

Ordinance 52-21

An Ordinance amending Title 24 of the Mille Lacs Band Statutes for the purposes of removing Mille Lacs Band Legal Services (“Legal Services”) from the administrative control of the Solicitor General for the purpose of eliminating the inherent conflict of interest involved in having the prosecution control the budget and personnel of the defense, establishing Legal Services as an independent entity, creating the board of directors of Legal Services, mandating that Legal Services not represent Band members for crimes against other Band members and for drug crimes, and clarifying that the Court of Central Jurisdiction has original jurisdiction over all causes of action arising from 24 MLBS Chapter 2.

The District II Representative introduced the following Bill on this 21st day of July, 2021.

IT IS ENACTED BY THE BAND ASSEMBLY OF THE NON-REMOVABLE MILLE LACS BAND OF OJIBWE:

Section 1. Amending 24 MLBS Chapter 2, Subchapter 2.

§ 1053. Department of Justice Members.

The Department of Justice shall consist of the following:

- (a) Solicitor General, Deputy Solicitor General(s), and legal support staff;
- (b) Chief Law Enforcement Officer, Deputy Law Enforcement Officers and staff; and
- (e) ~~Mille Lacs Band Legal Services Director, legal staff, and support staff; and~~
- (c) MLBO Compliance Officer and staff.

The Solicitor General shall exercise day-to-day supervision over the Department of Justice.

§ 1054. Powers and Duties of Solicitor General.

The Solicitor General shall be the leader of the Department of Justice (“Department”) and have the following authority ~~in exercising said authority of government:~~

- (a) To convene the department for due cause at any time. In the event that she or he fails to do so upon request of any two members of the Department, the Department may be convened after 48 hours written notice by any member of the Department.

- (b) As an appointed official and the Band's lead attorney, the Solicitor General is responsible to all Mille Lacs Band of Ojibwe elected officials.
- (c) The Solicitor General shall have the responsibility for ensuring the enforcement of all the laws of the Mille Lacs Band of Ojibwe.
- (d) The Solicitor General shall have a duty to supervise investigations of potential violations of the law.
- (e) The Solicitor General shall prosecute any and all violators of the law.
- (f) The Solicitor General's primary allegiance shall be to the laws of the Band and not to the Executive Branch. ~~Hence, the~~ The Solicitor may conduct investigations and prosecute members of the Executive Branch, as well as the Legislative or Judicial Branches within the parameters of Band law.
- (g) The Solicitor General shall have the supervisory and administrative control of the Justice Department including Deputy Solicitor General(s) and staff, Law Enforcement Officers and staff, ~~Mille Lacs Band Legal Services Director and staff,~~ and MLBO Compliance Officer and staff.
- (h) The Solicitor General shall review the laws of the Mille Lacs Band of Ojibwe to assure their compliance with the Indian Civil Rights Act (25 U.S.C.A. § 1302).
- (i) The Solicitor General shall supervise and advise the Chief Law Enforcement Officer as to her or his duties and obligations.
- (j) The Solicitor General is authorized to perform background investigations for purposes of employment and election purposes.

Section 2. Amending 24 MLBS Chapter 2 by enacting Subchapter 8 – Band Member Legal Services.

SUBCHAPTER 8

BAND MEMBER LEGAL SERVICES

Section

1331. Definitions.

1332. Band Member Legal Services.

1333. Number and Appointment of Directors.

- 1334. Removal of Directors.
- 1335. Qualifications of Directors.
- 1336. Term of Office.
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- 1339. Duties of the Managing Attorney of Band Member Legal Services.
- 1340. Service Area of Band Member Legal Services.
- 1341. Limitations on Representation by Band Member Legal Services.

§ 1331. Definitions.

The following terms are defined for the purposes of this subchapter:

- (a) “Board” means the board of directors of Band Member Legal Services.
- (b) “Director” means a member of the board.
- (c) “Drug crime” means any federal crime involving the possession or sale of illicit drugs, a state first or second-degree controlled substance crime, or any other crime for the sale of an illicit drug.
- (d) “Good cause” means any reason set forth in the personnel policy manual established under 6 MLBS § 1 or any reason recognized under the common law.
- (e) “Indigent defense services” means legal representation provided to those individuals who qualify to receive legal representation, whether free or otherwise, under the standards promulgated by the board.
- (e)(f) “Tribal public defender” means an attorney employed by or contracted with Band Member Legal Services for the purpose of providing indigent defense services.

§ 1332. Band Member Legal Services.

Band Member Legal Services shall be an independent entity established to provide indigent defense services to Band members, whose funding shall be provided by appropriations by the Band Assembly and, to the extent possible, by charitable or grant funds provided by outside entities. Band Member Legal Services shall be under the administrative control of the board.

§ 1333. Number and Appointment of Directors.

The board shall consist of five (5) directors, who shall be appointed as follows:

- (a) one (1) director appointed by the District I Representative;
- (b) one (1) director appointed by the District II Representative;
- (c) one (1) director appointed by the District III Representative;
- (d) one (1) director appointed by the Chief Executive; and
- (e) one (1) director appointed by the Chief Justice.

§ 1334. Removal of Directors.

Directors may be removed for good cause by the individual by whom the director was appointed to the board. A vacancy caused by removal or for any other reason shall be filled in a timely manner by the relevant appointing individual as identified under § 1303.

§ 1335. Qualifications of Directors.

Directors must be attorneys licensed to practice law in the State of Minnesota, under the laws of the Band, or both. Directors shall remain in good standing with the bar of the relevant jurisdiction or jurisdictions during their term.

