

# **Laws of the Non-Removable**



## **Mille Lacs Band of Ojibwe**

***2024 - 1***

# Foreword

The Legislative Branch is pleased to provide an updated publication of the Laws of the Non-Removable Mille Lacs Band of Ojibwe. These statutes belong to the People and are the result of many years of hard work by dedicated individuals in collaboration with elected leaders. The lawmaking process is one of negotiation, review, rewrites, deliberation, and, yes, politics. But these statutes lay the foundation to govern independently and promote our sovereignty as a People.

The Legislative Branch is taking on the task of regular publication of statutes, routine notification to Band membership, and the advancement of the Revisor's Office. Since the most recent publication of the complete Band Statutes in 2020, two titles have been repealed (Titles 13 and 14), one Title has been adopted (Title 25), and several Titles have been amended by act. Thus, Band Statutes continue to be fluid in nature and will need constant review by Band members and elected leaders.

According to 25 MLBS § 12, the Revisor's Office shall certify, in preparing an edition of Band Statutes, "that all sections appear to be correctly printed." The Revisor of Statutes has issued a Certificate of Correctness for the enclosed Titles in the publication of this edition of Band Statutes. As of January 30, 2025, the Titles contained herein are the most current versions known to the Legislative Branch. As more laws are passed, official titles will be uploaded to the Band's website.

We all have a duty to read and know these words, to disagree and second-guess, to recognize and abide by, to make ongoing changes, and to propose the creation of entirely new bodies of law to meet the times we live in. Thank you to all Legislative staff, past and present, who have been instrumental in the exercise of our tribal sovereignty. But the ultimate thank you is to the People of the Band from whom the Legislative Branch derives its power. We must never forget that the inherent power to make law comes only from the People.

Miigwech,



Sheldon Boyd  
Speaker of the Assembly

*January 30, 2025*

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*Titles 12 to 27, see Volume 2*

# TITLE 1 – CIVIL RIGHTS CODE

## Section

1. Freedom of Religion, Speech and Press; Right to Assemble and Petition.
2. Searches and Seizures.
3. Prohibition Against Double Jeopardy.
4. Self-Incrimination in Criminal Proceeding.
5. Expropriation of Private Property.
6. Individual Rights During Judicial Proceedings.
7. Bails, Fines and Penalties.
8. Equal Protection and Due Process of Law.
9. Bills of Attainder, Ex Post Facto Laws, and Laws Impairing Obligations of Contracts.
10. Rights to Trial by Jury.
11. Habeas Corpus.
12. Presumption of Innocence.
13. Protection of Cultural Values.
14. Fundamental Principles.
15. Compensation for Unlawful Taking of Band Lands.

### **§ 1. Freedom of Religion, Speech and Press; Right to Assemble and Petition.**

- (a) The Band Assembly for the Non-Removable Mille Lacs Band of Ojibwe, in exercising the powers of self-government, shall make no law which prohibits the free exercise of religion or abridges the freedom of speech or of the press and to petition for a redress of grievances.
- (b) The Band Assembly for the Non-Removable Mille Lacs Band of Ojibwe, in exercising the powers of self-government, shall make no law which prohibits the rights of the people to peaceably assemble. However, no Tribal political campaign activity shall be permitted in any government building or any government owned business except for the purpose of a government sponsored candidate forum, where all candidates for band elected office are given the option to participate.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1140-MLC-1, § 1.  
Band Ordinance 21-10, § 1.

### **Cross References**

Nay-Ah-Shing School, sectarian materials or teaching, *see* 9 MLBS § 23.

### **§ 2. Searches and Seizures.**

All persons within the territories under the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe have the right to be secure in their persons, houses, papers and effects against unreasonable search and seizures. Any warrant shall be issued by a District Court judge, shall be founded upon probable cause supported by oath or affirmation, and shall describe with particularity the place to be searched and the person or thing to be seized.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1140-MLC-1. § 2.  
Band Ordinance 38-19.

### **Cross References**

Historical preservation, civil penalties, *see* 10 MLBS § 603.  
Juvenile justice, warrants, *see* 8 MLBS § 102.  
Motor vehicles, seizure and confiscation of certain substances and vehicles in which they are found, *see* 19 MLBS § 503.  
Natural Resource Officers, searches, inspections and seizures, *see* 11 MLBS §§ 2606 to 2608.  
Peaceful possession of property, *see* 24 MLBS § 203.  
Searches and seizures, criminal procedure, *see* 24 MLBS § 4107 et seq.  
Trespass, seizure of vehicles, equipment or goods, *see* 21 MLBS § 207.  
Watercraft, seizure and confiscation of certain substances and vessels in which they are found, *see* 20 MLBS § 405.

### **§ 3. Prohibition Against Double Jeopardy.**

No person shall be subjected, for the same offense, to be twice put in jeopardy by the Court of Central Jurisdiction for the commission of a crime within the territories governed by the Non-Removable Mille Lacs Band of Ojibwe.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1140-MLC-1, § 3.

### **§ 4. Self-incrimination in Criminal Proceeding.**

No person shall be compelled, in any criminal case in the Court of Central Jurisdiction, to be a witness against her or himself.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1140-MLC-1, § 4.

## **Cross References**

Basic rights of children taken into custody, *see* 8 MLBS § 105.

Gasoline and petroleum products excise tax, immunity from prosecution based on testimony, *see* 22 MLBS § 311.

Notification of rights at time of arrest, *see* 24 MLBS § 4106.

Sales and use taxes, immunity from prosecution for testimony, *see* 22 MLBS § 512.

Tobacco products excise taxes, immunity from prosecution based on testimony, *see* 22 MLBS § 218.

### **§ 5. Expropriation of Private Property.**

The Non-Removable Mille Lacs Band of Ojibwe shall not confiscate any private property for public use without just compensation.

## **Historical and Statutory Notes**

### **Source:**

Band Statute 1140-MLC-1, § 5.

### **§ 6. Individual Rights During Judicial Proceedings.**

All persons in any criminal or civil proceeding of the Non-Removable Mille Lacs Band of Ojibwe shall be accorded the right to a speedy and public trial, be informed of the nature and cause of the accusation, be confronted with the witnesses against him, have a compulsory process of obtaining witnesses in her or his favor, and at her or his own expense, to have the assistance of counsel for her or his defense.

## **Historical and Statutory Notes**

### **Source:**

Band Statute 1140-MLC-1, § 6.

## **Cross References**

Basic rights of children taken into custody, *see* 8 MLBS § 105.

Child care staff, abuse or neglect of children, *see* 8 MLBS § 1207.

Human Resources Division cases, informing minor or parents of rights, *see* 8 MLBS § 11.

Indian employment rights hearings, *see* 18 MLBS § 423.

Legal responsibilities of Solicitor General in capacity of prosecutor, *see* 4 MLBS § 20.

Notification of rights at time of arrest, *see* 24 MLBS § 4106.

### **§ 7. Bails, Fines and Penalties.**

The Court of Central Jurisdiction, in the exercise of judicial authority, shall issue no order which establishes excessive bail, imposes excessive fines, inflicts cruel and unusual punishments, or

imposes for conviction of any one (1) offense a penalty or punishment greater than imprisonment for a term of one (1) year, a fine of \$5,000.00, or both.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1140-MLC-1, § 8.

### **Cross References**

Bail, *see* 24 MLBS §§ 4156, 4157.

Sentence, *see* 24 MLBS § 4251 et seq.

### **§ 8. Equal Protection and Due Process of Law.**

All persons within the territorial jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe shall be accorded the equal protection of the Band's laws and no person shall be deprived of liberty or property without due process of law.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1140-MLC-1, § 8.

### **Cross References**

Basic rights of children taken into custody, *see* 8 MLBS § 105.

Child care staff, abuse or neglect of children, *see* 8 MLBS § 1207.

Creditors' remedies, due process, *see* 24 MLBS § 3301.

Deputy Registrar of Motor Vehicles, removal, *see* 19 MLBS § 10.

Historical preservation, civil penalties, *see* 10 MLBS § 603.

Human Resources Division cases, informing minor or parents of rights, *see* 8 MLBS § 11.

Indian employment rights hearings, *see* 18 MLBS § 423.

Justices or Judges, removal or discipline, *see* 5 MLBS § 11.

Peaceful possession of property, *see* 24 MLBS § 203.

Solicitor General, legal responsibilities in capacity of prosecutor, *see* 4 MLBS § 20.

### **§ 9. Bills of Attainder, Ex Post Facto Laws, and Laws Impairing Obligations of Contracts.**

The Band Assembly shall not pass a bill of attainder, approve any ex post facto law, or pass any law impairing the obligations of contracts.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1140-MLC-1, § 9.

## **§ 10. Rights to Trial by Jury.**

All persons accused of an offense within the territorial jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe which is punishable by imprisonment of not more than one (1) year, shall have the right, upon request, to a trial by jury of not less than six (6) persons.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1140-MLC-1, § 10.

### **Cross References**

Criminal procedure, jury trial, *see* 24 MLBS § 4201.

Trial by jury, generally, *see* 24 MLBS § 2014.

## **§ 11. Habeas Corpus.**

The privilege of the writ of habeas corpus from the Court of Central Jurisdiction, the United States District Court for the District of Minnesota, the Eighth Circuit Court of Appeals, or the United States Supreme Court shall be available to all persons whose liberties have been restricted under the laws of the Non-Removable Mille Lacs Band of Ojibwe.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1140-MLC-1, § 10.01.

## **§ 12. Presumption of Innocence.**

In any criminal legal proceeding, each person shall be presumed innocent until proven guilty.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1140-MLC-1, § 11.

## **§ 13. Protection of Cultural Values.**

The Band Assembly shall, in all its actions, seek to preserve and protect the official language of the Band as Ojibwe, the official religion of the Band as Me da win, and protect the Band's aboriginal rights and sovereignty, as well as the unwritten customs and traditions of the Band.

## **Historical and Statutory Notes**

**Source:**

Band Statute 1140-MLC-1, § 12.

## **Cross References**

Derivation of political powers, *see* 2 MLBS § 1.

Treaty rights, *see* 2 MLBS § 1001 et seq.

## **§ 14. Fundamental Principles.**

The rights herein enumerated are basic human rights essential to the security of the Band, individual freedoms, and the continued peace and friendship between the Band and the United States of America as established in the Treaties of 1837, 1842, 1855, 1863, and 1864.

## **Historical and Statutory Notes**

**Source:**

Band Statute 1140-MLC-1, § 13.

## **§ 15. Compensation for Unlawful Taking of Band Lands.**

The Band Assembly hereby declares that the only means of compensation which are acceptable for unlawful taking of Band lands by other governments, persons or corporations shall be land, and, furthermore, this land shall be equal in nature, value, and all other respects to those lands that were subject to unlawful taking.

## **Historical and Statutory Notes**

**Source:**

Band Statute 1140-MLC-1, § 14.

# TITLE 2 – BAND GOVERNMENTAL POWER AND SOVEREIGNTY

<u>Chapter</u>	<u>Section</u>
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## Historical and Statutory Notes

The Preamble of Band Statute 1141-MLC-2 provides: "WHEREAS, in 1981, the Non-Removable Mille Lacs Band of Chippewa Indians, in a historic step, adopted a form of government based on the principle of division of powers, and,

"WHEREAS, that form of government has proven to be highly satisfactory, but experience with the large body of law which was necessary to establish the system has revealed a number of flaws and ambiguities, and,

"WHEREAS, the Band Assembly has determined to improve Band government by adopting an entire Code of government, revising and replacing the former Code, NOW THEREFORE, IT IS ENACTED BY THE BAND ASSEMBLY:"

Band Statute 1141-MLC-2, §§ 1 and 2 provide: "Section 1. Purpose. The purpose of this act is to promote the general welfare of the Non-Removable Mille Lacs Band of Chippewa Indians and its members by establishing duties, purposes and procedures for the conduct of domestic and external affairs of the Band by a form of government based upon the principle of division of powers. This statute is enacted by the authority vested in the Mille Lacs Reservation Business Committee under Article VI, Section 1 of the Constitution of the Minnesota Chippewa Tribe. "Section 2. Scope of Amending Provision. Band Statutes 1001-MLC-1, 1002-MLC-02, 1008-MLC-1, 1011-MLC-5, 1024-MLC-3, 1032-MLC-1, 1033-MLC-1, 1037-MLC-2, 1039-MLC-1, 1063-MLC-5 are hereby repealed in their entirety and replaced by the provisions of this act, except that: "Section 2.01. The provisions of Band Statute 1032-MLC-1, Section 28, relating to the authorities of the Commissioner of Corporate Affairs shall be transferred and hereinafter referenced by Band Statute 1077-MLC-16, Section 5.

"Section 2.02. The provisions of Band Statutes 1032-MLC-1, Section 29, relating to the authorities of the Commissioner of Natural Resources shall be transferred and hereinafter referenced by Band Statute 1030-MLC-22, Section 32."

The Title of Band Ordinance 40-03 is "An Ordinance to Increase the Geographic Jurisdiction for Housing Renovation Services."

The Preamble of Band Ordinance 40-03 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe to increase the Geographic Jurisdiction for Housing Renovation Services."

Sections 1, 2 and 5 of Band Ordinance 40-03 provide: “Section 1. Title 2 Mille Lacs Band Statutes Annotated section 10 (referred to in this Act as 2 MLBS sec. 10), “Geographical Jurisdiction for Services” is repealed by this Act and replaced as follows.

“Section 2. 2 MLBS sec. 10(a) shall be as stated in Section 3 of this Act and 2 MLBS sec. 10(b) shall be as stated in Section 4 of this Act.

“Section 5. The effective date of this law is October 1, 2002.”

## **CHAPTER 1**

### **GENERAL PROVISIONS**

#### **Section**

- 1. Derivation of Powers.**
- 2. Written and Unwritten Laws.**
- 3. Division of Powers.**
- 4. Functions of Governmental Authority.**
- 5. Sovereign Immunity.**
- 6. Official Seal.**
- 7. Contracts with Band.**
- 8. Official Oath of Office.**
- 9. Code of Ethics.**
- 10. Geographical Jurisdiction for Services.**
- 11. Designation of Band Districts.**
- 12. Waiver for Special Dispensation.**

#### **§ 1. Derivation of Powers.**

All political powers of the Non-Removable Mille Lacs Band of Ojibwe derive from the aboriginal rights of the Band comprised of the Non-Removable Sandy Lake Band of Ojibwe, the Rice Lake Band of Ojibwe, Snake River Ojibwe and the Kettle River Band of Ojibwe, and the inherent and aboriginal rights of the people of the Band to self-government. Some of these rights have been delegated to establish a constitutional form of government in which the Constitution of the Minnesota Chippewa Tribe is the supreme law of the Band. The Band has reserved to itself, however, the power to maintain a Band government which may enact laws to preserve the sovereignty of the Band and to promote and maintain individual rights and promote the general welfare of the people of the Band.

#### **Historical and Statutory Notes**

##### **Source:**

Band Statute 1142-MLC-2, § 3.

## **Cross References**

Protection for cultural values, *see* 1 MLBS § 13.

### **§ 2. Written and Unwritten Laws.**

All the organs of Band government are subject to written laws, consistent with the authority delegated by the constitution and unwritten laws based upon the customs and traditions of our Band since time immemorial.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-2, § 3.01.

### **§ 3. Division of Powers.**

To accomplish a fair and just exercise of authorities conferred by the people in the Constitution, the authorities of government shall be balanced by dividing such authorities so that no one (1) person or governmental entity shall have absolute power.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-2, § 3.02.

## **Cross References**

Band Assembly District Representatives, prohibition against exercising Executive or Judicial powers, *see* 3 MLBS § 9.

Joint Session of the Band Assembly, *see* 3 MLBS § 27.

Solicitor General, investigations and prosecutions against members of all three branches, *see* 24 MLBS § 1054.

### **§ 4. Functions of Governmental Authority.**

The authority of government conferred pursuant to Articles I, VI and XIII of the Constitution of the Minnesota Chippewa Tribe is hereby divided into three (3) functions. The three (3) functions of our Band government shall be executive, legislative and judicial.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-2, § 4.

## **Cross References**

Executive political authority, *see* 4 MLBS § 2.  
Joint Session of the Band Assembly, *see* 3 MLBS § 27.  
Judicial authority, *see* 5 MLBS § 101.  
Legislative political authority, *see* 3 MLBS § 3.

### **§ 5. Sovereign Immunity.**

- (a) The Band Assembly shall direct by law, in what manner, and in what courts, suits may be brought against the Non-Removable Mille Lacs Band of Ojibwe. Except as specifically authorized by Band Statute, the Non-Removable Mille Lacs Band of Ojibwe shall not be subject to suit in any court of competent jurisdiction without its express written consent to such suit. The sovereign immunity of the Non-Removable Mille Lacs Band of Ojibwe shall apply unless expressly waived by Band statute.
  
- (b) Under no circumstances or matters of material fact shall the Band Assembly waive sovereign immunity for the provisions of services to members of the Non-Removable Mille Lacs Band of Ojibwe, when said members as citizens of the state of Minnesota meet eligibility guidelines to receive said services. Any said official of the Band shall have no authority, upon her or his authorization of any contractual document to consent, on behalf of the Band to suit in any court of competent jurisdiction or to submit to any binding arbitration utilizing the civil rules of procedure of the United States of America or the state of Minnesota in any dispute which involves the Band. Therefore, the appearance of any signature of any official of the Non-Removable Mille Lacs Band of Ojibwe to any contractual document shall be valid only for the purposes of implementing the Indian Self Determination and Education Assistance Act of 1975, Public Law 93-638 (25 U.S.C.A. § 450 et seq.) by providing assistance to Indians from Indians. The foregoing shall be liberally construed so as to effectuate the purposes thereof.

## **Historical and Statutory Notes**

**Source:**

Band Statute 1085-MLC-37, § 75.01.  
Band Statute 1142-MLC-2, § 30.

### **§ 6. Official Seal.**

The Official Seal of the Non-Removable Mille Lacs Band of Ojibwe shall be affixed to all official documents of the Executive and Legislative Branches of government for the Non-Removable Mille Lacs Band of Ojibwe. Any document of the Executive or Legislative Branch that is required to possess the Official Seal affixed shall have no force or effect and no weight in law until such time as the Seal is affixed.

## Historical and Statutory Notes

**Source:**

Band Statute 1142-MLC-2, § 35.

### § 7. Contracts with Band.

All contractual or other types of agreements, regardless of subject matter shall be executed on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe and contain the official seal of the Band to be of any force and effect in any court of law. All said contract or contracts entered into in violation of this Section shall be of no force or effect.

## Historical and Statutory Notes

**Source:**

Band Statute 1085-MLC-37, § 75.

### Cross References

Contracts with Indian tribes, *see* 25 U.S.C.A. § 81 et seq.

### § 8. Official Oath of Office.

The Chief Justice, or any other Justice of the Court of Central Jurisdiction, before the Band Assembly shall administer the official Oath of Band Office to all popularly-elected leaders of the Band and to any appointee of the Band. The Oath shall be: "I, (name of officer), do hereby swear that I will support, honor and protect the Constitution of the Minnesota Chippewa Tribe, the Constitution of the United States of America, and the laws of the Non-Removable Mille Lacs Band of Ojibwe, and I will protect the rights of Band members and others under the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe, and I will faithfully and impartially discharge the duties of the office to which I hold to the best of my judgment and ability, so help me gi-chi-ma-ni-do.

## Historical and Statutory Notes

**Source:**

Band Statute 1142-MLC-2, § 34.

### Cross References

Federation Cultural Resources Board, oath of office, *see* 10 MLBS § 106.

Oath for Band offices, *see* 5 MLBS § 115.

### § 9. Code of Ethics.

The Band Assembly shall establish by law a code of ethics to govern the behavior of all elected and appointed officers of the Non-Removable Mille Lacs Band of Ojibwe.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-2, § 18.

### **Cross References**

Recall of appointed officials, violations of code of ethics, *see* 4 MLBS § 15.

## **§ 10. Geographical Jurisdiction for Services.**

- (a) **General Geographic Service Area.** Enrolled members of the Non-Removable Mille Lacs Band of Ojibwe who reside on trust and/or allotted land or who reside within a 30 mile radius of such trust and/or allotted land shall be entitled to participate in the Cultural, Natural Resources, Economic, Social, Educational, Health and General Welfare Resources of the Band Government as authorized by Article XIII of the Constitution of the Minnesota Chippewa Tribe.
- (b) **Geographical Service Area for Housing Renovations.** The Geographical Service Area for Housing Renovation Services shall be any place in the State of Minnesota and on any other lands which are located within 50 miles of Mille Lacs Band trust or allotted lands.
- (c) **Geographical Service Area for administering TANF.** The Geographical Service Area for administering TANF shall be the Minneapolis/St. Paul urban areas of Hennepin, Anoka, and Ramsey Counties in addition to the geographical Jurisdiction in Title, 2, section 2 and shall be in accordance with a plan submitted by the Commissioner of Education and approved by the Band Assembly.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 25.

Band Ordinance 40-03, §§ 3 and 4. Band Ordinance 11-04, § 2.

## **§ 11. Designation of Band Districts.**

- (a) District I of the Mille Lacs Band of Ojibwe shall be known as Nay-ah-Shing. All trust and/or allotted land within the aforementioned geographical radius with the exception of Chi-mi-ni-sing, (Isle) shall constitute the service jurisdiction of District I.

- (b) District II of the Mille Lacs Band of Ojibwe shall be known as Ga-me-ta-wa-ga-gi-mog, (Sandy Lake) and be comprised of the following geographical locations: Mi-ni-si-na-kwang (East Lake), Chi-mini-sing, (Isle). All trust and/or allotted land within the aforementioned geographical radius shall constitute the service jurisdiction of District II.
- (c) District III of the Mille Lacs Band of Ojibwe shall be known as Ah-sho-moog, (Lake Lena) and be comprised of the following geographical locations: Ne-shi-gwa-go-gog, (Pine City), A-sin-ni-ga-ning, (Sandstone), and Ga-shi-gwa-na-bi-go-gog, (Hinckley). All trust and/or allotted land within the aforementioned geographical radius shall constitute the service area of District III.

**Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 26.

**Cross References**

Consolidated Nay-Ah-Shing School Board, election from Districts, *see* 9 MLBS § 3.

Legislative districts, *see* 3 MLBS § 2.

Motor vehicle registration, application for registration, *see* 19 MLBS § 106.

**§ 12. Waiver for Special Dispensation.**

The Band Assembly upon petition of the Chief Executive may issue a Section 20 waiver for participation in resources offered by the Band for the benefit of any Band members or executive administration upon petition of just cause.

**Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 27.

**CHAPTER 2**

**TREATY RIGHTS**

**Subchapter**

**1. General Provisions**

**2. Implementation of Usufructuary**

**Section**

**1001**

**1101**

# SUBCHAPTER I

## GENERAL PROVISIONS

### Section

- 1001. Policy.**
- 1002. Supreme Law.**
- 1003. Legal and Moral Obligation of United States.**
- 1004. Cultural Importance of Usufructuary Rights.**
- 1005. Conservation.**
- 1006. Recognition by United States Courts.**
- 1007. Authorization.**
- 1008. Exterior Legal Counsel.**

### Historical and Statutory Notes

The Preamble of Band Statute 1056-MLC-24 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians for the purpose of exercising usufructuary rights of Band members in the territory ceded in 1837."

### Cross References

1837 Treaty Conservation Code for the Minnesota Ceded Territory, *see* 11 MLBS § 4001 et seq.  
Migratory bird hunting off reservation, memorandum agreement with U.S. Fish and Wildlife Service, *see* Nat. Res. Comm. Order 144-90.  
Protection for cultural values, *see* 1 MLBS § 13.

### **§ 1001. Policy.**

The Band Assembly hereby declares that the Mille Lacs Band of Ojibwe has upheld all provisions of the Treaty of 1837 (7 Stat. 536). Due to the active infringement of its usufructuary rights by the Government of the State of Minnesota, members of the Mille Lacs Band of Ojibwe have not enjoyed the protection guaranteed in Article V of the Treaty of 1837. Therefore, it shall be the policy of the Mille Lacs Band of Ojibwe to aggressively assert all rights, privileges and responsibilities contained in all provisions of said Treaty without infringement by any other government.

### Historical and Statutory Notes

**Source:**

Band Statute 1056-MLC-24, § 1.

### **§ 1002. Supreme Law.**

The Band Assembly hereby declares that in all matters before the Court of Central Jurisdiction, all treaties to which the Mille Lacs Band is a party shall have a status equal to the supreme law of all land under the jurisdiction of the Band.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1056-MLC-24, § 1.01.

### **§ 1003. Legal and Moral Obligation of United States.**

The Band Assembly hereby declares that the United States of America is possessed of a legal and moral obligation to guarantee usufructuary rights of members of the Mille Lacs Band of Ojibwe by virtue of Congress ratification of the Treaty of 1837.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1056-MLC-24, § 1.02.

### **Cross References**

1837 Treaty Conservation Code for the Minnesota Ceded Territory, *see* 11 MLBS § 4001 et seq.

### **§ 1004. Cultural Importance of Usufructuary Rights.**

The Band Assembly hereby declares that members of the Mille Lacs Band of Ojibwe are culturally heavily dependent on hunting, fishing, and the gathering of wild rice as vital to the continuance of a cultural existence in the ceded territory.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1056-MLC-24, § 1.03.

### **§ 1005. Conservation.**

The Band Assembly hereby declares that it is the policy of the Mille Lacs Band of Ojibwe that the exercise of this treaty right shall be in accordance with culturally established principles of conservation.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1056-MLC-24, §1.04.

**§ 1006. Recognition by United States Courts.**

Usufructuary rights guaranteed by Article V of the Treaty of 1837 have been recognized by the United States Court of Appeals for the Seventh Circuit in the matter of Lac Courte Oreilles Band of Chippewa Indians v. Lester P. Voight. The Solicitor General for the United States of America has further taken the position before the Supreme Court of the United States that this case was correctly decided. The Supreme Court denied Certiorari.

**Historical and Statutory Notes**

**Source:**

Band Statute 1056-MLC-24, § 4.

**§ 1007. Authorization.**

The Band Assembly hereby directs and empowers the Chief Executive, the Commissioner of Natural Resources, and the Solicitor General to initiate lawful activities which will secure the active involvement of the United States of America in securing usufructuary rights of Band members in the area beginning at the junction of the Crow Wing and Mississippi Rivers, between 20 and 30 miles above where the Mississippi is crossed by the 46th parallel of north latitude, and running thence to the north point of Lake St. Croix, one (1) of the sources of the St. Croix River; thence to and along the dividing ridge between the waters of Lake Superior and those of Mississippi, to the sources of the Ocha-sua-sepe a tributary of the Chippewa river; thence to a point on the Chippewa river, 20 miles below the outlet of Lake De Flambeau; thence to the junction of the Wisconsin and Pelican rivers' thence on an east course 25 miles; thence southerly, on a course parallel with that of the Wisconsin river; to the line dividing the territories of the Chippewa and Menominee; thence to the Plover portage; thence along the southern boundary of the Chippewa country, to the commencement of the boundary line dividing it from that of the Sioux, half a day's march below the falls on the Chippewa river; thence with said boundary line to the mouth of Wah-tap river, at its junction with the Mississippi; and thence up the Mississippi to the place of beginning.

**Historical and Statutory Notes**

**Source:**

Band Statute 1056-MLC-24, § 2.  
Band Statute 1056-MLC-24, §§ 3 and 5.

**Cross References**

Geographical restrictions of natural resource regulations, *see* 11 MLBS §§ 2004, 2005.

## **§ 1008. Exterior Legal Counsel.**

The Band Attorneys are hereby authorized and directed to assist the Solicitor General of the Mille Lacs Band of Ojibwe in the legal implementation of this chapter.

### **Historical and Statutory Notes**

**Source:** Band Statute 1056-MLC-24, § 6.

## **SUBCHAPTER 2**

### **IMPLEMENTATION OF USUFRUCTUARY RIGHTS**

<b><u>Part</u></b>	<b><u>Section</u></b>
<b>A. General Provisions</b>	<b>1101</b>
<b>B. Great Lakes Indian Fish and Wildlife Compact</b>	<b>1151</b>

### **Historical and Statutory Notes**

The Preamble of Band Statute 1092-MLC-5 provides: "It is enacted, an Indian Fish and Wildlife Compact with Keweenaw Bay Band of Chippewa Indians, Red Cliff Band of Chippewa Indians, Bad River Band of Chippewa Indians, Mole Lake Band of Chippewa Indians, Lac Courte Oreilles Band of Chippewa Indians, Grand Portage Band of Chippewa Indians, Fond du Lac Band of Chippewa Indians, St. Croix Band of Chippewa Indians, Bay Mills Band of Chippewa Indians, Lac du Flambeau Band of Chippewa Indians for the exercise of usufructuary right in the Wisconsin territory of the Treaty of 1837."

### **Cross References**

Natural Resources Protection Code, *see* 11 MLBS § 2001 et seq.

## **PART A**

### **GENERAL PROVISIONS**

#### **Section**

- 1101. Reservation of Right of Amendment.**
- 1102. Rights of Band Members.**
- 1103. Applicability of Natural Resources Code.**
- 1104. Court of Central Jurisdiction.**
- 1105. Conflicting Laws.**
- 1106. Obligations of the United States of America.**
- 1107. Rules and Regulations.**

## **1108. Obligations of Solicitor General.**

### **§ 1101. Reservation of Right of Amendment.**

The Band Assembly hereby fully reserves the right to alter, amend or repeal the several provisions of this subchapter, and all rights and privileges granted or extended hereunder shall be subject to such reserved right.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 12.

### **§ 1102. Rights of Band Members.**

Every enrolled member of a constituent Band of the Non-Removable Mille Lacs Band of Ojibwe shall have usufructuary rights provided that in the exercise of said rights, no Band member shall violate the terms and conditions established to exercise said rights.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 17.

### **§ 1103. Applicability of Natural Resources Code.**

All provisions of the Natural Resources Code (11 MLBS § 2001 et seq.) shall apply to the exercise of usufructuary rights by Band members in all the territory ceded by the Treaty of 1837.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 13.03.

### **§ 1104. Court of Central Jurisdiction.**

The Court of Central Jurisdiction is hereby granted subject matter jurisdiction for any cause of action which arises from implementation of this subchapter. Nothing in this subchapter shall be construed as a waiver of sovereign immunity of the Non-Removable Mille Lacs Band of Ojibwe in any state or federal court of competent jurisdiction.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 6.

**Cross References**

Subject matter jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 111.

**§ 1105. Conflicting Laws.**

The provisions of this subchapter shall control and be supreme in the event it shall be employed notwithstanding any statutory provision to the contrary or in conflict herewith and the justices of the Court of Central Jurisdiction shall be bound thereby.

**Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 15.

**§ 1106. Obligations of the United States of America.**

Nothing herein or the application thereof shall be construed by any government, agency, person or circumstance as a waiver by the Non-Removable Mille Lacs Band of Ojibwe of the solemn, special trust obligation of the United States of America, as legal trustee for the land, air, water and general natural resource and environmental right, privileges and interests of the Band.

**Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 10.

**§ 1107. Rules and Regulations.**

The Commissioner of Natural Resources shall have the power to issue Commissioner's Orders for the purpose of promulgating all rules and regulations for the exercise of usufructuary rights by Band members in all the territory ceded by the Treaty of 1837 regardless of state boundaries and borders.

**Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 13.01.

**Cross References**

Commissioner's Orders, *see* 4 MLBS § 7.

**§ 1108. Obligations of Solicitor General.**

- (a) Should there be any doubt as to the proper interpretation of any part of this chapter, the Chief Executive, Speaker of the Assembly or the Commissioner of Natural Resources shall submit such question to the Solicitor General, who shall give her or his written opinion thereon and such opinion shall be binding until annulled by the full Court of Central Jurisdiction or amended by law.
- (b) The Solicitor General, consistent with the statutory authority conferred by law shall represent the interests of the Non-Removable Mille Lacs Band of Ojibwe in all matters, related to enforcement of Band law be they prosecutorial or otherwise in the Court of Central Jurisdiction.

**Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 14.

**Cross References**

Duties of Solicitor General, *see* 4 MLBS § 18.

**PART B**

**GREAT LAKES INDIAN FISH AND WILDLIFE COMPACT**

**Section**

**1151. Findings and Determinations.**

**1152. Constitution of Great Lakes Indian Fish and Wildlife Commission.**

**1153. Compact for Non-Removable Mille Lacs Band of Ojibwe.**

**1154. Voight Inter-Tribal Task Force Charter.**

**1155. Ratification.**

**1156. Enabling Legislation.**

**1157. Withdrawal.**

**1158. Construction and Severability.**

**1159. Cooperation of Band Officers.**

**1160. Commissioner of Natural Resources.**

**§ 1151. Findings and Determinations.**

- (a) The Band Assembly hereby finds and determines that usufructuary rights exist in all territories encompassed by the Treaties of July 29, 1837, 7 Stat. 536, and October 4, 1842, 7 Stat. 842 as construed by the Seventh Circuit Court of Appeals in *Lac Courte Oreilles Band vs. Voight*, 700 F.2d 341, cert. denied 104 S. Ct. 53, 464 US 805, 78 L.Ed.2d 72 (1983).
- (b) The Band Assembly finds and determines that the sovereignty and jurisdiction of each Band who was signatory to the aforementioned treaties shall extend to all places interior and exterior to their boundaries thereof as defined in federal law. Notwithstanding any provisions of any law of the Mille Lacs Band to the contrary, the Mille Lacs Band shall now and hereafter retain and exercise civil and criminal jurisdiction over enrolled members of the Mille Lacs Band of Ojibwe who exercise usufructuary rights in the territory ceded in the aforementioned treaties.
- (c) The Band Assembly hereby finds and determines that just cause exists for the Non-Removable Mille Lacs Band of Ojibwe to be a party to a Commission known as the Great Lakes Indian Fish and Wildlife Commission.
- (d) The Band Assembly finds and determines that a Compact is required, pursuant to the laws of the Non-Removable Mille Lacs Band of Ojibwe. Said Compact to be known as the Great Lakes Indian Fish and Wildlife Compact.
- (e) The Band Assembly finds and determines that a Constitution proposed by the constituent Bands of the Great Lakes Indian Fish and Wildlife Commission is incompatible with the laws of the Non-Removable Mille Lacs Band of Ojibwe, however we find and determine that in the best interests of unity and conservation of the natural resources, an agreement is necessary and prudent.
- (f) The Band Assembly hereby finds and determines that any other party to this Commission shall exercise whatever statutory authority deemed necessary to be party to said Commission.
- (g) Therefore, the Band Assembly hereby finds and determines that the document entitled, "Constitution of the Great Lakes Indian Fish and Wildlife Commission" (2 MLBS § 1152.) is hereby ratified and approved subject to condition entered in the foregoing 'Compact'. Anything in the contents of the 'Constitution', which is inconsistent with any provision of the 'Compact' both ratified herein, it shall be the 'Compact' that controls on behalf of the Non-Removable Mille Lacs Band of Ojibwe.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 1.

### **Cross References**

Court of Central Jurisdiction, jurisdiction over persons, *see* 5 MLBS §§ 112, 113.

**§ 1152. Constitution of Great Lakes Indian Fish and Wildlife Commission.**

- (a) Entered into by and between the following Bands of Ojibwe:
- (1) Keweenaw Bay,
  - (2) Bay Mills,
  - (3) Mole Lake,
  - (4) Bad River,
  - (5) Red Cliff,
  - (6) Fond du Lac,
  - (7) Grand Portage,
  - (8) Lac Courte Oreilles,
  - (9) St. Croix,
  - (10) Lac du Flambeau; and
  - (11) Non-Removable Mille Lacs Band.

(b)

**PREAMBLE**

WE, THE INDIAN TRIBES OF THE GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION RECOGNIZE THAT OUR FISH, WILDLIFE AND OTHER RENEWABLE RESOURCES ARE IMPORTANT NATURAL RESOURCES AND OF VITAL CONCERN TO THE INDIAN TRIBES OF THE GREAT LAKES REGION AND THAT THE CONSERVATION OF THIS RESOURCE IS DEPENDENT UPON EFFECTIVE AND PROGRESSIVE MANAGEMENT. AND IT IS FURTHER RECOGNIZED THAT THE TRIBES HAVE REGULATORY AUTHORITY AND A RESULTANT DUTY TO PROTECT THE RESOURCE THAT IS OF GREAT IMPORTANCE TO US. WE FURTHER BELIEVE THAT BY UNITY OF ACTION WE CAN BEST ACCOMPLISH THESE THINGS, NOT ONLY FOR THE BENEFIT OF OUR PEOPLE BUT FOR ALL THE PEOPLE OF THE GREAT LAKES.

**ARTICLE I NAME**

The name of this organization shall be the GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION.

## **ARTICLE II PURPOSE**

- A. The GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION was begun in recognition of the traditional pursuits of the Native American people and the deep abiding respect for the circle of life in which our fellow creatures have played an essential life-giving role. As governments who have inherited the responsibilities for protection of our fish, wildlife, and plants we are burdened with the inability to effectively carry-out our tasks as protectors and managers. This is especially true now that the state and federal courts have recognized our traditional claims. We have never intended to abandon our responsibilities.
- B. The purposes of this organization are exclusively charitable and educational and shall be:
1. To provide an organization to facilitate and coordinate intertribal communications in the Great Lakes concerning matters pertaining to the exercise of usufructuary rights including fish and wildlife management, treaty rights issues, court cases related to fish and wildlife, tribal and/or inter-tribal regulations.
  2. To assist tribal governments in the protection, preservation, conservation and prudent use and management of tribal fish, wildlife, and plant resources in the Great Lakes area.
  3. To direct the administration of federal programs, funds and efforts in order to aid and assist the federally recognized members of this organization.
  4. To educate Indian and non-Indian professionals involved in fish and wildlife management and others in the general public similarly dedicated to the protection, preservation, enhancement and prudent use of fish, wildlife and other resources.
  5. To provide administrative support for and provide expertise and advice to tribal governments in the Great Lakes relating to the protection, preservation, enhancement and prudent use and management of fish, wildlife and other resources in the Great Lakes.
  6. To improve the general welfare of Indian people in the Great Lakes through educational, charitable, and fish and wildlife related activities.
  7. To carry out the purposes as herein set forth in any state, territory, district, possession, dependency, or other political subdivision of the United States of America or in any foreign country at any other location in the world to the extent that such purposes are not forbidden by the laws of such state, territory, district, possession, dependency, or political subdivision of the United States of America, or of such foreign country, or of such other political entity as may be applicable; provided, however, that such purposes shall be accomplished and exercised only if they may be accomplished and exercised under and in accordance with, Section 501 (c) (3) of the Internal Revenue Code of 1954 and any amendments thereto.

## **ARTICLE III MEMBERS**

- Section 1.** Membership shall be open to an Indian tribe in the Great Lakes region who:
- a. Is recognized as a tribe by federal treaty, statute, agreement or regulation; and who;
  - b. Is organized and operating under a constitution and by-laws; and who;
  - c. [left blank]
  - d. Ratifies this constitution and bylaws of appropriate tribal resolution.

#### **ARTICLE IV GOVERNING BODY**

**Section 1.** The governing body shall be the Commission. The Commission shall consist of the tribal Chairpersons from each member tribe.

**Section 2.** Two (2) committees of the Commission are hereby established. Great Lakes Indian Fisheries Commission and Voigt Fish and Wildlife Committee, each of which shall be governed by a charter ratified by the constituent tribes of each committee.

- a. Upon selection the tribe shall notify the Commission of their duly authorized representative by letter.

**Section 3.** The Commission members shall report in writing to their respective governing body on the business transacted, including recommendations for final approval relating to any contract or agreement to be entered on behalf of member tribes, by the Commission.

**Section 4.** A special meeting of the Commission can be called by the Chairman at the request of any Commission member.

#### **ARTICLE V OFFICERS**

**Section 1.** The officers of the Commission shall be the Chairman, Vice Chairman and Secretary, and shall be elected by the members of the Commission.

**Section 2.** The term of office of each officer shall be for one (1) year and shall commence with the regular meeting, except the first elected officers shall serve until the first regular election.

#### **ARTICLE VI VACANCIES AND REMOVAL OF OFFICERS**

**Section 1.** If a Commission officer shall die, resign, permanently leave the state or tribe which he or she represents, the Commission shall declare the position vacant and shall select a replacement for the balance of the unexpired term.

#### **ARTICLE VII DUTIES OF OFFICERS**

**Section 1.** The Chairman shall preside over all meetings of the Commission and shall perform all duties of a Chairman and exercise any authority delegated to her or him by the Commission and shall have all authority to sign all documents for the Commission. He or she shall vote in all matters for her or his respective tribe.

**Section 2.** The Vice-Chairman shall assist the Chairman when called upon to do so in the absence of the Chairman, he or she shall preside. While presiding, he or she shall have all the rights, privileges, and duties as well as the responsibilities of the Chairman.

**Section 3.** The Secretary shall work with administrative staff to ensure that official minutes of all meetings are kept and that meeting notices are mailed in a timely manner.

**Section 4.** The Executive Administrator shall be appointed by the Commission.

## **ARTICLE VIII MEETINGS**

**Section 1.**

- a. The conduct and procedure of the meetings may be further defined by the appropriate resolution of the Commission.
- b. A quorum shall consist of a majority of the Commission membership.

## **ARTICLE IX POWERS OF THE COMMISSION**

**Section 1.** The Commission shall have the following powers:

- a. To formulate and adopt a budget for Commission activities.
- b. To formulate a broad natural resource management program for those matters of concern to the committee.
- b. To coordinate committee budgets and the work of the committees.
- c. To administer the provision of technical services to the committees and the member tribes.
- d. Request technical advice and/or assistance from any source whatever for the purpose of assisting tribal fish and wildlife programs and to consult with any and all individuals, organizations, institutions, and government (tribal, local, state, federal, and international) on matters pertaining to fish and wildlife.
- e. To render any assistance within the authority of the Commission to any tribe requesting such assistance.
- f. As a non-profit organization to accept funds from state, federal, private foundations or other sources for operations.
- g. To provide public information.

**Section 2.** Any and all rights vested in members tribes shall not be abridged by this Constitution.

**Section 3.** The Commission shall interpret any and all ambiguous words and phrases found within this Constitution.

## **ARTICLE X POWERS OF THE COMMITTEES**

**Section 1.** Each constituent committee shall have the following powers:

- a. To formulate and adopt a budget to carry out its activities and to secure funding therefore.

- b. To formulate a broad natural resource management program for those matters of concern to the committee.
- c. To carry out any other powers provided in Charter.

**Section 2.** Any and all rights vested in members tribes shall not be abridged by this Charter.

## **ARTICLE XI AMENDMENTS**

This Constitution may be amended by unanimous vote of the member tribes upon at least 15 days' notice prior to such meeting to consider such proposed amendment submitted to member tribes.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 2.

### **§ 1153. Compact for Non-Removable Mille Lacs Band of Ojibwe.**

- (a) Entered into by and between the Non-Removable Mille Lacs Band of Ojibwe for the purpose of declaring the conditions under which the Band enters into the Great Lakes Indian Fish and Wildlife Commission. The Band Assembly hereby determines that any Band party to the provision of the "Constitution" found in 2 MLBS § 1152, shall in their own right, enter into the Great Lakes Indian Fish and Wildlife Commission upon terms designated in Article III of 2 MLBS § 1152.
- (b) THE NON-REMOVABLE MILLE LACS BAND OF OJIBWE HEREBY SOLEMNLY AGREES TO:

### **GREAT LAKES INDIAN FISH AND WILDLIFE COMPACT**

GREAT LAKES INDIAN FISH AND WILDLIFE COMPACT is hereby ratified, enacted into law, and by this Band as party thereto with any other Band which, pursuant to Article II of said Compact, that desires to legally join therein substantially as follows:

#### **ARTICLE I**

The purpose of this Compact is, through means of joint or cooperative action:

1. To promote the orderly, integrated, and comprehensive development, use, and conservation of Indian resources within the Treaty Cession of 1837/42 (hereinafter called Treaty Cession).
2. To plan for the welfare and development of the Indian resources of the Treaty Cession on a whole as well as for those portions of the Treaty which may have problems of special concerns.

3. To make it possible for Reservations within the Treaty and their members to derive the maximum benefit from the utilization of these resources.
4. To establish and maintain an intergovernmental agency to the end that the purposes of this Compact may be accomplished more effectively.

## **ARTICLE II**

This Compact shall enter into force and become effective and binding when it has been enacted by any Reservation by such action as their laws and the laws of their government may prescribe for adherence thereto.

## **ARTICLE III**

The Great Lakes Indian Fish and Wildlife Commission created by Article IV of this Compact shall exercise its power and perform its functions in respect to the Treaty Cession Area for which is the purposes of this Compact. The authorization of two (2) committees of the Commission are hereby established, Great Lakes Indian Fisheries Commission and Voight Intertribal Task Force each of which shall be governed by a charter ratified by the respective laws of the Band Governments.

## **ARTICLE IV**

- A. There is hereby created an agency of the party Bands to be known as the Great Lakes Indian Fish and Wildlife Commission. In that name the Commission may sue and be sued. In any of the party's Court of Competent Jurisdiction, the individual party's governing body may at its discretion notify the Band Court no later than 72 hours after any case has been filed of its decision to accept or reject any decision filed by the Court. However, the Great Lakes Indian Fish and Wildlife Commission must put forth a proper defense in any case to which it is a defendant. Actions by non-Indian parties of this Compact shall only be filed in a competent court of one (1) of the parties of this Compact. Transaction involving federal funds shall conform to the laws of any Band Government within whose territory funds are being expended. The Commission may pursuant to by-laws provided for the execution and acknowledgment of all instruments in its behalf.
- B. The Commission shall be composed of one (1) member from each Band Government as designated or appointed in accordance with the law of the Band Government which they represent and serve and subject to removal in accordance with such law.
- C. Each band delegate shall be entitled one (1) vote in the Commission. The presence of commissioners from a majority of the party Bands shall constitute a quorum for the transaction of business at any meeting of the Commission. Actions of the Commission shall be by a majority of the votes cast except that any recommendations made pursuant to Article VI of this Compact shall require an affirmative vote of not less than a majority of the votes cast from each of a majority of the Bands present and voting.

