearing, the Executive Council Member accused of an ethical violation, complainant, and the person allegedly wronged by the Executive Council Member's actions, if any, shall be excused from the Executive Session so the Executive Council may review the evidence and consider a decision and sanction, if any.
- (g) **Decision.** The Executive Council shall decide in Open Executive Council Session, by recorded vote, whether an ethical violation under this ordinance has occurred. The said decision shall be made by a vote of 2/3 of the entire Executive Council. If the Executive Council decides that an ethical violation has occurred, the Executive Council shall then decide, by motion, an appropriate sanction, if any, to impose on the Executive Council Member who engaged in the unethical conduct. *If any Executive Council Member accused of the ethical violation shall NOT participate nor be present for the decision session of his/her violation.*

SANCTIONS.

The Executive Council may impose a sanction or sanctions against any Executive Council Member who is found to have engaged in unethical conduct under this Ordinance Code. Such sanctions may include, but shall not be limited to, the following:

- (a) Reprimand, which is defined as a public censure or condemnation administered by the Executive Council;
- (b) Restitution;
- (c) Suspension;
- (d) Expulsion.

Expulsion must follow the requirements set forth in the Habematolel Pomo of Upper Lake Constitution. Suspension shall not exceed three (3) months for any specific violation. During suspension, the suspended Executive Council Member

will not be eligible for any salary, stipends or benefits as an Executive Council Member.

APPEAL.

Any Executive Council Member who is found to have violated this Ordinance Code and against whom, sanctions have been imposed by the Executive Council, shall have a right to appeal such determinations to the Tribal Membership of the Habematolel Pomo of Upper Lake Tribe pursuant to the rules and procedures Ordinance Code. If the Executive Council determines that an allegation of unethical conduct on the part of a Tribal Council member has been submitted for purposes of harassment or for other improper purposes, or is completely without merit, the Executive Council Member against whom such allegation is made may seek appropriate relief through the Tribe.

CONFIDENTIALITY.

Executive Council Members, the complainant, any person allegedly wronged by the Executive Council Member's actions, if any, and any other person involved with investigation or review of an ethical violation under this Ordinance Code shall keep all information obtained in the process set out under this Ordinance Code confidential. The investigation report prepared pursuant to this Ordinance Code shall be confidential. A complainant or person allegedly wronged by the Executive Council Member's action, if any, or all persons involved with such action shall be required to execute a pledge of confidentiality before being provided a copy of the investigation report, and shall be subject to a fine not to exceed \$ 1,000.00 for violation of said pledge. Any fine collected pursuant to this section shall be credited to the Tribe's General Fund Account. Violation of this section shall be a violation of this Ordinance Code for Executive Council Members, grounds for discipline of tribal employees, and grounds for any appropriate sanctions for other persons up to \$ 1,000.00 fine and including grounds for removal of said position.

ROLE OF TRIBAL COUNCIL MEMBER ACCUSED OF ETHICAL VIOLATION.

An Executive Council Member against whom an allegation of unethical conduct under this ordinance is made shall not participate in review of the allegation by the Executive Council, consideration by the Executive Council of whether unethical conduct occurred and an appropriate sanction for such conduct, or voting in Open Session on whether an ethical violation occurred and on an appropriate sanction.

SEVERABILITY.

If any provision of this Ordinance Code shall be held unconstitutional or invalid by the Habematolel Pomo of Upper Lake Tribe, only the invalid provision or language shall be severed and the remaining provisions and language of this Ordinance Code shall remain in full force and effect.

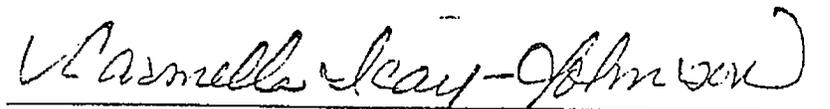
CERTIFICATION

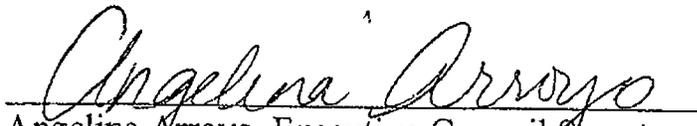
We the undersigned Chairperson and Secretary of the Executive Council of the Habematolel Pomo of Upper Lake (The Tribe), do hereby certify that by a vote of the General Membership, held on **June 12, 2004** in **Lakeport**, California, where a quorum as present, that the foregoing Code of Ethics Ordinance was adopted by a vote of **41 Yeas, 8 Nays, and 3 Abstentions.**

We further certify that this Ordinance Code has not been rescinded, amended, or modified in anyway.

Date Signed: July 8, 2004

ATTEST:


Carmella Icaj-Johnson, Executive Council Chairperson


Angelina Arroyo, Executive Council Secretary