§ 1336. Term of Office.

- (a) Initially, the directors appointed under § 1303(a) and (b) shall serve until December 31 of the year in which they were appointed, the directors appointed under § 1303(c) and (d) shall serve for two (2) years, and the director appointed under § 1303(e) shall serve for three (3) years.
- (b) All directors after the initial directors shall serve three (3) year terms. The term of office for directors shall begin on January 1 of the calendar year in which the appointment was due to be made and shall end on December 31 of the final year of the director's three (3) year term.
- (c) Any director appointed to fill a vacancy in the board shall serve until December 31 of the year in which that position on the board would normally be filled. At that time,

the term will be completed and the appointing individual shall make an appointment for a full three (3) year term in that position.

§ 1337. Duties of the Board.

The board shall have the following duties:

- (a) to develop standards governing the delivery of indigent defense services, including:
 - (1) standards governing eligibility for indigent defense services;
 - (2) standards for maintaining and operating regional tribal public defender officers, if any regional tribal public defender offices are established;
 - (3) standards prescribing minimum experience, training, and other qualifications for tribal public defenders;
 - (4) standards for tribal public defender caseloads;
 - (5) standards for the evaluation of tribal public defenders;
 - (6) standards for independent, competent, and efficient representation of clients whose cases present conflicts of interest; and
 - (7) such other standards as are necessary and appropriate to ensure the delivery of adequate indigent defense services;
- (b) to establish regional tribal public defender offices, if determined to be necessary and appropriate;
- ~~(b)~~(c) to adopt bylaws; and
- ~~(e)~~(d) to approve and submit to the Band Assembly a biennial budget request.

§ 1338. Managing Attorney of Band Member Legal Services.

The board shall appoint a managing attorney who must be chosen on the basis of relevant training, experience, and such other qualifications considered appropriate. The managing attorney must be an attorney licensed and eligible to practice law in the State of Minnesota or under the laws of the Band. The managing attorney shall serve a two-year term from his or her date of appointment and may be removed prior to completion of his or her term for good cause by a majority vote of the board.

§ 1339. Duties of the Managing Attorney of Band Member Legal Services.

The managing attorney shall have the following duties:

- (a) to attend all meetings of the board as a non-voting member;
- (b) to assist the board in developing standards for the delivery of adequate indigent defense services;
- (c) to administer and coordinate delivery of indigent defense services and supervise compliance with board standards;
- (d) to recommend the establishment of regional tribal public defender offices, if determined to be necessary and appropriate;
- (e) to conduct regular training programs for tribal public defenders;
- (f) to hire, subject to policies and procedures established by the board, professional, technical, and support personnel, including attorneys to serve as tribal public defenders, considered reasonably necessary for the efficient delivery of indigent defense services;
- (g) to prepare and submit to the board a proposed annual budget for the provision of indigent defense services;
- (h) to prepare and submit to the board an annual report containing pertinent data on the operations, needs, and costs of Band Member Legal Services and any other information that the board may require;
- ~~(i)~~ (i) to adopt a personnel policy for human resources purposes, which must be approved by the board; and
- ~~(j)~~ (j) to perform other duties as assigned by the board.

§ 1340. Service Area of Band Member Legal Services.

Band Member Legal Services shall have a service area including the counties of Aitkin, Crow Wing, Hennepin, Mille Lacs, Morrison, Pine, and Ramsey.

§ 1341. Limitations on Representation by Band Member Legal Services.

- (a) Band Member Legal Services may represent Band members in all civil matters in administrative hearings, tribal court, state court, and federal court.

- (b) Band Member Legal Services may represent Band members in criminal matters in tribal court, state court, and federal court, provided that:
- (1) the charge or charges do not implicate an act against another Band member;
 - (2) the representation is in accordance with any standards promulgated by the board; and
 - (3) the representation is not for a charge that constitutes a drug crime, unless it is a first-time possession offense that is a charge of second or lesser degree.

Section 3. Amending Chapter 3, Subchapter 6 of Title 24 MLBS.

§ 4002. Court of Central Jurisdiction.


The Court of Central Jurisdiction is hereby granted subject matter jurisdiction for any cause of action which arises from 24 MLBS Chapter 2 (§ 1001 et seq.) or this subchapter. Nothing in this subchapter shall be construed as a waiver of sovereign immunity of the Non-Removable Mille Lacs Band of ~~Chippewa Indians~~ Ojibwe in any state or federal court of competent jurisdiction. ~~Associate Justices of~~ The Court of Central Jurisdiction shall have original jurisdiction over all causes of action which arise from any provisions of 24 MLBS Chapter 2 and this subchapter. A Criminal Division is hereby created in the Court of Central Jurisdiction to ~~here~~ hear causes of actions arising from 24 MLBS Chapter 2 and this subchapter.

EFFECTIVE DATE. Section 1 and Section 2 of this bill shall become effective on August 30, 2021. Section 3 of this bill shall be effective immediately as provided in 3 MLBS § 30.

**Ordinance 52-21
(Band Assembly Bill 19-04-52-21)**


Introduced to the Band Assembly on this
Twenty-first day of July in the year
Two thousand twenty-one.

Passed by the Band Assembly on this
Twenty-first day of July in the year
Two thousand twenty-one.


Sheldon Boyd, Speaker of the Assembly

APPROVED

Date: July 23, 2021


Melanie Benjamin, Chief Executive

OFFICIAL SEAL OF THE BAND