- D. The commissioners of any two (2) or more party Bands may meet separately to consider problems of particular interest to their Band but no action taken at any such meeting shall be deemed an action of the Commission unless and until the Commission shall specifically approve the same.
- E. In the absence of any commissioner, a representative casting said vote shall have a written proxy in proper form as may be required by the Commission.
- F. The Commission shall elect annually from among its members a Chairman, Vice-Chairman and Secretary-Treasurer. The executive director shall serve at the pleasure of the Commission and at such compensation and under such terms and conditions as may be fixed by it. The executive director shall be custodian of the records of the Commission with authority to affix the Commission's official seal and attest to and certify such records or copies thereof.
- G. The executive director, subject to the approval of the Commission in such cases as its by-laws may provide, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Commission's functions subject to the aforesaid approval, the executive director may fix their compensation, define their duties, and require bond of such of them as the Commission may designate.
- H. The executive director, on behalf of, as trustee for, and with the approval of the Commission, may borrow, accept, or contract from the services of personnel from any government or any subdivision or agency thereof, from any intergovernmental agency, or from any institution, person, firm or corporation; and may accept from any of the Commissioners' purposes and functions under this Compact any and all donations, gifts, and grants of money, equipment, supplies, materials and services from any state or government or any subdivision or agency thereof or intergovernmental agency or from any institution, person, firm or corporation and may receive and utilize the same.
- I. The Commission may establish and maintain one (1) or more offices for the transacting of its business and for such purposes the executive director on behalf, of as trustee for, and with the approval of the Commission, may acquire, hold and dispose of real and personal property necessary to the performance of its functions.
- J. The Commission may adopt, amend and rescind by-laws, rules, and regulations for the conduct of its business.
- K. The Commission and its executive director shall make available to the party Bands any information within its possession and shall always provide free access to its records by duly authorized representatives of such party Band.
- L. The Commission shall keep a written record of its meetings and proceedings and shall annually make a report thereof to be submitted to the duly designated official of each party Band.

- M. The Commission may issue any reports as it may deem desirable.

## **ARTICLE V**

- A. The Commission shall submit to the executive head or designated officer of each party Band a budget of its estimated expenditures for such period as may be required by the laws of the Band for presentation to the Government thereof.
- B. Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party Bands. Detailed Commission budgets shall be recommended by a majority of the votes cast, and the costs shall be allocated equitably among the party states in accordance with their respective interests. Majority is defined as 3/4 of all parties.
- C. The Commission shall not pledge the credit of any party Band. The Commission may meet any of its obligations in whole or in part with funds available to it under Article IV (H) of this Compact, provided that the Commission takes specific action setting aside such funds prior to the incurring of any obligations to be met in whole or in part in this manner. Except where the Commission makes use of funds available to it under Article IV (H) hereof, the Commission shall not incur any obligations prior to the allotment of funds by the party states adequate to meet the same.
- D. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under the bylaws. However, all receipts and disbursement of funds handled by the Commission shall be audited yearly by a certified public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.
- E. The account of the Commission shall be open at any reasonable time for inspection by such agency, representative or representatives of the party Band as may be duly constituted for that purpose and others who may be authorized by the Commission.

## **ARTICLE VI**

The Commission shall have power to:

- A. Collect, correlate, interpret, and report on data relating to the Indian resources and the use thereof in the Treaty Cession or any portion thereof.
- B. Recommend methods for the orderly, efficient, and balanced development, use and conservation of the Indian resources of the Treaty Cession or any portion thereof to the part Band and to any other governments or agencies having interest in or jurisdiction over the Treaty Cession or any portion thereof.

- C. Consider means of improving and maintaining the fisheries and wildlife of the Treaty Cession or any portion thereof.
- D. Recommend policies relating to Indian resources including the institution and alteration of flood plain and other zoning laws, ordinances and regulations.
- E. Recommend uniform or other laws, or regulations relating to the development, use and conservation of the Treaty Cession resources to the party Band or any of them and to other governments, political subdivision, agencies or intergovernmental bodies having interests in or jurisdiction sufficient to affect conditions in the Treaty Cession or any portion thereof.
- F. Consider and recommend amendments or agreement supplementary to this Compact to the party Bands or any of them, and assist in the formulation and drafting of such amendments or supplementary agreements.
- G. Prepare and publish reports, bulletins and publications appropriate to this work and fix reasonable sale prices thereof.
- H. With respect to the Indian resources of the Treaty Cession or any portion thereof, recommend agreements between the governments of the United States and Canada.
- I. Cooperate with the governments of the United States and of Canada, the party Band and any public or private agencies or bodies having interests in or jurisdiction sufficient to affect the Treaty Cession or any portion thereof.
- J. Make any recommendation and do all things necessary and proper to carry out the powers conferred upon the Commission by this Compact, provided that no action of the Commission shall have the force of law in, or be binding upon any party Band.

## ARTICLE VII

Each party Band agrees to consider the action the Commission recommends in respect to:

- A. To provide an organization to facilitate and coordinate intertribal communication in the Great Lakes concerning matters pertaining to the exercise of usufructuary right including fish and wildlife management, treaty rights issues, court cases related to fish and wildlife, tribal and/or intertribal regulations.
- B. Measures for combating pollution.
- C. To assist tribal governments in the protection, preservation, conservation and prudent use and management of tribal fish, wildlife and plant resources in the Great Lakes area.
- D. Propose wildlife improvement.

- E. Uniformity or effective coordinating action in fishing laws and regulations and cooperative action to eradicate destructive and parasitical forces endangering the fisheries, wildlife and other Indian resources.
- F. To direct the administration of federal programs, funds, and efforts in order to aid and assist the federally recognized members of this organization.
- G. To educate Indian and non-Indian professionals involved in fish and wildlife management and others in the general public similarly dedicated to the protection, preservation, enhancement and prudent use of fish, wildlife and other resources.
- H. To provide administrative support for and provide expertise and advice to tribal governments in the Great Lakes relating to the protection, preservation, enhancement and prudent use and management of fish, wildlife and other resources in the Great Lakes.

**ARTICLE VIII**

This Compact shall continue in force and remain binding upon each party Band until renounced by act of the Government of such Band, in such form and manner as it may choose and as may be valid and effective to repeal a statute of said Band, provided that such renunciation shall not become effective until six (6) months after notice of such action shall have been officially communicated in writing to the executive head of the other party Bands.

**ARTICLE IX**

It is intended that the provisions of this Compact shall be reasonably and liberally construed to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party Band or of the United States, or the applicability thereof to any Band, agency, person or circumstance is held invalid, the constitutionality of the remainder of this Compact and the applicability thereof to any Band, agency, person or circumstance shall not be affected hereby, provided further that if this Compact shall be held contrary to the Constitution of the United States, or any party Band, the Compact shall remain in full force and effect as to the remaining Bands and in full force and effect as to the Band affected as to all severable matters.

**Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 3.

**§ 1154. Voight Intertribal Task Force Charter.**

**CHARTER  
VOIGHT INTERTRIBAL TASK FORCE COMMITTEE  
GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION**

## ARTICLE I - NAME

The name of this committee shall be the Voight Intertribal Task Force Committee.

## ARTICLE II - PURPOSE

The purposes of this committee shall be to:

1. Develop the capabilities of its members tribes to regulate their use of natural resources.
2. Develop biological expertise in inland fish, wildlife, and plant species, communities, and ecosystems.
3. Develop resource management plans.
4. Assist tribes to develop resource regulations suitable for tribal adoption and adequate to protect the environment.
5. Develop law enforcement capabilities adequate to ensure compliance with resource regulations.
6. Assist tribes in the development of judicial systems adequate to adjudicate cases arising under tribal resource regulations.
7. Assist tribes or Bands to secure through negotiations, litigation, arbitration, or any other lawful and appropriate means, the full exercise of the usufructuary rights reserved in the Treaties of 1837 and 1842.
8. Develop the capability to recognize, analyze and recommend action on actual and potential environmental degradation which may impair the opportunity to engage in usufructuary activities within the territories ceded by the Treaties of 1837 and 1842.
9. Educate tribal membership, tribal leadership, and the general public in issues and events related to the other purposes stated herein.

## ARTICLE III - MEMBERSHIP

**Section 1. Membership.** Membership in this committee is open to any federally recognized Chippewa Tribe or Band which:

- (a) Is a member of the Great Lakes Indian Fish and Wildlife Commission; and
- (b) Is a signatory or successor thereto to either the 1837 or 1842 Treaties; and
- (c) Has a reservation within the territories ceded by the 1837 and 1842 Treaties; and
- (d) Has by resolution adopted this Charter.

## ARTICLE IV - TRANSACTING BUSINESS

**Section 1. Representatives.** Each member tribe may appoint one (1) representative to the committee and one (1) alternate. Each tribe may select its representative and alternate by whatever means and for whatever term deemed appropriate by the tribe.

**Section 2. Meetings.** The committee shall hold an annual meeting in October of each year. The committee shall also hold meetings as needed, which may be called by the Chairman, or in the

absence of the Chairman, the Vice Chairman, or in any event by any three (3) member tribes or the executive administrator of the Commission. Meetings may be conducted by conference call.

**Section 3. Action.** All action must be authorized by motion and approval by a majority of those tribes in attendance.

**Section 4. Voting.** On all matters upon which a vote shall be taken each member tribe shall have one (1) vote.

**Section 5. Quorum.** A majority of the member tribes shall constitute a quorum.

## ARTICLE V - OFFICERS

**Section 1. Officers.** The officers of the committee shall be the Chairman and Vice-Chairman, and shall be elected by the members of the committee at the annual meeting.

**Section 2. Terms.** The term of office for each officer shall be one (1) year except that the officers first elected under this Charter shall serve until the 1985 annual meeting.

**Section 3. Vacancies.** In the event a committee officer is for any reason unable or unwilling to complete her or his term the committee shall, on at least 30 days' notice to its members, hold a special election for the purpose of replacing the officer.

## ARTICLE VI - DUTIES OF OFFICERS

**Section 1. Chairman.** The Chairman shall preside over all meetings of the committee, shall perform all duties of a Chairman, shall exercise any authority delegated by the committee, and shall have authority to sign all documents for the committee. The Chairman shall work with the administrative staff to ensure that official minutes of all meetings are kept and that meeting notices are mailed in a timely manner. The Chairman shall be allowed to vote.

**Section 2. Vice-Chairman.** The Vice-Chairman shall assist the Chairman when called upon to do so and in the absence of the Chairman shall preside. While presiding, the Vice-Chairman shall have all the rights, privileges, duties, and responsibilities of the Chairman.

**Section 3. Further Duties.** The duties of the officers may be defined further by motion of the committee.

## ARTICLE VII - POWERS

The committee shall have the following powers:

- (1) To undertake any programs consistent with the purposes as defined in Article II.
- (2) To formulate and adopt a budget to carry out its activities, and to secure funding through the Commission therefore, and to approve modifications and amendments to the budget as may from time to time be required.

- (3) To formulate and adopt policies for the provision of technical, enforcement, and judicial services to the committee and its member tribes, to be implemented by the Commission staff.
- (4) To establish subcommittees to pursue such objectives as the committee shall direct.

## **ARTICLE VIII - AMENDMENTS**

This Charter may be amended by affirmative vote of at least two-thirds of the member tribes upon furnishing to all member tribes of the Commission a copy of the proposed amendment at least 60 days in advance of the vote on such amendment.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 4.

### **§ 1155. Ratification.**

The Commissioner of Natural Resources is authorized and directed to witness the ratification of the Compact by the Non-Removable Mille Lacs Band of Ojibwe by executing the final draft thereof in her or his own name as Commissioner for and on behalf of the Non-Removable Mille Lacs Band of Ojibwe and affixing the Seal of the Non-Removable Mille Lacs Band of Ojibwe.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 5.

### **§ 1156. Enabling Legislation.**

This Compact shall become effective and operative immediately after passage the Constitution of the Great Lakes Indian Fish and Wildlife Commission by any five (5) party Bands incorporating the provisions of said Constitution into the laws of such Bands.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 9.

### **§ 1157. Withdrawal.**

The Non-Removable Mille Lacs Band of Ojibwe in acceding to this Compact Constitution reserves the right at any time to withdraw from said Compact-Constitution, but such withdrawal shall be based upon a law properly enacted pursuant to Band 3 MLBS § 16.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 8.

#### **§ 1158. Construction and Severability.**

This Compact shall be liberally construed so as to effectuate the purposes thereof by the Court of Central Jurisdiction. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the laws of any party Band or the application thereof to any agency, person or circumstance is held invalid by the Court of Central Jurisdiction, the validity of the remainder of this Compact and the applicability thereof to any agency, person, or circumstance shall not be affected thereby. If this Compact-Constitution or any part thereof shall be held contrary to the laws of any party Band, this Compact-Constitution may remain in full force and effect as to the remaining party Bands and as to the Mille Lacs Band so affected, in full force and effect as to all severable matters.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 7.

#### **§ 1159. Cooperation of Band Officers.**

All administrations and entities of the Non-Removable Mille Lacs Band of Ojibwe shall cooperate with the Commission and the Task Force in the execution of their functions and shall assist the Commission and the Task Force in carrying out the duties imposed upon it.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 11.

#### **§ 1160. Commissioner of Natural Resources.**

In pursuance of Article IV of the Compact and Article IV of the Charter, the Commissioner of Natural Resources shall be the duly authorized representative of the Band at meetings called by the Chairman of the Commission and the Task Force at a designated location and shall exercise all voting rights conferred by the Compact and Charter as provided.

### **Historical and Statutory Notes**

**Source:**

## **CHAPTER 3**

### **INTERGOVERNMENTAL RELATIONS**

#### **Section**

##### **2001. Minnesota State Intertribal Affairs Council.**

##### **§ 2001. Minnesota State Intertribal Affairs Council.**

Pursuant to Minnesota Statutes-Chapter 3, Section 922, the Non-Removable Mille Lacs Band of Ojibwe may participate in an Indian Affairs Intertribal Council, an entity of the state of Minnesota. The Chief Executive is hereby authorized and directed to notify the Governor of the state of Minnesota and other tribal governments that effective on March 1, 1985 the Non-Removable Mille Lacs Band of Ojibwe shall withdraw from participation in this state council and shall in no way sanction any actions of said council as they may apply to the Non-Removable Mille Lacs Band of Ojibwe, as the public policy of the Band is to recognize and enhance government to government diplomatic relations.

#### **Historical and Statutory Notes**

##### **Source:**

Band Statute 1085-MLC-37, § 82.

## **CHAPTER 4**

### **EXCLUSION AND REMOVAL**

#### **Section**

##### **3001. Findings and Determinations.**

##### **3002. Definitions.**

##### **3003. Persons Subject to Exclusion and Removal.**

##### **3004. Grounds for Exclusion and Removal.**

##### **3005. Complaint for Exclusion.**

##### **3006. Notice of Exclusion.**

##### **3007. Exclusion Hearing.**

##### **3008. Exclusion Orders.**

##### **3009. Enforcement Proceedings.**

##### **3010. Emergency Writs.**

##### **3011. Authorized Entry for Exclusion Hearing.**

##### **3012. Review of Orders of Exclusion and Removal.**

### 3013. Stays.

#### Historical and Statutory Notes

The Preamble of Band Statute 1069-MLC-7 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians for the purpose of exclusion and removal of persons within the jurisdiction of the Band for just cause."

#### Cross References

Commercial practices, violations, see 18 MLBS § 10.

Cultural actions, sanctions, see 24 MLBS § 603.

Life estates in trust or restricted lands, spouse or children of member, see 21 MLBS § 102.

Prohibited drugs, see 23 MLBS § 1 et seq. Trespass, see 21 MLBS § 206.

### § 3001. Findings and Determinations.

- (a) That under federal law and Article 6, Section 1 (c), of the Constitution of the Minnesota Chippewa Tribe, and as an incident of its inherent sovereign powers, the Non-Removable Mille Lacs Band of Ojibwe has the authority to exclude certain persons from territories under the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe and to determine the conditions upon which such persons may be present within said lands.
- (b) That in order to protect and promote the health, safety, morals and general welfare of the Band, its members and other residents of lands under the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe, it is necessary to provide a means to exclude or remove such persons from said lands in the event that they violate Band law or do other acts harmful to the Band, its members or other residents of territories under the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe.

#### Historical and Statutory Notes

##### Source:

Band Statute 1069-MLC-7, § 1.

### § 3002. Definitions.

The following terms shall have the following meanings when used in this chapter:

- (a) **"Appellate Court"** means the Appellate Division of the Court of Central Jurisdiction of the Band.
- (b) **"Band"** means any constituent Band of the Non-Removable Mille Lacs Band of Ojibwe, a federally recognized Indian Tribe.

- (c) **"Court"** means the Court of Central Jurisdiction for each constituent Band of the Non-Removable Mille Lacs Band of Ojibwe.
- (d) **"Constituent Bands"** means the Non-Removable Sandy Lake Band of Ojibwe, the Snake River Band of Ojibwe, the Rice Lake Band of Ojibwe, the the Lake Lena (Knife River) Band of Ojibwe, and the Non-Removable Mille Lacs Band of Ojibwe.
- (e) **"District Court"** means the District Division of the Court of Central Jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe.
- (f) **"Law Enforcement Officer"** means an officer of the Band authorized to enforce the laws of the Band.
- (g) **"Secretary"** means the United States Secretary of the Interior.
- (h) **"Weapon"** means an instrument of offensive or defensive combat, or anything used, or designed to be used, in destroying, defeating or injuring a person.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1069-MLC-7, § 13.

#### **§ 3003. Persons Subject to Exclusion and Removal.**

All persons, except those authorized by federal law to be present on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe, are subject to exclusion or removal from all or any portion of said lands as provided herein.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1069-MLC-7 § 2.

#### **§ 3004. Grounds for Exclusion and Removal.**

Persons subject to exclusion and removal may be excluded or removed from said lands for commission of one (1) or more of the following acts within said lands:

- (a) An act that is a crime, as defined by federal or Band law, or any act which, if committed by a member of the Band, would be a crime under Band law.

- (b) Any act causing physical loss or damage of any nature to the property of the Band or Tribe, enrolled member of the Band, or other residents of land under the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe.
- (c) Obstructing the performance of governmental functions by any elected official, officer, agent or employee of the Band through the use or threat of force or violence, bribery, deception or other unlawful means.
- (d) Resisting arrest by a law enforcement officer through the use of threat of force or violence, bribery, deception or other unlawful means.
- (e) Rendering criminal assistance by doing any one (1) of the following acts for the purpose of hindering the apprehension, prosecution, conviction or punishment of a person known to have committed a crime, to be sought by law enforcement officers for the commission of a crime, or to have escaped from a detention facility:
  - (1) harboring or concealing such person,
  - (2) providing to such person a weapon, money, transportation, disguise or other means of avoiding discovery or apprehension,
  - (3) concealing, altering or destroying any physical evidence that might aid in the discovery or apprehension of such person,
  - (4) warning such person of impending discovery or apprehension, except where such warning is given in an attempt to persuade the person to comply with the law, or
  - (5) obstructing by force, threat, bribery or deception any person from performing an act that might aid in the discovery, apprehension, prosecution or conviction of such person.
- (f) Threatening to enter lands under the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe to cause disturbances or riots or to conduct any other activity prohibited by law.
- (g) Mining, cutting timber or vegetation or other use, abuse or damage to property of the Band or Tribe without authorization from the Band, Tribe or Secretary.
- (h) Prospecting without authority from the Band or the Secretary.
- (i) Exploring or excavating items, sites or locations of historic, religious or scientific significance without the lawful authority or permission of the Band or in violation of Band or federal law.

- (j) Committing frauds, confidence games or usury against any enrolled member of the Band or any other resident of lands under the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe.
- (k) Inducing any enrolled member of the Band or any other resident of said lands to enter into a grossly unfavorable contract of any nature.
- (l) Defrauding any enrolled member of the Band or any other resident of said land of just compensation for her or his labor or service of any nature.
- (m) Unauthorized taking of any property from lands under the jurisdiction of Non-Removable Mille Lacs Band of Ojibwe.
- (n) Entering land under the jurisdiction of any constituent Band of the Non-Removable Mille Lacs Band of Ojibwe for the purpose of evicting of a Band member or the removal of any real or personal property of a Band member without her or his written consent.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1069-MLC-7, § 3.

### **Cross References**

Criminal causes of action, *see* 24 MLBS § 1001 et seq.

Historical preservation, civil penalties, *see* 10 MLBS § 603.

### **§ 3005. Complaint for Exclusion.**

Any member, officer, agent or employee of the Band may make a complaint for exclusion. Forms of complaint will be kept by the Clerk of Court and other officials that may be designated by him. A complaint for exclusion shall be valid only if it bears the signature of the complaining witness and is witnessed by a Judge of the Court, the Clerk of Court, or a law enforcement officer. After the complaint has been duly signed and witnessed, it shall be delivered to the District Court.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1069-MLC-7, § 4.

### **§ 3006. Notice of Exclusion.**

Upon receipt of a valid complaint for exclusion, the District Court shall cause notice to be served personally or, if personal service is not reasonably possible, by registered mail, upon the person proposed for exclusion. The notice shall state the reason for the proposed exclusion and shall state a time and place at which the person may appear before the District Court to show cause why he or she should not be excluded from said land. The hearing shall be held not less than three (3) days after the time of service or mailing.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1069-MLC-7, § 5.

### **§ 3007. Exclusion Hearing.**

After notice to the person proposed for exclusion, the District Court shall hold a hearing to determine whether the person shall be excluded from the lands under the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe. The person shall be given an opportunity to present evidence and argument at the hearing and cross examine opposing witnesses, and may be represented by council at her or his own expense. The District Court may, in its discretion, grant a continuance of the hearing on request by the person proposed for exclusion or upon its own motion.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1069-MLC-7, § 6.

### **§ 3008. Exclusion Orders.**

After the hearing, or at the time set for the hearing if the person proposed for exclusion does not appear, the District Court may order her or him excluded from all or any portion of said lands, or may permit her or him to remain upon said lands on such conditions as the District Court sees fit to impose. Notice of the order shall be served in the manner set forth in 2 MLBS § 3006. Conditions that the District Court may impose in an order of exclusion may include, but shall not be limited to; the payment of money or performance of labor by the person to be excluded as restitution for damage caused by the person, and the payment of a civil penalty. A conditional civil penalty included in an order of exclusion shall be in the nature of a civil forfeiture and not a criminal fine and shall be for the purpose of recovering in part the costs of enforcement of this chapter. An order of exclusion shall remain in force until revoked by the District Court unless the order specifically provides otherwise.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1069-MLC-7, § 7.

**§ 3009. Enforcement Proceedings.**

If any person ordered excluded from said lands by the District Court does not promptly comply with the order of exclusion, the District Court shall order her or his removal from said land at the non-member's expense, or the prevention of her or his entry into lands under the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe, and may refer the matter to the United States Attorney for prosecution under any applicable federal statute.

**Historical and Statutory Notes**

**Source:**

Band Statute 1069-MLC-7, § 8.

**§ 3010. Emergency Writs.**

If, upon receipt of a valid Complaint for exclusion, the District Court finds that the presence of the person proposed for exclusion on said lands presents an immediate danger to the life, health, morals or property of the Band, its members or other residents of said land, and further finds that delay would result in irreparable injury, the District Court may issue an Emergency Writ of Exclusion without providing prior notice as required by 2 MLBS § 3006, or holding a hearing as required by 2 MLBS § 3007. The District Court shall cause the Writ to be served upon the person in the most expeditious manner practical under the circumstances. An Emergency Writ of Exclusion may, in addition to ordering the exclusion of a person, direct any law enforcement officer to remove the person from land under the jurisdiction of the Non-Removable Mille Lacs band of Ojibwe. In the event that removal is ordered, the law enforcement officer executing the Writ shall use only so much force as is necessary to affect the removal, and shall serve a copy of the Writ upon the person at the time of removal or as soon thereafter as possible. An Emergency Writ of Exclusion shall remain in force until revoked by the District Court unless the Writ specifically provides otherwise.

**Historical and Statutory Notes**

**Source:**

Band Statute 1069-MLC-7, § 9.

**§ 3011. Authorized Entry for Exclusion Hearing.**

An emergency Writ of exclusion shall contain notice to the person excluded of the time at which he or she may enter said land in the company of a law enforcement officer for the purpose of attending an exclusion hearing before the District Court. The person must be accompanied by a law enforcement officer at all times during her or his presence on said land unless the Writ specifically provides otherwise. In all other respects, the provisions of 2 MLBS §§ 3007 to 3009

shall be applicable to a person excluded from land under the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe under an Emergency Writ of Exclusion.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1069-MLC-7 § 10.

### **§ 3012. Review of Orders of Exclusion and Removal.**

The Appellate Court shall have exclusive jurisdiction to hear appeals from orders of exclusion. No appeal may be taken from an exclusion order if the person excluded failed without good cause to appear at the exclusion hearing. An excluded person may enter said lands in the company of a law enforcement officer for the purpose of presenting argument to the Appellate Court. The person must be accompanied by a law enforcement officer at all times during her or his presence on said lands unless the order of exclusion specifically provides otherwise.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1069-MLC-7, § 11.

### **§ 3013. Stays.**

- (a) The appellate Court may stay an order of exclusion upon condition of security as it deems just, only if:
  - (1) all prior hearing remedies have been exhausted, and
  - (2) no substantial interest of the Band, its members, or other residents of said land will be adversely affected thereby.
- (b) All orders of exclusion shall remain in full force and effect pending appeal unless stayed as provided herein.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1069-MLC-7, § 12.

# TITLE 3 – LEGISLATIVE BRANCH

## Section

1. Definitions.
2. Band Assembly.
3. Legislative Power.
4. Initiative and Referendum.
5. Band Assembly Members.
6. Terms of Office.
7. Powers and Duties of Speaker of Assembly.
8. Powers and Duties of the Secretary-Treasurer.
9. Powers and Duties of District Representatives.
10. Parliamentarian and Clerk of the Band Assembly.
11. Record of Proceedings.
12. Rules of Band Assembly.
13. Band Assembly Vacancies.
14. Quorum.
15. Roll Call Vote.
16. Compensation.
17. Passage of Laws.
18. Legislative Sessions.
19. Special Sessions.
20. Annulment of Commissioner's Orders and Opinions of Solicitor General.
21. Appropriation Bills Prior to End of Fiscal Year.
22. Fiscal Year.
23. Petitions by Band Members.
24. Legislative Privilege.
25. Assembly Powers of Inquiry.
26. Multi-Topic Bills.
27. Joint Session of Band Assembly.
28. Removal of Elected Officials or Appointees.
29. Elections.
30. Legislative Orders.
31. Style of Laws.
32. Effective Date for Bills, Orders, and Resolutions.
33. Interpretation of Title.
34. Construction of Title.

## § 1. Definitions.

The definitions in this section shall apply to this Title.

- (a) **“Band”** means the Non-Removable Mille Lacs Band of Ojibwe.

- (b) **“Band Assembly”** means the Band’s legislative branch, established pursuant to 3 MLBS § 2, and comprised of the duly elected Speaker of the Assembly and three (3) District Representatives.
- (c) **“Bill”** means proposed legislation under consideration by the Band Assembly.
- (d) **“Chief Executive”** means the elected official who leads the Band’s executive branch pursuant to 4 MLBS § 6.
- (e) **“Clerk of the Band Assembly”** means the appointed official pursuant to 3 MLBS § 10 who is responsible for managing the session proceedings, record-keeping, and bill drafting.
- (f) **“Formal Public Hearing”** means a hearing conducted by the Band Assembly pursuant to 3 MLBS § 17(a).
- (g) **“Joint Session of the Band Assembly”** means a meeting with the four (4) members of the Band Assembly and the Chief Executive, convened pursuant to 3 MLBS § 27.
- (h) **“Law”** means a bill adopted by the Band Assembly and not vetoed by the Chief Executive.
- (i) **“Legislative Session”** means the period of time in which the Speaker of the Assembly convenes the Band Assembly pursuant to § 18.
- (j) **“Opinion”** means a written interpretation of Band laws, policies, or Legislative, Secretarial, or Commissioner’s Orders pursuant to 4 MLBS § 18.
- (k) **“Ordinance”** means an act adopted by the Band Assembly and presented to the Chief Executive.
- (l) **“Parliamentarian”** means the appointed official pursuant to 3 MLBS § 10 who is trained in parliamentary law and in the rules, precedents, and practices of the Band Assembly.
- (m) **“Resolution”** means a formal expression of opinion, will, or intention voted on by the Band Assembly.
- (n) **“Resolution of the Joint Session of the Band Assembly”** means a resolution of the Joint Session of the Band Assembly, which is voted on by the Band Assembly, including the Speaker of the Assembly, and the Chief Executive.
- (o) **“Secretary-Treasurer”** means the elected official who has the powers and duties in administering the Band’s financial affairs pursuant to 3 MLBS § 8.

- (p) **“Speaker of the Assembly”** means the elected official who leads the Band’s legislative branch pursuant to 3 MLBS § 7.
- (q) **“Special Session”** means a meeting held outside of the normal legislative session. A special session is called pursuant to 3 MLBS § 7.
- (r) **“Statute”** means an ordinance that has been codified into Band law pursuant to Title 25.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 38-21.  
 Band Ordinance 02-22.  
 Band Ordinance 40-22.  
 Band Act 79-22.

### **§ 2. Band Assembly.**

- (a) All legislative political authority of the Non-Removable Mille Lacs Band of Ojibwe shall be vested in the Legislative Branch of government. The Legislative Branch of government shall be known as the Band Assembly. It shall be comprised of the duly elected representatives of the legislative districts of the Mille Lacs Reservation. Each District shall elect one (1) representative. The Districts are as follows:
  - (1) District 1: Nay-Ah-Shing (Vineland).
  - (2) District 2: Mi-ni-si-na-kwang (East Lake), Chi-mini-sing (Isle), Ga-me-ta-wa-ga-gi-mog (Sandy Lake), and Chi-manoominikaang (Minnewawa); and
  - (3) District 3: Ga-shi-gwa-na-bi-go-gog (Hinckley), Ah-zhoo-moog (Lake Lena), Ne-shi-gwa-go-gog (Pine City), and A-sin-ni-ga-ning (Sandstone).
- (b) The Secretary-Treasurer shall be the leader of the Band Assembly. The Secretary-Treasurer shall exercise her or his legislative duties under the title "Speaker of the Assembly." The Secretary-Treasurer shall exercise her or his financial duties under the title "Secretary of Treasury."
- (c) Unless otherwise specified by Band Statute, all legislative authority of the Mille Lacs Reservation Business Committee shall be exercised by the Band Assembly. The Band Assembly is and shall be the body referred to in the Constitution of the Minnesota Chippewa Tribe as the Reservation Business Committee.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 4.01.  
Band Ordinance 38-21.  
Band Act 79-22.

**Cross References**

Designation of band districts, *see* 2 MLBS§ 11.  
Functions of governmental authority, *see* 2 MLBS § 4.  
Reservation Business Committee, *see* Const. Art. 3, § 2.

**§ 3. Legislative Power.**

It shall be the authority and duty of the Legislative Branch to enact laws which regulate internal and external affairs of the Band in order to promote the general welfare of the people. The Band Assembly shall have power:

- (a) to enact laws which promote the general welfare of the people,
- (b) to appropriate all Band revenue regardless of source,
- (c) to confirm appointments of the Chief Executive, which are, by law, required to be with the advice and consent of the Band Assembly,
- (d) to adopt resolutions,
- (e) to annul any Commissioner's Order or any Opinion of the Solicitor General in conformity with 3 MLBS § 20,
- (f) to ratify agreements, contracts, cooperative and reciprocity agreements, and memoranda of understanding; and
- (g) to perform all other legislative functions conferred by the provisions of Article VI of the Constitution of the Minnesota Chippewa Tribe.

**Historical and Statutory Notes****Source:**

Band Statute 1141-MLC-2, § 5.  
Band Ordinance 38-21.

**Cross References**

Consolidated Nay-Ah-Shing School Board; powers reserved to Band Assembly, *see* 9 MLBS § 14.  
Education-related funds, appropriations, *see* 9 MLBS § 26.  
Gaming, Compacts with State of Minnesota, *see* 15 MLBS § 104. Negotiation and execution of agreements, contracts, etc., *see* 4 MLBS § 3.

Recommendation of agreements, contracts, etc., *see* 4 MLBS § 6.  
Violation of approved Tribal Ordinance, *see* 24 MLBS § 1211.

#### **§ 4. Initiative and Referendum.**

- (a) The legislative authority of the Band is vested in the Band Assembly, but there is reserved to the people the power to propose bills and laws and to enact or reject the same at the polls, independent of the Band Assembly and at their own option, to approve or reject at the polls any item, section or part of any bill or law passed by the Band Assembly, subject to election regulations promulgated by the Band Assembly.
- (b) The power of the people to approve or reject at the polls any item, section or part of any bill or law passed by the Band Assembly shall be exercised by filing a petition with the Secretary-Treasurer, signed by at least 5% of the Band members entitled to vote in tribal elections based on the total number of registered voters at the last preceding tribal election, within 20 calendar days after the passage of such bill or law. Newly enacted bills and laws shall be posted in each district within five (5) calendar days of enactment and shall remain posted until 20 calendar days have passed after enactment. The same petition requirements, excluding the 20-day limitation, shall apply to the power of the people to propose new bills and laws. An election regarding such initiative or referendum shall be held within 30 calendar days after the filing of the petition.
- (c) The people shall not have the power to approve or reject at the polls any item, section, or part of any bill or law passed by the Band Assembly prior to September 19, 1992.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 6.  
Band Ordinance 08-93.  
Band Ordinance 38-21.  
Band Act 79-22.

#### **§ 5. Band Assembly Members.**

The Band Assembly shall be comprised of the popularly elected Secretary-Treasurer, who shall be the Speaker of the Assembly, and the popularly elected District Representatives from each of the three (3) districts within the territorial jurisdiction of the Reservation. Each District Representative shall have one (1) vote in the Band Assembly.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 7.  
Band Ordinance 38-21.  
Band Act 79-22.

## **§ 6. Terms of Office.**

The terms of office of the members of the Band Assembly shall be the term prescribed for the Secretary-Treasurer and Committeemen of the Reservation Business Committee in Article IV, Section 3 of the Constitution of the Minnesota Chippewa Tribe.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 8.

## **§ 7. Powers and Duties of Speaker of Assembly.**

- (a) The Speaker of the Assembly shall be the leader of the Legislative Branch of Government and have the following powers and duties in exercising said authority of government:
- (1) to convene the Band Assembly subject to 3 MLBS §§ 18 and 19; in the event that he or she shall fail to do so upon request of any two (2) District Representatives, the Band Assembly may be convened after 48 hours' notice by any member of the Band Assembly,
  - (2) to be considered as a member of the Band Assembly for purposes of establishing a quorum,
  - (3) to require the prompt recording of the Band Assembly's acts and deeds,
  - (4) to schedule all special hearings of the Band Assembly upon request of any two (2) District Representatives,
  - (5) to have the powers of authorization for issuance of all subpoenas and official documents on behalf of the Band Assembly; and
  - (6) to maintain order in all sessions of the Band Assembly.
- (b) The Speaker of the Assembly shall not be a voting member of the Band Assembly.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 9.

Band Ordinance 38-21.  
Band Ordinance 02-22.  
Band Act 79-22.

### **§ 8. Powers and Duties of Secretary-Treasurer.**

The Secretary-Treasurer shall have the following general powers and duties in administering the financial affairs of Band government:

- (a) to superintend and manage all fiscal operations, planning and budgeting of the Band as authorized by the Band Assembly,
- (b) to enforce on behalf of the Band all judgments and claims rendered in its favor,
- (c) to receive and keep receipts for all monies paid into the Band treasury and safely keep the same until lawfully disbursed by formal appropriation,
- (d) to have powers of investigations of financial irregularity,
- (e) to require the production of such books, accounts, documents, and property under any lawful financial inquiry in all things that will aid her or him in the performance of her or his duties;
- (f) to levy, impound or attach any financial account of the Band or any political subdivision thereof to prevent serious financial jeopardy or acts in violation of law. This authority shall not be exercised to contravene any lawful acts of the Band Assembly,
- (g) to issue Secretarial Orders to implement decisions concerning matters of the fiscal affairs of the Band consistent with the powers herein delegated. Such written orders shall be in uniform format, numbered consecutively, and have expiration dates,
- (h) to nominate, in conjunction with the Chief Executive, a suitable person to act as the Commissioner of Finance,
- (i) to post a fidelity bond in favor of the Band in an amount satisfactory to the Band Assembly; and
- (j) to coordinate with the Commissioner of Finance for the Office of Management and Budget to ensure that financial planning and operations are consistent.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 10.  
Band Ordinance 38-21.  
Band Act 79-22.

### **Cross References**

Commissioner of Finance, *see* 22 MLBS § 101 et seq.  
Public Works Commission, financial record system, *see* 12 MLBS § 114.  
Review of proposed procurement actions, *see* 7 MLBS § 3 et seq.  
Violation of Orders or Opinions, *see* 24 MLBS § 1212.

### **§ 9. Powers and Duties of District Representatives.**

- (a) The District Representatives shall have the following individual authority in the exercise of legislative powers of Band government:
  - (1) to introduce into the Band Assembly appropriate bills promoting the general welfare of the people for enactment into the laws of the Band,
  - (2) to establish district committees within their respective districts for the purpose of aiding them in the performance of their legislative duties,
  - (3) to chair public hearings on any proposed law within their appropriate district,
  - (4) to attend all sessions of the Band Assembly when called upon by the Speaker of the Assembly. The failure to attend any session of the Band Assembly shall require the official consent of the Band Assembly in order to consider said absence as excused,
  - (5) to represent the community interests of the district from which the Representative was elected. The Representative shall exercise this duty fairly and impartially in order to promote the general welfare of all district residents,
  - (6) to authorize the use of district community centers according to written standards that are fair and reasonable,
  - (7) to comply with the provisions of the oath of office of a District Representative,
  - (8) to refrain from the disclosure or distribution of any privileged or confidential information or documents that may come into their possession as a result of their office; and
  - (9) to perform all legislative and other duties as may be assigned by the Speaker of the Assembly or the Band Assembly.

- (b) No popularly elected District Representative to the Band Assembly shall exercise any of the authority properly belonging to either the Executive or Judicial branches of government or to any officer who is appointed to serve the Band.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 11.  
Band Ordinance 38-21.  
Band Act 79-22.

### **Cross References**

Community centers, use, *see* Exec. Order 033.  
Division of powers, *see* 2 MLBS § 3.  
Functions of Governmental Authority, *see* 2 MLBS § 4.

### **§ 10. Parliamentarian and Clerk of the Band Assembly.**

The Band Assembly shall appoint an individual, not a member of the Band Assembly, who shall act as Parliamentarian and Clerk of the Band Assembly. The Parliamentarian shall be independent of any supervisory authority in the Band Assembly. All parliamentary decisions shall be rendered in an impartial manner. The Parliamentarian may be removed from office by unanimous vote of the Band Assembly in concurrence with the Speaker of the Assembly.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2 § 12.  
Band Ordinance 38-21.

### **§ 11. Record of Proceedings.**

It shall be the duty of the Clerk of the Band Assembly to record all official minutes of the proceedings of the Band Assembly. The Clerk of the Band Assembly shall add the meeting minutes to the next scheduled Band Assembly agenda for Band Assembly approval. The official record of the proceedings of the Band Assembly shall be prima facie evidence of the facts stated therein in the Court of Central Jurisdiction and any other court of competent jurisdiction.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 12.01.  
Band Ordinance 38-21.

## **§ 12. Rules of Band Assembly.**

The Band Assembly shall establish the rules of its proceedings, decide upon its adjournment and discipline of its members through censure for improper conduct as a Band Assembly member or other disciplinary action, provided, however, that removal shall be governed by 3 MLBS § 28(a), but not twice for the same offense.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 13.  
Band Ordinance 38-21.

## **§ 13. Band Assembly Vacancies.**

Any vacancy in a popularly elected official position on the Band Assembly must be filled in accordance with the Election Ordinance most recently adopted by the Minnesota Chippewa Tribe. The Chief Executive shall not be a member of the Band Assembly.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 14.  
Band Act 79-22.

## **§ 14. Quorum.**

Any three (3) members shall constitute a quorum to transact business of the Band Assembly. The Speaker of the Assembly shall be considered as a member of the Band Assembly for the purpose of establishing a quorum.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 14.01.

## **§ 15. Roll Call Vote.**

In all votes of the Band Assembly, a roll call vote may be utilized upon the request of any Representative and their roll call vote shall be entered for the record. Otherwise, all other votes may be consensual.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 15.

**§ 16. Compensation.**

The compensation for members of the Band Assembly shall be prescribed by Band law, provided that sufficient funds are available for said compensation.

**Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 16.  
Band Act 79-22.

**§ 17. Passage of Laws.**

- (a) The Band Assembly shall conduct formal public hearings on any bill which alters, amends, or repeals Titles 1, 3, 4 and 5, Chapter 1 of Title 2, and Subchapters 1 to 3 of Chapter 3 of Title 24. The Band Assembly may conduct formal public hearings on any or all other bills at their discretion. Formal public hearings shall be held in all appropriate districts of the Band's Reservation, or alternatively by live-stream or other similar media broadcast, prior to the time that the Band Assembly seeks to formally act upon said bill. Additionally, each bill shall be posted on the Tribal Register for ten (10) calendar days after said bill has been introduced at a formal public hearing and must be available at all times upon request by any enrolled Band member. This provision shall not apply to any bill on which no formal public hearing has been held.
- (b) A majority vote of the three (3) District Representatives shall be required for the passage of each bill.
- (c) After the formal action of the Band Assembly, no later than 72 hours after said action, each bill shall be presented to the Chief Executive, who shall have five (5) business days from the date of receipt to either sign the bill into law or veto the bill and return it to the Band Assembly with a written veto message containing the objections to the bill. In the event the Chief Executive neither signs the bill nor vetoes it, it shall become law without the Chief Executive's signature after the expiration of five (5) business days from date of receipt of the bill.
- (d) The Clerk of the Band Assembly shall certify the date and time that each bill has been presented to the Chief Executive for action. This date shall be utilized to determine the appropriate five (5) business day time period found in subsection (c).
- (e) Any bill which has been vetoed and returned by the Chief Executive shall have a compromise hearing within five (5) calendar days of the return. Failure of the Band

Assembly to act within the five (5) calendar days shall halt further action on said bill for 180 calendar days. Should the Band Assembly hold a compromise hearing with the Chief Executive within the allocated time, 20 calendar days shall be available to negotiate an agreement for the bill's passage into law. Should an agreement not be concluded within the allotted time, further action on the bill is precluded for 180 calendar days from said date. Appropriation bills shall be excluded from the above time schedule.

- (f) An appropriation bill which has been returned by the Chief Executive shall have a compromise hearing within three (3) calendar days of the return to the Band Assembly. Negotiations shall commence with the Chief Executive on the fourth calendar day thereafter and shall continue until a compromise has been achieved. During this time the Band Assembly shall be precluded from adjourning.
- (g) A veto by the Chief Executive is a total veto of the entire bill. Sectional vetoes shall be prohibited pursuant to the provisions of this section.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 17.  
Band Ordinance 38-21.  
Band Act 79-22.

### **Cross References**

Approval of laws by Tribal Executive Committee, *see* Const. Art. 15, § 3.  
Chief Executive's powers and duties, *see* 4 MLBS § 6.  
Great Lakes Indian Fish and Wildlife Compact withdrawal, *see* 2 MLBS § 1157.  
Land consolidation, applicability of federal law and regulations, *see* 21 MLBS § 104.  
Review of laws by Secretary of Interior, *see* Const. Art. 15, § 2.  
Violation of approved Tribal Ordinance, *see* 24 MLBS § 1211.

### **§ 18. Legislative Sessions.**

The Speaker of the Assembly shall convene two (2) legislative sessions per year. The first shall begin at the annual State of the Band Address on the second Tuesday of January of each calendar year running through the last week of April. The second shall begin the second week of July of each calendar year running through September 30.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 02-22.  
Band Act 79-22.

## **§ 19. Special Sessions.**

- (a) The Band Assembly shall meet for a special session when called on pursuant to 3 MLBS § 7. The Speaker of the Assembly may call a special session in exigent circumstances. Special sessions may be requested for exigent circumstances that require Band Assembly action.
- (b) The Parliamentarian shall not accept any agenda items that he or she has not received two (2) complete calendar days in advance of the upcoming special session. The Parliamentarian shall publish the agenda for any upcoming special session no later than 24 hours in advance.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 02-22.  
Band Act 79-22.

## **§ 20. Annulment of Commissioner's Orders and Opinions of Solicitor General.**

The Band Assembly shall have five (5) calendar days from the date of receipt of such order or opinion to submit notice of its intent to annul any Commissioner's Order or the Opinion of the Solicitor General. Said notice shall be directed to the attention of the Chief Executive and the appropriate Commissioner or Solicitor General. Within ten (10) calendar days thereafter, the Band Assembly shall hold a hearing on the proposed annulment of the Commissioner's Order or the Opinion of the Solicitor General. At such hearing, the appropriate Commissioner or the Solicitor General shall appear before the Band Assembly to justify the particular Commissioner's Order or Opinion of the Solicitor General. The Band Assembly, within five (5) calendar days after said hearing, may act to either accept the said Commissioner's Order or Opinion of the Solicitor General or act to annul, in whole or in part, the particular Commissioner's Order or Opinion of the Solicitor General.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 19.  
Band Ordinance 38-21.  
Band Act 79-22.

### **Cross References**

Commissioner of Corporate Affairs, Commissioner's Orders, *see* 16 MLBS § 6.  
Commissioner's Orders, *see* 4 MLBS § 7.  
Opinions of Solicitor General, *see* 4 MLBS § 18.

## **§ 21. Appropriation Bills.**

Should the Band Assembly fail to pass an appropriation bill before the start of the Band's biennium or should said bill be vetoed by the Chief Executive, all fiscal operations of the Band shall cease as of midnight of the last day of the biennium, unless the Band Assembly adopts a continuing resolution prior to such time.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 23-99, §§ 2, 3.

### **Cross References**

Preparation and submission of budget requests, *see* 4 MLBS § 3.

## **§ 22. Fiscal Year.**

The fiscal year of the Band shall be October 1 through September 30 of each calendar year.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 20.01.

Band Ordinance 38-21.

Band Act 79-22.

## **§ 23. Petitions by Band Members.**

The Band Assembly shall pass no law or Legislative Order which abridges the rights of the membership to petition the Band Assembly on matters of the Band government.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 21.

## **§ 24. Legislative Privilege.**

No member of the Band Assembly shall be subject to suit or criminal prosecution brought against her or him for acts performed and remarks made in any session of the Band Assembly. This shall not, however, preclude judicial review, in a proper case, of the constitutionality or legality of acts and decisions taken by the Band Assembly.

## **Historical and Statutory Notes**

### **Source:**

Band Statute 1141-MLC-2, § 22.  
Band Act 79-22.

### **§ 25. Assembly Powers of Inquiry.**

- (a) The Band Assembly shall have the power to hold hearings of inquiry on any issue affecting the general welfare of the Band or its members. Said power shall include the power to issue subpoenas and cause them to be served and enforced, and the power to impound records or documents that will aid the Band Assembly in fulfilling its responsibility to the members of the Band.
- (b) All official hearings of inquiry of the Band Assembly shall be held according to rules adopted by the Band Assembly.

## **Historical and Statutory Notes**

### **Source:**

Band Statute 1141-MLC-2, § 23.  
Band Ordinance 38-21.  
Band Ordinance 02-22.  
Band Act 79-22.

### **§ 26. Multi-Topic Bills.**

The Band Assembly may pass any bill with many topics and shall not be limited to one (1) topic for any one (1) bill.

## **Historical and Statutory Notes**

### **Source:**

Band Statute 1141-MLC-2, § 24.  
Band Ordinance 38-21.

### **§ 27. Joint Session of Band Assembly.**

- (a) The Joint Session of the Band Assembly may be convened for the purpose of considering removal of members and officers as prescribed in Article X of the Constitution of the Minnesota Chippewa Tribe. Vacancies on the Band Assembly shall be filled by appointment of the Joint Session of the Band Assembly. Appointees shall serve until the next election prescribed by the Election Ordinance most recently adopted by the Minnesota Chippewa Tribe. The Joint Session of the Band Assembly

may be convened only by the Speaker of the Assembly. In the event that the Speaker of the Assembly shall refuse to convene the Joint Session of the Band Assembly, under extraordinary circumstances, the remaining four (4) members of the Joint Session of the Band Assembly may convene said session by presenting to the Speaker of the Assembly a notice of intent to hold said meeting and describing the time and place for said meeting.

- (b) The membership of the Joint Session of the Band Assembly shall be the Speaker of the Assembly, who shall preside, the District I Representative, the District II Representative, the District III Representative, and the Chief Executive.
- (c) Except as specifically authorized by any provision of the Constitution of the Minnesota Chippewa Tribe, the Joint Session of the Band Assembly shall take no action which serves to undermine or encroaches upon the distribution of the authority of the Band as found in Titles 1 to 5.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 25.  
Band Ordinance 38-21.  
Band Act 79-22.

### **Cross References**

Division of powers, *see* 2 MLBS § 3.  
Functions of governmental authority, *see* 2 MLBS § 4.  
Powers and duties of Chief Executive, *see* 4 MLBS § 6.

### **§ 28. Removal of Elected Officials or Appointees.**

- (a) The Joint Session of the Band Assembly shall have powers of impeachment over popularly elected officials of the Band, as well as appointees of the Chief Executive as stated and defined in Title 4. The cause of removal shall be as found in Article X, Section 2, of the Constitution of the Minnesota Chippewa Tribe. All removal proceedings of the Joint Session of the Band Assembly shall be made in concert with the provisions of Article X, Section 3 of the Constitution of the Minnesota Chippewa Tribe.
- (b) On matters of removal, the Speaker of the Assembly shall have one (1) vote and the Chief Executive shall have one (1) vote. A two-thirds majority vote of the Joint Session of the Band Assembly shall be required to remove any popularly elected officer of the Band.

- (c) No popularly elected official of the Joint Session of the Band Assembly shall vote on any issue related to removal of said officer in which that officer is the topic of the removal proceedings.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 26.  
Band Ordinance 38-21.  
Band Act 79-22.

### **Cross References**

Commissioner for corporate Affairs, removal from office, *see* 16 MLBS § 3.  
Consolidated Nay-Ah-Shing School Board, removal from office, *see* 9 MLBS § 6.  
Court of Appeals Justices, removal for cause, *see* 5 MLBS §§ 5, 11.  
District Court Judge, removal for cause, *see* 5 MLBS §§ 7, 10, 11. Recall of appointed officials, *see* 4 MLBS § 15.

### **§ 29. Elections.**

The Joint Session of the Band Assembly shall have the power to call an election at any time; however, elections established under Article IV, Section 1 of the Constitution and By-Laws of the Minnesota Chippewa Tribe shall be held when directed by the two-thirds majority vote of the Tribal Executive Committee of the Minnesota Chippewa Tribe. Upon the official action of the Joint Session of the Band Assembly or the Tribal Executive Committee, the Chief Executive shall cause to have prepared and distributed an official Writ of Election.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 27.

### **§ 30. Legislative Orders.**

- (a) The Band Assembly may issue Legislative Orders on any subject matter within the Legislative Branch of government pursuant to authority conferred by this Title and the Constitution of the Minnesota Chippewa Tribe. Any said Legislative Order shall be authorized by a majority vote of the members of the Band Assembly. All members of the Band Assembly, as well as the Speaker of the Assembly, shall affix their signatures to each Legislative Order; however, the failure of one (1) or two (2) members of the Band Assembly to countersign any Legislative Order shall not invalidate the Order, provided it was passed by a majority vote of the Band Assembly in accordance with its rules of procedure.

- (b) All said Legislative Orders shall be consecutively numbered and have the official seal of the Band affixed thereto.
- (c) The Clerk of the Band Assembly shall be responsible for safe keeping of original copies of all Legislative Orders. All Legislative Orders shall have the full force of law of the Band until amended or repealed. The Clerk of the Band Assembly shall produce and distribute all Legislative Orders within 24 hours after formal enactment of the Band Assembly.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 28.  
Band Ordinance 38-21.  
Band Ordinance 40-22.  
Band Act 79-22.

### **§ 31. Style of Laws.**

The style of laws of the Band shall be: "Be it enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Ojibwe." No laws shall be enacted except by bill.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 29.  
Band Ordinance 38-21.  
Band Act 79-22.

### **§ 32. Effective Date for Bills, Orders, and Resolutions.**

- (a) If a bill does not have an effective date, the effective date shall be immediately upon a majority vote of the Band Assembly and either the signature of the Chief Executive or the absence of action by the Chief Executive as prescribed in § 17(c).
- (b) If a Legislative Order does not have an effective date, the effective date shall be immediately upon a majority vote of the Band Assembly.
- (c) If a Secretarial Order does not have an effective date, the effective date shall be immediately upon the signature of the Secretary-Treasurer.
- (d) If a resolution does not have an effective date, the effective date shall be immediately upon the signature of the Speaker of the Assembly.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 38-21.  
Band Ordinance 02-22.

**§ 33. Interpretation of Title.**

Should there be any doubt as to the proper interpretation of any part of this Title, or of 2 MLBS Chapter 1, the Speaker of the Assembly or the Band Assembly as an entity may submit such question to the Solicitor General, who shall give a written Opinion thereon, and such Opinion shall be binding unless annulled in whole or in part, by the Court of Central Jurisdiction, or amended by the Band Assembly pursuant to the enactment of the law. The exterior legal counsel of the Band shall, on request, assist the Solicitor General in the proper interpretation of this or any other Band statute upon official request of the Band Assembly.

**Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 32.  
Band Ordinance 38-21.  
Band Act 79-22.

**Cross References**

Legal counsel, *see* 4 MLBS § 16.

**§ 34. Construction of Title.**

The Solicitor General, the exterior legal counsel, and the Court of Central Jurisdiction, whichever is applicable, shall liberally construe the provisions of this Title, or of 2 MLBS Chapter 1, so as to provide for the full force and effect of the purposes therein stated.

**Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 33.  
Band Act 79-22.

# TITLE 4 – EXECUTIVE BRANCH

## Section

1. Definitions.
2. Executive Political Authority.
3. Powers and Duties of the Executive Branch.
4. Executive Officers.
5. Terms of Office.
6. Powers and Duties of Chief Executive.
7. Powers and Duties of Executive Officers.
8. Creation, Powers and Duties of Administration Policy Board.
9. Membership and Meetings of Administration Policy Board.
10. Powers and Duties of Commissioner of Administration.
11. Executive Committees.
12. Executive Hearings.
13. Procedures for Conduct of Hearings of Inquiry.
14. Decisions or Orders After Hearings of Inquiry.
15. Recall of Appointed Officials.
16. Legal Counsel.
17. Appointment of Solicitor General.
18. Duties of Solicitor General.
19. Legal Standards of Office of Solicitor General.
20. Legal Responsibilities of Solicitor General in Capacity of Prosecutor.
21. Immunity of Solicitor General.
22. Office Commissions.
23. Letters of Credence.
24. Executive Privilege and Immunity.
25. Interpretation of Title.
26. Construction of Title.

## Historical and Statutory Notes

The Preamble of Band Statute 1142-MLC-3 provides: "WHEREAS, in 1981 the Non-Removable Mille Lacs Band of Chippewa Indians, in a historic step, adopted a form of government based on the principal of division of powers, and,

"WHEREAS, that form of government has proven to be highly satisfactory, but experience with the large body of law which was necessary to establish the system has revealed a number of flaws and ambiguities and,

"WHEREAS, The Band Assembly has determined to improve Band government of adopting an entire Code of government, revising and replacing the former Code, NOW

THEREFORE, IT IS ENACTED BY THE BAND ASSEMBLY:"

Band Statute 1142-MLC-3, §§ I and 2 provide:

"Section 1. Purpose. The purpose of this act is to promote the general welfare of the Non-Removable Mille Lacs Bands of Chippewa Indians and its members by establishing duties, purposes and procedures for the conduct of domestic and external affairs of the Band by a form of government based upon the principle of division of powers. This statute is enacted by the authority vested in the Mille Lacs Reservation Business Committee under Article VI, Section 1 of the Constitution of the Minnesota Chippewa Tribe.

"Section 2. Scope of Amending Provision. The provision of Band Statutes 1001-MLC-1, 1008-MLC-1, 1032-MLC-1, 1033-MLC-1, 1039-MLC-1 are hereby repealed in their entirety and replaced by the provisions of this act, except that:

"Section 2.01. The provisions of Band Statute 1032-MLC-1, Section 28, relating to the authorities of the Commissioner of Corporate Affairs shall be transferred and hereinafter referenced by Band Statute 1077-MLC-16, Section 5.

"Section 2.02. The provisions of Band Statute 1032-MLC-1, Section 29, relating to the authorities of the Commissioner of Natural Resources shall be transferred and hereinafter referenced by Band Statute 1030-MLC-22, Section 32."

The Title of Band Ordinance 23-99 is "An Ordinance amending the budgeting period of the Mille Lacs Band of Ojibwe and repealing and replacing 4 MLBS §3(d), 4 MLBS §10(e), 3 MLBS §18 and 5 MLBS 114(e) of the Mille Lacs Band Statutes Annotated."

The Preamble of Band Ordinance 23-99 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purposes of amending the body of law governing the Band's budgeting period. The Band Assembly determines that it is in the Band's best interest to appropriate Band funds for a two-year budgeting period."

Band Ordinance 23-99, §§ 1 & 2 provide:

"Section 1. Purpose "This Act is intended to amend the body of law governing the budgeting cycle of the Mille Lacs Band of Ojibwe. The purpose of this Act is to provide a process whereby the Mille Lacs Band of Ojibwe appropriates funds based on a two-year time period.

"Section 2. Repeal "3 MLBAS §18, 4 MLBS §3(d), 4 MLBS §10(e) and 5 MLBS §114(e) of the Mille Lacs Band Statutes Annotated is hereby repealed and replaced in its entirety."

### **Cross References**

Band government identification cards, *see* 22 MLBS § 308.

Bribery, *see* 24 MLBS § 1203.

Consolidated Nay-Ah-Shing School Board as independent subdivision of Executive Branch, *see* 9 MLBS § 1.

## § 1. Definitions.

The following words shall have the meanings herein subscribed:

- (a) **"Band"** means the Non-Removable Mille Lacs Band of Ojibwe.
- (b) **"Band Statute"** means the codified laws of the Non-Removable Mille Lacs Band of Ojibwe.
- (c) **"Commissions"** means the legal papers which authorize an officer of the Non-Removable Mille Lacs Band of Ojibwe to hold official office in the governmental structure of the Band.
- (d) **"Constitution"** means the Constitution of the Minnesota Chippewa Tribe.
- (e) **"Domestic Affairs"** means the internal concerns of the five (5) constituent Bands which comprise the Non-Removable Mille Lacs Band of Ojibwe and their people.
- (f) **"External Affairs"** means the matters of trade, commerce and interaction and general relations with governments, corporations, Indian tribes or bands, or citizens of the United States of America.
- (g) **"Letters of Credence"** means the legal papers which authorize an officer of the Non-Removable Mille Lacs Band of Ojibwe to conduct external affairs on behalf of the Band.
- (h) **"Members"** means the enrolled members of the Non-Removable Mille Lacs Band of Ojibwe.
- (i) **"People"** means the enrolled members of the Non-Removable Mille Lacs Band of Ojibwe.
- (j) **"Tribe"** means the Minnesota Chippewa Tribe.

### Historical and Statutory Notes

**Source:**

Band Statute 1142-MLC-3, § 28.

## § 2. Executive Political Authority.

All executive political authority of the Non-Removable Mille Lacs Band of Ojibwe shall be vested in the Executive Branch of government. The leader of the Executive Branch shall be the

popularly-elected tribal chairperson, whose title shall be Chief Executive. The Chief Executive is the officer referred to in the Constitution as the Chairman. Unless otherwise specified by Band Statute, all Executive Branch authority shall be exercised by the Chief Executive.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 3.

### **Cross References**

Chairman, Reservation Business Committee, *see* Const. Art. 3, § 2.

Division of powers, *see* 2 MLBS § 3.

Functions of governmental authority, *see* 2 MLBS § 4.

### **§ 3. Powers and Duties of the Executive Branch.**

It shall be the authority and duty of the Executive Branch to see that the laws of the Band are faithfully executed. The Executive Branch shall have power to:

- (a) conduct relations with all other governments and their political subdivisions,
- (b) negotiate and execute agreements, contracts, cooperative and reciprocity agreements, and memoranda of understanding on behalf of the Band, subject to ratification by the Band Assembly wherever required by Band statute,
- (c) administer contracts and grants, cooperative and reciprocity agreements, and memoranda of understanding, under the terms and conditions contained therein; and
- (d) prepare biennial budget requests for all executive functions and submit the same to the Band Assembly for appropriation no later than September 1 of each odd numbered year.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 4.

Band Ordinance 23-99, §§ 2, 4.

### **Cross References**

Appropriation bills prior to end of fiscal year, *see* 3 MLBS § 21.

Fiscal year, *see* 3 MLBS § 22.

Ratification of agreements by Band Assembly, *see* 3 MLBS § 3.

#### **§ 4. Executive Officers.**

The Executive Officers of the Non-Removable Mille Lacs Band of Ojibwe shall consist of the Chief Executive, Commissioner of Administration, Assistant Commissioner of Administration, Commissioner of Natural Resources, Commissioner of Education, Commissioner of Corporate Affairs, Commissioner of Health and Human Services, and the Commissioner of Community Development.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 5.  
Band Ordinance 20-97, § 1.

#### **Cross References**

Education department programs, delineation of responsibility, *see* Exec. Order 108-93.  
Efficient operation of Band government and employment of Band members, *see* Exec. Order 104-92.  
Vehicles owned by Band, maintenance and log books, *see* Exec. Order 109-93.

#### **§ 5. Terms of Office.**

The term of office of the Chief Executive shall be the term prescribed for the Chairman of the Reservation Business Committee in Article IV, Section 3 of the Constitution. The terms of office of the other Executive Officers shall be four (4) years in duration commencing July 1, 1985.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 6.

#### **§ 6. Powers and Duties of Chief Executive.**

The Chief Executive shall have the following authority in exercising the executive powers of Band government:

- (a) to faithfully and impartially execute the laws, judicial determinations, orders and resolutions of the Band,

- (b) to appoint, wherever authorized by Band Statute, Executive Officers, judges, heads of commissions, boards or authorities, and legal and financial counsel; to make appointments to fill any vacancy in any office as authorized by Band Statute and subject to confirmation by the Band Assembly,
- (c) to conduct external relations with all other governments and their political subdivisions,
- (d) to recommend agreements, contracts, cooperative and reciprocity agreements, and memoranda of understandings to the Band Assembly for ratification,
- (e) to issue proclamations and Executive Orders on any subject matter within the Executive Branch of government pursuant to the authority conferred by Band Statute; such written statements shall be of uniform form and shall be numbered consecutively with effective and expiration dates affixed thereto,
- (f) to act as the custodian of all Band property,
- (g) to appoint Executive Committees, which may hold official hearings to assist the Chief Executive in conducting the duties of the office; such Executive Committees shall have the power to issue subpoenas and cause them to be served and enforced consistent with the provisions of due process; all hearings of such committees shall be held in accordance with 4 MLBS §§ 13 and 14,
- (h) to sit in the Joint Session of the Band Assembly as provided by 3 MLBS § 27,
- (i) to present to the Band Assembly an annual State of the Band Address on the second Tuesday of January of each calendar year; the Chief Executive shall, from time to time, give information to the Band Assembly and recommend to their consideration such measures as he or she shall judge necessary and expedient,
- (j) to call general and special elections upon the prior authorization of the Joint Session of the Band Assembly pursuant to the provisions of Article IV, Section 1 of the Constitution,
- (k) to issue pardons and commutations of sentences to any individual convicted of a crime in the Court of Central Jurisdiction under such regulations and restrictions as may be prescribed by Band statute,
- (l) to approve or veto any proposed law which shall have passed the Band Assembly pursuant to the regulations prescribed by 3 MLBS § 16(c); and
- (m) to make rules and policies consistent with the provisions of Band statute.

## Historical and Statutory Notes

### Source:

Band Statute 1142-MLC-3, § 7.

### Cross References

Capital Improvements Authority Board of Commissioners, *see* 12 MLBS § 2.  
Commissioner of Corporate Affairs, appointment, *see* 16 MLBS § 2.  
Consolidated Nay-Ah-Shing School Board, veto authority of Chief Executive, *see* 9 MLBS § 27.  
Corporate Commission, Board composition, *see* 16 MLBS § 103.  
Environmental Protection Commission, selection and terms of office, *see* 11 MLBS § 3.  
Exemption from provisions of personnel manual, *see* 6 MLBS § 2.  
Government facilities, utilization and security, *see* Exec. Order 033.  
Housing Authority Board of Commissioners, appointment, *see* 12 MLBS § 306.  
Procurement, responsibilities of Chief Executive, *see* 7 MLBS § 10.  
Public Works Commission Board of Supervisors, *see* 13 MLBS § 102.  
Public Works Commission, enforcement of regulations, *see* 13 MLBS § 103.  
Ratification of agreements, contracts, etc., *see* 3 MLBS § 3.  
Review of proposed procurement actions, *see* 7 MLBS § 6.  
Sentence, criminal procedure, *see* 24 MLBS § 4251 et seq.  
Vehicles owned by Band, maintenance and log books, *see* Exec. Order 109-93.  
Violation of Executive Orders, *see* 24 MLBS § 1212.

### § 7. Powers and Duties of Executive Officers.

The Executive Officers shall have the following general authority in exercising subject matter authority conferred by Band statute:

- (a) to faithfully and impartially execute the laws of the Band and the policies of the Executive Branch of government,
- (b) to conduct external relations with their counterparts in the political subdivisions of other governments, pursuant to the prior authorization of the Chief Executive,
- (c) to authorize the expenditure of all appropriated funds within their subject matter jurisdiction,
- (d) to regulate the performance of their duties by all persons employed within their area of subject matter jurisdiction,
- (e) to advise the Chief Executive on all matters related to their subject matter jurisdiction, be it external or domestic,

- (f) to recommend the reorganization of any department within their subject matter jurisdiction as they may deem advisable in the interests of economy or efficiency,
- (g) to prescribe procedures for the development of policy in the area under their respective jurisdiction,
- (h) to issue Commissioner's Orders on any subject matter within their jurisdiction pursuant to the authority conferred by Band statute; such written statements shall be uniform format, numbered consecutively, and have effective and expiration dates affixed thereto,
- (i) to take such measures as are deemed necessary to prevent any action which threatens the well-being of programs within their respective jurisdiction by the issuance of a formal Commissioner's Order,
- (j) to exercise any and all authority conferred pursuant to the provisions of any other Band statute,
- (k) to perform any duties as may be lawfully assigned by the Chief Executive,
- (l) to represent the interests of the Chief Executive in matters within their respective subject matter jurisdiction before the Band Assembly; and
- (m) to represent the interests of the Executive Branch of Band government before any exterior governmental body as authorized and directed by the Chief Executive; no such representation shall occur by any Commissioner unless the said Commissioner shall present to the exterior governmental body her or his official letters of credence.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 8.

### **Cross References**

Annulment of Commissioner's Orders, *see* 3 MLBS § 20.

Commissioner of Finance, general powers and duties, *see* 22 MLBS § 104.

Education department programs, delineation of responsibility, *see* Exec. Order 108-93.

Efficient operation of Band government and employment of Band members, *see* Exec. Order 104-92.

Great Lakes Indian Fish and Wildlife Compact, commissioner's orders, *see* 2 MLBS § 1160.

Vehicles owned by Band, maintenance and log books, *see* Exec. Order 109-93.

Violation of Commissioner's Orders, *see* 24 MLBS § 1212.

### **§ 8. Creation, Powers and Duties of Administration Policy Board.**

The Band Assembly hereby creates within the Executive Branch of Band government an entity which shall be known as the Administration Policy Board. The Administration Policy Board shall have the following powers, duties and responsibilities:

- (a) to employ and contract with any individual in fulfilling the mandates of the Executive Branch of government,
- (b) to administer through lawful activities all grants and contracts received by the Non-Removable Mille Lacs Band of Ojibwe for the benefit of the general welfare of the people of the Band. Such power to administrate said grants and contracts shall be limited to acts which affect all grants and contracts regardless of particular subject matter; in the event that any particular administrative order shall affect only one (1) subject matter, the authority of the Commissioner for that subject matter shall prevail,
- (c) to authorize the submission of proposals to any exterior entity for authorized grants and contracts which will benefit the general welfare of the people,
- (d) to regulate the performance of all employees, including the hiring and dismissal of any employee, pursuant to the provisions of Band statute regulating civil service employees,
- (e) to ensure the lawful activities of any grant or contract within the Executive Branch of government,
- (f) to recommend any measure to the Band Assembly for their consideration, upon the advice and consent of the Chief Executive,
- (g) to negotiate all contracts and grants on behalf of the Executive Branch of Band government; all such negotiated contracts shall be subject to ratification by the Band Assembly; and
- (h) to perform all duties as assigned by the Chief Executive.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 9.

### **Cross References**

Government employees, *see* 6 MLBS § 1 et seq.

### **§ 9. Membership and Meetings of Administration Policy Board.**

- (a) The Administration Policy Board shall consist of the following Executive Officers:
  - (1) Commissioner of Administration,
  - (2) Assistant Commissioner of Administration,
  - (3) Commissioner of Natural Resources,
  - (4) Commissioner of Education,
  - (5) Commissioner of Human Services; and
  - (6) Commissioner of Community Development.
- (b) A quorum of four (4) members of the Administration Policy Board shall be required for the transaction of any official business. In the event that the Administration Policy Board is unable to perform its duties due to lack of quorum, the Commissioner of Administration may issue a Commissioner's Order to implement any said matter. Any said Commissioner's Order issued under this circumstance, shall be valid only until the next official meeting of the Administration Policy Board.
- (c) The Administration Policy Board shall be chaired by the Commissioner of Administration. The Commissioner of Administration shall prepare an agenda for the Administration Policy Board upon the advice and consent of the Chief Executive.
- (d) The Administration Policy Board shall convene on the second Thursday of each month. Additional meetings may be held at any time thereafter upon notification by the Commissioner of Administration.
- (e) All meetings of the Administration Policy Board shall be recorded and transcribed into writing. The minutes of the Administration Policy Board shall constitute prima facie evidence of the facts stated therein before any action in the Court of Central Jurisdiction or any other court of competent jurisdiction.
- (f) Within five (5) days after the convening of the Administration Policy Board, the approved official record of said meeting shall be transmitted to the Speaker of the Assembly who shall in turn present said record to the Band Assembly.
- (g) The Chief Executive shall have veto authority over any action of the Administration Policy Board.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, §10.  
Band Ordinance 20-97, § 2.

### **§ 10. Powers and Duties of Commissioner of Administration.**

The Commissioner of Administration shall act as the Chief of Staff within the Executive Branch of Band Government. The Commissioner of Administration shall have the following authority:

- (a) to act in the absence of any other Commissioner,
- (b) to act by and with the advice and consent of the Chief Executive,
- (c) to sign by authorization all vouchers and expenditures of appropriated funds of the Executive Branch pursuant to the provisions of Band statute,
- (d) to represent the interests of the Chief Executive in matters before the Band Assembly upon the direction of the Chief Executive,
- (e) to be responsible for the preparation of the biennial budget for the Executive Branch of Band government and for the submission of said budget to the Band Assembly no later than September 1 of each odd numbered year,
- (f) to exercise all authority conferred pursuant to the provisions of any Band statute and any authority conferred by the Chief Executive; and
- (g) to delegate to the Assistant Commissioner of Administration any of the authority contained herein or in 4 MLBS § 7 during the absence of the Commissioner of Administration or another Executive Officer.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 11.  
Band Ordinance 23-99, §§ 2, 5.

### **§ 11. Executive Committees.**

The Chief Executive shall authorize, appoint and empower all Executive Committees pursuant to the issuance of an Executive Order.

#### **Historical and Statutory Notes**

**Source:**

**§ 12. Executive Hearings.**

- (a) The Chief Executive is authorized to hold Executive Hearings for the following purposes:
  - (1) the making of rules or policies consistent with the provisions of Band statute,
  - (2) to adjudicate matters in controversy; and
  - (3) to investigate and inquire into matters affecting the general welfare of the Band or its organs of government.
- (b) All Executive Hearings shall be held in accordance with 4 MLBS § 13.
- (c) The powers of subpoena shall be available to any Executive Hearing of inquiry. The Executive Hearing officer may issue subpoenas and cause them to be served and enforced. The opportunity to quash any subpoena for cause shall be available pursuant to a petition duly filed with the Court of Central Jurisdiction.

**Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 12.

**§ 13. Procedures for Conduct of Hearings of Inquiry.**

- (a) All Executive Hearings shall be conducted by a hearing officer appointed by the Chief Executive. The hearing officer shall be a justice of the Court of Central Jurisdiction or a suitable person knowledgeable in law and the Mille Lacs judicial philosophy.
- (b) The hearing officer shall conduct the inquiry in a manner which is consistent with the Mille Lacs judicial philosophy of a search for truth and justice in the spirit of the Mille Lacs Band. To that end, the hearing officer shall conduct every session of the hearing as the principal investigator, questioning witnesses, calling for evidence to be produced, and advising the parties and their legal representatives of the issues he or she is concerned with and inviting their views and assistance.
- (c) Following questioning by the hearing officer, the witness may make additional comments within the limits of relevancy and propriety adjudged by the hearing officer. Any other party or legal representative may then question the witnesses.

Witnesses may be recalled at the discretion of the hearing officer if additional questions are raised.

- (d) Hearings are to be held upon at least three (3) days' advance notice to the parties. Continuance shall be granted for good cause. Hearings shall be informal and there may be as many sessions as deemed necessary by the hearing officer to enable her or him to review all the evidence and hear the contentions of the parties.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 13.

### **Cross References**

Band Assembly hearings of inquiry, *see* 3 MLBS § 25.

Mille Lacs judicial philosophy, *see* 24 MLBS § 2002.

### **§ 14. Decisions or Orders After Hearings of Inquiry.**

The decisions or orders of the hearing panel, whether interim or final, shall be in writing and shall contain the following:

- (a) the names of the parties,
- (b) the claims made by the parties,
- (c) the names of witnesses heard and documents or other evidence reviewed by the hearing officer,
- (d) the questions to be decided,
- (e) the facts found to be established by the evidence,
- (f) the law which governs the case; and
- (g) the decision of the hearing officer, including whether any wrong or error was committed and, if so, what remedy is being given.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 13.04.

## Cross References

Band Assembly hearings of inquiry, *see* 3 MLBS § 25.

### § 15. Recall of Appointed Officials.

- (a) The Chief Executive, upon receiving the two-thirds majority vote of the Joint Session of the Band Assembly, shall suspend the commission of any appointed officer, for just cause subject to final determination as provided for in subsection (e). Upon the suspension of any commission, the rights, privileges, and responsibilities to office are temporarily suspended.
- (b) The Chief Executive shall, within 72 hours after receipt of entry of findings, notify the Speaker of the Assembly for the purpose of convening the Joint Session of the Band Assembly.
- (c) The Joint Session of the Band Assembly shall convene within ten (10) consecutive days after receipt of the decision of the hearing officer for the purpose of entering judgment for the discipline or removal of the officer who is the subject of the proceeding.
- (d) The officer shall appear before the Joint Session of the Band Assembly to enter into the record any final comments within the limits of relevancy and propriety.
- (e) The Joint Session of the Band Assembly shall, by two-thirds majority vote, render its final decision on the recall of the appointed officer. No appeal from the final decision of the Joint Session of the Band Assembly shall be available.
- (f) In the event the hearing officer rules in favor of the appointed officer, the Chief Executive shall reinstate the commission of the appointed officer within 72 hours after entry of findings and conclusions of law.
- (g) For purposes of proceedings to recall an appointed officer, just cause shall mean:
  - (1) any alleged violation of the Code of Ethics of the Non-Removable Mille Lacs Band of Ojibwe, or allegations of facts which, if true, would constitute malfeasance, misfeasance, or nonfeasance in office, or any other violation of the Code of Ethics,
  - (2) the issuance of formal criminal charges against an appointed officer by any court of competent jurisdiction,
  - (3) a violation of the oath of office; and

- (4) the unauthorized release of the privileged communications of the Band, either written or oral.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 14.

### **Cross References**

Capital Improvements Authority, removal of Board members, *see* 12 MLBS § 203.

Code of ethics, establishment, *see* 2 MLBS § 9.

Housing Authority, removal of Board members, *see* 12 MLBS § 311.

Public Works Commission Board of Supervisors, *see* 12 MLBS § 102.

Removal of elected officials or appointees, *see* 3 MLBS § 28.

### **§ 16. Legal Counsel.**

The Non-Removable Mille Lacs Band of Ojibwe shall have both Interior and Exterior legal counsel:

- (a) The Interior Legal Counsel of the Band shall be known as the Solicitor General. The duly-appointed and confirmed Solicitor General shall be a member of the bar association of the Non-Removable Mille Lacs Band of Ojibwe and shall represent the interest of the Executive Branch and the Band Assembly in all matters before the Court of Central Jurisdiction.
- (b) The Exterior Legal Counsel in and for the Non-Removable Mille Lacs Band of Ojibwe shall be a lawyer or legal firm of the choice of the Chief Executive upon the advice and consent of the Band Assembly. The said Exterior Legal Counsel in and for the Band shall be a person or persons licensed to practice law in any state court of the United States or in any federal court of the United States. The Exterior Legal Counsel shall be employed pursuant to the provisions of a contract approved by the Secretary of Interior pursuant to the provisions of 25 U.S.C. § 81. The Exterior Legal Counsel may represent the interests of the Non-Removable Mille Lacs Band of Ojibwe in any matter before any court including the Court of Central Jurisdiction.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1141-MLC-2, § 31.

### **§ 17. Appointment of Solicitor General.**

- (a) The Chief Executive shall nominate and forward to the Band Assembly for confirmation the name of a competent and duly qualified individual of high honor and integrity to serve as the Solicitor General of the Non-Removable Mille Lacs Band of Ojibwe.
- (b) The Solicitor General shall serve a four-year term of office commencing May 1, 1987, and on this date every four (4) years hence.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 15.

### **Cross References**

Department of Justice members, *see* 24 MLBS § 1053.

### **§ 18. Duties of Solicitor General.**

The Solicitor General shall have the following responsibilities, obligations and authority on behalf of the Non-Removable Mille Lacs Band of Ojibwe:

- (a) to represent the interests of the Non-Removable Mille Lacs Band of Ojibwe in all legal proceedings in the Court of Central Jurisdiction and all other exterior courts of competent jurisdiction,
- (b) to independently uphold the laws and Executive, Legislative, Secretarial and Commissioner's Orders, judicial determinations, policies, and the terms of domestic assistance grants and contracts of the Band when consistent with the Constitution of the Minnesota Chippewa Tribe and the laws of the Non-Removable Mille Lacs Band of Ojibwe,
- (c) to initiate and defend any legal action necessary, that is or can be brought in or against the name of the Non-Removable Mille Lacs Band of Ojibwe, to uphold the provisions of the Constitution of the Minnesota Chippewa Tribe and the laws of the Band, or to protect the rights of the enrolled members of the Band,
- (d) to interpret all laws and Executive, Legislative, Secretarial and Commissioner's Orders and policies on behalf of the Non-Removable Mille Lacs Band of Ojibwe,
  - (1) All said interpretations shall be titled in the form of Opinion of the Solicitor General, consecutively numbered, dated as to the date of issuance, and contain the official seal of the Band.

- (2) All said Opinions of the Solicitor General shall have the force of law and shall be binding until annulled by the Court of Central Jurisdiction or amended pursuant to Legislative Order of the Band Assembly.
- (e) to aid in drafting public bills, resolutions, orders, policies, or amendments thereto on the request of the Chief Executive, Speaker of the Assembly, or the Chief Justice; and
- (f) to advise and assist the Chief Executive, the Band Assembly or the Court of Central Jurisdiction in the achievement of a clear, faithful, and coherent expression of the laws and policies of the Non-Removable Mille Lacs Band of Ojibwe as prescribed by the standards of the office of Solicitor General in 4 MLBS § 19.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 16.  
 Band Ordinance 08-21, § 1.

### **Cross References**

Annulment of Solicitor General opinions, *see* 3 MLBS §20.  
 Commercial practices, representation by Solicitor General, *see* 18 MLBS § 7.  
 Consolidated Nay-Ah-Shing School Board, Solicitor General obligations, *see* 9 MLBS § 28.  
 Department of Justice, powers and duties of Solicitor General, *see* 24 MLBS § 1054.  
 Employee Credit Union, representation by Solicitor General, *see* 17 MLBS § 14.  
 Environmental protection, Civil actions, *see* 11 MLBS § 17 et seq.  
 Liberal construction of law, *see* 11 MLBS § 31.  
 Great Lakes Indian Fish and Wildlife Compact, obligations of Solicitor General, *see* 2 MLBS § 1108.  
 Human Resources Division cases, obligations of Solicitor General, *see* 8 MLBS § 16.  
 Motor vehicle licensing law, implementation by Solicitor General, *see* 19 MLBS § 1.  
 Motor vehicles, representation by Solicitor General, *see* 19 MLBS § 13.  
 Tobacco products, revocation, cancellation or suspension of license of distributor or retailer, *see* 22 MLBS § 211.  
 Use of information, commercial practices, *see* 18 MLBS § 9.  
 Violation of Solicitor General's Opinions, *see* 24 MLBS § 1212.

### **§ 19. Legal Standards of Office of Solicitor General.**

- (a) The Solicitor General shall have the duty of advocating whatever position he or she concludes is required by Band Statute in the event of any conflicts within the Executive branch or between the Executive and Legislative branches of Band government. The Solicitor General shall maintain an attorney-client relationship with respect to all communications between her or him and the Chief Executive and any member of the Band Assembly.

- (b) The Solicitor General's first duty under law is to uphold the laws of the Non-Removable Mille Lacs Band of Ojibwe and the confidentiality of communications between the Chief Executive and members of the Band Assembly and the Solicitor General.
- (c) In the event that litigation or representation in litigation is requested by any Executive Officer, the Solicitor General shall notify the Speaker of the Assembly and afford her or him an opportunity to object to the legal service requested. The Speaker of the Assembly shall have five (5) days from the date of notification to respond. In the event that the Speaker shall object to the request or fail to respond, the Solicitor General shall independently consider the merits of the issue based solely upon the applicable laws of the Band and notify both parties as to her or his representation decision.
- (d) In the event that litigation or representation in litigation is requested by the Speaker of the Band Assembly, the Solicitor General shall notify the Chief Executive and afford her or him an opportunity to object to the legal service request. The Chief Executive shall have five (5) days from the date of notification to respond. In the event that the Chief Executive shall object to the request, or fail to respond, the Solicitor General shall independently consider the merits of the issue based solely upon the applicable laws of the Band and notify both parties as to her or his representation decision.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 17.

### **§ 20. Legal Responsibilities of Solicitor General in Capacity of Prosecutor.**

The Solicitor General, in a criminal case, shall:

- (a) make no prosecution that he or she knows is not supported by probable cause,
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, a legal officer, and has been given reasonable opportunity to obtain a legal officer,
- (c) not seek to obtain from an unrepresented accused a waiver of important civil rights, including procedural rights; and
- (d) make timely disclosure to the legal officer for the accused all evidence of information known by the Solicitor General that tends to negate the guilt of the accused or mitigates the offense and, in connection with sentencing, disclose to the legal officer

for the accused and the Court all unprivileged mitigating circumstances known to the Solicitor General.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 18.

### **Cross References**

Criminal procedure, *see* 24 MLBS § 4001 et seq.

Equal protection and due process of law, *see* 1 MLBS § 8.

Individual rights during judicial proceedings, *see* 1 MLBS § 6.

Self-incrimination in criminal proceeding, *see* 1 MLBS § 4.

### **§ 21. Immunity of Solicitor General.**

The Solicitor General shall be immune from civil liability arising from the true and faithful performance of her or his lawful acts and deeds in the Court of Central Jurisdiction or any other court of competent jurisdiction.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 19.

### **Cross References**

Suits against Band officials, *see* 24 MLBS § 701.

### **§ 22. Office Commissions.**

No appointed and confirmed officer of the Non-Removable Mille Lacs Band of Ojibwe shall exercise any powers of the office to which they were appointed unless and until they have received an official commission executed by the Chief Executive and witnessed by the Speaker of the Assembly. All said commissions shall state the date of expiration of the commission.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 20.

### **§ 23. Letters of Credence.**

No appointed officers of the Executive Branch shall represent to any other person the interests of the Non-Removable Mille Lacs Band of Ojibwe, unless he or she shall first exhibit a letter of credence executed by the Chief Executive and witnessed by the Speaker of the Assembly. All said letters of credence shall state the date of expiration.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 21.

#### **Cross References**

Letters of credence, *see* Exec. Orders 031, 032.

### **§ 24. Executive Privilege and Immunity.**

- (a) The Chief Executive shall be immune from liability brought against her or him for acts performed or remarks made or spoken in the lawful conduct of Band affairs. Proceedings of confidential meetings with her or his advisors and subordinates and confidential communications of the Chief Executive are privileged and not subject to disclosure. This shall not, however, preclude judicial review, in the proper case, of the constitutionality or legality of acts and decisions taken by the Chief Executive, nor shall it preclude any proper removal hearing in accordance with the provisions of Article X of the Constitution of the Minnesota Chippewa Tribe.
- (b) Executive privilege shall not extend to any appointed officer of the Non-Removable Mille Lacs Band of Ojibwe. Such officers shall, however, be immune from personal liability for acts performed in good faith in the scope of their official duties.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 22.

#### **Cross Reference**

Suits against Band officials, *see* 24 MLBS § 701.

### **§ 25. Interpretation of Title.**

Should there be any doubt as to the proper interpretation of any part of this Title, the Chief Executive may submit such question to the Solicitor General who shall give her or his written opinion thereon, and any such opinion shall be binding unless annulled, in whole or part, by the Court of Central Jurisdiction, or amended by the Band Assembly pursuant to enactment of law.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 23.

### **§ 26. Construction of Title.**

The Solicitor General and the Court of Central Jurisdiction shall liberally construe the provisions of this Title so as to provide for achievement of the purposes thereof.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1142-MLC-3, § 24.

## **TITLE 5 – JUDICIAL BRANCH**

<b><u>Chapter</u></b>	<b><u>Section</u></b>
<b>1. Judicial Organization</b>	<b>1</b>
<b>2. Judicial Authority and Jurisdiction</b>	<b>101</b>
<b>3. RESERVED</b>	<b>-</b>
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### **CHAPTER 1**

### **JUDICIAL ORGANIZATION**

**Section**

- 1. Court of Central Jurisdiction; Composition.**
- 2. Court of Central Jurisdiction; Constituent Courts and Leadership.**
- 3. Composition of Court of Appeals.**
- 4. Composition of District Court.**
- 5. Appointment and Terms of Office of Justices.**
- 6. Chief Justice; Election and Term of Office.**

- 7. District Court Judge and Associate Judges; Appointments and Term of Office.**
- 8. Vacancy in Court of Central Jurisdiction.**
- 9. Qualifications of Justices.**
- 10. Qualifications of District Judge and Associate Judges.**
- 11. Removal or Discipline of Justices and Judges.**
- 12. Salaries of Justices.**
- 13. Official Seal.**
- 14. Convening Schedule of District Court.**
- 15. Fines and Bonds.**

### **§ 1. Court of Central Jurisdiction; Composition.**

All judicial authority of the Non-Removable Mille Lacs Band of Ojibwe shall be vested in the Court of Central Jurisdiction. The Court of Central Jurisdiction shall be composed of the Justices and Judges of the Court of Central Jurisdiction, the Clerk of Court, Court Administrator and other judicial employees.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 7.

#### **Cross References**

Court staff, *see* 5 MLBS § 107.

### **§ 2. Court of Central Jurisdiction; Constituent Courts and Leadership.**

The Court of Central Jurisdiction shall consist of the District Court and the Court of Appeals of the Non-Removable Mille Lacs Band of Ojibwe and as otherwise provided for by law and shall be led by the Chief Justice who shall serve as the leader of the Court of Central Jurisdiction.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 7.01.

### **§ 3. Composition of Court of Appeals.**

The Court of Appeals shall be composed of one (1) Chief Justice and two (2) Associate Justices.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 7.02.

#### **§ 4. Composition of District Court.**

The District Court shall be composed of one (1) District Court Judge and such other Associate District Court Judges as necessary.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC4, § 7.03.  
Band Ordinance 39-19.

#### **§ 5. Appointment and Terms of Office of Justices.**

- (a) The terms of office of the three (3) Justices of the Court of Appeals shall be for six (6) years. Any Justice may be disciplined or removed for cause pursuant to 3 MLBS § 25.
- (b) The Justices shall be nominated by the Chief Executive, who shall submit the nomination to Band Assembly. Band Assembly shall upon receipt of the nomination confirm or reject the nomination within 30 days. There shall be one (1) justice from each of the three (3) respective districts of the Mille Lacs Band.
- (c) The Justice from the Nay-Ah-Shing District shall serve a six-year term expiring August 15, 1996 and on this date every six (6) years hence. The Justice from the Game-ta-wa-ga-gi-moog District shall serve a six-year term expiring August 30, 1998 and on this date every six (6) years hence. The Justice from the Ah-sho-moog District shall serve a six-year term expiring August 15, 2000 and on this date every six (6) years hence.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 12.

#### **Cross References**

Designation of Band districts, *see* MLBS § 11.

#### **§ 6. Chief Justice; Election and Term of Office.**

The Justices of the Court of Appeals shall elect from among themselves the Chief Justice who shall then serve a four-year term as Chief Justice expiring August 30, 1996 and on this date every four (4) years hence.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 12.03.

### **§ 7. District Court Judge and Associate Judges; Appointment and Terms of Office.**

- (a) The District Court Judge and the Associate Judges shall be nominated by the Chief Executive who shall submit the nomination to Band Assembly. Band Assembly shall upon receipt of the nominations confirm or reject the nominations within 30 days.
- (b) The District Court Judge shall serve a six-year term expiring August 15, 1 996 and on this date every six (6) years hence.
- (c) The Associate Judges shall each serve a four-year term expiring August 30, 2024 and on this date four (4) years hence.
- (d) The District Court Judge or Associate Judges may be disciplined or removed for cause pursuant to 3 MLBS § 25.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 12.04, 12.05.  
Band Ordinance 39-19.

### **§ 8. Vacancy in Court of Central Jurisdiction.**

- (a) Should the Chief Justice temporarily become unable to perform the duties of office those powers and duties shall devolve upon the Senior Associate Justice, until such disability is removed.
- (b) Whenever an Associate Justice of the Court is unable to perform the duties of office, those powers and duties shall devolve upon a Special Magistrate, until such disability is removed or another justice is appointed and sworn in.
- (c) In the event a Justice or Judge is unable to complete their term of office that position will be filled by nomination from the Chief Executive subject to ratification by Band Assembly.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 13.

## **Cross References**

Special Magistrate, *see* MLBS § 108.

### **§ 9. Qualifications of Justices.**

- (a) Any person who is nominated as a justice of the Court of Central Jurisdiction shall meet the following qualifications:
  - (1) Shall be an enrolled member of the Non-Removable Mille Lacs Band of Ojibwe, and;
  - (2) Shall have reached the chronological age of 21, and;
  - (3) Shall have graduated from high school or obtained an equivalent degree, or be at least 55 years old, and;
  - (4) Shall be knowledgeable of the Constitution of the Minnesota Chippewa Tribe, the laws of the Non-Removable Mille Lacs Band of Ojibwe and the unwritten customs and traditions of the Band, and;
  - (5) Shall be a person of honor, integrity and good moral character as evidenced by letters of recommendation from four (4) elders of the Band who are not related within the first degree to the person nominated for office.
- (b) No person shall be nominated as a justice in the event said person shall have been convicted of a felony or if that person has been convicted of a gross misdemeanor within seven (7) years.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 14.

### **§ 10. Qualifications of District Judge and Associate Judges.**

- (a) Shall have graduated from an accredited law school and be in good standing of a state bar.
- (b) Shall have never been convicted of a felony or gross misdemeanor and if convicted for such while seated as a judge shall be subject to removal pursuant to 3 MLBS § 25.

### **Historical and Statutory Notes**

**Source:**

**§ 11. Removal or Discipline of Justices and Judges.**

- (a) A Joint Session of the Band Assembly, pursuant to 3 MLBS § 27, may remove or discipline any justice or judge of the Court for just cause associated with a violation of the Judicial Code of Ethics of the Non-Removable Mille Lacs Band of Ojibwe or a violation of Article X, § 2(a), (b), (c), (d) and (e) of the Constitution of the Minnesota Chippewa Tribe or for any felony, gross misdemeanor or a second misdemeanor conviction while holding office, excluding minor traffic offenses or a criminal conviction in the Court of Central Jurisdiction.
- (b) No Justice of the Court of Central Jurisdiction shall be removed or disciplined without due process of law.
- (c) The following procedures shall apply to all removal or disciplinary proceedings of Justices or Judges:
  - (1) The removal process shall be by a Joint Session with the Speaker of the Band Assembly presiding. The Judge/Justice may be represented by counsel during the process and shall have the right to call witnesses and present evidence on their behalf and shall be advised of the charges against them.
  - (2) Following questioning by the hearing officer, the witness may make additional comments within the limits of relevancy and propriety. Any other party or legal representative may question the witness. A witness may be recalled at the discretion of the hearing officer if additional questions are raised.
  - (3) Hearings are to be held upon at least 72 hours advance notice to the parties. A continuance may be granted for good cause at the discretion of the hearing officer. Hearings shall be informal and there may be as many sessions as deemed necessary by the Joint Session to enable review of all the evidence.
  - (4) The decisions of the Joint Session, whether interim or final shall be in writing and shall contain the following:
    - (i) The name of the party;
    - (ii) The date of the hearing;
    - (iii) The facts established by the evidence;
    - (iv) The decision of the Joint Session, including the remedy being given.

- (d) The decision of the Joint Session on any removal or disciplinary action shall be final.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 21.

### **Cross References**

Due process of law, *see* 1 MLBS § 8.

Joint Session of Band Assembly, *see* 3 MLBS § 27.

## **§ 12. Salaries of Justices.**

- (a) The salary for the Associate Justices of the Court of Appeals shall be as established by Band Assembly appropriation.
- (b) The Chief Justice may recommend to the Band Assembly adjustments to salaries based upon recommendations contained in an annual report of the Judiciary, current and anticipated caseloads, and the general business conditions existing in the court.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 18.

## **§ 13. Official Seal.**

- (a) The official seal of the Court of Central Jurisdiction shall be affixed to all official documents of the Court. Any document of the Court of Central Jurisdiction without the official seal shall have no legal force and effect.
- (b) The official seal of the Court of Central Jurisdiction shall be at all times kept in a secure location.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 31.

### **Cross References**

Seal, judicial authority, *see* 5 MLBS § 110.

## **§ 14. Convening Schedule of District Court.**

The District Court of the Mille Lacs Band of Ojibwe shall regularly convene in District III, at least one (1) day in every two (2) week period; District II, at least one (1) day in every two (2) week period and District I, at all other times.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 36.

### **§ 15. Fines and Bonds.**

All moneys paid into the Court of Central Jurisdiction, or received by the Clerk of Court, in any case pending or adjudicated, shall be forthwith deposited with the Office of Management and Budget, in the name of the Court of Central Jurisdiction.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 30.

## **CHAPTER 2**

### **JUDICIAL AUTHORITY AND JURISDICTION**

#### **Section**

- 101. Judicial Authority.**
- 102. Writs, Judgments, and Orders.**
- 103. Cultural Causes of Action; Panel of Elders' Decisions.**
- 104. Powers of Construction and Interpretation.**
- 105. Rules.**
- 106. Regulation of Practice of Law.**
- 107. Court Staff.**
- 108. Special Magistrate.**
- 109. Contracts, Grants, Bequests, Donations, or Gifts.**
- 110. Seal.**
- 111. Subject Matter Jurisdiction.**
- 112. Persons Subject to Criminal Jurisdiction.**
- 113. Personal Jurisdiction.**
- 114. Duties of Chief Justice.**
- 115. Oath for Band Offices.**
- 116. Duties of Individual Justices and Judges.**
- 117. Responsibilities of Individual Justices and Judges.**

**118. Continuing Education.**

**119. Immunity for Justices and Judges.**

**§ 101. Judicial Authority.**

Except as otherwise provided for by law the Court of Central Jurisdiction shall have all judicial authority extending to cases in law and equity. The Court of Central Jurisdiction shall have all powers necessary for carrying into execution its judgments and determinations in order to promote the general welfare, preserve and maintain justice, and to protect the rights of all persons under the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe.

**Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 8.

**Cross References**

Functions of governmental authority, *see* 2 MLBS § 4.

**§ 102. Writs, Judgments, and Orders.**

The Court of Central Jurisdiction shall have the power to issue writs of habeas corpus, judgments, orders requiring conduct, orders prohibiting conduct, certification of appeals or any other writs as are necessary in the furtherance of justice.

**Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 8.03.

**§ 103. Cultural Causes of Action; Panel of Elders' Decisions.**

The Court of Central Jurisdiction shall have the authority to enter as a judgment and order a decision made by a panel of elders in a Cultural Cause of Action between Band members as defined by 24 MLBS § 601 et seq.

**Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 8.10.

**§ 104. Powers of Construction and Interpretation.**

The Court of Central Jurisdiction shall have the power to construe and interpret statutes, legal instruments, records, decisions, or legal process applicable or pertaining to or emanating from the Non-Removable Mille Lacs Band of Ojibwe, when brought before the Court.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 8.08.

### **§ 105. Rules.**

- (a) The Court of Central Jurisdiction shall have the power to prescribe by general rules, the forms of process, writs, pleadings, rules of evidence and motions and the practice and procedure of the District Court and Court of Appeals of the Mille Lacs Band in civil actions and criminal actions and appeals therein, such rules shall not abridge, enlarge or modify the substantive rights of any person.
- (b) Such rules shall not take effect until 90 days after they have been reported to the Band Assembly by the Chief Justice during a regular session of the Band Assembly and shall not abridge the right of Band Assembly to enact, modify, or repeal any statute or modify or repeal any rule of the Court of Central Jurisdiction pursuant thereto.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, §§ 8.01, 8.02.

### **§ 106. Regulation of Practice of Law.**

The Court of Central Jurisdiction shall have the power to prescribe rules governing the admission of individuals to practice law and to prescribe rules governing conduct in the practice of law, and rules concerning the presentation, hearing and determination of accusations against individuals practicing law. Such rules shall not be inconsistent with the laws of the Mille Lacs Band.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 8.04.

### **§ 107. Court Staff.**

The Court of Central Jurisdiction shall have the power to appoint a Clerk of Court, Court Administrator or any other court staff as may be required and to prescribe the necessary duties and responsibilities of those positions not inconsistent with Mille Lacs Band law.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 8.05.

#### **§ 108. Special Magistrate.**

The Court of Central Jurisdiction shall have the power to appoint a law trained individual to serve as a Special Magistrate as needed to hear cases at such times as the interests of justice require independent or supplementary judicial review. A Special Magistrate shall have all authority conferred upon any other justice or judge of the Court of Central Jurisdiction.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 8.06.

#### **§ 109. Contracts, Grants, Bequests, Donations, or Gifts.**

The Court of Central Jurisdiction shall have the power to contract with and to receive grants, bequests, donations or gifts for the enhancement of the judiciary of the Mille Lacs Band and to apply the same to the purpose designated. All said contracts, grants, bequests, donations or gifts may be accepted or entered into by the Court by and with the advice and consent of the Band Assembly in accordance with applicable Band law.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 8.07.

#### **§ 110. Seal.**

The Court of Central Jurisdiction shall have the power to adopt a seal which shall be used to authenticate judgments, orders, opinions and other court papers. The form of the seal and regulation of the seal's use shall be specified by court rules.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 8.09.

### **Cross References**

Official seal, judicial organization, *see* 5 MLBS § 13.

## **§ 111. Subject Matter Jurisdiction.**

- (a) The Court of Central Jurisdiction shall have jurisdiction over all civil and criminal matters where all parties are Indians within the jurisdiction of the Court. The Court of Central Jurisdiction shall have civil jurisdiction over non-Indians in all cases as provided in Section 113 of this Chapter. The Court shall have jurisdiction pursuant to the laws of the United States of America. The Court shall have jurisdiction over contracts made with the Non-Removable Mille Lacs Band of Ojibwe, or any of its political subdivisions or entities, for services to be performed within the territorial jurisdiction of the Band, except as such jurisdiction may be otherwise limited by Band Statute.
- (b) The Court of Central Jurisdiction is hereby granted exclusive original jurisdiction over all criminal or civil causes of action, involving any person, where such grievance or dispute arises concerning any property personal or otherwise, located on lands or contiguous waters subject to the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe.
- (c) The Court of Central Jurisdiction shall have subject matter jurisdiction over any cause of action that may arise from unwritten cultural law or a violation thereof. The Court of Central Jurisdiction however, in the exercise of its authority to enforce all provisions of unwritten cultural law and upon the authority it possess as to accord equal justice shall give full force and effect to 24 MLBS Chapter 1 , if the provisions of that chapter are not inconsistent with any custom or cultural law heretofore or hereafter in place in the determination of cultural causes of action arising pursuant to any statute of the Non-Removable Mille Lacs Band of Ojibwe.
- (d)
  - (1) The Court of Central Jurisdiction shall have jurisdiction over all civil matters in which the Non-Removable Mille Lacs Band of Ojibwe, any of its political subdivisions or entities, or its officers, appointees or employees are parties in their official capacity. Nothing herein shall be construed as a waiver of sovereign immunity of the Band unless specifically authorized in accordance with Band law or by specific Band Statute.
  - (2) The Court of Central Jurisdiction has exclusive jurisdiction over all suits in which Band officials are defendants where declaratory and equitable relief is sought.
- (e) The District Court of the Court of Central Jurisdiction shall have original jurisdiction over all criminal and civil matters except as otherwise provided for by law.

- (f) The Court of Appeals shall have original jurisdiction over election disputes pursuant to the Minnesota Chippewa Tribal Election Ordinance and on issues certified to the Court of Appeals from foreign jurisdictions.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1092-MLC-25, § 16.  
Band Statute 1130-MLC-51, T. I, § 6.  
Band Statute 1303-MLC-4, § 9-11.  
Band Ordinance 08-93.

### **Cross References**

Change of name, authority of Court, *see* 8 MLBS § 801.  
Civil causes of action, exclusive original jurisdiction, *see* 24 MLBS § 2.  
Commercial practices, jurisdiction, *see* 18 MLBS § 5.  
Commissioner of Finance, subject matter jurisdiction of Court of Central Jurisdiction, *see* 22 MLBS § 113.  
Concurrent civil jurisdiction with United States Courts, *see* 24 MLBS § 3.  
Criminal offenses, subject matter jurisdiction, *see* 24 MLBS § 4002.  
Education, subject-matter jurisdiction, *see* 9 MLBS § 29.  
Employee Credit Union, jurisdiction of Court, *see* 17 MLBS § 18.  
Federation Cultural Resources Board, review of decisions, *see* 10 MLBS § 119.  
Firewood harvest, jurisdiction, *see* 11 MLBS § 2412.  
Gasoline and petroleum products excise tax, subject matter jurisdiction, *see* 22 MLBS § 315.  
Housing Authority, jurisdiction, *see* 12 MLBS § 31.  
Motor vehicles, subject matter jurisdiction, *see* 19 MLBS § 12.  
Natural Resource Protection Code, jurisdiction, *see* 11 MLBS § 2601.  
Procurement, subject matter jurisdiction, *see* 7 MLBS § 48.  
Prohibited drugs, subject matter jurisdiction, *see* 23 MLBS § 9.  
Property disputes, jurisdiction, *see* 21 MLBS §§ 3, 4.  
Sales and use taxes, subject matter jurisdiction, *see* 22 MLBS § 516.  
Tobacco excise taxes, subject matter jurisdiction, *see* 22 MLBS § 221.  
Treaty usufructuary rights, implementation, subject matter jurisdiction, *see* 2 MLBS § 1104.  
Uniform Commercial Code, jurisdiction, *see* 18 MLBS § 301.

### **§ 112. Persons Subject to Criminal Jurisdiction.**

The Court of Central Jurisdiction shall have criminal jurisdiction over Mille Lacs Band members and non-member Indians alike and as may otherwise be prescribed by law.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 9.01.

### **Cross References**

Criminal procedure, jurisdiction over persons, *see* 24 MLBS § 4003.  
Enrolled members exercising usufructuary rights in ceded territory, jurisdiction, *see* 2 MLBS § 1151.

### **§ 113. Personal Jurisdiction.**

The Court of Central Jurisdiction shall have civil jurisdiction over any person, corporation, business organization or other private entity that:

- (a) Transacts business with any member of the Band within the territorial jurisdiction of the Band;
- (b) Engages in any activity which results in injury or property damage within the territorial jurisdiction of the Mille Lacs Band;
- (c) Engages in any activity which results in a dispute over the ownership, use, possession or interest in any property within the territorial jurisdiction of the Band;
- (d) Contracts to insure any person, property, corporation, business organization or risk located within the territorial jurisdiction of the Band;
- (e) Enters into a written or verbal sales or service agreement within the territorial jurisdiction of the Mille Lacs Band or where performance of the agreement is to be within the territorial jurisdiction of the Mille Lacs Band;
- (f) Engages in conduct that may affect the environment or territories under the jurisdiction of the Band or affects the natural resources of the Band or threatens the health, safety, peace or welfare of Mille Lacs Band or inhabitants thereof.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 9.02.

### **Cross References**

Commercial practices, jurisdiction, *see* 18 MLBS § 5.

Concurrent jurisdiction with United States Courts, *see* 24 MLBS § 3.

Enrolled members exercising usufructuary rights in ceded territory, jurisdiction, *see* 2 MLBS § 1151.

Environmental protection, actions for declaratory or equitable relief, jurisdiction and service of process, *see* 11 MLBS § 20.

Native American veteran Direct Loan Program, unlawful detainer, *see* 12 MLBS § 115.

Nay-Ah-Shing School, admission of persons under Band jurisdiction, *see* 9 MLBS § 18.

### **§ 114. Duties of Chief Justice.**

The Chief Justice of the Court of Central Jurisdiction shall have the following Judicial and Administrative authority in exercising the judicial powers of the Band government:

- (a) To convene the Court of Appeals on the first Tuesday of February, June, September and November for the purpose of opening the general term of the Court. The Chief Justice may convene the Court of Appeals on special occasions at such time and locations as may be designated upon five (5) days written notice to the other justices prior thereto;
- (b) To present to the Band Assembly an annual State of the Judiciary Address on the second Tuesday of January of each calendar year;
- (c) To present to the Chief Executive and the Band Assembly information and recommendations for the improvement of the Judiciary;
- (d) To execute rules and policies of the Court consistent with the provisions of Band Statute for the orderly conduct of Court business as provided for by law,
- (e) To prepare a biennial appropriation request, for the court after consultation with the other Justices and Judges of the Court, and submit the request no later than September 1 of each odd numbered year;
- (f) To appoint a Special Magistrate in a proceeding, who has graduated from law school, in the interests of justice and in accordance with 5 MLBS § 108, when necessary.
- (g) To exercise all administrative duties necessary for the continued conduct of competent court operations.
- (h) To enter as a judgment and order determinations made in a Cultural Cause of Action.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 16.  
Band Ordinance 23-99, §§ 2, 6.

### **Cross References**

Juvenile detention and shelter care facilities, rules and regulations, *see* 8 MLBS § 15.

### **§ 115. Oath for Band Offices.**

The Chief Justice or in her or his absence any other Justice of the Court shall administer the following Oath of Office for Band Officials:

"I, \_\_\_\_\_, do hereby swear that I will support, honor, and respect the

Constitution of the Minnesota Chippewa Tribe and the laws of the Non-Removable Mille Lacs Band of Ojibwe and I will protect the rights of Band members and others under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indian, and that I will faithfully and impartially discharge the duties of the office to the best of my judgment and ability so help me gi chi ma ni do."

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 32.

### **Cross References**

Federation Cultural Resources Board, oath of office, *see* 10 MLBS § 106.

Official oath of office, *see* 2 MLBS § 8.

### **§ 116. Duties of Individual Justices and Judges.**

Individual justices and judges of the Court of Central Jurisdiction shall have the following authority:

- (a) To preserve and enforce order in their immediate presence, and in all proceedings when performing official duties.
- (b) To compel obedience to lawful directives and orders.
- (c) To compel attendance of persons called to testify in a proceeding as provided by law.
- (d) To administer oaths and affirmation to persons in proceedings before them and in any other circumstance where such shall be necessary in the exercise of Judicial powers or duties or where the law so requires an oath or affirmation.
- (e) To punish civilly or criminally, for contempt, any person, to assure the effective exercise of judicial authority.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 17.

### **§ 117. Responsibilities of Individual Justices and Judges.**

- (a) The individual justices and judges shall adopt by court order a code of judicial conduct and conform their conduct to the same.

- (b) A judge or justice who discloses any information relative to any pending case to the public-at-large may be subject to disciplinary action by the Joint Session.
- (c) No Justice, Judge or Special Magistrate shall be qualified to act as such in any case wherein he or she has any direct or indirect interest or wherein any relative once removed under cultural law by marriage is a party of interest in the proceeding.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, §§ 19, 22, 23.

### **Cross References**

Confidentiality, child support proceedings, see 8 MLBS § 2104.

### **§ 118. Continuing Education.**

The individual justices and judges shall attend a minimum number of legal education and training courses each year as provided for in the annual budget.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 19.01.

### **§ 119. Immunity for Justices and Judges.**

The justices and judges of the Court of Central Jurisdiction shall be immune from civil liability arising from judicial acts and deeds in the performance of their judicial duties.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1303-MLC-4, § 20.

### **Cross References**

Suits against Band officials, *see* 24 MLBS § 701.

## **CHAPTER 3**

## **RESERVED**

## CHAPTER 4

### FAMILY HEALING TO WELLNESS COURT

#### Section

**301. Findings and Determinations.**

**302. Purposes and Establishment.**

**303. Definitions.**

**304. Structure.**

**305. Eligibility.**

**306. Admission.**

**307. Monitoring.**

**308. Information.**

**309. Hearings.**

**310. Drug and Alcohol Testing.**

**311. Treatment Services.**

**312. Participant Services.**

**313. Termination.**

**314. Graduation.**

**315. Continuing Education.**

**316. Program Reporting.**

**317. Office of the Solicitor General.**

#### **§ 301. Findings and Determinations.**

- (a) The Band Assembly hereby finds that the purpose of this chapter is to bring together healing resources, cultural resources, and drug treatment by using a team approach to achieve the healing of the individual, the preservation and reunification of Band families, and the strengthening of Band communities.
- (b) The Band Assembly hereby finds that 24 MLBS § 2003 states that Zhawenimaa, to keep the people together as one (1), is the way of life of the Non-Removable Mille Lacs Band of Ojibwe. The Band's goal is to restore the circle of peace and harmony by helping those that come before the Court of Central Jurisdiction so that they may experience a good life and the Band will continue to survive.
- (c) The Band Assembly hereby finds that Band children and families impacted by substance abuse and mental health disorders are better served by a cooperative process grounded in Band culture and traditional teachings as an alternative to the usual court process.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-22.

**§ 302. Purposes and Establishment.**

- (a) **Voluntary Program.** The Family Healing to Wellness Court of the Non-Removable Mille Lacs Band of Ojibwe, Noojimo’wiigamig Inaawanidiwag, which means Healing Journey, is established as a voluntary program under 8 MLBS § 3001 et seq. to:
- (1) provide intensive services and more frequent court intervention to facilitate the reunification of Band families and to prevent the breakup of such families;
  - (2) improve the safety and well-being of children whose families are affected by substance abuse, trauma, and mental health conditions;
  - (3) prevent the prenatal exposure of infants to alcohol and controlled substances;
  - (4) expedite family reunification and reduce the lengths of children’s out-of-home placements;
  - (5) strengthen families’ indigenous cultural, traditional, and community ties;
  - (6) reduce recidivism rates of substance abuse and promote recovery; and
  - (7) develop future healthy generations of Band members by promoting health and wellness for participants, their families, and Band communities.
- (b) **Authorities.** The Family Healing to Wellness Court shall exercise its authority in accordance with this chapter and any rules it adopts pursuant to 5 MLBS § 105. The Family Healing to Wellness Court is empowered to issue all orders reasonably necessary to ensure the safety, well-being, and rehabilitation of individuals who come within or consent to its jurisdiction.
- (c) **Multidisciplinary Cultural Approach.** The Family Healing to Wellness Court shall use a multidisciplinary, collaborative, and culturally-based approach to serve Band families who are involved with the Band’s child protection system due to substance abuse and mental health needs.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 30-22.

**§ 303. Definitions.**

Unless otherwise provided in this section, all words in this chapter shall be construed according to their ordinary meaning. The following terms are defined for purposes of this chapter:

- (a) **“Ancillary Service”** means any type of aid, benefit, evaluation, support, treatment, or therapy that is provided to a participant by either a government or government-sanctioned entity that is not provided directly by the Family Healing to Wellness Court.
- (b) **“Applicant”** means any individual who has applied for admittance into the Family Healing to Wellness Court.
- (c) **“Band”** means the Non-Removable Mille Lacs Band of Ojibwe.
- (d) **“Case Manager”** means the primary trained person who assesses the needs of the participant and the participant’s family, when appropriate; links the participant to treatment and resources; ensures that services are appropriate; develops the wellness plan jointly with the participant; monitors program compliance; and communicates activities to the larger Healing Journey Team.
- (e) **“Case plan”** means a written document developed by the Band’s Family Services Department jointly with the parent, guardian, or custodian for the delivery of services to the family and the child who is the subject of a child protection case containing the components required by 8 MLBS § 3166.
- (f) **“Chemical dependency”** means the adaptation of neurons to repeated drug exposure resulting in the neurons only functioning normally in the presence of the drug.
- (g) **“Chemical dependency assessor”** means a clinician certified by the state of Minnesota to perform Rule 25 chemical assessments.
- (h) **“CHIPS”** or **“child protection case”** means a Child in Need of Protection or Services case filed with the Court of Central Jurisdiction pursuant to the definitions found under 8 MLBS § 3103(j).
- (i) **“Confidentiality”** means the ethical principle that a professional hold as secret all information relating to a patient, client, or participant unless the patient, client, or participant gives consent permitting disclosure.
- (j) **“Consequence”** means the court-ordered corrective action intended to improve behavior and increase motivation that must be completed by a non-compliant participant.
- (k) **“Controlled substance”** means any drug or chemical whose manufacture, possession, or use is regulated by the United States Food and Drug Administration.

- (l) **“Coordinator”** means an individual responsible for the overall management of the Family Healing to Wellness Court, which includes collecting data on overall participant completion rates and other performance measures needed for reporting and building relationships that are beneficial to the Family Healing to Wellness Court.
- (m) **“Court”** means the Band’s Court of Central Jurisdiction.
- (n) **“Court Administrator”** means an officer appointed by the Court to work with the Justices and Judges in overseeing the Court’s administration.
- (o) **“Custodian”** means one who has physical custody of a minor and who is providing food, shelter, and supervision to her or him.
- (p) **“Drug”** means a medicine or other substance which has a physiological effect when ingested or otherwise introduced into the body.
- (q) **“Evidence-based”** means that a medicine, treatment principles, or educational curriculum approach is backed by scientific evidence.
- (r) **“GC/MS”** means gas chromatography/mass spectrometry, which is an analytical method that combines the features of gas chromatography and mass spectrometry to identify different substances within a test sample.
- (s) **“Guardian”** means a person other than the minor’s parent who is by law responsible for that minor (but not the minor’s property).
- (t) **“Guardian Ad Litem”** means a person appointed by the Court to represent the child’s best interests before the Court
- (u) **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, a federal law that requires the creation of national standards to protect sensitive patient health information from being disclosed without the patient’s consent or knowledge.
- (v) **“Healing Journey”** means the Family Healing to Wellness Court program of the Non-Removable Mille Lacs Band of Ojibwe, also known as Noojimo’wiigamig Inaawanidiwag, established pursuant to § 302 of this chapter.
- (w) **“Healing Journey Team”** or **“Team”** means the group of individuals responsible for the day-to-day service delivery and activities of the Family Healing to Wellness Court in accordance with § 304(c) of this chapter.
- (x) **“Judge”** means either a District Court Judge or Associate Judge appointed pursuant to 5 MLBS § 7 or a Special Magistrate appointed pursuant to 5 MLBS § 108.

- (y) **“Justice”** means a Court official nominated by the Chief Executive and confirmed by the Band Assembly pursuant to 5 MLBS § 5.
- (z) **“LC/MS”** means liquid chromatography/mass spectrometry, which is a technique used to provide information about the molecular weight, structure, identity, and quantity of specific sample components.
- (aa) **“Medication Assisted Recovery”** means the use of medications, in combination with counseling and behavioral therapies, to treat substance abuse.
- (bb) **“Parent”** means a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.
- (cc) **“Participant”** means an individual who is admitted into the Family Healing to Wellness Court.
- (dd) **“Probation officer”** means a person appointed by law to supervise offenders on probation.
- (ee) **“Program”** means the Family Healing to Wellness Court of the Non-Removable Mille Lacs Band of Ojibwe, also known as the Healing Journey, Noojimo’wiigamig Inaawanidiwag, established pursuant to § 302 of this chapter.
- (ff) **“Psychotropic medication”** means a remedial or therapeutic substance that changes the nervous system function and results in alterations in perception, mood, consciousness, cognition, or behavior, e.g. a sedative.
- (gg) **“Post-Traumatic Stress Disorder”** means a condition in which a person has difficulty recovering after experiencing or witnessing a traumatic event.
- (hh) **“Reasonable suspicion”** means an objectively justifiable suspicion that is based on specific facts or circumstances.
- (ii) **“Sex crime”** means a category of offense that arises when violence occurs during a sexual act, when there is a lack of consent by one (1) party to the sexual act, or when someone engages in sexual activity with an individual who is legally incapable of consent, such as a child.
- (jj) **“Substance abuse”** means a pattern of harmful use of any drug for mood-altering purposes.
- (kk) **“Team meeting”** means a meeting of the Healing Journey Team, usually held just prior to participant court appearances, in which information about the participant’s drug-testing results, attendance and participation in required treatment and other required activities, and other relevant information is shared and updated.

- (ll) **“Treatment plan”** means a therapeutic strategy to address an individual’s substance abuse and mental health needs that may incorporate patient education, mental health services, dietary adjustment, an exercise program, drug treatment, traditional Ojibwe healing practices, involvement in cultural activities, and the participation of nursing and allied health professionals.
- (mm) **“Violent crime”** means a violent felony, crime of violence, or crime of a violent nature in which an offender or perpetrator uses or threatens to use harmful force upon a victim.”
- (nn) **“Violent offender”** means a person who:
  - (1) has been convicted of an offense that is punishable by a term of imprisonment exceeding one (1) year, during the course of which offense or conduct:
    - (i) the person carried, possessed, or used a firearm or dangerous weapon; or
    - (ii) there occurred the death of or serious bodily injury to any person; or
    - (iii) there occurred the use of force against the person of another, without regard to whether any of the circumstances described in subparagraph (i) or (ii) is an element of the offense; or
  - (2) has one (1) or more prior convictions for a felony crime involving the use or attempted use of force against a person with the intent to cause death or serious bodily or psychological harm.
- (oo) **“Wellness plan”** is a written document, based on an assessment of the circumstances necessitating the participant’s involvement with the Family Healing to Wellness Court, that is developed in collaboration with the participant that includes the components of the case plan, the treatment plan, and the program phase requirements.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-22.

**§ 304. Structure.**

The Family Healing to Wellness Court is structured to foster engagement by the establishment of the following:

- (a) **Oversight.** Oversight of the Family Healing to Wellness Court shall be provided by the Band’s Chief Executive, Chief Justice, Speaker of the Assembly, and District Representatives according to their statutorily defined duties.

- (b) **Steering Committee.** The District Court Judge shall establish a Steering Committee, which provides advice and guidance in the development of Healing Journey procedures and addresses any inconsistencies or gaps in the provision of necessary treatment or services.
- (c) **Healing Journey Team.** Designated Band judicial officers and court staff, a Deputy Solicitor General, defense counsel, cultural advisors, a Family Services social worker, guardians ad litem, service providers, and representatives of Band departments working with a participant and the participant’s family shall comprise a collaborative Healing Journey Team responsible for daily service delivery, participant monitoring, and the general operations of the program. When relevant and appropriate for a participant or family, the Healing Journey Team may also include school officials, language teachers, a tribal court peacemaker, peers in recovery, tribal law enforcement officers, and county social workers, probation agents, and parole officers.
- (d) **Phases.** The Healing Journey Team is empowered to establish the required components of the four (4) Family Healing to Wellness Court phases, which are:
  - (1) Tobacco (New Beginnings);
  - (2) Cedar (Personal Responsibility);
  - (3) Sage (Cooperation and Accountability); and
  - (4) Sweetgrass (Completion and Sharing).

**Historical and Statutory Notes**

**Source:**

Band Ordinance 30-22.

**§ 305. Eligibility.**

To be eligible to participate in the Family Healing to Wellness Court, the applicant must:

- (a) be a Band member or the parent, guardian, or custodian of a minor child who is either a Band member, a Band member descendant, or a child eligible to become a Band member in accordance with Band law;
- (b) be a respondent in a child protection case pending before the Court under 8 MLBS § 3001 et seq.;
- (c) be diagnosed with a substance abuse condition and be willing to comply with treatment recommendations;

- (d) never have been convicted of felony child abuse or be found at any time to be a violent offender;
- (e) never have been convicted of any sex crime within the preceding ten (10) years; and
- (f) be willing to execute a release of information to allow confidential information to be shared with the Healing Journey Team, ancillary service providers, and probation officers when appropriate.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-22.

### **§ 306. Admission.**

To be admitted into the Family Healing to Wellness Court, an applicant must file a petition. After the petition is filed with the Family Healing to Wellness Court, the Healing Journey Team shall review the petition according to a four-step process.

- (a) **Step 1.** The case manager shall meet with the applicant to verify eligibility. If the case manager determines that the applicant is eligible, the case manager shall refer the applicant to a chemical dependency assessor for a substance abuse assessment. The applicant shall execute a release of information authorizing the results of the evaluation to be shared with the Healing Journey Team. The case manager shall accept any previously completed substance abuse assessment that remains current.
- (b) **Step 2.** After completion of the evaluation and development of treatment recommendations, the chemical dependency assessor shall send a full report to the case manager. The Healing Journey Team shall thereafter meet to determine whether to recommend the applicant for admission into the Family Healing to Wellness Court by evaluating:
  - (1) the results of the substance abuse assessment;
  - (2) the contents of the Child in Need of Protection or Services petition;
  - (3) the applicant's history of criminal behavior and domestic violence, if any; and
  - (4) all other available information relevant to the applicant's fitness for participation in the Family Healing to Wellness Court.
- (c) **Step 3.** After the applicant is informed of her or his eligibility for the Family Healing to Wellness Court, the case manager must inform the applicant of the wellness plan, possible consequences of non-compliance, and other Healing Journey requirements.

Applicants may meet with legal counsel for the same purposes. If the applicant is indigent and unable to retain legal counsel, the Court shall appoint an attorney to represent the applicant, if funding allows.

- (d) **Step 4.** Upon a showing that the applicant has voluntarily agreed to the wellness plan and all Healing Journey requirements, the judge may issue an order admitting the applicant into the Family Healing to Wellness Court.
- (e) **Filing Deadline.** The petition for admission to the Family Healing to Wellness Court must be filed on or before 120 calendar days from the CHIPS petition's filing date unless the judge authorizes admission at a later date.
- (f) **CHIPS Trial Continued.** Once an applicant is admitted into the Family Healing to Wellness Court prior to adjudication, the District Court CHIPS trial shall be continued until the applicant graduates or is terminated from the Healing Journey. The Family Healing to Wellness Court may hold pre-trial and review hearings and issue orders as necessary for ongoing foster care funding and to ensure that the best interests of the child are being met.
- (g) **Re-admittance.** Any applicant previously terminated from the Family Healing to Wellness Court in accordance with § 313 of this chapter may not be re-admitted for a period of at least 30 days after termination.

### Historical and Statutory Notes

**Source:**

Band Ordinance 30-22.

### § 307. Monitoring.

- (a) **Wellness Plan Adherence.** After a participant is admitted into the Family Healing to Wellness Court, the case manager shall monitor the participant's adherence to the wellness plan and all other Healing Journey requirements. Monitoring may include, but is not limited to:
  - (1) regular meetings between the case manager and the participant;
  - (2) testing for alcohol and controlled substances;
  - (3) home visits;
  - (4) verification of participant's completion of phase requirements; and
  - (5) inquiries of treatment providers and probation or parole officers.

- (b) **Communication.** Healing Journey Team members and service providers operating within the Band government shall engage in ongoing communication with one another, including frequent exchanges of timely and accurate information about the participant's overall performance.
- (c) **Team meetings.** Members of the Healing Journey Team shall consistently attend team meetings to review participant progress, determine appropriate actions to improve outcomes, and prepare for status hearings. Team meetings are closed to participants and the public unless the Healing Journey Team determines that there is good cause for a participant to attend. With the participant's written consent, the Healing Journey Team may permit other persons to observe team meetings, provided that no identifying participant information shall be disclosed.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-22.

### **§ 308. Information.**

- (a) **Information Sharing.** Participants shall provide voluntary, informed, and written consent about what information will be shared between members of the Healing Journey Team. Participant consent shall be obtained through the execution of a release of information, which shall comport with HIPAA and 42 CFR, Part 2.
- (b) **Confidentiality.** Any statement made by a Family Healing to Wellness Court participant shall not be used against the participant in a subsequent adversarial proceeding, except that statements made by a participant which pertain to any mandatory reporting, such as abuse or neglect of a child or vulnerable adult, must be used in accordance with 8 MLBS § 3143. Substance use, mental health, and other professional evaluations of a terminated participant may also be used in a subsequent District Court proceeding. All other records of the Family Healing to Wellness Court are confidential and shall not be disclosed except to the members of the Healing Journey Team. The Court Administrator shall cause to be maintained a separate confidential file for an applicant or participant's Family Healing to Wellness Court records.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-22.

### **§ 309. Hearings.**

- (a) **Status Hearings.** The judge shall preside over status hearings for Healing Journey participants which shall be held on the schedule determined by the phases and as the Healing Journey Team determines necessary. Status hearings must be conducted in a strictly non-adversarial manner reflecting the Anishinaabe Values and adhering to the concept of Zhawenimaa. Matters to be considered at the hearing include:
- (1) whether the participant is attending required treatment sessions and is compliant with other components of the wellness plan;
  - (2) the participant's random alcohol and drug test results;
  - (3) the participant's own report of achievements made and challenges confronted; and
  - (4) the awarding of incentives for wellness plan progress; or
  - (5) the imposition of consequences for program non-compliance, after the participant has an opportunity to be heard regarding the non-compliant behavior.
- (b) **Judicial Decision-Making.** The judge shall make the final decision concerning the provision of incentives or imposition of consequences that affect a participant's program status after taking into consideration the recommendation of the other members of the Healing Journey Team and discussing the matter in court with the participant or the participant's legal counsel. The judge shall rely on the expert input of trained treatment professionals when imposing treatment-related conditions. If the judge believes that there is new evidence or other considerations that may affect the Healing Journey Team's initial recommendation, the judge shall confer with the rest of the team before providing an incentive or imposing a consequence other than the initial recommendation.
- (c) **Progressive Consequences.** Immediate, graduated, and individualized consequences shall govern the responses of the Healing Journey Team to each participant's noncompliance. Members of the Healing Journey Team shall consider recent and past behavior when responding to infractions. Consequences should be developed using a therapeutic approach, not a punitive approach, so as to encourage the participant's renewed program compliance.
- (d) **Opportunity to Respond.** The judge shall allow participants a reasonable opportunity to explain their perspectives concerning factual controversies and the imposition of consequences, incentives, and therapeutic adjustments. Participants shall receive a clear justification for why a particular consequence is being imposed. If a participant has difficulty expressing her or himself because of such factors as a language barrier, nervousness, or cognitive limitation, the judge shall permit the participant's legal counsel or representative to assist in providing such explanations.

- (e) **Non-Medical Use of Substances.** Consequences shall be imposed for the non-medically prescribed use of drugs, including alcohol, cannabis, and prescribed pharmaceuticals, regardless of the licit or illicit status of the drug. The Healing Journey Team shall rely on medical advice to determine whether a prescription for an addictive or intoxicating medication is medically indicated and whether non-addictive, non-intoxicating, and medically safe alternative treatments are available. Consideration shall be given to the use of traditional Ojibwe healing medicines.
- (f) **Incentives.** The Healing Journey Team shall place as much emphasis on incentivizing productive behaviors as it does on substance abuse and other infractions. Criteria for phase advancement and graduation shall include objective evidence that participants are completing the requirements of their wellness plans.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-22.

### **§ 310. Drug and Alcohol Testing.**

- (a) **Written Testing Procedures.** The Family Healing to Wellness Court shall have written policies and procedures governing sample collection, sample analysis, and result reporting for drug and alcohol testing. The testing policies and procedures shall address elements that contribute to the reliability and validity of the testing process. Urine specimens shall be routinely tested for evidence of dilution and adulteration.
- (b) **Notice of Testing.** Upon admittance to the Healing Journey, participants shall receive a clear and comprehensive explanation of their rights and responsibilities related to drug and alcohol testing.
- (c) **Random Testing.** All testing shall be random and conducted as needed in accordance with this chapter. Participants shall not receive more than an eight-hour notice of when a sample will be collected. For tests with short detection windows, such as oral fluid tests, specimens shall be provided within four (4) hours after notification.
- (d) **Confirmation Tests.** If a participant denies substance use in response to a positive screening test, a portion of the same specimen shall be subjected to confirmatory analysis using an instrumented test, such as GC/MS or LC/MS.
- (e) **Availability of Results.** Test results from an instant drug or alcohol screening shall be made available to the case manager within two (2) business days of administration. Results from a lab-tested screening shall be forwarded to the case manager as soon as practicable after receipt. When a positive test is received by the case manager, the Healing Journey Team shall be notified immediately.

- (f) **Refusal and Adulteration.** A participant's refusal to submit to testing, submission of a sample from another person, or production of an adulterated sample shall be treated as non-compliant behavior.
- (g) **Scope of Testing.** Drug or alcohol testing shall not be limited to a single drug of the participant's choice but shall regularly include a panel of drugs to detect a broad array of known drugs of use.
- (h) **Frequency of Testing.** The Healing Journey Team shall establish the required frequency of testing for each program phase with the understanding that, as a participant progresses, testing may be less frequent. An increase in the frequency of testing may be imposed upon the Healing Journey Team's reasonable suspicion of use or as a consequence for a participant testing positive for alcohol or prohibited drugs.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-22.

### **§ 311. Treatment Services.**

- (a) **Continuum of Care.** The Healing Journey Team shall provide prompt access to a continuum of substance abuse and medical and mental health services based on a clinical assessment of the participant's treatment needs.
- (b) **Participant's Goals.** The Healing Journey Team shall, in collaboration with the participant, set individualized short and long-term goals based on the participant's wellness plan. A participant's progress through the Family Healing to Wellness Court phases and an individual's progress through those phases shall not be based solely upon pre-set court timelines.
- (c) **Adjustments to the Level of Care.** Adjustments to the level of substance abuse treatment and other care shall be predicated on each participant's response to treatment and shall not be tied to the programmatic phase structure. If a participant relapses or uses alcohol or a prohibited drug, the Healing Journey Team shall develop a remedial plan together with the participant to regain and maintain sobriety.
- (d) **Individualized Treatment.** Healing Journey participants shall be matched to services according to their specific needs. Treatment plans shall be individualized for each participant based on the results of the initial assessment and ongoing assessments. Participants shall be reassessed at a frequency determined by the program and treatment plans may be modified or adjusted based on results.
- (e) **Provider Training and Credentials.** All chemical dependency and mental health treatment services shall be evidence-based and provided by licensed programs or individuals.

- (f) **Medication Assisted Recovery.** The Family Healing to Wellness Court may accept applicants taking medications to treat chemical dependency so long as the medication is prescribed by a trained and authorized addiction physician. The Family Healing to Wellness Court shall have policies specific to Medication Assisted Recovery and memoranda of understanding in place to ensure proper coordination with treatment and medical providers. The Healing Journey Team shall not require any participant to discontinue Medication Assisted Recovery unless clinical and medical assessment indicates that it is not appropriate for the participant or is no longer needed.
- (g) **Trauma-Informed Services.** Services provided to participants shall be trauma-informed when appropriate and clinically necessary to the degree that available resources allow. Participants shall be screened and assessed, as needed, for trauma history, trauma-related symptoms, and Post-Traumatic Stress Disorder.
- (h) **Concurrent Mental Health and Substance Abuse Treatment.** Mental health and substance abuse shall be treated concurrently using an evidence-based approach that focuses on mutually aggravating effects of the two (2) conditions, when recommended by appropriate providers.

### Historical and Statutory Notes

**Source:**

Band Ordinance 30-22.

### § 312. Participant Services.

- (a) **Healing Services.** The Healing Journey Team shall refer participants for treatment and social services to address conditions that are likely to interfere with their response to substance abuse or mental health treatment, diminish long-term treatment gains, or negatively impact their parenting abilities. Depending upon participant needs, services may include housing assistance, trauma-informed services, criminal-thinking interventions, individual, family, or interpersonal counseling, vocational or educational services, cultural and traditional education and activities, transportation, and medical or dental treatment. Participants shall only be required to receive services for which they have an assessed need.
- (b) **Psychotropic Medications.** Applicants shall not be denied admittance into the Family Healing to Wellness Court because they are receiving lawfully prescribed psychotropic medication. Participants shall receive psychotropic medication based on a determination of medical necessity or medical indication by a qualified medical provider. Participants shall not be required to discontinue lawfully prescribed psychotropic medication as a condition of graduating from the Family Healing to Wellness Court.

- (c) **Family Participation.** If a participant wishes to enlist the help and support of a family member or friend to assist with progress on the wellness plan, the participant may do so as long as the necessary releases of information are executed. If the participant's co-parent, co-guardian, or co-custodian who is also a respondent in the child protection matter, or the participant's child, objects to the requested family member or friend accessing confidential information, no such information shall be released to that person.
- (d) **Overdose Prevention and Referral.** As early in the Healing Journey as feasible, participants shall complete a brief evidence-based educational curriculum describing concrete measures they can take to prevent or reverse overdose or poisoning from opioids, other drugs, or alcohol.
- (e) **Peer Support.** Where appropriate and feasible, the Healing Journey Team shall incorporate peer recovery support services which may include referrals to peer recovery support programs and cultural groups, the establishment of alumni groups, and the training of Healing Journey graduates as peer recovery support specialists.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-22.

### **§ 313. Termination.**

- (a) **Grounds for Termination.** A participant may be terminated from the Family Healing to Wellness Court for any of the following reasons:
  - (1) persistent non-compliance or lack of progress on her or his wellness plan, non-compliance with Healing Journey requirements, drug test tampering, or lack of progress in treatment;
  - (2) commission of a violent crime, a crime endangering the safety or welfare of a child, or a crime committed in furtherance of the participant securing alcohol or other prohibited drugs;
  - (3) evidence indicating that the participant is involved with the dealing of controlled substances or driving while under the influence of an intoxicant;
  - (4) any threatening, abusive, or violent behavior;
  - (5) hostile, threatening, or disrespectful conduct towards the Healing Journey Team or other participants; or
  - (6) any other conduct for which the Healing Journey Team deems termination to be an appropriate remedy.

- (b) **Recommendation to Terminate.** If the Healing Journey Team believes that a participant's conduct is grounds for termination from the Family Healing to Wellness Court, the Team shall:
- (1) deliberate and obtain consensus on whether the participant should be terminated;
  - (2) put into writing the termination recommendation and supporting rationale; and
  - (3) provide a copy of the termination recommendation to the participant and the participant's legal counsel, if any.
- (c) **Termination Hearing.** Upon the filing of the Healing Journey Team's written recommendation to terminate the participant from the Healing Journey, the judge shall:
- (1) schedule the matter for a hearing and provide the participant and participant's legal counsel with notice of the hearing; and
  - (2) after conducting the hearing, issue a written order that terminates the participant from the Healing Journey; or
  - (3) if during the hearing, the judge receives evidence or is made aware of other considerations that may warrant not terminating the participant, after recessing the hearing to consult with the Healing Journey Team, may issue an order declining to terminate the participant from the Healing Journey.
- (d) **Evidentiary Hearing.** If the judge finds that an evidentiary hearing is necessary to determine whether to terminate a participant from the Healing Journey, the Office of the Solicitor General shall serve as the prosecutor.
- (e) **Return to CHIPS Process.** When a participant is terminated from the Healing Journey, the participant's child protection matter shall resume under the usual procedures set forth by 8 MLBS § 3101 et seq.

### Historical and Statutory Notes

**Source:**

Band Ordinance 30-22.

### § 314. Graduation.

- (a) **Eligibility for Graduation.** Upon a participant's successful completion of all four (4) phases of the Healing Journey and the components of the participant's wellness plan, the Healing Journey Team may recommend the participant's graduation.

- (b) **Graduation Ceremony.** Upon the Healing Journey Team’s recommendation for a participant’s graduation, the case manager shall assist the successful participant to plan a graduation ceremony to be held following the final status hearing. The participant shall decide which individuals to invite to the ceremony, if any.
- (c) **Final Status Hearing.** A final status hearing will be held at which the Healing Journey Team’s recommendation for the participant’s graduation may be accepted by the Court. If the judge accepts the recommendation, then the Court shall issue an order finding that the participant has successfully completed the Healing Journey.
- (d) **Graduation Certificate.** At the final status hearing, the judge shall issue a graduation certificate to the participant and provide a copy of the certificate to the Office of the Solicitor General. The Healing Journey Team should be prepared to offer comments and may give culturally meaningful gifts or tokens to the graduating participant.
- (e) **Dismissal of CHIPS Case.** Upon receipt of the copy of the participant’s graduation certificate, the Office of the Solicitor General shall promptly file a motion to dismiss the participant’s CHIPS case in the District Court, where it shall be granted.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-22.

#### **§ 315. Continuing Education.**

Members of the Healing Journey Team shall attend continuing education workshops at least every other year to gain up-to-date knowledge about best practices on relevant topics, including substance abuse and mental health treatment, complementary treatment and social services, behavior modification, community supervision, drug and alcohol testing, team decision-making, and emerging legal issues in tribal Healing to Wellness Courts. Whenever available, the Healing Journey Team shall receive training on promising practices that incorporate Mille Lacs Band or other tribal culturally-informed approaches to the treatment of substance abuse and mental health disorders.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-22.

#### **§ 316. Program Reporting.**

The Family Healing to Wellness Court shall submit a comprehensive report to the Band Assembly no later than January 15th of each year, detailing the number of participants during the

prior calendar year, the respective outcomes, and any other information that is reasonably necessary to assess the Family Healing to Wellness Court’s impact on Band communities. All information reported shall contain only non-identifying data to maintain the confidentiality of Healing Journey participants.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 30-22.

**§ 317. Office of the Solicitor General.**

For all purposes of this chapter, the Office of the Solicitor General’s sole client shall be the Band’s Family Services department.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 30-22.

**TITLE 6 – GOVERNMENT EMPLOYEES**

<u>Chapter</u>	<u>Section</u>
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4. Fringe Benefits	1131
5. Ethics Code	1151
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**CHAPTER 1**

**PERSONNEL POLICY AND PROCEDURES**

Section

1. Adoption and Amendment of Personnel Policy and Procedures Manual.
2. Exempt Personnel.
3. American Indian Preference.
4. Employee and Appointee Trade Transactions.

## **§ 1. Adoption and Amendment of Personnel Policy and Procedures Manual.**

- (a) The Mille Lacs Band of Ojibwe Personnel Policy and Procedures Manual dated January 6, 2010, is hereby adopted and made applicable to all employees of the Mille Lacs Band of Ojibwe and its agencies and subdivisions except as provided in section 2 of this Chapter 1. Hereafter, it shall be the duty of the Human Resources Department, Commissioner of Administration, Assistant Commissioner of Administration, and Solicitor General's Office, in consultation with Legislative Counsel to ensure that the Band's Personnel Policy and Procedures Manual is amended on an annual basis or, as needed, to comply with federal and Band law and Band policy. Such amended Personnel Policy and Procedures Manual shall be approved by duly enacted legislation of the Band Assembly prior to implementation.
- (b) The Mille Lacs Band of Ojibwe Personnel Policies and Procedures Manual, as amended and approved on February 21, 2024, are hereby adopted. A copy of the revised Personnel Policies and Procedures Manual shall be attached as Exhibit A to the Act which is enacting it.

### **Historical and Statutory Notes**

#### **Source:**

Band Ordinance 14-10, Title I, § 1.  
Band Ordinance 33-12, § 2.  
Band Ordinance 21-22.  
Band Act 60-23.  
Band Act 16-24.

## **§ 2. Exempt Personnel.**

- (a) The Mille Lacs Band of Ojibwe Personnel Policy and Procedure Manual applies to all Mille Lacs Band employees with the following exceptions who are specifically exempt:
  - (1) The Chief Executive;
  - (2) Secretary-Treasurer/Speaker of the Assembly;
  - (3) District Representatives;
  - (4) Elected members of the Nay Ah Shing School Board when acting in their official capacity;
  - (5) Employees of the Corporate Commission and its subsidiaries;
  - (6) Employees of the Gaming Regulatory Authority;

- (7) Employees of the MLBO Police Department, except the administrative staff working within this department are not exempt;
  - (8) Department of Natural Resources enforcement staff when he or she is assisting the Mille Lacs Band Police Department; and
  - (9) Employees hired under contract for a particular purpose.
- (b) Appointed officials of the Band are subject to all provisions in the MLBO Personnel Policy and Procedures Manual except to the extent those provisions conflict with other applicable provisions of Band law.
- (c) According to 9 MLBS § 6, elected Nay-Ah-Shing School Board members are subject to removal from office as determined by 3 MLBS § 25.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 14-10, Title I, § 1.  
Band Ordinance 33-12, § 1.  
Band Ordinance 23-14.

### **§ 3. American Indian Preference.**

- (a) The American Indian preference provisions in the MLBO Personnel Policy and Procedures Manual shall be construed in a manner that is consistent with the requirements of Chapter 4 of Title 15 of the Mille Lacs Band Statutes Annotated (the Band’s Indian Employment Rights Ordinance or “TERO”) and shall supersede all other provisions of Band law.
- (b) Assuming equal qualifications, the Personnel Policy and Procedures Manual provides American Indian preference will be given in employment recruitment, hiring, promotions, training and development in the following order:
- (1) Band Members, defined as enrolled members of the Mille Lacs Band of Ojibwe Indians;
  - (2) Other Indians, defined as enrolled members of any other federally recognized tribe; and
  - (3) All others.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 14-10, Title I, § 1.

Band Ordinance 15-14, Title I, § 1.

**§ 4. Employee and Appointee Trade Transactions.**

No employee or appointee of the Band shall be allowed to have any personal interest or concern in any business that sells services or goods to any Band entity, except as authorized with written permission by the Chief Executive.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 14-10, Title I, § 1.

**CHAPTER 2**

**SENIOR EXECUTIVE STAFF POLICIES**

**Section**

**1001. Payroll.**

**1002. Salary Status.**

**1003. Travel Mileage – [REPEALED].**

**1004. Per Diem – [REPEALED].**

**1005. Fringe Benefits – [REPEALED].**

**1006. Effect of Resignation or Removal – [REPEALED].**

**1007. Avoiding Conflict of Interest.**

**§ 1001. Payroll.**

- (a) The Mille Lacs Band Assembly has determined that each appointed member of the government shall have a payroll check prepared after they submit and sign an authorized time sheet.
- (b) The Mille Lacs Band Assembly has determined their payroll is to be issued each Friday at 10:00 a.m. for the previously ended pay period of Friday.

**Historical and Statutory Notes**

**Source:**

Band Statute 1099-MLC-8, Gov. Pol., §§ 1, 1.2.

**§ 1002. Salary Status.**

- (a) All appointed members of the government are on salary.

- (b) Compensatory time shall not be available for Senior Executive Staff appointees of tribal government.

**Historical and Statutory Notes**

**Source:**

Band Statute 1099-MLC-8, Gov. Pol., §§ 1.3, 1.4.

**§ 1003. Travel Mileage.**

[REPEALED].

**Historical and Statutory Notes**

**Source:**

Band Ordinance 39-98, § 2.

**§ 1004. Per Diem.**

[REPEALED].

**Historical and Statutory Notes**

**Source:**

Band Ordinance 39-98, § 2.

**§ 1005. Fringe Benefits.**

[REPEALED].

**Historical and Statutory Notes**

**Source:**

Band Ordinance 45-98, § 2.

**§ 1006. Effect of Resignation or Removal.**

[REPEALED].

**Historical and Statutory Notes**

**Source:**

Band Ordinance 45-98, § 2.

**§ 1007. Avoiding Conflict of Interest.**

- (a) Senior executive staff appointees of tribal government shall not use their appointed position for their own personal financial benefit or financial benefit of family members.
- (b) Appointed officials of tribal government shall not order the preparation of any type of check in which they/or an immediate family are to be the payee.
- (c) Senior executive staff appointees of tribal government shall not be loaned program/corporate funds under any circumstance provided that all programs follow the same policy.

**Historical and Statutory Notes**

**Source:**

Band Statute 1099-MLC-8, Gov. Pol., §§ 4.03-4.05.

**CHAPTER 3**

**TRAVEL POLICIES**

**Section**

**1101. Purpose.**

**1102. Definitions.**

**1103. Interpretation.**

**1104. Per Diem; Elected Officials Traveling on Business.**

**1105. Per Diem; Appointed Officials Traveling on Official Business.**

**1106. Mileage and Related Allowances.**

**1107. Allowable Travel Expenses.**

**1108. Airfare.**

**1109. Advancements and Deductions.**

**1110. Application of this Chapter.**

**§ 1101. Purpose.**

This Chapter is intended to establish a body of law governing travel for Elected Officials and Appointed Officials of the Mille Lacs Band of Ojibwe. The purpose of this Chapter is to provide a uniform set of regulations governing travel that will allow officials of the Band to represent the interests of the Band to the best of their abilities and to manage resources of the Band effectively and responsibly.

## Historical and Statutory Notes

### Source:

Band Ordinance 39-98, § 1.

### § 1102. Definitions.

- (a) **Actual Expenses.** Out of pocket expenses paid by a traveler when traveling on official Band business that may be reimbursed to the traveler.
- (b) **Appointed Officials.** For purposes of this Chapter appointed officials of the Mille Lacs Band shall include but not be limited to, the Commissioner of Administration, the Assistant Commissioner of Administration, the Commissioner of Education, the Commissioner of Finance, the Commissioner of Health and Human Services, the Commissioner of Community Development, the Commissioner of Natural Resources, the Solicitor General, the Justices and Judges of the Court of Central Jurisdiction or any other person designated as a Senior Executive Staff employee.
- (c) **Elected Officials.** For purposes of this Chapter elected officials shall be the Chief Executive, the Secretary-Treasurer of the Band Assembly, and the District Representatives of the Band Assembly.
- (d) **Joint Resolution.** A resolution adopted by the Band Assembly that requires the concurrence of the Chief Executive to have the effect of law and which shall remain in effect until altered by the enactment of law or joint resolution.
- (e) **Misconduct.** Shall include but not be limited to unlawful behavior or other intentional and wrongful behavior other than negligence or carelessness.
- (f) **Necessary Expense.** An expense that is helpful and appropriate in assisting a traveler in the performance of their duty. An expense does not have to be essential to be considered necessary.
- (g) **Per Diem.** A payment made to a traveler for daily subsistence incurred for travel instead of payment made for the actual expense for subsistence while on travel.
- (h) **Senior Executive Staff.** All individuals employed by the Mille Lacs Band or a political subdivision having the status of Senior Executive Staff, as designated by their personnel file, and who are not otherwise designated as Appointed Officials including but not limited to the Deputy Assistant to the Chief Executive.
- (i) **Subsistence.** Lodging, meals, and other incidental expenses for the personal sustenance and comfort of the traveler.

## **Historical and Statutory Notes**

**Source:**

Band Ordinance 39-98, § 3.

### **§ 1103. Interpretation.**

The provisions of this Chapter shall be interpreted and applied liberally to accomplish the purpose of this Chapter and if a court of competent jurisdiction adjudges any section, provision or portion invalid, the remainder of the Chapter shall not be affected thereby.

## **Historical and Statutory Notes**

**Source:**

Band Ordinance 39-98, § 4.

### **§ 1104. Per Diem; Elected Officials Traveling on Official Business.**

(a)

- (1) Under provisions prescribed by this Chapter, an elected official, when traveling on official Band business shall be entitled to any of the following:
  - (i) Per Diem at a rate not to exceed that established by joint resolution of the Band Assembly including:
    - (A) Lodging for elected officials traveling on behalf of the Band which shall be paid for with a Band credit card not to exceed an amount established by joint resolution of the Band Assembly;
    - (B) Elected officials shall receive payment for meals and incidentals at a rate pre-determined by joint resolution.
  - (ii) Reimbursement for the actual and necessary expenses of official travel not to exceed an amount established by joint resolution of the Band Assembly; or
  - (iii) Combination of payments described in subparagraphs (i) and (ii) of this paragraph.

- (2) For travel consuming less than ten (10) hours in a single day, the payment prescribed shall be as set forth pursuant to this Chapter.

(b)

- (1) Under the provisions set forth in this Chapter, an elected official who abandons the travel assignment prior to its completion:

- (i) Because of an incapacitating illness or injury is entitled to reimbursement for expenses of transportation to the elected officials designated post of duty, or home, as the case may be, and to payments pursuant to paragraph (a) of this section until that location is reached; or
- (ii) Because of a personal or family emergency (such as but not limited to serious illness, injury, or a death, or an emergency situation), the official shall be entitled to incur additional expenses to return to the designated post of duty or home, as the case may be.

(2)

- (i) Under provisions of this Chapter, an elected official who, interrupts the travel assignment prior to its completion for a reason specified in subparagraph (1) of subparagraph (i) of this paragraph, may be allowed (subject to the limitation provided in this section);
  - (A) To incur transportation expenses to the location where necessary medical services are provided or the emergency situation exists;
  - (B) Payments pursuant to paragraph (a) of this section until that location is reached; and
  - (C) Reimbursement and payments or to incur expenses for the return to such assignment or location.
- (ii) The amount of additional expenses an elected official may incur, pursuant to subparagraph (2) shall be the elected official's actual cost of transportation to the location where necessary medical services are provided or the emergency exists, and return to assignment from such location, less the cost of transportation which the elected official would have incurred had such travel begun and ended at the elected official's designated post of duty, or home, as the case may be. The payments which an elected official may be allowed pursuant to

subparagraph (A) of this paragraph shall be based on the additional time (if any) which was required for the elected official's transportation as a consequence of the transportation having begun and ended at a location on the travel assignment rather than at the elected official's designated post of duty, or home, as the case may be.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 39-98, § 5.

### **§ 1105. Per Diem; Appointed Officials Traveling on Official Business.**

(a)

- (1) Under provisions prescribed in this Chapter, an appointed official, when traveling on official business from the appointed official's designated post of duty, or away from home, is entitled to any of the following;
  - (i) Per Diem at a rate not to exceed that established pursuant to paragraph (c) of this section or as otherwise amended by joint resolution; or
  - (ii) Reimbursement for the actual and necessary expenses of official travel not to exceed an amount established pursuant to this Act or as amended by joint resolution of the Band Assembly; or
  - (iii) Combination of payments described in subparagraphs (i) and (ii) of this paragraph.
  - (iv) Lodging for appointed officials traveling on behalf of the Band which shall be paid for with a Band credit card not to exceed an amount established by joint resolution.
- (2) For travel consuming less than ten (10) hours in a single day, the payment prescribed shall be as set forth in paragraphs (c) and (d) of this section.

(b)

- (1) Under the provisions set forth in this Chapter, an appointed official who abandons their travel assignment prior to its completion;
  - (i) Because of an incapacitating illness or injury which is not due to an appointed official's own misconduct is entitled to reimbursement for

expenses of transportation to the appointed official's designated post of duty, or home, as the case may be, and to payments pursuant to paragraph (a) of this section until that location is reached; or

- (ii) Because of a personal or family emergency (such as but not limited to serious illness, injury, or a death or an emergency situation), the official shall be entitled to incur additional expenses to return to the appointed official's designated post of duty or home, as the case may be.

(2)

- (i) Under provisions prescribed in this Chapter, an appointed official who, interrupts the travel assignment prior to its completion for a reason specified in this section, may be allowed (subject to the limitation provided in subparagraph (ii) of this paragraph)-

- (A) To incur transportation expenses to the location where necessary medical services are provided or the emergency situation exists;

- (B) Payments pursuant to paragraph (a) of this section until that location is reached; and

- (C) Reimbursement and payments or to incur expenses for the return to such assignment.

- (ii) The reimbursement which an appointed official may be allowed pursuant to this subparagraph shall be the appointed official's actual costs of transportation to the location where necessary medical services are provided or the emergency exists, and return to assignment from such location. The payments which an appointed official may be allowed pursuant to subparagraph (i) of this paragraph shall be based on the additional time (if any) which was required for the appointed official's transportation as a consequence of the transportation having begun and ended at a location on the travel assignment (rather than at the officials designated post of duty, or home, as the case may be).

- (c) The Mille Lacs Band determines that the per diem rate for appointed officials shall be at the same rate that the United States General Service Administration prescribes for federal employees, on a quarter basis, unless otherwise prescribed by joint resolution.

- (d) Common carrier transportation shall be utilized for trips with a destination in excess of 200 miles from the appointed official's post of duty or home, when it is in the best interest of the Band to do so.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 39-98, §§ 6, 11(a)(1).

### **§ 1106. Mileage and Related Allowances.**

- (a)
  - (1) Under provisions prescribed by this Chapter or as amended by joint resolution, an elected or appointed official traveling on official business for the Band is entitled to an established mileage rate instead of the actual expense of transportation, for the use of a privately owned vehicle when that mode of transportation is authorized or approved as more advantageous to the Band.
  - (2) Under provisions prescribed by this Chapter or as amended by joint resolution, an elected or appointed official traveling on official business for the Band is entitled to an established rate per mile, instead of the actual expense of transportation, for the use of a privately owned airplane or motorcycle when that mode of transportation is authorized or approved as more advantageous to the Mille Lacs Band.
- (b) A determination that travel by a privately owned vehicle is more advantageous to the Band is not required under this section when payment on a mileage basis is limited to the actual cost of travel by common carrier including per diem.
- (c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, in any case in which an elected or appointed official who is engaged on official business for the Band chooses to use a Band owned vehicle in lieu of a privately owned vehicle, payment on a mileage basis is limited to the actual expense of travel when not otherwise paid for by the Band.
- (d) In addition to the rate per mile authorized under paragraph (a) of this section, the elected or appointed official may be reimbursed for:
  - (1) Parking fees; and
  - (2) Ferry fees; and

- (3) Bridge, road, and tunnel costs; and
- (4) Airplane landing and tie-down fees.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 39-98, § 7.

### **§ 1107. Allowable Travel Expenses.**

- (a) Except as otherwise permitted by this Chapter only actual and necessary travel expenses will be allowed for an elected or appointed official including but not limited to:
  - (1) Expenses for business related telephone or fax usage;
  - (2) Reasonable, actual costs for use of physical fitness facilities;
  - (3) The actual cost for transportation for governmental purposes when at the destination location such as but not limited to taxi fares, bus fares or car rentals and valet which shall not exceed a rate prescribed by law or as amended by joint resolution of the Band Assembly;
  - (4) The actual cost of cleaning or dry-cleaning clothes not to exceed an amount prescribed by Band law or as amended by joint resolution of the Band Assembly;
  - (5) The expense of personal phone calls while on travel in excess of ten (10) hours not to exceed 15 minutes per day on any individual trip; and
  - (6) Other actual and necessary expenses that may arise from time to time.
- (b) An elected or appointed official traveling on official business is expected to exercise reasonable care in incurring expenses. Excess costs, circuitous routes, delays, or luxury accommodations and services unnecessary or unjustified in the performance of official business are not acceptable under this standard. Individual officials will be responsible for excess costs and any unnecessary expenses incurred for personal preference or convenience as determined by review of post-trip travel expense statements pursuant to § 1109(d) of this Chapter.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 39-98, § 9.

**§ 1108. Airfare.**

Rates for elected and appointed officials are to be based on coach except in the following instances:

- (a) The rates do not exist or are unavailable within a reasonable time; or
- (b) Less than first class would result in a higher cost because of routing, time urgency, or other unavoidable reasons; or
- (c) Physical condition of the traveler necessitates use of the first-class travel.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 39-98, § 13.

**§ 1109. Advancements and Deductions.**

- (a) The Office of Management and Budget may advance, through the proper disbursing official, to an elected or appointed official entitled to per diem or mileage allowances under this Chapter, a sum considered advisable with regard to the character and probable duration of the travel to be performed based upon a pre-trip request form.
- (b) Any elected or appointed official of the Mille Lacs Band when requesting a travel advance pursuant to paragraph (a) of this section must complete a pre-trip travel expense statement which shall include the following information:
  - (1) Name and title of the person requesting advance travel payment; and
  - (2) The date the post-trip expense form is submitted to the Office of Management and Budget; and
  - (3) Destination and purpose of the travel along with supporting documentation; and
  - (4) Method of transportation used; and
  - (5) Signature of the traveler; and
  - (6) Appropriate authorizing signature of;

- (i) The Chief Executive or Commissioner of Administration or other designee for Executive Branch Officials; or
    - (ii) The Secretary-Treasurer or designee for Legislative Branch Officials; or
    - (iii) The Chief Justice or designee for Judicial Branch Officials;
  - (7) The estimated travel cost based on the number of quarters of per diem claimed and other estimated travel expenses.
- (c) Notwithstanding any provisions to the contrary in this Chapter, a trip of ten (10) hours or less occurring entirely in one (1) calendar day by an appointed official is not eligible for advance payments.
- (d) Any elected or appointed official when receiving Band funds for travel shall submit a post-trip travel expense statement which shall include the following information:
- (1) The name and title of the person traveling; and
  - (2) The date the post-trip expense form is submitted to the Office of Management and Budget; and
  - (3) The destination and purpose of the travel; and
  - (4) The method of transportation used; and
  - (5) The signature of the traveler; and
  - (6) The appropriate authorizing signature of;
    - (i) The Chief Executive or the Commissioner of Administration or designee for Executive Branch Officials;
    - (ii) The Secretary-Treasurer or designee for Legislative Branch Officials;
    - (iii) The Chief Justice or designee for Judicial Branch Officials;
  - (7) The traveler must account for all advanced payments received pursuant to paragraph (a) of this section except for meals and incidentals and provide receipts in order to be reimbursed for any other allowable expenses.

- (e) Post-trip travel expense statements are due in the Office of Management and Budget within (30) consecutive days following the completion of the travel.
- (f) A sum advanced or not used for allowable travel expenses is recoverable from the official or her or his estate by;
  - (1) Set off against accrued pay, retirement credit, or any other amount due the official;
  - (2) Deduction from any amount due from the Mille Lacs Band; and
  - (3) Such other method as provided for by law.
- (g) The Band may recover any travel funds or disallowed expenditures following the date the post-trip statement is due. Five (5) working days prior to the initiation of any recovery process for funds due the Band, the Secretary-Treasurer or designee shall give written notice of any such recovery process to the official.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 39-98, §§ 8, 10, 11(a)(2), 12.

**§ 1110. Application of this Chapter.**

Elected and appointed officials are prohibited from receiving travel payments or reimbursements for travel other than by the provisions of this chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 39-98, § 14.

**CHAPTER 4**

**FRINGE BENEFITS**

**Subchapter**

- 1. Elected Officials**
- 2. Appointed Officials**

**Section**

- 1131**
- 1141**

# SUBCHAPTER 1

## ELECTED OFFICIALS

### Section

**1131. Purpose.**

**1132. Definitions.**

**1133. Allowable Fringe Benefits.**

### **§ 1131. Purpose.**

This Subchapter is intended to amend the body of law governing fringe benefits for Elected Officials of the Mille Lacs Band of Ojibwe. The purpose of this Subchapter is to provide regulations governing fringe benefits that support and recognizes the service of Elected Officials of the Mille Lacs Band of Ojibwe.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 47-98, § 1.

### **§ 1132. Definitions.**

- (a) **Annual Leave.** For purposes of this Subchapter, annual leave shall include annual and personal leave days authorized by this Subchapter.
- (b) **Service.** The amount of time an Elected Official has been on the payroll of the Mille Lacs Band of Ojibwe as an Elected Official.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 47-98, § 3.

### **§ 1133. Allowable Fringe Benefits.**

- (a) Elected Officials shall accrue annual and sick leave based upon the number of years of service completed. Such leave shall be available at the beginning of each fiscal year. Leave for Elected Officials who assume office prior to the beginning of a new fiscal year shall be prorated based upon the number of full weeks that the Elected Official will work during that fiscal year.

	<b>0-4 Yrs.</b>	<b>5-8 Yrs.</b>	<b>9-12 Yrs.</b>	<b>13+ Yrs.</b>
<b>Annual Leave</b>	272 hrs.	288 hrs.	336 hrs.	400 hrs.

**Sick Leave**                      160 hrs.                      160 hrs.                      160 hrs.                      160 hrs.

- (b) Elected Officials may carryover up to 160 hours of annual leave and up to 160 hours of sick leave.
- (c) Elected Officials may be paid at the salary rate appropriate for all or any portion of their unused annual leave that they may have accrued, whether accumulated as an official or an employee of the Band.
- (d) Should an Elected Official resign or be removed from office that official may be paid for unused annual leave that has been carried over from the previous year. Elected Officials may also be paid for annual leave for the current fiscal year prorated to the number of weeks in office.
- (e) Elected Officials shall notify the Office Management and Budget prior to the end of the fiscal year how they wish to utilize any unused leave. If an Official chooses to be paid for any of their unused annual leave, OMB shall make such payment within ten (10) working days of receiving notice.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 47-98, § 4.

**SUBCHAPTER 2**

**APPOINTED OFFICIALS**

**Section**

**1141. Purpose.**

**1142. Definitions.**

**1143. Allowable Fringe Benefits.**

**§ 1141. Purpose.**

This Subchapter is intended to amend the body of law governing fringe benefits for Appointed Officials of the Mille Lacs Band of Ojibwe. The purpose of this Subchapter is to provide regulations governing fringe benefits that support and recognizes the services of Appointed Officials of the Mille Lacs Band of Ojibwe.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 45-98, § 1.

**§ 1142. Definitions.**

- (a) **Appointed Officials.** For purposes of this Subchapter, Appointed Officials of the Mille Lacs Band shall include but not be limited to; the Commissioner of Administration, the Assistant Commissioner of Administration, the Commissioner of Education, the Commissioner of Finance, the Commissioner of Health and Human Services, the Commissioner of Community Development, the Commissioner of Natural Resources, the Deputy Assistant, the Solicitor General, the District Court Judge or any other person designated as a Senior Executive Service employee.
- (b) **Annual Leave.** For purposes of this Subchapter, annual leave shall include annual and personal leave days authorized by this Subchapter.
- (c) **Service.** The amount of time an Appointed Official has been on the payroll of the Mille Lacs Band of Ojibwe as an Appointed Official.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 45-98, § 3.

**§ 1143. Allowable Fringe Benefits.**

- (a) Appointed Officials shall accrue annual and sick leave based upon the number of years of service completed. Such leave shall be available at the beginning of each fiscal year. Leave for Appointed Officials who assume office prior to the beginning of a fiscal year shall be prorated based upon the number of full weeks that the Appointed Official will work during that fiscal year.

	<b>0-4 Yrs.</b>	<b>5-8 Yrs.</b>	<b>9-12 Yrs.</b>	<b>13+ Yrs.</b>
<b>Annual Leave</b>	272 hrs.	288 hrs.	336 hrs.	400 hrs.
<b>Sick Leave</b>	160 hrs.	160 hrs.	160 hrs.	160 hrs.

- (b) Appointed Officials may carryover up to 160 hours of annual leave and up to 160 hours of sick leave.
- (c) Appointed Officials may be paid at the salary rate appropriate for all or any portion of their unused annual leave that they may have accrued, whether accumulated as an official or an employee of the Band.
- (d) Should an Appointed Official resign or be removed from office that official may be paid for unused annual leave that has been carried over from the previous year. Appointed Officials may also be paid for annual leave for the current fiscal year prorated to the number of weeks in office.

- (e) Appointed Officials may choose to donate any portion of their sick leave beyond 120 hours to any band employee who has exhausted their own sick leave due to sickness or disability.
- (f) Appointed Officials shall notify the Office Management and Budget prior to the end of the fiscal year how they wish to utilize any unused leave. If an Official chooses to be paid for any of their unused annual leave, OMB shall make such payment within ten (10) working days of receiving notice.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 45-98, § 4.

## **CHAPTER 5**

### **ETHICS CODE**

#### **Section**

**1151. Purpose.**

**1152. Intent.**

**1153. Definitions.**

**1154. Conduct.**

**1155. Behavior.**

**1156 Conflicts of Interest.**

**1157. Prohibited Activities.**

**1158. Recording of Gifts.**

**1159. Public Relations.**

**1160. Complimentary Services.**

**1161. Unity.**

**1162. Authority.**

**1163. Responsibility.**

#### **§ 1151. Purpose.**

The intent of this code of conduct is to maximize trust between Mille Lacs Band officials and the people they serve. The conduct of elected and appointed officials of the Mille Lacs Band, whether on or off duty, which adversely reflects on the Mille Lacs Band of Ojibwe is within the scope of this code of conduct.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 19-98, Chapter 1, § 2.

#### **§ 1152. Intent.**

The intent of this code of conduct is to maximize trust between Mille Lacs Band officials and the people they serve. The conduct of elected and appointed officials of the Mille Lacs Band, whether on or off duty, which adversely reflects on the Mille Lacs Band of Ojibwe is within the scope of this code of conduct.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 19-98, Chapter 1, § 2.

### **§ 1153. Definitions.**

- (a) **Appointed Officials.** Means officials of the Mille Lacs Band, including but not limited to, the Commissioner of Administration, Assistant Commissioner of Administration, Commissioner of Corporate Affairs, Commissioner of Education, Commissioner of Community Development, Commissioner of Finance, Commissioner of Health and Human Services, Commissioner of Natural Resources, Solicitor General, staff members of the Office of the Chief Executive, the Justices and Judges of the Court of Central Jurisdiction, or any other person designated as a Senior Executive Staff employee or members of any board of an official Mille Lacs Band entity that are appointed by the Chief Executive or by Band Assembly members.
- (b) **Immediate Family.** Means a spouse, biological or adopted child, or members of the same household, or the mother, father, sister, or brother of the official.
- (c) **Elected Officials.** The Chief Executive, the Speaker of the Band Assembly, the District Representatives or members of any board of a Mille Lacs Band entity that are elected by Band members.
- (d) **Mille Lacs Band or Band.** The Mille Lacs Band of Ojibwe or any political subdivision thereof or any entity the majority of which is owned by the Band.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 19-98, Chapter 1, § 3.

### **§ 1154. Conduct.**

The conduct of elected and appointed officials of the Mille Lacs Band reflects on the character and integrity of the entire membership. Band officials should conduct themselves in a manner that does not discredit their position, the Band, or the people they represent. Officials with good character enhance the credibility of the Band.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 19-98, Chapter 1, § 4.

#### **§ 1155. Behavior.**

Officials of the Mille Lacs Band hold positions of honor and respect which place them in a position of high public visibility and provide them with the opportunity and responsibility to be positive role models for the people they serve today as well as for future generations.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 19-98, Chapter 1, § 5.

#### **§ 1156. Conflicts of Interest.**

It is the duty of all Mille Lacs Band officials to pursue and protect the best interests, needs, and welfare of the Band. Their personal interests or interests of their friends, immediate family, or businesses shall be subordinated to the larger, best interests of the Band. Basic honesty, sound judgment and common sense are requisite for avoiding conflicts of interest and perceived conflicts of interest.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 19-98, Chapter 1, § 6.

#### **§ 1157. Prohibited Activities.**

The following activities are prohibited:

- (a) Misusing public office or position for private or personal gain.
- (b) Attempting to make or influence Mille Lacs Band or political subdivision decisions outside official processes.
- (c) Voting or participating in official decisions in matters where the official has a personal or economic interest greater than that of other Mille Lacs Band members or employees.

- (d) Soliciting or accepting Mille Lacs Band contracts for work without going through the prescribed procurement process.
- (e) Making unauthorized commitments or promises of any kind purporting to bind the Mille Lacs Band.
- (f) Improperly using Band resources for private or personal gain.
- (g) Practicing or supporting unfair employment or business practices, such as but not limited to nepotism, harassment or retaliation.
- (h) Improperly using their position to coerce or attempt to coerce anyone in order to further their personal interests or the interests of immediate family.
- (i) Interfering or attempting to interfere or inappropriately influence the Court in a pending case or case that may go before the Court.
- (j) Hindering, interfering or attempting to interfere in any civil or criminal investigation conducted by an appropriate official having jurisdiction to perform such an investigation.
- (k)
  - (1) Soliciting or accepting any gift, gratuity or service with a value of more than \$100.00.
  - (2) An official shall not accept gifts, gratuities or services totaling in the aggregate more than \$500.00 in any fiscal year.
  - (3) Nominal gifts, gratuities or services with a value of less than \$25.00 will not be considered for purposes of subsection (k), paragraph (2).
- (l) Receiving compensation for work performed from any person or entity other than the Mille Lacs Band of Ojibwe or political subdivision thereof that could reasonably be perceived by band members as conflicting with Mille Lacs Band interests.
- (m) Knowingly or intentionally violating any other Mille Lacs Band statute.
- (n) Using a Band credit card for unauthorized purposes or personal reasons other than those expressly authorized by Band law.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 19-98, Chapter 1, § 7.

**§ 1158. Recording of Gifts.**

- (a) All elected and appointed officials of the Mille Lacs Band receiving gifts in goods or services in excess of \$25.00, whether intended as a gift to the official or to the Band, shall record or cause to be recorded such gift with the Band Assembly.
- (b) Any gift in excess of \$100.00 to an official may only be accepted as a gift to the Band.
- (c) Gifts in goods or services from family members or pursuant to the customs and traditions of the Band are exempt from the provisions of this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 19-98, Chapter 1, § 8.

**§ 1159. Public Relations.**

Good public relations require that Band officials cannot be separated from the people they were chosen to represent. They are bound, the same as other persons, to tell the truth, to respect individuals and their property, and to abide by the requirements of the law. An orderly society cannot exist if individuals can choose to follow only the laws with which they agree.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 19-98, Chapter 1, § 9.

**§ 1160. Complimentary Services.**

- (a) All elected and appointed officials are to pay for all services, that they receive, including meals, at any facility owned by the Band or any political subdivision thereof including the Corporate Commission of the Band except as expressly authorized under Band law.
- (b) Complimentary services may occur only under the following restrictions:
  - (1) When hosting vendors, potential vendors, dignitaries, officials of any non-Band government, guests of the Mille Lacs Band or for any other bona fide Mille Lacs Band governmental purpose; and

- (2) Under no circumstances shall Band officials provide complimentary services to another Band official or themselves unless governmental business is being transacted or another non-Band party is being hosted.
- (c) All complimentary slips shall contain the following:
- (1) name(s) of person(s) being hosted, if applicable;
  - (2) purpose/reason for the transaction;
  - (3) entity the guest represents if applicable;
  - (4) date;
  - (5) program budget to be charged which must have sufficient funds available;
  - (6) signature of the official authorizing the comp.
- (d) The Chief Executive, and Executive Officers as defined in 4 MLBS § 4 and as amended, as well as any full-time employee within the Executive Branch expressly authorized by the Chief Executive shall be permitted to sign complimentary slips.
- (e) The Secretary-Treasurer, District Representatives of the Band Assembly and the Commissioner of Finance as well as any full-time employee within the Legislative Branch expressly authorized by the Secretary-Treasurer shall be permitted to sign complimentary slips.
- (f) The Chief Justice as well as any full-time employee within the Judicial Branch expressly authorized by the Chief Justice shall be permitted to sign complimentary slips.
- (g) Any complimentary slip not authorized or in conformity with this Title or any other law of the Band may be recovered from the official or employee as the case may be or their estate by:
- (1) Set off against accrued pay, retirement credit, or any other amount do the official/employee;
  - (2) Deduction from any amount due from the Mille Lacs Band;
  - (3) Such other method as provided for by law.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 19-98, Chapter 1, § 10.

### **§ 1161. Unity.**

Dedication and cooperation inspire unity. Unity is essential in order to ensure the long-term survival of our culture, our people and our nation. In order to promote unity, Band officials must be committed to:

- (a) Demonstrating the highest standards of personal integrity, truthfulness and honesty in all their activities in order to inspire public confidence and trust.
- (b) Constructively promoting and supporting open communications with the membership and employees in a positive and professional manner.
- (c) Serving the membership with respect, concern, courtesy and responsiveness, recognizing that service to the Band and its membership is more important than service to oneself.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 19-98, Chapter 1, § 11.

### **§ 1162. Authority.**

- (a) The Joint Session of the Band Assembly described in 3 MLBS § 27 shall have the authority to issue oral or written reprimands or to suspend an official with or without pay for any violation of this code. Such authority shall not serve to infringe upon any other disciplinary, civil or criminal action that may otherwise be available.
- (b) Any elected official of the Mille Lacs Band, found by a majority of the Joint Session, after appropriate hearing, to be in violation of this code may be subject to the provisions and penalties set forth in this code of conduct and to any and all other remedies that may otherwise be available.
- (c) Any appointed official of the Mille Lacs Band found by a majority of the Joint Session, after appropriate hearing, to be in violation of this code may be subject to the provisions and penalties set forth in this code of conduct and to any and all other remedies that may otherwise be available.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 19-98, Chapter 1, § 12.

### **§ 1163. Responsibility.**

- (a) It is the responsibility of all Mille Lacs Band officials and employees to report any violations of this code. A Joint Session shall be convened to hear matters involving violations of this code upon a written petition signed by three (3) or more members of the Joint Session.
- (b) It is the responsibility of all Band officials and employees to disclose waste, fraud, abuse or corruption to appropriate Mille Lacs Band authorities.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 19-98, Chapter 1, § 13.

## **CHAPTER 6**

### **[RESERVED]**

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 14-10, Title I, Section 2.

Band Ordinance 14-10, Title I, Section 3.

## **CHAPTER 7**

### **INDEMNIFICATION**

**Section**

**2001. Definitions.**

**2002. Indemnification mandatory; standard.**

**2003. Advances.**

**2004. Reimbursement to witnesses.**

**2005. Determination of eligibility.**

**2006. Indemnification of other persons.**

**2007. Scope.**

**§ 2001. Definitions.**

For purposes of this Chapter:

- (a) **“Act or omission in the official capacity of a Band Official”** means any act or omission under color of such person’s authority as a Band Official, without regard to

any ultimate determination regarding the limits of such person's actual authority as a Band Official.

- (b) **"Band governing body"** means the Band's Chief Executive and Band Assembly.
- (c) **"Band Official"** means (i) each person holding the elective office as a member of the Band Assembly or Chief Executive of the Non-Removable Mille Lacs Band of Ojibwe, and (ii) any person serving in an appointive position with the Legislative Branch, Executive Branch, or Judicial Branch of the Band, who has been approved to receive indemnification pursuant to this Chapter by a majority of the Band governing body pursuant to § 2003 of this Title.
- (d) **"Proceeding"** means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding relating to or arising out of a person's acts or omissions as a Band Official, but shall not include any proceeding initiated by the Band.
- (e) **"Special legal counsel"** means legal counsel selected by a majority of the Band governing body, who is not representing the Solicitor General whose indemnification is in issue.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 70-08, § 1.

### **§ 2002. Indemnification Mandatory; Standard.**

- (a) The Band shall indemnify any present or former Band Official made or threatened to be made a party to a proceeding by reason of any alleged act or omission of such person in her or his official capacity as a Band Official against judgments, penalties, fines, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by such present or former Band Official in connection with the proceeding, if, with respect to such alleged acts or omissions, the present or former Band Official:
  - (1) has not been indemnified by another organization or entity for the same liability described in the preceding paragraph with respect to the same acts or omissions;
  - (2) acted in good faith and without actual knowledge that such act or omission was beyond her or his authority as a Band Official;
  - (3) received no improper personal benefit;

- (4) in the case of a criminal proceeding, did not have reasonable cause to believe the act or omission was unlawful; and
  - (5) reasonably believed that the act or omission was in the best interests of the Band.
- (b) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent does not, of itself, establish that the person did not meet the criteria in this section.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 70-08, § 2.

### **§ 2003. Advances.**

- (a) If a present or former Band Official is made or threatened to be made a party to a proceeding by reason of any alleged act or omission in the official capacity of such person as a Band Official, such present or former Band Official is entitled, upon written request to the Band, to payment or reimbursement by the Band of reasonable expenses, including attorneys' fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:
- (1) upon receipt by the Solicitor General of (a) a written affirmation by the person of a good faith belief that the criteria for indemnification in § 2002 of this Title have been satisfied and (b) a written undertaking by the person to repay the amounts paid or reimbursed by the Band, if it is definitively determined by the Solicitor General, or the Court of Central Jurisdiction upon appeal pursuant to § 2005 of this Title, that the criteria for indemnification have not been satisfied; and
  - (2) after a determination, pursuant to § 2005 of this Title, by the Solicitor General or Court of Central Jurisdiction, that the facts then known would not preclude indemnification under this section.
- (b) The written undertaking required by paragraph (a)(1) of this section shall be an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.
- (c) If the person seeking an advance under this section is the Solicitor General, the Solicitor General shall submit the documents described in paragraph (a)(1) of this section to special legal counsel selected by a majority of the Band governing body. Special legal counsel shall then make the initial determination described in paragraph

(a)(2) of this section, subject to appeal to the Court of Central Jurisdiction pursuant to § 2005 of this Title.

- (d) If the person seeking an advance under this section is a former or present appointed official, it shall be the right of the majority of the Band governing body to decide whether such indemnification shall be approved.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 70-08, § 3.

### **§ 2004. Reimbursement to Witnesses.**

This section does not require, or limit the ability of, the Band to reimburse expenses, including attorneys' fees and disbursements, incurred by a person, including a present or former Band Official, in connection with an appearance as a witness in a proceeding at a time when such person has not been made or threatened to be made a party to a proceeding.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 70-08, § 4.

### **§ 2005. Determination of Eligibility.**

- (a) Determinations as to (i) whether the criteria set forth in § 2002 of this Title concerning indemnification of a present or former Band Official, other than the Solicitor General, have been satisfied, or (ii) whether such present or former Band Official is entitled to advances under § 2003 of this Title shall be made:
- (1) by the Solicitor General; or
  - (2) if an adverse determination is made by the Solicitor General, by the Court of Central Jurisdiction, upon application of the present or former Band Official and notice as the Court requires.
- (b) Determinations as to (i) whether the criteria set forth in § 2002 of this Title concerning indemnification of a present or former Solicitor General have been satisfied, or (ii) whether a present or former Solicitor General is entitled to advances under Section 2003 of this Title shall be made:
- (1) by special legal counsel; or

- (2) if an adverse determination is made by special legal counsel, by the Court of Central Jurisdiction, upon application of the present or former Solicitor General and notice as the Court requires.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 70-08, § 5.

#### **§ 2006. Indemnification of Other Persons.**

This section does not limit the power of the Band to indemnify other persons.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 08-08, § 6.

#### **§ 2007. Scope.**

This section does not apply to any proceedings to resolve conflicts within the Executive, Legislative or Judicial Branch nor does it apply to any proceedings between the three (3) branches of Band government, as described in 4 MLBS § 19.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 08-08, § 7.

## **TITLE 7 – PROCUREMENT**

### **Section**

- 1. Purchasing.**
- 2. Reservation of Right of Amendment.**
- 3. Procurement Procedures and Standards.**
- 4. Standards of Conduct.**
- 5. Open and Free Competition.**
- 6. Solicitation of Offers.**
- 7. Contracting with Small and Minority Firms, Women’s Business Enterprises.**
- 8. Contract Pricing.**
- 9. Requisition.**

- 10. Small Purchase Procedures.**
- 11. Competitive Sealed Bids; Formal Advertising.**
- 12. Competitive Sealed Bids; Generally.**
- 13. Negotiated Procurement.**
- 14. Competitive Negotiation.**
- 15. Responsible Contractors.**
- 16. Procurement Records.**
- 17. Bonding.**
- 18. Environmental Standards.**
- 19. Contract Provisions.**
- 20. General Services Administration Supply Sources.**
- 21. Indian Preference.**
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- 23. Use of Indian Businesses.**
- 24. Buy Indian Provisions.**
- 25. Subcontracting.**
- 26. Contract Administration.**
- 27. Work Statements.**
- 28. Changes.**
- 29. Termination.**
- 30. Warranties.**
- 31. Audit.**
- 32. Covenant Against Contingent Fees.**
- 33. Notice.**
- 34. Mille Lacs Band Responsibilities.**
- 35. Disputes.**
- 36. Jurisdiction.**
- 37. Construction and Severability.**

## **§ 1. Purchasing.**

- (a) All public service contracts awarded by the Band or any political subdivision, and that is performed within the territorial jurisdiction of the Band, shall only be awarded to businesses licensed under the laws of the Mille Lacs Band.
- (b) In order to protect the economic security of the Band and its political subdivisions, contracts may only be awarded to businesses organized pursuant to the laws of the Mille Lacs Band, the laws of a state of the United States, or the laws of a federally recognized Indian tribe.
- (c) Authority to initiate a purchase or contract action on behalf of the Mille Lacs Band or any of its political subdivisions is hereby delegated by the Band Assembly.
- (d) The Corporate Commission of the Mille Lacs Band is expressly exempt from all provisions of this Title.

## Historical and Statutory Notes

**Source:**

Band Ordinance 17-98, § 1.

### § 2. Reservation of Right of Amendment.

The Band Assembly hereby fully reserves the right to alter, amend, or repeal the several provisions of this Title, and all rights and privileges granted or extended hereunder shall be subject to such reserved right.

## Historical and Statutory Notes

**Source:**

Band Ordinance 17-98, § 2.

### § 3. Procurement Procedures and Standards.

- (a) The Mille Lacs Band, and its political subdivisions, will use its own procurement procedures which reflect applicable law and regulations, provided that procurements for Federal and state assistance programs conform to the standards of applicable law.
- (b) The Mille Lacs Band hereby establishes standards and guidelines for procuring supplies, equipment, construction, and services, complying with the provisions of all applicable law.
- (c) Notwithstanding any other provisions of the Mille Lacs Band of Ojibwe procurement law, to the contrary the following procedures and standards shall apply to contracting for services by any expert witness whose services are necessary in connection with any criminal, civil, or administrative proceeding.
  - (1) Retainer agreements for expert witness services shall be prepared and executed by the attorney representing the client in connection with any criminal, civil, or administrative proceeding. The attorney shall assure that the retainer agreement contains provisions that preserve the attorney-client privilege and evidentiary privilege recognized as the attorney work-product doctrine.
  - (2) The Mille Lacs Band of Ojibwe Commissioner of Finance is authorized to prepare and process any disbursement of appropriated funds to pay the costs associated with any expert witness services.
  - (3) Subsection (c) of this section shall expire December 31, 2000.

- (d) Office of the Solicitor General will notify Band Assembly of the expiration before December 31, 2000.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 3.  
Band Ordinance 29-00.

#### **§ 4. Standards of Conduct.**

- (a) Mille Lacs Band or political subdivision officials and employees who are engaged in procuring goods or services shall not solicit or accept gratuities, favors or anything of monetary value in excess of \$10.00 from contractors or potential contractors.
- (b) All Mille Lacs Band or political subdivision officials, employees, and agents who are involved in purchasing or contracting activities must follow the standards of conduct set forth in applicable Band law and regulations.
- (c) Mille Lacs Band or political subdivision officials, employees, and agents will refrain from participating in purchasing or contracting in which a conflict of interest, real or apparent, could be involved. Such a conflict arises when the official, employee, or agent has a financial or other interest in a firm being considered for award of a purchase order or contract. A conflict also arises when an immediate family member (mother, father, brother, sister, husband, wife, son or daughter or in-laws) or a business partner or associate of the Band officer, employee, or agent has an interest in a firm.
- (d) Any Mille Lacs Band or political subdivision official, employee, or agent who has unknowingly obtained a benefit from a purchase order or contract awarded will immediately, upon discovery, report the benefit to her or his immediate supervisor. Failure to report such benefit is a breach of the ethical standards governing the Band procurement activities.
- (e) Officials, employees, or agents of the Band or political subdivisions shall not knowingly use confidential information for actual or anticipated personal gain.
- (f) Band or political subdivision officials, employees, and agents engaged in procurement activities will at all times act in good faith when dealing with actual or potential contractors.
- (g) Any Band or political subdivision official, employee, or agent who has doubts about the propriety of an action or decision shall refrain from taking such action or making such decision until consulting with a supervisor. When advice of counsel would be helpful and proper, the official, employee, or agent should seek it.

- (h) All persons who are employed by or who represent the Band or a political subdivision thereof are responsible for complying with the Band’s purchasing and contracting policies and for following all applicable procedures. All such persons will make purchases only through proper procedures and only after obtaining necessary approvals.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 4.

**§ 5. Open and Free Competition.**

All procurement transactions regardless of whether by sealed bids or by negotiation and without regard to dollar amount, shall be conducted in a manner that provides maximum open and free competition consistent with applicable provisions of this Title. Procurement procedures shall not be used to restrict or eliminate competition.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 5.

**§ 6. Solicitation of Offers.**

The Mille Lacs Band’s written selection procedures shall provide the following procedural requirements. Solicitation of offers, whether by competitive sealed bids or competitive negotiations, shall include:

- (a) incorporation of a clear and accurate description of the technical requirements for the material, product, or service to be procured; such description shall not, in competitive procurements, contain features unduly restricting competition; the description may include a statement of the qualitative nature of the material, product or service to be procured, and, when necessary, shall set forth those minimum essential characteristics and standards which it must conform to; detailed product specification should be avoided when possible; when it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name” or equal description may be used as a means to define the performance or other salient requirement; the specific features of the name brand which must be met by a vendor shall be clearly stated; and
- (b) clearly set forth all requirements which vendors must fulfill and all other factors to be used in evaluating bids or proposals.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 6.

**§ 7. Contracting with Small and Minority Firms, Women’s Business Enterprises.**

Best efforts will be made to use small business and minority owned business for supplies and services. This provision shall apply only after Indian preference requirements have been met, and when not inconsistent with other provisions of this Title.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 7.

**§ 8. Contract Pricing.**

The Mille Lacs Band and its political subdivisions shall perform some form of cost or price analysis in connection with every procurement action including contract modification. Costs or prices based on estimated costs for contracts under grants shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal grant purchasing principals.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 8.

**§ 9. Requisition.**

- (a) The basic purpose of the purchasing and contracting process is to support Mille Lacs Band or political subdivision program activities by obtaining the items and services needed. A requisition is the internal document that conveys the program activity’s request for supplies, equipment, or services. It officially initiates a particular purchasing or contracting action. No purchase or contract may be initiated without a requisition.
- (b) Preparation of a requisition is the responsibility of Mille Lacs Band program personnel. Those personnel must ensure that the requisitions submitted provide a clear, accurate, and complete description of program requirements. Additionally, they must ensure, prior to submitting a requisition, that purchases of items or services are authorized by the program budget, and that all necessary approvals have been obtained.

## Historical and Statutory Notes

**Source:**

Band Ordinance 17-98, § 9.

### § 10. Small Purchase Procedures.

- (a) Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for the procurement of services, supplies, or other property, costing in the aggregate not more than \$25,000.00.
- (b) Competition will be obtained whenever the price of an item is estimated to exceed \$7,500.00. Price or rate quotations shall be obtained from at least three (3) qualified sources if available.
- (c) A purchase order is issued under small purchase procedures by a document conveying the Mille Lacs Band's or political subdivision's offer to buy. If a seller then accepts the offer, the purchase order becomes a binding agreement having the same force and effect as a contract. The following provisions must be stated on the back or attached to the copy of the purchase order:
  - (1) Change Clause: The Mille Lacs Band of Ojibwe or political subdivision reserves the right to change a purchase order within reason;
  - (2) Termination for Convenience: The Mille Lacs Band may terminate an order at any time prior to delivery of the requested product or service if such action would be in the best interest of the Band;
  - (3) Termination for Default: The Mille Lacs Band may, in addition to any other remedy it may have, terminate an order for default if the supplies or equipment delivered are not received on the due date(s) or are defective;
  - (4) Warranty: The Contractor shall provide any commercial warranty normally offered to the public and the Band shall not accept delivery of supplies and equipment "as is" unless previously agreed to in writing;
  - (5) Audit: To the extent permitted by applicable law, the contractor agrees that the Comptroller General of the United States and other government representatives or appropriate Band officials may examine those records related to the equipment or supplies purchased; and
  - (6) Discounts: All discounts from vendors must be listed by vendors on the invoice and credited to the procuring department.
- (d) Approval and signatures required on all purchase orders:

- (1) \$00.01-\$1,999.99 – Purchasing Clerk.
  - (2) \$2,000.00-\$9,999.99 – Purchasing Clerk and Finance Officer.
  - (3) \$10,000.00-\$25,000.00 – Commissioner of Finance.
  - (4) \$25,000.01 and above – Chief Executive and Secretary-Treasurer.
- (e) A change in a purchase order of up to 5% may be made by a Commissioner or Branch leader provided sufficient funds are available for purchases made pursuant to this section.
- (f) A purchase order shall not be created if there are insufficient funds in a budget line-item, except in the case of a public emergency as determined by the Chief Executive and the Secretary-Treasurer.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 10.  
Band Ordinance 09-20.  
Band Ordinance 07-22.

### **§ 11. Competitive Sealed Bids; Formal Advertising.**

- (a) Formal advertising with an adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiated procurement pursuant to Section 14 of this Title is necessary to accomplish sound procurement. However, procurement of \$25,000.00 or less need not be so advertised. Where such advertised bids are obtained, the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the Mille Lacs Band price and other factors considered. Any and all bids may be rejected when it is in the Mille Lacs Band's best interest to do so.
- (b) "Formal Advertising" shall mean placing notice in a conspicuous public place in all districts for a period of at least 14 days.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 11.

### **§ 12. Competitive Sealed Bids; Generally.**

- (a) In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price and best meets the Band's needs.
- (b) In order for formal advertising to be feasible, appropriate conditions must be present, including, at a minimum, the following:
  - (1) a complete and accurate list of specifications or a thorough purchase description,
  - (2) two (2) or more responsible suppliers who are willing and able to compete effectively for the business; and
  - (3) the procurement lends itself to a firm-fixed price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.
- (c) If formal advertising is used for procurement, the following requirements shall apply:
  - (1) A sufficient time prior to the date set for opening of the bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.
  - (2) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.
  - (3) All bids shall be opened publicly at the time and place stated in the invitation for bids.
  - (4) A firm-fixed price contract shall be awarded by written notice to the responsible bidder. Where specified in the bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bids when prior experience with the contractor indicates that such discounts are available; and
  - (5) Any or all bids may be rejected when there are sound documented business reasons and it is in the best interest of the Band to do so.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 12.

### **§ 13. Negotiated Procurement.**

- (a) Procurement may be negotiated if it is impractical and unfeasible to use formal advertising procurements, and if one (1) of the following situations exist:
  - (1) Public exigency will not permit the delay incident to advertising.
  - (2) The contract is for personal or professional services or for any services rendered by a university, college, or other educational institution.
  - (3) No acceptable bids have been received after formal advertising.
  - (4) The purchase is for highly perishable goods or medical supplies, for materials or services where the prices are established by law, for technical items or equipment requiring standardization or interchangeability of parts with existing equipment, for experimental developments or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment; or
  - (5) It is otherwise authorized by Band statute.
- (b) Notwithstanding the existence of circumstances justifying negotiations, competition shall be obtained to the maximum extent practicable.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 13.

### **§ 14. Competitive Negotiation.**

- (a) In competitive negotiation, proposals are requested from at least three (3) sources and the request for proposals is publicized for submitting offers. Either a fixed-price or cost-reimbursable type contract is awarded, as appropriate.
- (b) If competitive negotiation is used for a procurement, the following requirements shall apply:
  - (1) Proposals shall be solicited from at least three (3) sources to permit reasonable competition consistent with the nature and requirements of the procurement; the request for proposal shall be publicized, and reasonable request by other sources to complete shall be honored to the maximum extent practicable.
  - (2) The request for proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

- (3) The Band shall provide a mechanism for technical evaluation of the proposals received, determining responsible vendors for the purpose of written or oral discussion, and selection for a contract award; and
  - (4) Awards may be made to a responsible contractor whose proposal will be most advantageous to the Mille Lacs Band, price and other factors considered; unsuccessful offerors shall be notified promptly.
- (c) The Mille Lacs Band may utilize competitive negotiation procedures for procurement of professional services, whereby competitors are selected, subject to negotiation of fair and reasonable compensation.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 14.

#### **§ 15. Responsible Contractors.**

Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 15.

#### **§ 16. Procurement Records.**

- (a) The Mille Lacs Band will maintain records in sufficient detail to track the significant history of all procurements over \$7,500.00. The records shall include, but are not limited to information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the price.
- (b) Procurement records or files for negotiated purchases over \$25,000.00 will provide justification for use of negotiations in lieu of advertising, contractor selection, and the basis for the price.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 16.  
Band Ordinance 09-20.  
Band Ordinance 07-22.

### **§ 17. Bonding.**

- (a) In construction contracts that are federally funded or deemed commercial, bonding is required. These types of contracts shall demand a performance bond of not less than 20% of the total contract price, but not to exceed \$500,000.00. A performance bond requirement is to ensure that, if a contractor defaults, the Band may request that the surety pay the expenses incurred to complete the construction contract.
- (b) In addition, all construction contracts identified as federally funded or commercial shall be covered by a payment bond equal to one (1) payment installment to cover subcontractors or suppliers as determined by the Contracting Officer or her or his agents. The payment bond must contain language stating that if the contractor fails to make a payment to its subcontractors or suppliers, the surety will make the necessary payment.
- (c) For all Band funded residential construction projects, a performance bond is required for contracts in excess of \$100,000.00.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 03-06, § 1, Paragraph 3.  
Band Ordinance 07-22.

### **§ 18. Environmental Standards.**

Contracts in excess of \$10,000.00 shall contain a provision which requires the recipient of the contract to agree to comply with all applicable standards, orders, or regulations issued regarding Environmental Protections and as amended. Violations shall be reported to the Bureau of Indian Affairs and the Regional Office of the Environmental Protection Agency or other appropriate agencies.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 18.

### **§ 19. Contract Provisions.**

In addition to provisions defining a sound and complete procurement contract, the Mille Lacs Band will include the following contract provisions or conditions in all procurement contracts and subcontracts:

- (a) Contracts other than small purchases shall contain provisions or conditions which allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- (b) All contracts in excess of \$10,000.00 shall contain suitable provisions for termination by the Mille Lacs Band and the basis for any settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default, as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- (c) All contracts and subcontracts for construction or facility repair shall include a provision for compliance with the Copeland “Anti-Kickback Act” (18 U.S.C. § 874) and as supplemented in the Department of Labor regulations. This Act provides that each contractor or subcontractor shall be prohibited from including, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Mille Lacs Band will prosecute or report all suspected or reported violations to appropriate law enforcement officials.
- (d) When required by Federal Grant Program law or Band statute, all construction contracts in excess of \$5,000.00 awarded by the Mille Lacs Band or any of its political subdivisions shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 276(a) to 276(a-7) and as amended) and as supplemented by the Department of Labor regulations. Under this Title, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. The Mille Lacs Band shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation, and the award of a contract shall be conditioned upon the acceptance of the wage determination.
- (e) When applicable, all contracts awarded by the Mille Lacs Band and subcontracts in excess of \$5,000.00 for construction which involve the employment of laborers shall include a provision for compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327 to 330) and as supplemented by the Department of Labor regulations. Each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of eight (8) hours and a standard work week of 40 hours. Work in excess of the standard work day or work week is permissible, provided that the worker is compensated at a rate of no less than 1-1/2 times the basic rate of pay for all hours worked in excess of eight (8) hours in any calendar day or 40 hours in the work week. The Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in

surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies, materials, or articles ordinarily available on the open market, or contracts for transportation or transmission of information.

- (f) The contract shall include notice of requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental, or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and notice of requirements and regulations pertaining to copyrights and rights in data.
- (g) All negotiated contracts, except those awarded by small purchase procedures, awarded by the Mille Lacs Band shall include a provision that the Mille Lacs Band, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific contract, for the purpose of making audits, examination, excerpts, and transcriptions. The Mille Lacs Band shall require contractors to maintain all required records for three (3) years after the Mille Lacs Band makes final payments and all other pending matters are closed.
- (h) Contracts and subcontracts in excess of \$100,000.00 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 1857(h)) and as amended, the Clean Water Act (33 U.S.C. § 1368) and as amended, Executive Order 11738, and Environmental Protection Agency regulations which prohibit the use, under non-exempt Federal contracts, grants, or loans, of facilities included on the EPA list of Violating Facilities. The provision shall require reporting of violations to the grantor agency.
- (i) Contracts shall recognize mandatory standards and policies relating to energy efficiency requirements issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321); and
- (j) Contracts and subcontracts awarded by the Mille Lacs Band of Ojibwe shall contain a section that prohibits the assignment of any rights, interests, or obligations under the contract without the written approval of the contracting officer.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 19.

## **§ 20. General Services Administration Supply Sources.**

When the Mille Lacs Band is performing services under cost reimbursement contracts, the Band shall be entitled to use the General Services Administration supply sources to the extent allowable by law.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 20.

### **§ 21. Indian Preference.**

- (a) A contractor awarded a public service contract shall give preferential employment under the contract, including subcontracts thereunder, to qualified Indians and to the extent feasible and consistent with the efficient performance of the contract, provide employment and training opportunities to Indians regardless of age, religion, or sex that are not fully qualified to perform under the contract. The contractor shall comply with all Indian preference requirements established by the Mille Lacs Band under the contract to the extent that such requirements are not inconsistent with the purpose and intent of this Title.
- (b) If a contractor or any of its subcontractors are unable to fill employment openings after giving full consideration to Indians as required in paragraph (a), these employment openings may then be filled by other persons under the conditions set forth in the Equal Employment Opportunity clause of the contract. The contractor agrees to include this clause or one similar thereto in all subcontracts issued under the contract.
- (c) Indian Preference shall mean awarding a contract or a subcontract with priority first given to qualified Mille Lacs Band Members. The second priority shall be given to qualified members of another federally recognized Indian Tribe. The third priority shall be given to all other qualified persons.
- (d) Indian Preference shall also mean that contracts bid by Band member contractors that are within 10% of the lowest competitive bid shall be given the opportunity to negotiate an acceptable bid.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 21.

Band Ordinance 15-14, Title IV, § 1.

### **§ 22. Equal Opportunity.**

During the performance of a contract, and after complying with the Indian Employment Preference clause of the contract, the contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, age, religion, or sex. The contractor will take affirmative action that applicants are employed and that employees are treated during employment without regard to their race, age, religion, or sex. Such action shall include, but not be limited to, employment upgrading, demotion or transfer, layoff or termination, rates of pay, or other forms of competition, including apprenticeship.
- (b) The contractor will, in all solicitation or advertisements for employees, placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, age, religion, or sex; and
- (c) The contractor will include provisions of these paragraphs in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Mille Lacs Band may direct to enforce such provisions, including sanctions for non-compliance. However, if the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the Mille Lacs Band to enter such litigation to protect the interest of the Mille Lacs Band.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 22.

### **§ 23. Use of Indian Businesses.**

- (a) As used in this section, the term “Indian businesses” means Indian organizations or Indian-owned economic enterprises as defined in the Code of Federal Regulations or the laws of the Mille Lacs Band.
- (b) The Mille Lacs Band and its political subdivisions shall give preference in awarding contracts and subcontracts to Indian businesses.
- (c) The contractor agrees to give preference to qualified Indian businesses in the awarding of any subcontracts entered into under the contract consistent with the efficient performance of the contract. The contractor shall comply with any preference requirements regarding Indian businesses established by the Mille Lacs Band receiving services under the contract to the extent that such requirements are not inconsistent with the purpose and intent of this Title.
- (d) If no Indian businesses are available under the conditions in paragraph (c) above, the contractor agrees to accomplish the maximum amount of subcontracting, as the

contractor determines is consistent with efficient performance of the contract, with small business concerns or minority businesses. The contractor is not, however, required to establish a small business, labor surplus, or minority business subcontracting program.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 23.

### **§ 24. Buy Indian Provisions.**

The Mille Lacs Band of Ojibwe and political subdivisions, as well as all contractors and subcontractors who conduct business on lands under the jurisdiction of the Mille Lacs Band of Ojibwe pursuant to a contract or subcontract with the Band or political subdivision thereof, shall comply with the provisions of the Buy Indian Act (25 U.S.C. § 47) and regulations promulgated thereunder.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 24.

### **§ 25. Subcontracting.**

- (a) Any contract proposal or plan of operations submitted by a tribal organization which proposes to do a portion of the work by subcontract shall identify the purpose and scope of the proposed subcontract, the manner in which the subcontractor will be selected, and the estimated cost of the subcontract.
- (b) Preference shall be given to qualified Indian businesses in awarding subcontracts, and the contractor shall comply with any preference requirements established by the Mille Lacs Band in receiving services under the contract.
- (c) If no Indian businesses are available under the conditions in the above paragraph, the contractor shall accomplish the maximum amount of subcontracting, as is consistent with efficient performance of the contract, with small business concerns, labor surplus area concerns, and minority business enterprises.
- (d) Subcontract opportunities shall be advertised or negotiated in a manner which provides free and open competition to the extent provided for by law. Subcontracts shall be awarded in accordance with sound business practices and the preferential requirements in this Title.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 25.

**§ 26. Contract Administration.**

- (a) A system for contract administration will be maintained to assure contractor conformance with terms, conditions, and specifications of the contracts or orders, and to assure adequate and timely follow-up of all purchases.
- (b) All contracts for services and materials shall be reviewed and approved in the following manner:
  - (1) The Office of Management and Budget shall review all contracts to ensure that sufficient budgetary and payment term considerations are in place.
  - (2) The Solicitor General shall review all contracts over \$7,500.00.
  - (3) Administration Policy Board approval is required for all Executive Branch contracts over \$7,500.00; and
  - (4) Band Assembly ratification is required for all contracts in excess of \$25,000.00, including any and all contract addendum(s) that, in total, increase costs to \$25,000.00.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 26.  
Band Ordinance 44-09, § 1.  
Band Ordinance 07-22.

**§ 27. Work Statements.**

- (a) Work statements must satisfy clarity, precision, and completeness. The following requirements will be included in the work statements:
  - (1) Objectives: precisely identify desired end objectives of the project and associated requirements.
  - (2) Context for project: list background information that will aid in understanding the nature and origin of the program. Include a brief summary of objectives, program authority, major programs, and goals set by statute, if relevant. Describe the relationship of the effort to other programs and goals.

- (3) Acceptance: identify milestones or management control points in the sequence of tasks where progress reviews, approvals, acceptances, or rejections are to occur. Establish relevant and well-defined baselines for performance measurement. These baselines will serve at least four (4) purposes, including:
  - (i) prevention of contractor from drifting into areas not pertinent to the effort,
  - (ii) measure the results of completed work,
  - (iii) assist in defining whether or not subsequent changes or redirection of effort falls within the original scope of work; and
  - (iv) assist the program official and the contracting officer in monitoring the progress of the work; monitoring is particularly important for phase-type contracts where it is necessary to detect unsatisfactory performance early; it will allow a project officer to inform procurement personnel of unpromising contractor actions that should be dealt with promptly before their effect compromises the entire contract effort.
- (4) Responsibility: identify all Mille Lacs Band or political subdivision and contractor participation or cooperation that is needed for the success of the project, as well as the nature and extent of all task responsibilities. All tasks requiring Mille Lacs Band support (e.g., Band-furnished equipment, facilities, materials, and extra laboratory government assistance) should be stated specifically. The nature and requirements of Band support to be provided also should be presented specifically.
- (5) Schedule: generate a schedule for the sequence of tasks to be performed by a contractor and a similar schedule for related responsibilities of the Mille Lacs Band; and
- (6) Delivery: identify delivery requirements precisely and schedule a delivery date for each. Include details about the type and quantity of all deliverables. State precisely what a contractor is to deliver at specified times as the work progresses, and on completion of the next contract performance.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 27.

**§ 28. Changes.**

- (a) The Band's contracting officer may at any time, by written order, make changes within the general scope of the contract to any one (1) or more of the following:
  - (1) drawings, designs, or specifications, when the supplies to be furnished are to be specially manufactured for the Band in accordance with drawings, designs, or specifications,
  - (2) methods of shipment or packing,
  - (3) place of delivery,
  - (4) the scope of the service performed; or
  - (5) a change in the product delivered.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for performance of, any part of the work under the contract, the contract officer is authorized to make an equitable adjustment of up to 5% of the contract price (provided sufficient funds are available), the delivery schedule, or both. Any and all modifications of a contract, which, combined, total \$25,000.00, shall be approved by the Band Assembly. Failure of the parties to agree to any such adjustment shall be a dispute under the Disputes Clause. However, nothing in either this clause or the Disputes Clause shall excuse the contractor from proceeding on the contract as changed.
- (c) The contracting officer shall be the Commissioner or leader of a respective Branch or political subdivision.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 28.  
Band Ordinance 44-09, § 2.

### **§ 29. Termination.**

- (a) The Band may cancel a contract at any time with or without cause. Termination for convenience should be included in all contracts.
  - (1) The Band may terminate an order at any time prior to delivery of the requested product or service if such action would be in the best interest of the Band. If the contractor has begun work under an order, it shall so notify the Band contracting officer and submit a proposal for any necessary partial payment, restocking charge, or other compensation. The contracting officer shall determine what compensation, if any, should be paid. Such

determination shall be final unless a claim is made pursuant to the Disputes Clause of the contract.

- (2) The contracting officer, by written notice, may terminate the contract, in whole or in part, when it is in the Band's best interest. If the contract is terminated, the Band shall be responsible only for payment, pursuant to the payment provision of the contract, for services rendered before the effective date of termination.
- (b) The Band or political subdivisions may, in addition to any other remedy available, terminate a contract for default if the supplies or equipment delivered are not received on the due date(s) or are defective. Upon termination, the Band may pursue any remedy it may have under federal, state, or Band law, including but not limited to self-help or set-off.
- (1) The Band or political subdivisions may, by written notice of default to the contractor, terminate this contract in whole or in part, when the contractor fails to:
    - (i) deliver the supplies or perform the services within the time specified in the contract or any agreed upon extension,
    - (ii) make progress, so as to endanger performance of the contract (but see paragraph (2) below); or
    - (iii) perform any of the other provisions of the contract (see paragraph (2) below).
  - (2) The Band or its political subdivisions' right to terminate a contract under the provision above may be exercised if the contractor does not cure such failure within ten (10) business days (or more if authorized in writing by the contracting officer) after receipt of a notice from the contracting officer specifying the failure.
  - (3) If the Band or political subdivision terminates this contract in whole or in part, it may acquire, under the terms and the manner the contracting officer considers appropriate, supplies or services similar to those terminated, and the contractor will be liable to the Band or political subdivision for any excess costs for those supplies or services. However, the contractor shall continue the provisions of the contract not terminated.
  - (4) Except for defaults of subcontractors, the contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor.

- (5) If the failure to perform is caused by the default of a subcontractor, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any excess cost for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the contractor to meet the required delivery schedule.
  - (6) The Band or political subdivision shall pay the contract price for completed services performed and accepted. The Band may withhold from these amounts any sum the contracting officer determines to be necessary to protect the Band against loss. Failure to agree on such an amount will be a dispute under the Disputes Clause.
  - (7) If, after termination, it is determined that the contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Band.
  - (8) The right and remedies of the Band or political subdivision in this clause are in addition to any other rights and remedies provided by the law or under the contract.
- (c) The right of the contractor to proceed may be terminated by written notice if, after notice and hearing, the Administration Policy Board determines that the contractor, or its representative, offered or gave a gratuity (e.g., an entertainment or gift) to an official, agent, or employee of the Band, and intended, by the gratuity, to obtain a contract, or favorable treatment under a contract.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 29.

### **§ 30. Warranties.**

The contractor shall provide any commercial warranty normally offered to the public. The Band or political subdivisions shall not accept delivery of supplies and equipment “as is,” unless the contracting officer has previously agreed in writing to such terms.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 30.

### **§ 31. Audit.**

To the extent required by law, the contractor agrees that the Commissioner of Finance of the Mille Lacs Band and other Band Officials may examine those records related to the equipment or supplies purchased.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 31.

### **§ 32. Covenant Against Contingent Fees.**

The contractor warrants that no person or selling agency has been employed or retained to solicit or obtain a contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except a bona fide employee or bona fide established selling agent maintained by the contractor for the purpose of securing business. For breach or violation of this warranty, the Band shall have the right to annul the contract without liability, or, in its discretion, deduct from the contract price, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 32.

### **§ 33. Notice.**

Notices to either party shall be given by addressing the communications to the address set forth in the agreement or such other address as shall be later given in writing, and depositing the same in the United States mail, postage prepaid.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 17-98, § 33.

### **§ 34. Mille Lacs Band Responsibilities.**

The Mille Lacs Band or political subdivisions will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement. These include, but are not limited to, source evaluation, protest, disputes, and claims. Violation of law shall be referred to the appropriate Band, state, or federal officials.

## Historical and Statutory Notes

**Source:**

Band Ordinance 17-98, § 34.

### § 35. Disputes.

Any claim by the contractor shall be submitted in writing to the Band's contracting officer for a written decision. A claim by the Band or political subdivision against the contractor shall be subject to a written decision by the contracting officer. "Claim," as used in this section, means a written decision demand or written assertion by one (1) of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of the contract terms, or other relief arising under or relating to the contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. It may be converted to a claim by complying with the submission requirements of this section if it is disputed either as to liability, amount, or is not acted upon in a reasonable time. The contracting officer's decision shall be final unless the contractor appeals the matter to the Administration Policy Board whose decision will be final unless the contractor files suit. The contractor shall proceed diligently with performance of a contract pending final resolution of any request for relief, claim, appeal, or action under the contract, and comply with any decision of the contracting officer or the Band's Administration Policy Board.

## Historical and Statutory Notes

**Source:**

Band Ordinance 17-98, § 35.

### § 36. Jurisdiction.

The Court of Central Jurisdiction is hereby granted subject matter jurisdiction for any cause of action which arises from this Title or the application thereof. Nothing in this Title shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe in any court of competent jurisdiction.

## Historical and Statutory Notes

**Source:**

Band Ordinance 17-98, § 36.

### § 37. Construction and Severability.

The provisions of this Title shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Title shall be several and if any phrase, clause, sentence, or provision is

held invalid by a court of competent jurisdiction, the validity of the remainder of this Title and the applicability thereof shall not be affected thereby.

### Historical and Statutory Notes

**Source:**

Band Ordinance 17-98, § 37.

## TITLE 8 – CHILDREN AND FAMILIES

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### CHAPTER 1

#### GENERAL PROVISIONS

Section

1. Findings and Determinations.
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- 15. Legal Duties of Human Resource Officers and Child Social Workers.**
- 16. Obligations of Solicitor General.**
- 17. State of Minnesota: Agreement Regarding Indian Child Custody Proceedings.**

**§ 1. Findings and Determinations.**

- (a) The Band Assembly hereby finds that the purpose of Chapters 1 to 10 of this title is to secure for each child who may come before the Court of Central Jurisdiction such care, guidance and control preferably in her or his own home, as will serve her or his welfare and the best interests of the Bands. To preserve and strengthen the child's family ties, to preserve and strengthen the child's cultural and ethnic identity. Additionally, to secure for any child who may be removed from her or his home the care, guidance and control as nearly equivalent as that which he or she should have been given by her or his parents to help her or him develop into a responsible, well-adjusted adult and to improve any conditions or home environment which may be contributing to her or his delinquency. To this end, Chapters 1 to 10 of this Title shall be liberally construed.
- (b) The Band Assembly hereby finds that there is no resource that is more vital to the continued existence and integrity of the Band than our children and our elders and all the people who comprise the Non-Removable Mille Lacs Band of Ojibwe.
- (c) The Band Assembly hereby finds that the state of Minnesota, exercising its concurrent jurisdiction over child custody proceedings through administrative and judicial bodies, has failed to recognize the essential relations of the constituent Bands and the cultural and social standards prevailing in our communities and families.
- (d) The Band Assembly hereby finds and determines that it shall be the policy of the constituent Bands to protect the best interests of all children under the jurisdiction of the Bands and to promote stability and security of the constituent Bands and the families thereof, by establishing standards for the care of our children by choosing courses of action which least restrict the child's freedom and are consistent with the safety and interests of the constituent Bands of the Mille Lacs Band of Ojibwe.
- (e) The Band Assembly hereby finds and determines that the purposes of Chapters 1 to 10 of this Title shall be fulfilled by the creation of a special division under the Court of Central Jurisdiction.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 1.

## § 2. Reservation of Right of Amendment.

The Band Assembly hereby fully reserves the right to alter, amend, or repeal the several provisions of Chapters 1 to 10 of this title, and all rights and privileges granted or extended hereunder shall be subject to such reserved rights.

### Historical and Statutory Notes

#### Source:

Band Statute 1096-MLC-28, § 46.

## § 3. Definitions.

For the purpose of Chapters 1 to 10 of this Title the words and phrases shall have the meanings respectively ascribed to them:

- (a) **"Abandon"** means when a parent leaves a child without communication or fails to support a child and there is no indication of the parent's willingness to assume her or his parental role for a period exceeding two (2) years.
- (b) **"Adult"** means any person subject to the jurisdiction of the Mille Lacs Band of Ojibwe who is 18 years of age or older.
- (c) **"Court"** means the Human Resources Division of the Court of Central Jurisdiction when exercising jurisdiction under Chapters 1 to 10 of this title.
- (d) **"Court Magistrate-Judge"** means any (duly appointed, elected) judge of the Human Resources Division of the Court of Central Jurisdiction when exercising jurisdiction under Chapters 1 to 10 of this title.
- (e) **"Custodian"** means one who has physical custody of a minor and who is providing food, shelter and supervision to him.
- (f) **"Delinquent Act"** means an act, which if committed by an adult, is designated a crime under the laws of the state of Minnesota or is designated a crime under the tribal law and order code or tribal ordinance.
- (g) **"Detention"** means the placement of a minor in an appropriate physically restrictive facility.
- (h) **"Extended Family"** means a person who has reached the age of 16 and who is the minor's grandparent, aunt, or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent, or made part of the extended family by tribal resolution, or as defined by the law of custom of the child's tribe.

- (i) **"Guardian"** means a person other than the minor's parent who is by law responsible for that minor (but not the minor's property).
- (j) **"Guardian Ad Litem"** means an adult appointed by the Court to prosecute or defend for a minor in any proceeding to which he or she may be a party.
- (k) **"Human Resource Officer"** means any and all employees of the Mille Lacs Band of Ojibwe-Human Services Administration who are funded pursuant to any grant or contract to service any human assistance need of any person under the jurisdiction of the Band.
- (l) **"Indian Custodian"** means an adult Band member who has reached the age of 21 in whom temporary physical care, custody and control has been transferred by the parent of such minor.
- (m) **"Juvenile Offender"** means a person who commits a delinquent act prior to her or his eighteenth birthday.
- (n) **"Least Restrictive Alternative"** means the terms in the code direct the Court to select the least drastic method of achieving its goal; the restrictions placed on the child must be reasonable related to the Court's objectives and must be the least restrictive way of achieving that objective. For example, the reason any person is held in detention before trial is to insure that the person will not leave the area, therefore, the only restraint on that person's freedom is the restriction on her or his freedom of movement. No other restriction such as mail censorship or being placed in solitary confinement is related to the stated purpose of pretrial detention.
- (o) **"Minor"** means:
  - (1) A person under 18 years of age.
  - (2) A person 18 years of age or older concerning whom proceedings are commenced in the Court of Central Jurisdiction prior to her or his eighteenth birthday.
  - (3) A person 18 years of age or older who is under the continuing jurisdiction of the Court of Central Jurisdiction.
- (p) **"Minor-in-need-of-care"** means a minor who has no parent(s), guardian or custodian available who is capable and willing to care for him, or has suffered, or is likely to certainly suffer a physical injury, inflicted upon her or him by other than accidental means, which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions. Or, has not been provided with adequate food, clothing, shelter, medical care, education or supervision by her or his parent(s), guardian or custodian necessary for her or his health and well-being. Or, has been sexually abused, or has been committing delinquent acts as a result of parental

pressure, guidance or approval.

- (q) **"Parent"** includes a natural or adoptive parent as defined by the Court of Central Jurisdiction, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

### Historical and Statutory Notes

**Source:**

Band Statute 1096-MLC-28, § 29.

### Cross References

Criminal causes of action, *see* 24 MLBS § 1001.

### § 4. Jurisdiction of Court.

- (a) The Court of Central Jurisdiction is hereby conferred exclusive and original subject matter jurisdiction over any cause of action that may arise pursuant to Chapters 3 to 10 of this title.
- (b) The Court shall have exclusive and original jurisdiction of the following proceedings:
- (1) A minor is alleged to be a juvenile offender, unless the Court transfers jurisdiction to an exterior court;
  - (2) A minor is alleged to be a minor-in-need-of-care;
  - (3) Termination of parental rights;
  - (4) Adoption of a minor;
  - (5) Custody of or appointment of a custodian, conservator or a guardian for a minor;
  - (6) A mentally retarded or mentally ill minor Child custody proceedings, as defined by the Indian Child Welfare Act, (25 U.S.C.A. § 1901 et seq.) if the minor is domiciled or resides on territories under the jurisdiction of the Band and
  - (7) Transfer of jurisdiction from any court of child custody proceedings, as defined by the Indian Child Welfare Act, if the minor is not domiciled or does not reside on territories under the jurisdiction of the Band.

## Historical and Statutory Notes

### Source:

Band Statute 1096-MLC-28, §§ 2, 3.

### § 5. Transfer of Jurisdiction

- (a) In any child custody transfer from any court, the Band has exclusive jurisdiction over child custody proceedings, as defined by the Indian Child Welfare Act, (25 U.S.C.A. § 1901 et seq.) If the minor is domiciled or resides on lands under the jurisdiction of the Band.
- (b) The Band may petition for transfer from any court of jurisdiction over child custody proceedings, as defined by the Indian Child Welfare Act, if the minor is domiciled or resides exterior to lands under the jurisdiction of the Band.
- (c) Upon receipt of transfer jurisdiction from any court, the Solicitor General shall file a minor-in-need-of-care petition and an adjudicatory hearing shall be held in accordance with this title.
- (d) The Band agent for service of notice of state court child custody proceedings, as defined by the Indian Child Welfare Act, shall be the Commissioner of Human Services.
- (e) The Band petition for transfer shall be filed by the Solicitor General or selected representative within five (5) days of receipt of notice from a state court.
- (f)
  - (1) The Band may intervene in state court child custody proceedings, as defined by the Indian Child Welfare Act at any point in the proceedings.
  - (2) The Solicitor General or selected representative shall file a motion to intervene within five (5) days of receipt of notice from a state court.
- (g)
  - (1) If a parent or Indian custodian petition to state court for transfer of jurisdiction is granted, the Court shall not refuse to accept such transfer.
  - (2) The Court shall accept all state court transfers of child custody proceedings.
- (h) If the Band's petition for transfer is granted or if a parent or Indian custodian's petition for transfer is granted, the Band shall expeditiously transfer the minor to the jurisdiction of the Band.

- (i) Upon receipt of transfer jurisdiction from state court, the Solicitor General shall file a minor-in-need-of-care petition and an adjudicatory hearing shall be held in accordance with this title.
- (j) The Court shall give full faith and credit to other tribes' child custody court orders, as defined by the Indian Child Welfare Act.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 2.04, 3.01-3.06.

### **§ 6. Court Participation in Programs; Grants-In-Aid.**

The Court is authorized to cooperate fully with any federal, tribal, public or private agency to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purpose of Chapters 1 to 10 of this title, subject to appropriation of all funds by the Band Assembly.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 2.01.

### **§ 7. Social Services.**

The Court shall utilize such social services as may be furnished by any tribal or federal agency, provided that they are economically administered without unnecessary duplication and expense.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 2.02.

### **§ 8. Contracts for Care and Placement of Minors.**

The Court may negotiate a contract, on behalf of the Band with tribal or federal agencies and departments for the care and placement of minors whose status is adjudicated under this Court, subject to ratification by the Band Assembly.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 2.03.

**§ 9. Guardian Ad Litem.**

- (a) The Court, at any stage of a proceeding, may appoint a Guardian Ad Litem for a minor who is a party, if the minor has no parent, guardian or custodian appearing on behalf of the minor or if their interests conflict with those of a minor.
- (b) The Court, under any proceeding authorized by Chapters 1 to 10 of this title, shall appoint for the purposes of that proceeding a Guardian Ad Litem for a minor where the Court finds that the minor does not have a natural or adoptive parent, guardian or custodian willing and able to exercise effective guardianship.
- (c) The duties of the Guardian Ad Litem shall be to represent the minor's interest in any proceeding as required by the Court and make recommendations to the Court on disposition.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 4.04, 32.

**§ 10. Court to Inform Minor or Parents.**

At her or his first appearance before the Court, the minor, who is alleged to be a juvenile offender, the parent(s), guardian or custodian, when a minor is alleged to be a minor-in- need-of-care, and the parent(s), in a termination of parental rights proceeding, shall be informed by the Court of:

- (a) The allegations against him;
- (b) The right to an attorney at her or his own expense;
- (c) The right to testify or remain silent and that any statement made by her or him may be used against her or him;
- (d) The right to cross-examine witnesses;
- (e) The right to subpoena witnesses on her or his own behalf; and
- (f) The possible consequences if the allegations of the petition are found to be true.

## Historical and Statutory Notes

**Source:**

Band Statute 1096-MLC-28, § 4.05.

### Cross References

Admission of juvenile offender allegations, *see* 8 MLBS § 135.

Basic rights of children taken into custody, *see* 8 MLBS § 105.

Due process of law, *see* 1 MLBS § 8.

Minor-in-need-of-care proceedings, parent, guardian or custodian informed of right to attorney, *see* 8 MLBS § 210.

Right to confront witnesses, obtain witnesses and have assistance of counsel, *see* 1 MLBS § 6.

### § 11. Evidentiary Standards.

In all cases before the Human Resource Division, the judge/justice shall utilize a clear and convincing standard of proof.

## Historical and Statutory Notes

**Source:**

Band Statute 1096-MLC-28, § 34.

### § 12. Adjudication Upon Child Status Not Conviction of Crime.

No adjudication upon the status of any child in the jurisdiction of the Court shall be deemed criminal or a conviction of a crime.

## Historical and Statutory Notes

**Source:**

Band Statute 1096-MLC-28, § 2.05.

### § 13. Disposition or Evidence Not Admissible in Other Proceedings.

The disposition of a child or of evidence given shall not be admissible as evidence against the child in any proceedings in another court.

## Historical and Statutory Notes

**Source:**

Band Statute 1096-MLC-28, § 2.06.

**§ 14. Standard for Shelter Care and Detention Facilities.**

- (a)
  - (1) The Chief Justice of the Court of Central Jurisdiction shall prescribe and enforce rules and regulations governing the operation of detention and shelter care facilities. He or she may assign the responsibilities to another qualified tribal agency.
  - (2) The rules and regulations shall include, but are not limited to the following:
    - (i) Cleanliness standards,
    - (ii) Heat, water and light standards,
    - (iii) Personnel standards,
    - (iv) Visitation privileges,
    - (v) Occupancy standards,
    - (vi) Provisions for medical and dental care, and
    - (vii) Provisions for food, furnishing, clothing and toilet articles.
- (b) The Chief Justice of the Court of Central Jurisdiction shall prescribe and enforce written policies and procedures governing the administration of detention and shelter care facilities. Such policies and procedures shall include, but are not limited to the following:
  - (1) A minor shall not be punished, ridiculed or criticized for expressing through speech, custom or dress, the minor's Indian and tribal heritage.
  - (2) A minor shall be allowed to wear her or his hair according to her or his personal taste. The minor shall not be punished, ridiculed or criticized for the hairstyle he or she selects.
  - (3) A minor may wear her or his own clothes rather than clothes supplied by the detention facility, as long as they comply with minimum standards of cleanliness.
  - (4) Incoming and outgoing mail may be inspected for contraband, but shall not be read.

- (5) Whenever possible, the minor shall be allowed to attend the school in which he or she is enrolled. School work and educational assistance, at the minor's level of development, shall be provided for the minor in detention facilities.
  - (6) A minor shall be allowed to attend traditional ceremonials provided that he or she is accompanied by a parent, guardian or custodian, has received consent to do so by the child's Court Counselor, parent or custodian, who has been delegated the authority to consent from the judge/justice of the Court of Central Jurisdiction and returns immediately to the detention or shelter care facility.
  - (7) A minor shall be allowed to attend the funeral and any related activities of her or his brother, sister, mother, father, aunt, uncle, grandmother grandfather or cousin, whether they be natural or adopted provided that:
    - (i) His parent, guardian or custodian request and receive permission from the judge/justice of the Human Resource Division, and
    - (ii) He is accompanied by a parent, guardian or custodian, and
    - (iii) He returns immediately to the shelter care or detention facility.
  - (8) A minor shall be given the opportunity to engage in physical exercise every day.
  - (9) A minor shall not be locked alone in a room unless there exists a reasonable belief that he or she may cause physical injury to her or himself or others if not locked alone. An emergency fire exit must be accessible and toilet facilities must be available to the minor. While a minor is locked alone in a room, he or she must be visited at least once an hour. The confinement shall not exceed a four-hour time period.
  - (10) A minor shall not be punished by physical force, solitary confinement or deprivation of meals or family visits.
  - (11) A minor in a detention facility shall not be required to perform work duties, excepting household chores.
- (c) A judge/justice shall have the authority to close any facility in violation of this section.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 33.

## **Cross References**

Duties of chief Justice, *see* 5 MLBS § 114.

### **§ 15. Legal Duties of Human Resource Officers and Child Social Workers.**

- (a) The Human Resource Officer and Child Social Workers shall carry out duties conferred throughout Chapters 1 to 10 of this title. The Human Resource Officer and Child Social Workers duties do not include acting on behalf of the Band against the child. Their sole responsibility is to serve as a friend of the child, on the child's behalf and in the child's best interest.
- (b) The duties and responsibilities of the Human Resources Officer and Child Social Worker of the Band shall include, but not be limited to, the following:
  - (1) Make investigations as provided in this title, or as directed by the Court;
  - (2) Make reports to the Court as provided in this Title or as directed by the Court;
  - (3) Conduct informal hearings with the minor and the minor's parent(s), guardian or custodian;
  - (4) Place a minor in detention or shelter care as provided in this title; and
  - (5) Perform such other duties in connection with the care, custody or transportation of minors as the Court may require.
- (c) The Human Resource Officer must have an educational background and/or prior experience in the field of delivering social services to youth.
- (d) The Human Resource Officer shall identify and develop resources on the reservation designed to enhance each minor's potential as a viable member of the Band community.
- (e) The Human Resource Officer shall not be employed at or perform the duties of a prosecutor, Solicitor General or law enforcement official.
- (f) The Human Resource Officer shall not testify against any minor in any proceeding under this Title or any adjudicatory proceeding.

## **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 30.

**§ 16. Obligations of Solicitor General.**

- (a) The Solicitor General shall represent the people of the constituent Band of the Mille Lacs Band of Ojibwe under Chapters 1 and 3 to 10 of this title.
- (b) The Solicitor General's duties shall include, but not be limited to:
  - (1) Filing petitions with the Court as provided in Chapters 1 and 3 to 10 of this title;
  - (2) Representing the Band in all proceedings under Chapters 1 and 3 to 10 of this title; and
  - (3) Performing such other duties as the Court may order.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 31.

**Cross References**

Duties of Solicitor General, *see* 4 MLBS § 18.

**§ 17. State of Minnesota: Agreement Regarding Indian Child Custody Proceedings.**

The Band Assembly hereby authorized the Chief Executive to officially notify the state of Minnesota-Commissioner of Department of Human Services of the intention of the Mille Lacs Band of Ojibwe to revoke the agreement regarding Indian Child Custody Proceedings with cause following a minimum of 30 days after delivery of said written notice to the Commissioner of Human Services. The revocation shall not affect any action or proceeding over which a state court has previously assumed jurisdiction.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 36.

**CHAPTER 2**

**CURFEW**

## **Section**

**71. Purpose and Findings.**

**72. Definitions.**

**73. Prohibited Acts.**

**74. Exceptions.**

**75. Prosecution.**

**76. Affirmative Defenses.**

**77. Reasonable Grounds.**

**78. Penalties.**

**79. Severability.**

**80. Sovereign Immunity.**

### **Historical and Statutory Notes**

The Preamble to and §§ 101.1 and 109 of Band Ordinance 31-03 (this Chapter) provide:

“Preamble: This Ordinance shall regulate the conduct of juveniles in Public Places during night time hours for the purposes of protecting Juveniles from criminal activities, preventing Juveniles from committing crimes, enhancing parental control of their Juvenile children and protecting the peace and well-being of the community.”

“Section 101. Purposes and Findings: 1. This Ordinance repeals and replaces Title 8 MLBS §§ 71 and 72 and 24 MLBS § 1261.” “Section 109. Severability. If the Court of Central Jurisdiction adjudges any provisions of this ordinance to be invalid, such judgment shall not affect any other provisions of this Ordinance not specifically included in the judgment.”

#### **§ 71. Purposes and Findings.**

- (a) The Mille Lacs Band of Ojibwe Indians finds that there has been an increase in violence and crime by and against Juveniles on Band Lands in recent years.
- (b) The lack of maturity and experience makes Juveniles more susceptible to becoming victims or perpetrators of crimes.
- (c) The Mille Lacs Band finds that the increase in criminal activity by and against Juveniles creates a need for an Ordinance that will address the causes of the problem and aid in the prevention of crime.

### **Historical and Statutory Notes**

#### **Source:**

Band Ordinance 31-03, § 101.2-4.

## § 72. Definitions.

- (a) **Authorized Adult.** An Authorized Adult is any person who is at least 18 years of age and authorized by a Parent to have custody and control of a Juvenile.
- (b) **Band Lands.** Band Lands means lands owned by or held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band of Ojibwe Indians, or one (1) or more members of the Mille Lacs Band of Ojibwe Indians, and subject to the jurisdiction of the Mille Lacs Band.
- (c) **Emergency.** Emergency means an unforeseen circumstance that call for immediate action. The term includes, but is not limited to, a fire, natural disaster, automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.
- (d) **Juvenile.** Juvenile means a person under the age of 18 years but does not include a person under 18 years of age who is married or has been legally emancipated.
- (e) **Knowingly.** Knowingly means an action or inaction that is taken with such knowledge as a Parent or Authorized Adult is reasonably expected to have concerning the whereabouts of the Juvenile in her or his care, or such knowledge as a Person Operating a place of business is reasonably expected to have concerning the persons on the premises of such business.
- (f) **Parent.** Parent means any person having legal custody of a Juvenile: (1) as a natural parent, adoptive parent or step-parent; (2) as a legal guardian; or, (3) pursuant to a court order.
- (g) **Public Place.** A public place means any public or private location or area open to the public and includes, but is not limited to, streets, highways, roads, parks, public recreation areas, entertainment or civic facilities, schools, and the common areas of hospitals, clinics, apartment houses, office buildings, garages and shops.
- (h) **Serious Bodily Harm.** Serious Bodily Injury means bodily injury that creates a substantial risk of death or that causes death or serious or permanent disfigurement, loss or protracted impairment of the function of any bodily member or organ.
- (i) **Person Operating.** Person Operating means any individual, corporation, association, partnership, or other business entity managing a place of business on Band Lands that is open to the public.

### Historical and Statutory Notes

**Source:**

Band Ordinance 31-03, § 102.

### **§ 73. Prohibited Acts.**

- (a) In accordance with the cultural law of the Mille Lacs Band of Ojibwe Indians, all children under the chronological age of ten (10) who are subject to the jurisdiction of the Mille Lacs Band shall be subject to curfew that shall commence at the time the sun is fully set in the western sky. Except as provided in § 74 of this Chapter, it is unlawful for such a child to be present in any Public Place on Band Lands without a Parent or Authorized Adult from sunset to sunrise.
- (b) Except as provided in § 74 of this Chapter, it is unlawful for a Juvenile who is subject to the jurisdiction of the Mille Lacs Band to be present in any Public Place on Band Lands without a Parent or Authorized Adult:
  - (1) between 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday and 5:00 a.m. of the following day; or
  - (2) between 11:00 p.m. on any Friday or Saturday and 5:00 a.m. of the following day.
- (c) Any Parent or Authorized Adult subject to the jurisdiction of the Mille Lacs Band who knowingly or through negligent supervision permits a Juvenile to be present at any Public Place in violation of paragraphs (a) or (b) of this section shall be guilty of a civil misdemeanor.
- (d) Any Person Operating or otherwise in charge of any Band-owned business to knowingly permits any Juvenile to be present at any Public Place maintained by such business in violation of paragraphs (a) or (b) of this section shall be guilty of a civil misdemeanor.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 103.

### **§ 74. Exceptions.**

It shall not be unlawful under § 73 of this Chapter for a Juvenile to be present at a Public Place at any time if:

- (a) the Juvenile is accompanied by a Parent or Authorized Adult;
- (b) the Juvenile is involved in, or attempting to remedy, alleviate or respond to, an Emergency;

- (c) the Juvenile is engaged in lawful employment or while traveling to and from such employment;
- (d) the Juvenile is attending an activity that is sponsored by a school or religious organization, a traditional ceremony, or other social or recreational activity supervised by adults, or is reasonably traveling to and from such activity; or
- (e) the Juvenile, with the authority of a Parent, is on the public right-of-way, boulevard or sidewalk abutting the Juvenile's residence.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 104.

**§ 75. Prosecution.**

- (a) A prosecution for a violation of § 73 of this Chapter may only be initiated by the Solicitor General's Office. To initiate such a prosecution, the Solicitor General's Office must file a complaint in the Court of Central Jurisdiction within 90 days of the date on which the violation occurred. The complaint shall contain:
  - (1) a citation to the specific provision(s) of this Chapter allegedly violated; and
  - (2) the name, age and address, if known, of the defendant and, if the defendant is a Juvenile, of her or his parents, if known; and
  - (3) a plain and concise statement of the facts upon which the allegations are based.
- (b) The complaint must be personally served on the defendant within seven (7) days after it is filed in the Court of Central Jurisdiction. If the defendant is out of the jurisdiction of the Mille Lacs Band of Ojibwe Indians or is otherwise unable to be personally served, the seven (7) day period shall begin after the defendant has been located within the jurisdiction of the Mille Lacs Band.
- (c) **Preliminary Inquiry.**
  - (1) A preliminary inquiry shall be held within 30 days after the complaint has been filed and the defendant has been properly served, unless the Court finds good cause to the contrary. In no event shall a preliminary inquiry take place later than 45 days after the complaint has been filed and the defendant has been properly served.
  - (2) The defendant shall enter a plea of guilty or not guilty at the preliminary

inquiry. If the defendant stands mute or refuses to enter a plea, then the Court shall enter a plea of not guilty for the defendant.

- (d) **Pretrial Hearing and Adjudicatory Hearing.** The Court shall schedule a pretrial hearing to be held within 15 days after the preliminary hearing, and an adjudicatory hearing to be held within 45 days after the preliminary hearing. The time for the pretrial hearing and adjudicatory hearing may be extended if the defendant agrees to waive the time limits.
- (e) **Confidentiality of Records.** All court records under this Chapter shall be confidential and shall not be open to the public for inspection. Any conviction of a Juvenile under this Chapter shall become sealed once the Juvenile reaches 18 years of age.
- (f) **Appeal.** Appeals shall be conducted according to 24 MLBSA § 2501 et seq. A party may appeal a final Order by filing with the Clerk of the Court a written Notice of Appeal within 30 days of the date the Order was filed.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 105.

#### **§ 76. Affirmative Defenses.**

It shall be an affirmative defense to prosecution under § 73(d) of this Chapter that:

- (a) the owner, manager or employee of any business or other enterprise open to the public promptly notified the Mille Lacs Band police department that a Juvenile was present on the premises in violation of § 73(a) or (b) and refused to leave when requested; or
- (b) the owner, manager or employee reasonably relied upon the Juvenile's representation as to proof of age. Proof of age may be established by Band identification, State driver's license, school identification card, or other verifiable means.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 106.

#### **§ 77. Reasonable Grounds.**

A police officer may make an arrest or issue a citation under this Chapter if the officer has

reasonable grounds to believe that a violation of this Chapter has occurred and no exception applies.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 107.

### **§ 78. Penalties.**

- (a) Except as otherwise provided in this Chapter, violations of § 73(a)-(c) will be prosecuted pursuant to 8 MLBS Chapter 3 and will be subject to the penalties therein. In addition, the Court shall also sentence the Juvenile and/or the Juvenile's Parent(s) or Authorized Adult(s) as follows:
  - (1) The first offense shall be punishable by a fine of \$25.00.
  - (2) The second offense shall be punishable by a fine of \$50.00.
  - (3) The third and any additional offenses shall be punishable by a fine of \$75.00. In addition, the Court shall require the Mille Lacs Band's Family Services Department to investigate the Juvenile's social and education background for the purposes of making a recommendation to the Office of Solicitor General as to whether a Petition For a Child In Need Of Protective Services (CHIPS) is required.
- (b) Nothing in this section shall preclude the Court from alternative sentencing if deemed in the best interest of the Juvenile.
- (c) If a Juvenile cannot pay the fine imposed by the Court under this section, the Juvenile's Parent(s) or Authorized Adult(s) shall pay the fine.
- (d) A violation of § 73(d) shall be a civil misdemeanor and punishable by a fine not to exceed \$100.00 and/or other alternative sentencing, as deemed necessary by the Court.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 108.

### **§ 79. Severability.**

If the Court of Central Jurisdiction adjudges any provisions of this Chapter to be invalid, such judgment shall not affect any other provision of this Chapter not specifically included in the judgment.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 109.

### **§ 80. Sovereign Immunity.**

Nothing contained in this Chapter shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe Indians.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 110.

## **CHAPTER 3**

### **JUVENILE OFFENDERS**

**Section**

**101. Juvenile Offender Complaint.**

**102. Warrants.**

**103. Custody.**

**104. Law Enforcement Officer's Duties.**

**105. Basic Rights of Children Taken into Custody.**

**106. Fingerprints and Photographs.**

**107. Questioning in Custody.**

**108. Line up for Identification.**

**109. Court Counselor's Duties.**

**110. Detention Pending Hearing.**

**111. Detention in Jail.**

**112. Preliminary Inquiry Minor Placed in Detention or Shelter Care.**

**113. Preliminary Inquiry Minor Not in Detention or Shelter Care.**

**114. Notice of Preliminary Inquiry.**

**115. Presence of Parent, Guardian, or Custodian at Preliminary Inquiry.**

**116. Probable Cause.**

**117. Release to Responsible Adult.**

**118. Continued Detention or Shelter Care.**

- 119. Dismissal of Complaint.
- 120. Investigation by Human Resource Officer.
- 121. Informal Hearing.
- 122. Notice of Informal Hearing.
- 123. Subpoenas.
- 124. Inadmissibility of Statements.
- 125. Informal Adjustment.
- 126. Progress Reviews.
- 127. Petition.
- 128. Date of Adjudicatory Hearing.
- 129. Continuance.
- 130. Summons.
- 131. Adjudicatory Hearing.
- 132. Testimony at Adjudicatory Hearing.
- 133. Burden of Proof; Finding.
- 134. Appealability of Finding.
- 135. Admission of Allegations.
- 136. Pre-Dispositional Report.
- 137. Medical Examination.
- 138. Dispositional Hearing.
- 139. Notice of Dispositional Hearing.
- 140. Evidence.
- 141. Dispositional Orders.
- 142. Appealability of Dispositional Order.
- 143. Modification of Dispositional Order.
- 144. Record of Hearings.
- 145. Confidentiality of Courts Records.
- 146. Confidentiality of Law Enforcement Records.
- 147. Destruction of Records.
- 148. Appeal.
- 149. Contempt of Court.

### **Cross References**

- Compulsory attendance of school age pupils, *see* 9 MLBS § 19.
- Contributing to delinquency of minor, *see* 24 MLBS § 1260.
- Criminal procedure, juvenile delinquency, *see* 24 MLBS § 4301.
- Liquor violations, *see* 24 MLBS § 1258.
- Prohibited drugs, consumption by minors, *see* 23 MLBS § 5.

### **§ 101. Juvenile Offender Complaint.**

A complaint may be filed by a person who has knowledge of the facts alleged. The complaint shall be signed by the complainant. The complaint shall contain:

- (a) A citation to the specific statutory provisions of this Title which give the Court jurisdiction of the proceedings,
- (b) A citation to the Mille Lacs Band Statutes Annotated provision or custom and tradition which the minor is alleged to have violated, Name, age and address of the minor who is the subject of the complaint,
- (c) The name and address of parents, custodian or guardian, if known and
- (d) A plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 6.

### **Cross References**

Minor-in-need-of-care complaint, *see* 8 MLBS § 201.

### **§ 102. Warrants.**

- (a) The Court may issue a warrant directing that a minor be taken into custody if the Court finds probable cause to believe the minor has committed the acts alleged in the complaint, and there is probable cause to believe that the child will not appear for a hearing, or is in immediate and serious emotional or physical harm or would commit additional criminal offenses.
- (b) The Court may issue a warrant authorizing a law enforcement officer to search for a minor if there is probable cause to believe that the minor is within the Court's jurisdiction and a custodial warrant has been issued for the alleged juvenile offender.
- (c) The Court may issue a warrant authorizing a law enforcement officer to search for and seize property when the property has been obtained or is possessed in a manner which constitutes a delinquent act; or is designed or intended for use, or which is, or has been used as a means of committing a delinquent act; or would be material evidence in a juvenile offender proceeding.
- (d) The Court may issue a warrant for a person's arrest immediately upon the failure to appear, either in person or by counsel, in Court as directed for contempt of court.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 7.

### **Cross References**

Criminal procedure. Warrant, summons and arrest, *see* 24 MLBS § 4101.  
Unreasonable searches and seizures, *see* 1 MLBS § 2.

### **§ 103. Custody.**

A minor may be taken into custody by a law enforcement officer if:

- (a) The officer has reasonable grounds to believe a delinquent act has been committed and that the minor has committed the delinquent act; or
- (b) The minor is found in surroundings or conditions which pose an immediate and serious threat of emotional or physical harm; or
- (c) A Warrant pursuant to 8 MLBS § 102 has been issued for the minor.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1096-MLC-28, § 8.

### **Cross References**

Criminal procedure, Warrant, summons and arrest, *see* 24 MLBS § 4101.

### **§ 104. Law Enforcement Officer's Duties.**

A law enforcement officer who takes a minor into custody pursuant to 8 MLBS § 103 shall proceed as follows.

- (a) An arresting officer shall give the warnings listed in 8 MLBS § 105 to any minor he or she takes into custody prior to any questioning.
- (b) An arresting officer shall release the minor to the minor's parent, guardian or custodian, and issue verbal counsel or warning as may be appropriate, unless shelter care or detention is necessary.
- (c) If the minor is not released, an arresting officer shall make immediate and recurring efforts to notify the minor's parent, guardian or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care or detention is

made by the Human Resource Officer pursuant to 8 MLBS § 109. If the minor is not released, the minor shall be taken immediately to the Human Resource Officer by the arresting officer.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 9.

### **Cross References**

Criminal procedure, Warrant, summons and arrest, *see* 24 MLBS § 4101.

### **§ 105. Basic Rights of Children Taken into Custody.**

At the time a minor is taken into custody as a juvenile offender, the arresting officer shall give the following warning:

The minor has a right to remain silent. Anything the minor says can be used against the minor in court as he or she is presumed to be guilty until he or she can prove her or his innocence. The minor has a right to the presence of an attorney, parents or person of her or his choice during questioning. If he or she cannot afford an attorney, the Court is not required to provide free legal service, the Court will assist the minor in obtaining the services of any attorney through available services and parents of the minor cannot waive these rights for the minor.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 4.

### **Cross References**

Assistance of counsel, *see* 1 MLBS § 6.

Court to inform minor of rights, *see* 8 MLBS § 11.

Due process of law, *see* 1 MLBS § 8.

Self-incrimination in criminal proceeding, *see* 1 MLBS § 4.

### **§ 106. Fingerprints and Photographs.**

- (a) An alleged juvenile offender shall not be fingerprinted or photographed without the consent of the Court.
- (b) If latent fingerprints are found during the investigation of an offense and a law

enforcement officer has reasonable grounds to believe that the fingerprints are those of a minor in custody, he or she may fingerprint the minor for the purpose of immediate comparison with the latent fingerprints, only with the consent of the Court. Copies of the fingerprints shall be immediately destroyed, if the comparison is negative, or if the minor is not referred to the Court.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 4.02, 25.

### **§ 107. Questioning in Custody.**

A minor alleged to be a juvenile offender who is taken into custody and placed in detention or shelter care shall not be questioned except to determine identity.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 4.01.

### **§ 108. Lineup for Identification.**

The Court may authorize a lineup that includes a minor in custody as an alleged juvenile offender for identification purposes only if the minor and the minor's parent, guardian or custodian give their written consent and the minor is represented by Counsel at the time of the lineup.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 24.

### **§ 109. Court Counselor's Duties.**

- (a) The Court Counselor shall not place a minor in detention unless a complaint is filed in accordance with 8 MLBS § 101 or the court orders that a minor be taken into custody pursuant to 8 MLBS § 102.
- (b) If the minor's parent, guardian or custodian has not been contacted, the Court Counselor shall make immediate and recurring efforts to inform them that the minor has been taken into custody and release the minor to the parent, guardian or custodian, unless detention or shelter care is immediately necessary.

- (c) If a minor is not released to her or his parent, guardian or custodian, the Court Counselor shall place the minor in detention or shelter care, pending the preliminary inquiry.
- (d) If a minor is not released to her or his parent, guardian or custodian, the Court Counselor shall immediately explore alternative pre-adjudication custody arrangements and prepare recommendation for temporary care and custody for presentation at the preliminary inquiry.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 10.

### **§ 110. Detention Pending Hearing.**

A minor alleged to be a juvenile offender may be detained, pending a court hearing, in the following places:

- (a) A foster care facility on the reservation licensed or approved by the Band;
- (b) A detention home on the reservation approved by the Band; or
- (c) A private family home on the reservation approved by the Band.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28 § 11.

### **Cross References**

Minors-in-need-of-care, shelter care, *see* 8 MLBS § 206.

Standard for shelter care and detention facilities, *see* 8 MLBS § 15.

### **§ 111. Detention in Jail.**

A minor who is 16 years of age or older may be detained in a county jail or facility used for the detention of adults only if:

- (a) A facility in 8 MLBS § 110 is not available or would not assure adequate supervision of the minor;

- (b) Detention is in a cell separate, but not removed, from sight and sound of adults, whenever possible;
- (c) Adequate supervision is provided 24 hours a day.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 11.01.

### **§ 112. Preliminary Inquiry-Minor Placed in Detention or Shelter Care.**

- (a) If a minor is placed in detention or shelter care by the Human Resource Officer pursuant to 8 MLBS § 109(c), the Court shall conduct a preliminary inquiry within 24 hours for the purpose of determining whether probable cause exists to believe the minor committed the alleged delinquent act and whether continued detention or shelter care is necessary, pending further proceedings.
- (b) The minor must be released to parent, guardian, custodian or other suitable person, unless there is reason to believe that the child would endanger her or himself or others; not return for a court hearing; not remain in care or control of the person the child is to be released to; or that the child's health or welfare would be endangered.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 12.

### **§ 113. Preliminary Inquiry-Minor Not in Detention or Shelter Care.**

If a minor has been released to her or his parent, guardian or custodian, the Court shall conduct a preliminary inquiry within three (3) days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor committed the alleged delinquent act.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 12.01.

### **§ 114. Notice of Preliminary Inquiry.**

- (a) Notice of the preliminary inquiry shall be given to the minor and her or his parent,

guardian or custodian and their counsel as soon as the time for the inquiry has been established. The notice shall contain:

- (1) The name of the court;
  - (2) The title of the proceedings;
  - (3) A brief statement of the substance of the allegations against the minor; and
  - (4) The date, time and place of the preliminary inquiry.
- (b) The notice shall be delivered by a law enforcement officer, or an appointee of the Court.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 12.03.

### **§ 115. Presence of Parent, Guardian or Custodian at Preliminary Inquiry.**

If the minor's parent, guardian or custodian is not present at the preliminary inquiry, the Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the Court shall recess for not more than 24 hours and direct the Human Resource Officer to make continued efforts to obtain the presence of a parent, guardian or custodian.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §12.02.

### **§ 116. Probable Cause.**

The circumstances that give rise to the complaint or the taking of the minor into custody and the need for detention or shelter care. If the Court finds that probable cause exists to believe the minor performed the delinquent act, the minor may be released to her or his parents and ordered to appear at the adjudicatory hearing.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 12.04.

### **§ 117. Release to Responsible Adult.**

If the act is serious enough to Warrant continued detention or shelter care and there is reasonable cause to believe the minor will run away so that he or she will be unavailable for further proceedings or there is reasonable cause to believe that the minor will commit a serious act causing damage to person or property, the Court may release the minor to a relative or other responsible adult tribal member, if the parent, guardian or custodian of the minor consents to the release. If the minor is ten (10) years of age or older, the minor and her or his parent, guardian or custodian must both consent to the release.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 12.05.

### **§ 118. Continued Detention or Shelter Care.**

Upon a finding that probable cause exists to believe that the minor committed the alleged delinquent act and that there is a need for detention or shelter care and the minor's detention or shelter care shall be continued, the Court shall consider the Court Counselor's recommendation prepared pursuant to 8 MLBS § 109(d).

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 118.

### **§ 119. Dismissal of Complaint.**

If probable cause exists to believe the minor committed the alleged delinquent act and the need for detention or shelter care is not found, the complaint shall be dismissed with or without prejudice and the minor released.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 12.061.

### **§ 120. Investigation by Human Resource Officer.**

- (a) The Human Resource Officer shall make an investigation within 24 hours of the preliminary inquiry or the release of the minor to determine whether the interests of

the minor and the Band require that further action be taken.

- (b) Upon the basis of her or his investigation, the Human Resource Officer may recommend that no further action be taken. Suggest to the minor, her or his parent, guardian or custodian that they appear for an informal hearing pursuant to 8 MLBS § 121; a petition be filed; or a transfer petition be filed.
- (c) The Human Resource Officer may recommend that the Solicitor General file a petition pursuant to 8 MLBS § 127 in the Court to initiate further proceedings. The petition shall be filed within 48 hours if the minor is in detention or shelter care. If the minor has been previously released to her or his parent, guardian, custodian, relative or responsible adult, the petition shall be filed within five (5) days.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 13.

### **§ 121. Informal Hearing.**

The Human Resource Officer may hold an informal conference with the minor and the minor's parent, guardian or custodian to discuss alternatives to the filing of a petition if:

- (a) The admitted facts bring the case within the jurisdiction of the Court;
- (b) An informal adjustment of the matter would be in the best interest of the minor and the Band; and
- (c) The minor and her or his parent, guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 14.

### **§ 122. Notice of Informal Hearing.**

- (a) Notice of the informal hearing shall be given to the minor and her or his parent, guardian or custodian and their counsel as soon as the time for the hearing has been established.
- (b) The notice shall contain:

- (1) The name of the Court;
  - (2) The title of the proceeding; a brief statement of the substance of the allegation against the minor; and
  - (3) The date, time and place of the informal hearing.
- (c) The notice shall be delivered by a law enforcement officer or an appointee of the Court. If the notice cannot be delivered personally, the notice shall be delivered by registered mail.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28§ 14.01.

### **§ 123. Subpoenas.**

The provisions of 8 MLBS §§ 121-126 do not authorize the Human Resource Officer to compel any person to appear at any conference, produce any papers or visit any place.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 14.03.

### **§ 124. Inadmissibility of Statements.**

No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any proceedings against the minor under this chapter.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 14.02.

### **§ 125. Informal Adjustment.**

- (a) At the informal hearing, the Human Resource Officer may:
  - (1) Refer the minor and the parent, guardian or custodian to the community agency for needed assistance.

- (2) Order terms of supervision calculated to assist and benefit the minor which regulate the minor's activities and which are within the ability of the minor to perform.
  - (3) Accept an offer of restitution, if voluntarily made by the minor.
  - (4) Recommend that the Solicitor General file a petition pursuant to 8 MLBS § 127.
- (b) Any informal adjustment period shall not exceed six (6) months.
- (c) The Human Resource Officer shall set forth in writing the agreements and conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 14.04-14.06.

### **§ 126. Progress Reviews.**

The Human Resource Officer shall review the minor's progress every 30 days. If, at anytime after the initial 30 day period, the Human Resource Officer concludes that positive results are not being achieved, the Human Resource Officer shall recommend that the Solicitor General file a petition pursuant to 8 MLBSA § 127.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 14.07.

### **§ 127. Petition.**

- (a) Proceedings under this chapter shall be instituted by a petition filed by the Solicitor General on behalf of the Band and in the interests of the minor. The Solicitor General shall file no petition with the Court unless the Commissioner of Human Services shall certify to the facts contained therein. No Human Resource Officer shall certify to any facts contained therein on any petition, however this shall not relieve any Human Resource Officer from civil liability for malfeasance in the performance of their official duties.
- (b) The petition shall state:

- (1) The name, birthdate and residence of the minor.
- (2) The names and residences of the minor's parent, guardian or custodian.
- (3) A citation to the specific statutory provision of this Title which gives the Court jurisdiction of the proceedings.
- (4) A citation to the Mille Lacs Band Statutes Annotated provision which the minor is alleged to have violated.
- (5) If the minor is in detention or shelter care, the place of detention or shelter care and the time he or she was taken into custody.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 15.

### **§ 128. Date of Adjudicatory Hearing.**

- (a) Upon receipt of the petition, the Court Clerk shall set a date for the hearing which shall not be more than five (5) days after the Court received the petition from the Solicitor General. Mediation required pursuant to statute shall be waived, if the adjudicatory hearing is not held within ten (10) days after the filing of the petition.
- (b) Trial upon the merits shall commence within 30 days of filing of the complaint or be dismissed with or without prejudice.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 13, 16.

### **§ 129. Continuance.**

- (a) If the hearing is continued upon motion of the minor, the petition shall be dismissed and cannot be filed again.
- (b) The hearing is continued upon motion of the Solicitor General by reason of the unavailability of material evidence or witnesses and the Court finds the Solicitor General has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 16.01.

**§ 130. Summons.**

- (a) At least five (5) days prior to the adjudicatory hearing, the Court shall issue summons to:
  - (1) The minor;
  - (2) The minor's parent, guardian or custodian;
  - (3) Any person the Court believes necessary for the proper adjudication of the hearing; and
  - (4) Any person the parties believe necessary for the proper adjudication of the hearing.
- (b) The summons shall contain:
  - (1) The name of the Court;
  - (2) The title of the proceedings; and
  - (3) The date, time and place of the hearing.
- (c) A copy of the petition shall be attached to the summons.
- (d) The summons shall be delivered personally by a tribal law enforcement officer or appointee of the Court. If the summons cannot be delivered personally, the Court may deliver the summons by registered mail.
- (e) If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court and a bench Warrant shall be issued.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 16.04.

**§ 131. Adjudicatory Hearing.**

An adjudicatory hearing shall be conducted within ten (10) days of receipt of the petition by the

Court. The adjudicatory hearing shall be held for the sole purpose of determining the guilt or innocence of a juvenile offender or for determining if the minor is a minor-in- need-of-care.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 17.

### **§ 132. Testimony at Adjudicatory Hearing.**

- (a) The Court shall hear testimony concerning the circumstances which gave rise to the complaint.
- (b) No evidence that would be inadmissible in a civil proceeding shall be admitted.
- (c) The parties shall have the right to cross-examine and present witnesses.
- (d) Human Resource Officers shall testify at any Court hearing to which they have factual knowledge of the circumstances surrounding the cause of action.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 15, 17.01 to 17.03.

### **§ 133. Burden of Proof; Finding.**

If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Court shall find the minor to be a juvenile offender and proceed to the dispositional hearing.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 17.04.

### **§ 134. Appealability of Finding.**

A finding that a minor is a juvenile offender constitutes a final order for purpose of appeal.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 16.02.

### **§ 135. Admission of Allegations.**

If the minor admits the allegations of the petition, the Court shall proceed to the dispositional stage only if the Court finds:

- (a) The minor fully understands her or his rights as set forth in 8 MLBS § 11 and fully understands the potential consequences of her or his admission.
- (b) The minor voluntarily, intelligently and knowingly admits to all facts necessary to constitute a basis for Court action.
- (c) The minor has not, in her or his purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 16.03.

### **§ 136. Pre-Dispositional Report.**

- (a) The Human Resource Officer shall prepare and present a written report to the Court at least one (1) day before a dispositional hearing.
  - (1) The report shall contain a place for the care and assistance to the minor or her or his parents, guardian or custodian which is calculated to resolve the problems presented in the petition.
  - (2) The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan.
  - (3) Preference shall be given to the dispositional alternatives which are listed in 8 MLBS § 141 and select that which is the *least restrictive* of the minor's freedom and is consistent with the interests of the Band.
  - (4) The report shall contain specific reasons for not recommending placement of the minor with her or his parent, guardian or custodian.
- (b) The Human Resource Officer shall present the pre-dispositional report to the Court, the person selected by the minor to represent her or him and the Solicitor General at least one (1) day before the dispositional hearing.

## **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 18.

### **§ 137. Medical Examination.**

- (a) The Court may order a medical examination for a minor who is alleged to be a juvenile offender.
- (b) The Court may order a mental and/or physical examination at any time subsequent to the time that the party who is the subject of the cause admits the allegations of the petition, or if he or she does not admit, at any time subsequent to the time the Court finds the allegations of the petition have been proved.
- (c) The report of a medical examination shall not be admissible in evidence, nor shall it be considered by the Court, at the adjudicatory hearing in any juvenile Court case. It shall be admissible in evidence at the dispositional hearing in any juvenile Court case.

## **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 23.

### **§ 138. Dispositional Hearing.**

A dispositional hearing shall take place no more than ten (10) days after the adjudicatory hearing.

## **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28 § 19.

### **§ 139. Notice of Dispositional Hearing.**

- (a) Notice of the dispositional hearing shall be given to the minor and her or his parent, guardian or custodian and their counsel at least 48 hours before the hearing.
- (b) A dispositional hearing notice shall contain:
  - (1) The name of the Court;

- (2) The title of the proceedings;
  - (3) A statement that the hearing is to determine the disposition of the case; and
  - (4) The date, time and place of the dispositional hearing.
- (c) The notice shall be delivered by a law enforcement officer or an appointee of the Court. If the notice cannot be delivered personally, the notice shall be delivered by registered mail.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 19.02-19.04.

### **§ 140. Evidence.**

- (a) At the dispositional hearing, the Court shall hear evidence on the question of proper disposition.
- (b) At the dispositional hearing, the Court shall review and consider the predisposition report submitted by the Human Resource Officer and afford the parents an opportunity to controvert the factual contents and conclusions of the reports. The Court shall also consider the alternative predisposition report prepared by the minor and her or his attorney, if any.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 19.01, 19.05.

### **§ 141. Dispositional Orders.**

- (a) If a minor has been adjudged a juvenile offender, the Court may make the following dispositions:
  - (1) Place the minor on probation subject to conditions set by the Court;
  - (2) Place the minor in an institution or agency designated by the Court.
- (b) The dispositional orders are to be in effect for the time limit set by the Court, but no order shall continue after the minor reaches the age of 18 years of age.
- (c) The dispositional orders are to be reviewed at the Court's discretion, but at least once

every six (6) months.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 19.07.

### **§ 142. Appealability of Dispositional Order.**

The dispositional order constitutes a final order for purposes of appeal.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 19.06.

### **§ 143. Modification of Dispositional Order.**

- (a) A dispositional order of the Court may be modified upon a showing of change of circumstances.
- (b) The Court may modify a dispositional order at any time upon the motion of the following:
  - (1) The minor,
  - (2) The minor's parent, guardian or custodian and
  - (3) The Court Counselor.
- (c) If the modification involves a change of custody the Court shall conduct a hearing pursuant to subsection (d) to review its dispositional order.
- (d) A hearing to review a dispositional order shall be conducted as follows:
  - (1) Notice in writing or the hearing shall be given to the minor, the minor's parent, guardian or custodian and their counsel at least 48 hours before the hearing. The Notice shall contain the name of the Court, the title of the proceedings, a statement that the hearing is to review the disposition and the date, time and place of the hearing. The notice shall be delivered by a tribal law enforcement officer or an appointee of the Court.
  - (2) The Court shall review the performance of the minor, the minor's parents, guardian and custodian and the Human Resource Officer and other persons

providing assistance to the minor and the minor's family.

- (3) In determining modification of disposition, the procedures prescribed in 8 MLBS §§ 136 and 138-143 shall apply.
- (4) If the request for review of disposition is based upon an alleged violation of a Court order, the Court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 19.08.

### **§ 144. Record of Hearings.**

A record of all hearings under this Title shall be made and preserved.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 20.

### **§ 145. Confidentiality of Court Records.**

All court records shall be confidential and shall not be open to inspection to any, but the following: the minor, the minor's parent, guardian or custodian, the Court Counselor, the Solicitor General or the parents and the minor's attorney.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 20.01.

### **§ 146. Confidentiality of Law Enforcement Records.**

Law enforcement records and files concerning a minor shall be kept separate from the records and files of adults. All law enforcement records and files shall be confidential and shall not be open to inspection to any, but the following: the minor, the minor's parent, guardian or custodian, the Court Counselor, or the Solicitor General, the parents and the minor's attorney.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 20.02.

**§ 147. Destruction of Records.**

When a minor who has been the subject of any proceeding before the Court attains her or his eighteenth birthday, the Chief Justice of the Tribal Court shall order the Clerk of Court to destroy both the Court records and the law enforcement records.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 20.03.

**§ 148. Appeal.**

- (a) Any party to a Court hearing may appeal a final order or disposition of the case by filing a written notice of appeal with the Court within 30 days of the final order of disposition.
- (b) A decree or disposition of a hearing may be stayed by such appeal.
- (c) All appeals shall be conducted in accordance with 24 MLBS § 2501.
- (d) For purposes of appeal, a record of the proceedings shall be made available to the minor, her or his parents, guardian or custodian. Costs of obtaining this record shall be paid by the party seeking the appeal.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 21.

**§ 149. Contempt of Court.**

All willful disobedience or interference with any order of the Court constitutes contempt of court. The Court may punish an adult for contempt of court in accordance with Band Statute 1143-MLC-4, Title IX [repealed].

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 22.

## **CHAPTER 4**

### **MINORS IN NEED OF CARE**

Superseded by Chapter 13 (§§ 3001-3246) of this Title.

## **CHAPTER 5**

### **DUTY TO REPORT ABUSE AND NEGLECT**

Superseded by Chapter 13 (§§ 3001-3246) of this Title.

## **CHAPTER 6**

### **DOMESTIC ABUSE PREVENTION**

#### **Section**

- 401. Definitions.**
- 402. Petition for Order for Protection; Docket Priority.**
- 403. Filing of Petition.**
- 404. Hearings.**
- 405. Relief by Court.**
- 406. Temporary Order.**
- 407. Service of Order.**
- 408. Assistance of Band Law Enforcement Agency.**
- 409. Effect of Leaving Household.**
- 410. Security or Bond.**
- 411. Modification of Order.**
- 412. Titles.**
- 413. Copy to Law Enforcement Agency.**
- 414. Violation of Order.**
- 415. Immunity of Law Enforcement Officers.**

#### **Cross References**

Assault and battery, *see* 24 MLBS §§ 1101, 1102.

Child care staff, abuse or neglect of children, *see* 8 MLBS § 1207.  
Duty to report abuse, *see* 8 MLBS § 301.

**§ 401. Definitions.**

- (a) **"Domestic abuse"** means the following, if committed against a family or household member by a family or household member:
- (1) physical harm, bodily injury, or assault;
  - (2) the infliction of fear of imminent physical harm, bodily injury, or assault;
  - (3) terroristic threats, which means threats, directly or indirectly, to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, vehicle or facility of public transportation or otherwise to cause serious public inconvenience, or in a reckless disregard of the risk of causing such terror or inconvenience;
  - (4) criminal sexual conduct, as defined in Minn. Stat. §§ 609.342, 609.343, 609.344, 609.345, and 609.3451, to include criminal sexual conduct first through fifth degree;
  - (5) sexual extortion, as defined in Minn. Stat. § 609.3458; or
  - (6) interference with an emergency call, which means when a person intentionally interrupts, disrupts, impedes, or interferes with an emergency call or intentionally prevents or hinders another from placing an emergency call.
- (b) **"Family or household members"** means:
- (1) spouses and former spouses;
  - (2) parents and children;
  - (3) persons related by blood;
  - (4) persons who are presently residing together or who have resided together in the past;
  - (5) persons who have a child in common regardless of whether they have been married or have lived together at any time;

(6) a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

(7) persons involved in a significant romantic or sexual relationship.

Issuance of an order for protection on the ground in paragraph (6) does not affect a determination of paternity under Title 8, Chapter 12, Subchapter 2. In determining whether persons are or have been involved in a significant romantic or sexual relationship under paragraph (7), the court shall consider the length of time of the relationship; type of relationship; frequency of interaction between the parties; and, if the relationship has terminated, length of time since the termination.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 47.

Band Act 82-23.

### **§ 402. Petition for Order for Protection; Docket Priority.**

- (a) There shall exist an action known as a petition for an order for protection in cases of domestic abuse before the Court of Central Jurisdiction.
- (b) All actions brought under this chapter shall be given docket priority by the Court of Central Jurisdiction.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 47.

### **§ 403. Filing of Petition.**

- (a) A petition for relief under this chapter may be made by any family or household member on behalf of her or himself or on behalf of minor family or household members.
- (b) A petition for relief shall allege the existence of domestic abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.
- (c) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition or other action between the parties.

- (d) The Court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section by a person not represented by counsel.
- (e) The Court shall advise a petitioner under subsection (d) of the right to file a motion and affidavit and to sue in forma pauperis pursuant to Band Statute and shall assist with the writing and filing of the motion and affidavit.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 48.

### **§ 404. Hearing**

Upon receipt of the petition, the Court shall order a hearing which shall be held not later than 14 days after the date of the order. Personal service shall be made upon the respondent not less than five (5) days prior to the hearing. In the event that service cannot be made, the Court may set a new date.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 49.

### **§ 405. Relief by Court.**

- (a) Upon notice and hearing, the Court may provide relief as follows:
  - (1) Restrain any party from committing acts of domestic abuse;
  - (2) Exclude the abusing party from the dwelling which parties share or from the residence of the petitioner;
  - (3) Award temporary custody or establish temporary visitation with regard to minor children of the parties;
  - (4) Establish temporary support for minor children or a spouse;
  - (5) Provide counseling or other social services from the abusing party or if there are minor children;
  - (6) Order, in its discretion, other relief as it deems necessary for the protection of

a family or household member, including orders or directives to the Law Enforcement Agency of the Band, as provided in this chapter.

- (b) Any relief granted by the order for protection shall be for a fixed period not to exceed one (1) year.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 50.

### **§ 406. Temporary Order.**

- (a) Where an application under this chapter alleges an immediate and present danger of domestic abuse, the Court may grant an ex parte temporary order for protection, pending a full hearing, and granting relief as the Court deems proper, including an order:
  - (1) Restraining any party from committing acts of domestic abuse;
  - (2) Excluding any party from the dwelling they share or from the residence of the other except by further order of the Court.
- (b) An ex parte temporary order for protection shall be effective for a fixed period not to exceed 14 days. A full hearing, as provided by this chapter, shall be set for not later than seven (7) days from the issuance of the temporary order. The respondent shall be served forthwith, a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.

### **§ 407. Service of Order.**

Any order issued under this chapter shall be personally served upon the respondent.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.02.

**§ 408. Assistance of Band Law Enforcement Agency.**

When an order is issued under this chapter upon request of the petitioner, the Court shall order the Law Enforcement Agency of the Band to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in execution or service of the order of protection.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.03.

**§ 409. Effect of Leaving Household.**

A person's right to apply for relief shall not be affected by her or his leaving the residence or household to avoid abuse.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.04.

**§ 410. Security or Bond.**

The Court shall not require security or bond of any party unless it deems necessary in exceptional cases.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.04.

**§ 411. Modification of Order.**

Upon application, notice to all parties, and hearing, the Court may modify the terms of an existing order for protection.

**Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.05.

#### **§ 412. Titles.**

Nothing in this chapter shall affect the title to property, real or personal.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.06.

#### **§ 413. Copy to Law Enforcement Agency.**

Upon the request of the petitioner, any order for protection granted pursuant to this chapter shall be forwarded by the Clerk of Court within 24 hours to the Law Enforcement Agency of the Band with jurisdiction over the residence of the applicant.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.07.

#### **§ 414. Violation of Order.**

- (a) Whenever an order for protection is granted pursuant to this chapter, and the respondent or person to be restrained knows of the order, violation of the order for protection is a misdemeanor pursuant to Band contempt law.
- (b) Upon the filing of an affidavit by the petitioner or any Law Enforcement Officer, alleging that the respondent has violated any order for protection granted pursuant to this chapter, the Court may issue an order to the respondent, requiring the respondent to appear and show cause within 14 days why he or she should not be found in contempt of court and punished therefore. The hearing may be held by the District in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.09.

#### **§ 415. Immunity of Law Enforcement Officers.**

A Law Enforcement Officer is not liable for a failure to perform a duty required by 8 MLBS

§ 414.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 51.10.

### **Cross References**

Suits against Band officials and employees, see 24 MLBSA § 701.

## **CHAPTER 7**

### **TERMINATION OF PARENTAL RIGHTS**

**Section**

- 501. Procedures for Termination.**
- 502. Petition.**
- 503. Hearing Date; Continuance.**
- 504. Pre-Termination Report.**
- 505. Summons.**
- 506. Termination Hearing.**
- 507. Testimony.**
- 508. Grounds for Terminations.**
- 509. Disposition.**
- 510. Appealability of Termination Order.**
- 511. Enrollment Status or Degree of Blood Quantum.**

**§ 501. Procedures for Termination.**

Parental rights to a child may be terminated by the Court according to the procedures in this chapter.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.

**§ 502. Petition.**

Proceedings to terminate parental rights shall be instituted by a petition filed by the Solicitor General on behalf of the Band pursuant to 8 MLBS § 235 or by the parents or guardian of the

child. The petition shall state:

- (a) The name, birthdate and residence of the minor.
- (b) The names and residences of the minor's parent, guardian or custodian.
- (c) If the child is in detention or shelter care, the place of detention or shelter care and the time he or she was taken into custody.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.01.

### **§ 503. Hearing Date; Continuance.**

- (a) Upon receipt of the petition, the Court shall set a date for the termination hearing which shall be not more than ten (10) days after the Court receives the petition from the Solicitor General.
- (b) The hearing may be continued:
  - (1) Upon motion of the minor's parent, guardian or custodian.
  - (2) Upon motion of the Solicitor General by reason of the unavailability of material evidence or witnesses and the Court finds the Solicitor General has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.02.

### **§ 504. Pre-Termination Report.**

- (a) Within two (2) days of receiving the petition, the judge/justice shall order the preparation of a pre-termination report by the Human Resource Officer.
- (b) The Human Resource Officer shall consult with the minor's parents and all social services, health, education and other personnel who have had prior professional contacts with the minor and her or his parent, guardian or custodian, to determine whether termination of parental rights is consistent with the best interests of the child. The Solicitor General may also review any of the minor's previous Court records.

- (c) The Human Resource Officer shall prepare a written report containing the professional opinions of all personnel with whom he or she has consulted. The report shall be presented to the Court at least two (2) days before the termination hearing.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.03.

### **§ 505. Summons.**

- (a) At least five (5) days prior to the termination hearing, the Court shall issue summons to the minor, the minor's parent, guardian or custodian, and any person the Court believes necessary for the proper adjudication of the hearing and any person the minor's parent, guardian or custodian believes necessary for the proper adjudication of the hearing.
- (b) The summons shall contain the name of the Court, the title of the proceedings and the date, time and place of the hearing. A copy of the petition shall be attached to the summons.
- (c) The summons shall be delivered personally by a law enforcement officer or an appointee of the Court. If the summons cannot be delivered personally, the Court may deliver the summons by registered mail.
- (d) If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.04.

### **§ 506. Termination Hearing.**

The Court shall conduct the termination hearing for the sole purpose of determining whether parental rights shall be terminated. The hearing shall be private and closed.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.05.

### **§ 507. Testimony.**

The Court shall hear testimony concerning the circumstances that gave rise to the petition and the need for termination of parental rights.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.051.

### **§ 508. Grounds for Termination.**

The Court may terminate the parental rights of the parent(s) to her or his child if it finds evidence beyond a reasonable doubt that:

- (a) The parent has abandoned her or his child.
- (b) The minor has suffered physical injuries willfully and repeatedly inflicted by her or his parent(s) upon her or him which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions.
- (c) The parent(s) have subjected the minor to willful and repeated acts of sexual abuse.
- (d) The voluntary written consent of a parent has been acknowledged before the Court and is accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The Court shall also certify that either the parent or Indian custodian fully understood the explanation in English and that it was interpreted into a language that the parent or Indian custodian understood.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, §§ 27.052 to 27.054.

### **§ 509. Disposition.**

- (a) If parental rights to a child are terminated, the Court shall: place the minor with an extended family member; place the minor in a foster care or shelter care facility which has been approved by the Band; and proceed to the adoption chapter (8 MLBS § 601) of this title.
- (b) If parental rights to a child are not terminated, the Court shall make a disposition

according to 8 MLBS § 235.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.06.

### **§ 510. Appealability of Termination Order.**

The termination order constitutes a final order for purposes of appeal.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.07.

### **§ 511. Enrollment Status or Degree of Blood Quantum.**

No adjudication of termination of parental rights shall affect the minor's enrollment status as a member of any Band or the minor's degree of blood quantum of any Band.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 27.08.

## **CHAPTER 8**

### **ADOPTION AND FOSTER CARE**

Superseded by Chapter 13 (§§ 3001-3246) of this Title.

## **CHAPTER 9**

### **GUARDIANSHIP AND CONSERVATORSHIP**

Superseded by Chapter 13 (§§ 3001-3246) of this Title.

## CHAPTER 10

### CHANGE OF NAME

#### Section

**801. Authority of Court.**

**802. Application for Change of Name.**

**803. Order.**

**804. Records.**

#### **§ 801. Authority of Court.**

The Court of Central Jurisdiction of the Mille Lacs Band of Ojibwe, shall have the authority to change the name of any person upon petition of the person or upon the petition of the parents of a minor.

#### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1096-MLC-28, § 43.

#### **Cross References**

Original jurisdiction of District Court, see 5 MLBS § 111.

#### **§ 802. Application for Change of Name.**

- (a) An enrolled member of the Band who shall have resided on lands under jurisdiction of the Band for one (1) year may apply to the Court thereof, to have her or his name, the names of her or his minor children, if any, and the name of her or his spouse, if the spouse joins in the application, changed in the manner herein specified.
- (b) They shall state in her or his application the name and age of her or his spouse and each of her or his children, if any, and shall describe all lands in the state in or upon which he, her or his children and her or his spouse if their names are also to be changed by this application, claim any interest or lien, and shall appear personally before the Court and prove her or his identity by at least two (2) witnesses.
- (c) If he or she be a minor the application shall be made by her or his guardian or next of kin.
- (d) Every person who, with intent to defraud, shall make a false statement in any such

application shall be guilty of a fraud offense.

- (e) No minor child's name may be changed without both of her or his parents having notice of the pending of the application for change of name, whenever practicable, as determined by the Court.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 43.01.

### **§ 803. Order.**

- (a) When an application meets the requirements of 8 MLBS § 802, the Court shall grant the application unless it finds that there is an intent to defraud or mislead or, in the case of the change of a minor child's name, the Court finds that such name change is not in the best interest of the child.
- (b) The Court shall set forth in the order the name and age of the spouse and each child of the applicant, if any, and shall state a description of the lands, if any, in which the applicant and her or his spouse and children, if any, claim to have an interest.
- (c) The Clerk shall file such order and record the same in the judgment book. If lands be described therein, a certified copy of the order shall be filed for record by the Clerk with the county recorder of each county wherein any of the same are situated. Before doing so he or she shall present the same to the county auditor, who shall enter the change of name in her or his official records and note upon the instrument, over her or his official signature, the words "change of name recorded."
- (d) Any such order shall not be filed, nor any certified copy thereof be issued, until the applicant shall have paid to the Clerk the cost of such record. The fee of the Clerk shall be as provided by law.
- (e) No application shall be denied on the basis of the marital status of the applicant.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1096-MLC-28, § 43.02.

### **§ 804. Records.**

Any order issued by the Court for change of name shall be kept as a permanent record and copies shall be filed with the appropriate Federal or State governmental agencies.

## Historical and Statutory Notes

**Source:**

Band Statute 1096-MLC-28, § 43.

## CHAPTER 11

### CHILD CARE

**Subchapter**

1. Band-Owned Child Care Center
2. Drop-in Child Care Centers
3. Privately-Owned Child Care Centers

**Section**

901  
1401  
Reserved

## Historical and Statutory Notes

**Source:**

Band Statute 1019-MLC-46.

Band Statute 9503-MLC-46.

## Cross References

Gaming control, *see* 15 MLBS § 1.

Wage deductions, *see* 24 MLBS § 3308.

## SUBCHAPTER 1

### BAND-OWNED CHILD CARE CENTER

**Part**

- A. Definitions
- B. Licensing Standards and Procedures
- C. Facility
- D. Program
- E. Health
- F. Nutrition
- G. Safety
- H. Admissions

**Section**

901  
941  
971  
1001  
1041  
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1141

<b>I. Administration and Management</b>	<b>1171</b>
<b>J. Staff Requirements</b>	<b>1201</b>
<b>K. Program Operation</b>	<b>1241</b>
<b>L. Insurance</b>	<b>1271</b>
<b>M. Financial Records</b>	<b>1301</b>
<b>N. Child Care Learning Centers Serving Special Needs Children</b>	<b>1341</b>

**Historical and Statutory Notes**

The enacting clause of Band Statute 1019-MLC-46.

**PART A**

**DEFINITIONS**

**Section**

**901. Definitions.**

**§ 901. Definitions.**

The following definitions shall be utilized when interpreting this Chapter.

- (a) **"Applicant"** means an individual who has submitted a signed and dated application to operate a Child Care Program to the Mille Lacs Band Child Care Licensing Committee **"Band Assembly"**: means the duly elected and federally recognized governing body of the Mille Lacs Band of Ojibwe (MLBO). The Band Assembly is composed of the Speaker of the Assembly and the three (3) District Representatives.
- (b) **"Band-Operated Child Care Programs"** means child care programs that are provided and run by the Mille Lacs Band of Ojibwe. The child care providers/staff are Band employees. This includes, but is not limited to, Head Start, Early Head Start and before and after school programs operating in the Wewinabe Early Education building as well as in community center buildings.
- (c) **"Band Lands"** means lands owned by or held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band of Ojibwe, or one (1) or more members of the Mille Lacs Band of Ojibwe, and subject to the jurisdiction of the Mille Lacs Band.
- (d) **"Child"** means any person who is under the age of 12. Age groupings are:
  - (1) Infant: Six (6) weeks through 15 months.

- (2) Toddler: 16 months through 36 months.
- (3) Preschool: 37 months through 5 years.
- (4) School Age: 6 years through 11 years.
- (e) **“Consumer”** means a child who receives the services of a licensed Child Care Program and a parent or other individual having legal custody of any such child.
- (f) **“Child Care Program”** means the care of children outside of their home for part of a 24-hour day by persons unrelated to them by blood or marriage.
- (g) **“Child Care Program Coordinator or Director”** means a person having over-all responsibility for the operation of a Child Care Program including administrative duties, staff supervision and training, record keeping, program planning, budgeting, and liaison with local agencies.
- (h) **“Child Care Program Facility”** means the physical environment in which a Child Care Program takes place.
- (i) **“In-Home Child Care Program”** means a private home licensed for child care.
- (j) **“Federal Requirements”** means those requirements set forth in the Head Start Performance Standards and the Head Start Act of 2007. These requirements are binding for the Early Education programs run by the Mille Lacs Band of Ojibwe.
- (k) **“License”** means the document issued by the Band Assembly authorizing the license holder to operate a Child Care Program on Band Lands for a specified period of time and in accordance with the terms of the license and MLBO statutes.
- (l) **“License Capacity”** means the maximum number of children who can be in attendance at a Child Care Program at a given time depending upon adult to child ratios as set forth in this Chapter.
- (m) **“Child Care Licensing Committee”** means a committee which shall offer advice to the Band Assembly regarding the implementation and enforcement of this Chapter and the issuance and enforcement of Child Care Program standards. The members of the committee shall be: (1) the Commissioner of Health and Human Services; (2) the Commissioner of Education; (3) the Assistant Commissioner of Administration; and (4) the Solicitor General. Except as otherwise expressly provided in this Chapter, the committee shall have advisory powers only. The committee may delegate administrative tasks to Band staff under the supervision of one (1) or more committee members.
- (n) **“Program”** means the overall structure and activities prepared for children in a Child

Care Program.

### **Historical and Statutory Notes**

**Source:**

- Band Statute 1019-MLC-46, § 1.
- Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 901.
- Band Ordinance 16-14, Title I, § 1.

### **Cross References**

Reservation Business Committee, legislative authority to be exercised by Band Assembly, *see* 3 MLBS § 1.

## **PART B**

### **LICENSING STANDARDS AND PROCEDURES**

**Section**

- 941. Licensing Standards and Procedures.**
- 942. License Required.**
- 943. Unlicensed Centers.**
- 944. Application Form.**
- 945. Notice of Rules and Standards.**
- 946. Procedures for Evaluation of Application and Issuance or Denial of License.**
- 947. Background Study.**
- 948. Conclusive Determinations or Dispositions.**
- 949. Inspections.**
- 950. Term and Contents of License.**
- 951. Changes in Terms of License.**
- 952. Complaints.**
- 953. Access to Facility for Evaluation.**
- 954. Band's Evaluation.**
- 955. Correctional Order and Conditional License.**
- 956. Failure to Comply.**
- 957. Notice of Closure of Child Care Program.**
- 958. Variances.**
- 959. Policies and Procedures for Program Administration.**
- 960. Emergency Planning.**

**§ 941. Licensing Standards and Procedures.**

The licensing standards and procedures in this Part B shall be utilized for all Band- Operated

Child Care Programs as well as privately owned Child Care Centers operating on Band Lands.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 2.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 941.

### **§ 942. License Required.**

No individual, corporation, partnership, voluntary association, or other organization shall operate a Child Care Program on Band Lands unless licensed by the Band.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 942.

### **§ 943. Unlicensed Centers.**

- (a) Any individual, corporation, partnership, voluntary association, or other organization who operates a Child Care Program on Band Lands without a License from the Band and in willful disregard of this subchapter shall be guilty of a misdemeanor and subject to prosecution under 24 MLBSA § 1054.
- (b) The Band Assembly in conjunction with the Child Care License Committee will issue a closure order to prevent the continued operation of a Child Care Program, if an individual, corporation, partnership, voluntary association, or other organization has:
  - (1) failed to apply for a License after receiving notice that a License is required for the Child Care Program or continues to operate without a License after receiving notice that a License is required for the Child Care Program;
  - (2) continued to operate the Child Care Program without a License after the License has been revoked or suspended, and a final order has been issued affirming the revocation or suspension, or the License holder did not timely appeal the revocation or suspension; or
  - (3) continued to operate the Child Care Program without a License after the License has expired.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 942.

**§ 944. Application Form.**

Application for license shall be made on the Application Form issued by the Child Care Licensing Committee. The application, along with all supporting documentation, including the background information required by § 947 of this Title, must be completed and returned to the Licensing Committee in order for the application to be reviewed.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 2.01.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 944.

**§ 945. Notice of Rules and Standards.**

The Child Care Licensing Committee shall furnish every Applicant with a copy of the licensing standards and procedures in this Part and with a copy of the other provisions of this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 2.04.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 945.

**§ 946. Procedures for Evaluation of Application and Issuance or Denial of License.**

- (a) **Approval of application.** The Child Care Licensing Committee shall evaluate all signed and completed applications to operate a Child Care Program on Band Lands, including all supporting documentation, within 30 days of the submission of such applications, based upon the licensing standards in this Part. If the final results of the completed background investigations of directors and staff, which are required by § 947 of this Title, are approved by the Committee, the Committee will recommend to the Band Assembly that a License be issued.
- (b) **Denial of application.** The Band may deny an application for a License if an Applicant fails to comply with applicable laws or rules, knowingly withholds relevant information, or gives false or misleading information to the Band in connection with the application or during an investigation conducted under this subchapter. An Applicant whose application has been denied by the Band must be given notice of the denial within ten (10) calendar days of the denial. Notice must be given by certified

mail or personal service. The notice must state the reasons the application was denied and must inform the Applicant of the right to a contested case hearing under this subchapter. The applicant may appeal the denial by notifying the Band in writing by certified mail or personal service within 20 calendar days after receiving notice that the application was denied.

- (c) **Provisional License.** A provisional License may be issued to a new Child Care Program for a designated period not to exceed one (1) year if the center meets necessary health, safety, and insurance requirements but does not meet all other requirements for licensure.
- (d) **Timeline.** After completing its evaluation of an application to operate a Child Care Program on Band Lands, the Child Care Licensing Committee shall make a written recommendation to the Band Assembly to issue an Unconditional License, to issue a Provisional License, or to deny the issuance of a License including its reasons for the decision, and shall forward its recommendation to the Speaker of the Assembly of the Mille Lacs Band of Ojibwe. The Band Assembly shall act on the Committee's recommendation within 30 days of receipt of the Committee's recommendation. Each Applicant will be notified within ten (10) calendar days of the Band Assembly's decision by certified mail, return receipt requested, or by personal service.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, §§ 2.02, 2.07.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 946.

### **§ 947. Background Study.**

Individuals and organizations operating Child Care Programs on Band Lands must provide the Band's Office of the Solicitor General and the Child Care Licensing Committee with background information to be submitted to either the Minnesota Bureau of Criminal Apprehension or the Bureau of Indian Affairs for a background investigation for all directors and staff as well as other individuals that may be employed by the program. All such investigations must meet the requirements of 8 MLBSA § 1212, Disqualification factors. The obligations imposed by this section are continuing obligations that must be fulfilled as long as the Child Care Program continues to operate on Band Lands.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 947.

### **§ 948. Conclusive Determinations or Dispositions.**

A disqualification determination made by the Licensing Committee as set out in 8 MLBS § 1212 or maltreatment determination or disposition is deemed conclusive and not subject to appeal. A determination of maltreatment or disqualification will result in the denial or revocation of a license.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49.13, Title I, § 2 and Exhibit A, § 948.

### **§ 949. Inspections.**

An Applicant must cooperate with an Indian Health Service inspection of its Child Care Program for health and safety purposes. By submitting an application, an Applicant consents to Band and Indian Health Service inspections of the Applicant's Child Care Program before issuance of an initial License and throughout the term of the License. The Child Care Licensing Committee will contact Indian Health Services to schedule an inspection once an application has been submitted. Such inspections may include but are not limited to:

- (a) an inspection of the program's facility;
- (b) an inspection of the program's records and documents, including but not limited to its written health policies;
- (c) an evaluation of the program by consumers of the program; and
- (d) observation of the program in operation.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 949.

### **§ 950. Term and Contents of License.**

Every License shall specify whether it is an Unconditional or Provisional License and state the beginning and ending dates during which it is valid, and state its validity is according to the terms of the approved application.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, §§ 2.02, 2.08.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 950.

### **§ 951. Changes in Terms of License.**

If a change in one (1) or more terms of the license is required after the license has been issued, the applicant must apply to the Child Care Licensing Committee for approval of the changes. The Child Care Licensing Committee shall act to recommend approval or denial of the changes within 30 calendar days of receipt of changes. Final approval or denial of the changes will be issued from the Band Assembly within 30 days of the recommendation from the Child Care Licensing Committee.

#### **Historical and Statutory Notes**

##### **Source:**

Band Statute 1019-MLC-46, § 2.03.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 951.

### **§ 952. Complaints.**

All written complaints regarding a licensing violation shall be addressed to the Child Care Program Coordinator. If the complainant is not satisfied with the Child Care Program Coordinator's response, the complainant may appeal to the Program Director. If the complainant is not satisfied with the Program Director's response, the complainant may appeal to the Child Care Licensing Committee. The decision of the Child Care Licensing Committee on the complaint shall be final.

#### **Historical and Statutory Notes**

##### **Source:**

Band Statute 1019-MLC-46, § 2.06.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 952.

### **§ 953. Access to Facility for Evaluation.**

The Mille Lacs Band Child Care Licensing Committee, the Commissioner of Administration, and any applicable Band administrator[s], shall have access to any Child Care Facility for evaluation at any time during normal working hours and at other times by mutual agreement with the Child Care Program Coordinator. For the purpose of investigating any written complaints concerning the health and safety of the children being served by a Child Care Program, the Child Care Licensing Committee, the Commissioner of Administration, any applicable Band administrator[s], the Mille Lacs Band Assembly and/or any person designated by the Band Assembly shall have access to the child care facility at any time during a 24 hour day. Any

complaint concerning a Child Care Facility shall be investigated immediately. [Federal Requirement].

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 2.05.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 953.

### **Cross References**

Access by Band, child care centers, *see* 8 MLBS § 1602.

### **§ 954. Band's Evaluation.**

- (a) Before issuing, denying, suspending, revoking, or making conditional a License, the Child Care Licensing Committee shall evaluate information gathered under this section. The Child Care Licensing Committee's evaluation shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the Applicant or License holder for the recommendation to Band Assembly.
- (b) The Band Assembly shall evaluate the results of any study, inspection, or investigation to determine whether a risk of harm to the persons served by the program exists. If risk of harm exists, the Band Assembly shall either deny the application, issue a Correctional Order and Conditional License (see §955 below), or revoke the License. If the License is revoked, the Child Care Program must cease to provide services immediately and the Band Assembly may request the help of law enforcement in ensuring the program discontinues operation.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 954.

### **§ 955. Correctional Order and Conditional License.**

- (a) If the Child Care Licensing Committee find that an Applicant or License holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the Band Assembly may issue a correction order and a conditional License to the Applicant or License holder upon the recommendation of the Child Care Licensing Committee. When making a recommendation, the Child Care Licensing Committee shall consider

the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program. The correction order or conditional License must state:

- (1) the conditions that constitute a violation of the law or rule;
- (2) the specific law or rule violated;
- (3) the time allowed to correct each violation; and
- (4) if a License is made conditional, the length and terms of the conditional License.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 955.

### **§ 956. Failure to Comply.**

If the Band Assembly or Child Care Licensing Committee finds that Applicant or License holder has not corrected the violations specified in the correction order or conditional License, the Band may revoke the License.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 956.

### **§ 957. Notice of Closure of Child Care Program.**

If a Child Care Program decides to close, it must send written notice 60 days prior to the closure to the Band Assembly and must return its License for the Center to the Child Care Licensing Committee.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 2.10.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 957.

### **§ 958. Variances**

- (a) The Band Assembly may grant variances to rules that do not affect the health or safety of persons in a licensed Child Care Program if the following conditions are met:
  - (1) the variance must be requested by an Applicant or License holder on a form and in a manner prescribed by the Child Care Licensing Committee;
  - (2) the request for a variance must include the reasons that the Applicant or License holder cannot comply with a requirement stated in the rule and the alternative equivalent measures that the Applicant or License holder will follow to comply with the intent of the rule; and
  - (3) the request must state the period of time for which the variance is requested.

The Band Assembly may grant a permanent variance when conditions under which the variance is requested do not affect the health or safety of persons being served by the licensed Child Care Program, nor compromise the qualifications of staff to provide services. The permanent variance shall expire as soon as the conditions that warranted the variance are modified in any way. Any Applicant or License holder must inform the Child Care Licensing Committee of any changes or modifications that have occurred in the conditions that warranted the permanent variance. Failure to advise the Committee shall result in revocation of the permanent variance.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 2.11, § 2.12.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 958.

### **§ 959. Policies and Procedures for Child Care Program Administration.**

- (a) A License holder shall develop program policies and procedures necessary to maintain compliance with licensing requirements under this chapter and applicable federal law.
- (b) The License holder shall:
  - (1) provide training to program staff related to their duties in implementing the program's policies and procedures developed under paragraph (a);
  - (2) document the provision of this training; and
  - (3) monitor implementation of policies and procedures by program staff.

- (c) The License holder shall keep program policies and procedures readily accessible to staff and index the policies and procedures with a table of contents or another method approved by the Child Care Licensing Committee.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 959.

### **§ 960. Emergency Planning.**

Upon request, a License holder must cooperate with the Band's government disaster planning agency (the Tribal Emergency Response Committee), to prepare for or react to emergencies presented by natural, technical, hazardous material, and/or terrorism disasters.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 960.

## **PART C**

### **FACILITY**

**Section**

- 971. Requirement that Facilities be Provided.**
- 972. Indian Health Service Guidelines.**
- 973. Approval of Plans.**
- 974. Minimum Usable Space.**
- 975. Stairways and Corridors.**
- 976. Toilets and Washbowls.**
- 977. Emergency Items.**
- 978. Room Temperature.**
- 979. Storage of Medications and Poisonous Items.**
- 980. Space Used by Ill Children.**
- 981. Floors.**
- 982. Cleanliness and Good Repair.**
- 983. Cots, Cribs, and Playpens.**
- 984. Equipment and Furniture.**
- 985. Clear Air and Water.**
- 986. Hours of Operation.**

**§ 971. Requirement that Facilities be Provided.**

The Mille Lacs Band of Ojibwe (MLBO) hereby establishes that the Child Care Program facilities delineated in this Part C be provided for all Band-operated Child Care Centers.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 3.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 971.

**Cross References**

Child care centers, facilities and equipment, *see* 8 MLBSA § 1471.

**§ 972. Indian Health Service Guidelines.**

The facility and grounds used by the children must meet the guidelines established by Indian Health Service (I.H.S.). Any and all such standards set by the I.H.S. shall be designed to protect the requirements of the appropriate safety and sanitation authorities to include the health and safety of all persons who occupy the building.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 3.01.

**§ 973. Approval of Plans**

Prior to construction or renovation of a proposed Child Care Facility the architectural plans must be approved in writing by a designated I.H.S. facility inspector.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46 § 3.02.

**§ 974. Minimum Usable Space.**

There shall be a minimum of 35 square feet of usable floor space [primary space] per child in

attendance, exclusive of hallways, bathrooms, lockers, kitchens, and floor space occupied by stationary equipment, but including equipment and furnishings regularly used by children. In addition, there shall be a minimum of 75 square feet per child when using the outdoor space, or a park or recreation area within 1,500 feet of the center.

### **Historical and Statutory Notes**

**Source:**

- Band Statute 1019-MLC-46, § 3.03.
- Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 974.
- Band Ordinance 16-14, Title I, § 2.

### **Cross References**

Child care centers, indoor space, *see* 8 MLBS § 1471.

### **§ 975. Stairways and Corridors.**

All stairways and corridors leading to exits shall be kept clear and free from obstructions at all times.

### **Historical and Statutory Notes**

**Source:**

- Band Statute 1019-MLC-46, § 3.04.

### **§ 976. Toilets and Washbowls.**

- (a) There must be an adequate toilet and one (1) washbowl provided in a well- ventilated place.
- (b) There must be at least one (1) toilet and one (1) washbowl provided for each set of ten (10) children and one (1) additional toilet and washbowl for each additional child or fraction thereof.
- (c) Toilets and washbowls must be adequate, conveniently installed and accessible; properly designed and installed for the appropriate age group.
- (d) Training chairs, instead of the required number of toilets must be provided for toddlers.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 3.05.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 976.

### **Cross References**

Cleanliness and sanitation, child care centers, *see* 8 MLBS § 1510.

### **§ 977. Emergency Items.**

A first-aid kit, battery-operated flashlight and battery-operated portable radio shall be available in every Child Care Program Facility for emergency use.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 3.06.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 977.

### **Cross References**

Emergency equipment, child care centers, *see* 8 MLBS § 1506.  
First-aid kit, child care centers, *see* 8 MLBS § 1505.  
First-aid kit, *see* 8 MLBS § 1048.  
First-aid training, *see* 8 MLBS § 1044.

### **§ 978. Room Temperature.**

Indoor room temperature shall not be lower than 62 degrees Fahrenheit nor higher than 80 degrees Fahrenheit except in limited periods of time not to exceed one (1) hour. If the temperature remains at or above 89 degrees Fahrenheit, or remains at or below 62 degrees Fahrenheit, for longer than one (1) hour, the center must close.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 3.07.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 978.

### **Cross References**

Child care centers, room temperature, *see* 8 MLBS § 1472.

### **§ 979. Storage of Medications and Poisonous Items.**

All medications for the children in the Child Care Program Facility shall be kept under lock at all times, those medications which require refrigeration shall be kept in a cooling unit which is secure. All household cleaning supplies and other poisonous items shall be kept in a safe and secure place.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 3.08.

#### **Cross References**

Administration of medicine, diapering products, sunscreen lotions and insect repellents, child care centers, *see* 8 MLBS § 1511.

Hazardous areas, conditions and objects, child care centers, *see* 8 MLBS § 1509.

Medication of children, *see* 8 MLBS § 1047.

### **§ 980. Space Used by Ill Children.**

Space designated for use by an ill child need not be permanently arranged but shall be:

- (a) Used only for other compatible purposes: (e.g.) private office, library, staff's room or,
- (b) Effectively protected from the main activity area and screening;
- (c) Equipped with a child's cot; and
- (d) At no time shall an ill child be left without supervision.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46. § 3.10.

#### **Cross References**

Children who become ill, *see* 8 MLBS § 1046.

Children with communicable diseases, *see* 8 MLBS § 1045.

Exclusion of sick children, child care centers, *see* 8 MLBS § 1512.

### **§ 981. Floors.**

Floors must be kept clean at all times, must not have splinters, cracks, or broken linoleum, and must not be hazardous. Concrete floors shall be tiled, carpeted, or cushioned.

#### **Historical and Statutory Notes**

##### **Source:**

Band Statute 1019-MLC-46, § 3.11.

#### **Cross References**

Cleanliness and sanitation, child care centers, *see* 8 MLBS § 1510.

Hazardous areas, conditions and objects, child care centers, *see* 8 MLBS § 1509.

### **§ 982. Cleanliness and Good Repair.**

Premises shall be kept clean and sanitary. The facility and equipment must also be kept in good repair, with no peeling paint, and free from all debris and litter.

#### **Historical and Statutory Notes**

##### **Source:**

Band Statute 1019-MLC-46, § 3.12.

#### **Cross References**

Cleanliness and sanitation, child care centers, *see* 8 MLBS § 1510.

Hazardous areas, conditions and objects, child care centers, *see* 8 MLBS § 1509.

Painted surfaces, safety, *see* 8 MLBS § 1110.

### **§ 983. Cots, Cribs, and Playpens.**

A cot or crib must be provided for each child taking a nap in a program that includes rest. Adequate space and accessibility of exit must be maintained. Infants must be provided with cribs or playpens, regardless of type or duration of program.

#### **Historical and Statutory Notes**

##### **Source:**

Band Statute 1019-MLC-46, § 3.13.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 983.

**§ 984. Equipment and Furniture.**

All equipment and furniture must be designed for the age group and be substantial, easy to clean, and free from sharp points or corners, splinters, or paint that contains lead.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 3.14.

**Cross References**

Program, equipment and materials, see 8 MLBS § 1005.

Safety, furniture, equipment and toys, see 8 MLBS §1109.

**§ 985. Clean Air and Water.**

Every Child Care Program facility must comply with the Mille Lacs Band clean air and water standards as prescribed by law.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 985.

**§ 986. Hours of Operation.**

The authorized hours of operation must be posted in a conspicuous place on the program's premises.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 986.

**PART D**

**PROGRAM**

**Section**

- 1001. Program Guidelines Established.**
- 1002. Harmony with Life Style and Cultural Experience.**
- 1003. Daily Schedule.**
- 1004. Punishment.**
- 1005. Access to Equipment and Materials.**
- 1006. Types of Equipment and Materials.**

### **Cross References**

Program, child care centers, *see* 8 MLBS § 1571.

#### **§ 1001. Program Guidelines Established.**

The Mille Lacs Band of Ojibwe hereby establishes that the program guidelines in this Part D be followed for Child Care Programs.

#### **Historical and Statutory Notes**

**Source:**

- Band Statute 1019-MLC-46, § 4.
- Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1001.

#### **§ 1002. Harmony with Life Style and Cultural Experience.**

The program shall provide experience in harmony with life style and cultural background of the children. The cultural diversity of the children shall be reflected in the program through incorporation of their languages, food celebrations, lifestyles and child-rearing practices.

#### **Historical and Statutory Notes**

**Source:**

- Band Statute 1019-MLC-46, § 4.01.
- Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1002.

#### **§ 1003. Daily Schedule.**

The program daily schedule shall include the following guidelines and instructions:

- (a) Each care giver in charge of a group of children must follow written schedules of daily activities which include time for meals, snacks, sleep, toileting, and indoor/outdoor play, where applicable.

- (b) Each facility includes a designated area where a child can sit quietly or lie down to rest. A nap period is provided for children who need it and for children unable to sleep, time and space for rest and quiet play are available.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 4.02.

### **§ 1004. Punishment**

Care givers shall not use spanking, hitting, or other forms of physical punishment or any other technique which is humiliating, shaming, frightening, or otherwise damaging to the children. Punishment is not associated with food, rest, toilet training or isolation for illness. All facilities should utilize the concept of positive reinforcement.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 4.03.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1004.

### **Cross References**

Behavior guidance, child care centers, *see* 8 MLBS § 1573.

### **§ 1005. Access to Equipment and Materials.**

The following guides for equipment and materials shall be followed in a Child Care Program:

- (a) The quantity of materials and equipment must be sufficient to avoid excessive competition and long waits.
- (b) Materials and equipment are of sufficient quantity to provide for a variety of experiences and appeal at the individual's interest of the children in care.
- (c) Protected areas are provided, free from traffic by children and adults, where equipment and materials can be used with minimal interference.
- (d) Materials are stored in an orderly way, are attractive and accessible to children, and are arranged so that children may select, remove, and replace them either independently or with assistance.
- (e) Furniture is durable and safe, and is child-size or approximately adapted for children's

ages.

- (f) Non-durable consumable equipment such as books, games, or materials and other easily breakable or lost education or recreation equipment must be replaced as needed throughout the program's operation year.

### Historical and Statutory Notes

**Source:**

Band Statute 1019-MLC-46, § 4.04.

### Cross References

Facility, equipment and furniture, *see* 8 MLBS § 984.

Safety, furniture, equipment and toys, *see* 8 MLBS § 1109.

### § 1006. Types of Equipment and Materials.

- (a) **Definitions.** For the purpose of this section, the following terms have the meanings given them.
  - (1) **"Cognitive development equipment and materials"** means equipment and materials designed to enhance components of intellectual development, such as problem solving abilities, observation skills, group skills, and symbol recognition.
  - (2) **"Dramatic play equipment"** or **"practical life activity equipment"** means equipment, such as dress up clothes, large or miniature play sets, figures, and small and large building blocks that can be used to design a setting or space that stimulates the child's imagination and encourages role playing and the learning of practical life skills.
  - (3) **"Large muscle equipment"** means equipment that is designed to enhance large muscle development and coordination, such as playground equipment, large boxes and pillows, large wheel toys, pull toys, balls, jump ropes, climbers, and rocking boats.
  - (4) **"Manipulative equipment"** means equipment that is designed to enhance fine motor development and coordination, such as pegs and peg boards, puzzles, beads and strings, interlocking plastic forms, and carpentry materials.
  - (5) **"Sensory stimulation materials"** means equipment, other than pictures, that has different shapes, colors, and textures that stimulate the child's visual and tactile senses. Examples of sensory stimulation materials include mobiles, crib attached activity boxes, sand and water activity materials, swatches of

different textures of cloth, and wooden or plastic items of different shapes and colors.

- (b) **General requirements.** Each Child Care Program must have the quantity and type of equipment for the age categories of children served. Equipment must be appropriate to the age categories and any special needs of the children served. A center must have enough equipment for the number of children for which the center is licensed unless the use of equipment is rotated among groups of children.
  
- (c) **Equipment and materials for infants.** The minimum equipment and materials required for a center serving infants are as follows:
  - (1) one (1) area rug or carpet per group;
  - (2) a variety of non-folding child size chairs including infant seats and high chairs; one (1) per child, or a minimum of four (4) per group;
  - (3) one (1) changing table for every group of 8 to 10 infants;
  - (4) one (1) foot operated, covered diaper container per changing table;
  - (5) one (1) crib, cot, or portable crib waterproof mattress per child; and
  - (6) one (1) linear foot of low, open shelving per child.
  
- (d) **Equipment and materials for toddlers.** The recommended equipment and materials for a center serving toddlers are as follows:
  - (1) Arts and crafts supplies, such as clay or play dough, tempera or finger paints, colored and white paper, paste, collage materials, paint brushes, washable felt type markers, crayons, blunt scissors, and smocks;
  - (2) 2 books per child;
  - (3) Large building blocks (soft large blocks, soft rock blocks, soft brick blocks);
  - (4) Small building blocks (ABC blocks, see through animal blocks);
  - (5) Pieces of dramatic play equipment (apples, basket, tree) (food, cash register, bags);
  - (6) Double sided easel;
  - (7) Puzzles and/or matching games;

- (8) Manipulative sets (stringing beads, connectors, etc.);
  - (9) Musical instruments;
  - (10) Washable soft toys; and
  - (11) Sensory materials to provide visual and tactile stimulation (books w/texture, sensory blocks, sensory bottles, textured art work, plants, fish, sensory table, texture balls).
- (e) **Equipment and materials for preschoolers.** The recommended equipment and materials for a center serving preschoolers are as follows:
- (1) Arts and crafts supplies, such as clay or play dough, tempera or finger paints, colored and white paper, paste, collage materials, paint brushes, washable felt type markers, crayons, blunt scissors, and smocks;
  - (2) 2 books per child;
  - (3) Large building blocks (Lincoln logs, large wooden, cardboard boxes, rock blocks, brick blocks);
  - (4) Small blocks (Legos, ABC wooden blocks, city blocks);
  - (5) Pieces of dramatic play equipment (sink, babies, stove, food, and refrigerator/apples, tree, basket, smock, cash register/flowers, dirt, pots, gloves, shovel);
  - (6) Double sided easel;
  - (7) Mirror 12 inches by 36 inches;
  - (8) Puzzles, number games and/or letter games;
  - (9) Manipulative sets (connectors, counters, gears, pipe tubes, magna tiles);
  - (10) Pictures at the child's level; and
  - (11) Musical instruments.
- (f) **Equipment and materials for school-age children.** The recommended equipment and materials for a center serving school-age children are as follows:
- (1) Arts and crafts supplies, such as clay or play dough, tempera or finger paints, colored and white paper, paste, collage materials, paint brushes, washable felt

type markers, crayons, blunt scissors, and smocks;

- (2) 2 books per child;
- (3) Pieces of dramatic play equipment (apples, basket, tree) (food, cash register, bags);
- (4) Musical instruments;
- (5) Pictures at the child's level;
- (6) 1 set of cognitive development equipment per child (puzzle, etc.); and
- (7) Sets of manipulative materials (connectors, counters, gears, magna tiles, pipe tubes).

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1006.  
Band Ordinance 16-14, Title I, § 3.

## **PART E**

### **HEALTH**

**Section**

**1041. Health Guidelines Established.**

**1042. Health Responsibilities.**

**1043. Information Obtained from Parents.**

**1044. First Aid, Cardiopulmonary Resuscitation (CPR), Abusive Head Trauma (AHT), and Sudden Unexpected Infant Death Syndrome (SUIDS) Training.**

**1045. Exclusion of Sick Children.**

**1046. Children who Become Ill.**

**1047. Medication.**

**1048. First Aid Kit.**

**1049. Crib Safety Requirements.**

**1050. Reduction of Risk of Sudden Infant Death Syndrome.**

**1051. Toilets and Hand Sinks.**

### **Cross References**

Child care centers, health and safety, *see* 8 MLBS § 1501.  
Information and instruction from parents, *see* 8 MLBS § 1143.

**§ 1041. Health Guidelines Established.**

The Mille Lacs Band of Ojibwe hereby establishes the health guidelines in this Part E to be followed for Child Care Programs.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 5.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1041.

**§ 1042. Health Responsibilities.**

The director, or designated personnel, of each program shall be responsible for observation of health and development of children, handling illness at the center, accident prevention and emergency procedures, and keeping health records complete.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 5.01.

**§ 1043. Information Obtained from Parents.**

Written evidence will be obtained from each parent of the following information:

- (a) Emergency contact information on each child, including written permission for each child to receive emergency treatment.
- (b) Proof of immunizations appropriate for the child's age.
- (c) Any prescriptions or medications which the child is currently taking.
- (d) Proof of physical exam administered to the child annually or according to the well-child schedule for children under three (3) years.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 5.02.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1043.  
Band Ordinance 16-14, Title I, § 4.

**§ 1044. First Aid, Cardiopulmonary Resuscitation (CPR), Abusive Head Trauma (AHT) and Sudden Unexpected Infant Death Syndrome (SUIDS) Training.**

- (a) All teachers and assistant teachers, staff and volunteers, must satisfactorily complete, within 90 days of the start of work, at least eight (8) hours of First Aid and CPR training as well as additional training in Sudden Unexpected Infant Death Syndrome (SUIDS), and Abusive Head Trauma (AHT) training, unless this has been satisfactorily completed within the previous year. The health and safety training must be:
  - (1) repeated on a yearly basis;
  - (2) documented in the person's personnel record and indicated in the center's staffing chart; and
  - (3) provided by a licensed physician, a registered nurse, or a licensed practical nurse, or other certified instructor trained to provide the instruction or certified by the American Red Cross.
- (b) On the date of the initial licensure, at least one (1) staff person with health and safety training must be present at the center when children are in care and at least one (1) staff person with the health and safety training must accompany children on field trips.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 5.03.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1044.

**Cross References**

Safety, *see* 8 MLBS § 1101.

**§ 1045. Exclusion of Sick Children.**

- (a) A child with any of the following conditions or behaviors is a sick child and must be excluded from the center. If the child becomes sick while at the center, the child must be isolated from other children in care and the parent(s), guardian(s), or emergency contact(s) called immediately. A sick child must be supervised at all times. The license holder must exclude a child:

- (1) With a reportable illness or condition that a health care provider determines to be contagious and has not had sufficient treatment to reduce the health risk to others;
  - (2) with chicken pox until the child is no longer infectious or until the lesions are crusted over;
  - (3) who has vomited once that day;
  - (4) who has had three (3) or more abnormally loose stools that day;
  - (5) who has contagious conjunctivitis or pus draining from the eye;
  - (6) who has a bacterial infection such as streptococcal pharyngitis or impetigo and has not completed 24 hours of antimicrobial therapy;
  - (7) who has unexplained lethargy;
  - (8) who has lice, ringworm, or scabies that is untreated and contagious to others;
  - (9) who has a 100 degree Fahrenheit axilla or higher temperature of undiagnosed origin before fever reducing medication is given;
  - (10) who has an undiagnosed rash or a rash attributable to a contagious illness or condition;
  - (11) who has significant respiratory distress;
  - (12) who is not able to participate in child care program activities with reasonable comfort; or
  - (13) who requires more care than the program staff can provide without compromising the health and safety of other children in care.
- (b) The license holder must post or give a notice to the parents of exposed children the same day a parent notifies the center of a child's illness or condition a contagious reportable disease, or lice, scabies, impetigo, ringworm, or chicken pox.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 5.04.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1045.

### **Cross References**

Exclusion of sick children, child care centers, *see* 8 MLBS § 1512.

### **§ 1046. Children Who Become Ill.**

Child Care Programs must provide care for a child who becomes ill. Supervision must be provided until the child is picked up by the authorized person[s].

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 3.09.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1046.

### **Cross References**

Exclusion of sick children, *see* 8 MLBS § 1512.

Space used by ill children, *see* 8 MLBS § 980.

### **§ 1047. Medication.**

When a child is to be given oral or surface medication, written instructions by a physician or dentist must be provided and written authorization to administer medication must be given by the parent(s). Medication must be labeled, stored under lock and out of reach of children.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 5.05.

### **Cross References**

Administration of medicine, child care centers, *see* 8 MLBS § 1511.

Storage of medications, *see* 8 MLBS § 979.

## **§ 1048. First-aid Kit.**

The license holder must ensure that a first aid kit is available within the center. The kit must contain sterile bandages and band-aids, sterile compresses, scissors, an ice bag or cold pack, an oral or surface thermometer and adhesive tape. A current first aid manual must be included. The first aid kit and manual must be accessible to the staff at the center and taken on field trips.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 5.06.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1048.

Band Ordinance 16-14, Title I, § 5.

### **Cross References**

Child care centers, first aid kit, *see* 8 MLBS § 1505.

Emergency items, *see* 8 MLBS § 977.

## **§ 1049. Crib Safety Requirements.**

- (a) The license holder should access and consult the United States Consumer Product Safety Commission website for crib safety information. Annually, from the date printed on the license, all license holders shall check all their cribs' brand names and model numbers against the United States Consumer Product Safety Commission website listing of unsafe cribs and shall maintain written documentation for inspection for each crib showing that the review has been completed.
- (b) All license holders must maintain the following documentation for every crib used by or that is accessible to any child in care:
  - (1) the crib's brand name; and
  - (2) the crib's model number; and
  - (3) a notation that the crib was not identified as unsafe on the United States Consumer Product Safety Commission website or the license holder has taken the action directed by the United States Consumer Product Safety Commission to make the crib safe.
- (c) Any crib for which the license holder does not have the documentation required under subsections (a) and (b) must not be used by or be accessible to children in care.

- (d) Documentation of the review completed under this section shall be maintained by the license holder on site and made available to parents of children in care, the Band, and Indian Health Service.
- (e) On at least a monthly basis, the license holder shall perform safety inspections of every crib used by or that is accessible to any child in care, and must document compliance with current Minnesota crib requirements (as stated in the most current MN statutes).
- (f) Upon discovery of any unsafe condition identified by the license holder, the Licensing Committee, or Indian Health Services during the safety inspection, the license holder shall immediately remove the crib from use and ensure that the crib is not accessible to children in care, and as soon as practicable, but not more than two (2) business days after the inspection, remove the crib from the area where child care services are routinely provided.
- (g) Documentation of the inspections and actions taken with unsafe cribs required shall be maintained on site by the license holder and made available to parents of children in care, the Band, and Indian Health Service.
- (h) The Band may issue a licensing action if a license holder fails to comply with the requirements of this section.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1049.

### **§ 1050. Reduction of Risk of Sudden Unexpected Infant Death Syndrome (SUIDS).**

When a staff person is placing an infant to sleep, the staff person must place the infant on the infant's back, unless the license holder has documentation from the infant's parent directing an alternative sleeping position for the infant, and must place the infant in a crib with a firm mattress. The license holder must not place pillows, quilts, comforters, sheepskin, pillow-like stuffed toys, or other soft products in the crib with the infant, except a small blanket which may be used to swaddle an infant. Licensed child care providers must meet the crib requirements under § 1049 of this Title.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1050.  
Band Ordinance 16-14, Title I, § 6.

## § 1051. Toilets and Hand Sinks.

Toilets and hand sinks located in a well-ventilated area must be provided in the center.

- (a) The center must have at least one (1) toilet and one (1) hand sink for every ten (10) children accessible in the center.
- (b) Hand sinks for children must not be used for custodial work or food preparation.
- (c) Single service hand towels or warm air dryers must be available to dry hands and designed for easy use by the children.
- (d) Toilet facilities must be cleaned daily. Toilet training chairs must be emptied, washed with soap and water, and disinfected after each use. Toilets and seats must be washed with soap and water and disinfected when soiled or at least daily.
- (e) Hand washing procedures:
  - (1) Staff person: a staff person must wash her or his hands with soap and water after changing a child's diaper, after using toilet facilities, before and after handling food or eating, after sneezing or coughing or blowing her or his nose, after combing hair, after handling garbage and after spending time outdoors.
  - (2) Child: A child's hands must be washed with soap and water after a diaper change, after use of a toilet or toilet training chair, before and after handling food or eating, and after spending time outdoors. Staff must monitor hand washing and assist a child who needs help. The use of common basin or hand sink filled with standing water is prohibited.
- (f) The license holder shall provide the following supplies and make them accessible to children: toilet paper, liquid hand soap, facial tissues, and single use paper towels or warm air hand dryers.
- (g) A diaper must be changed only in the diaper changing area. The diaper changing area must be separate from the areas used for food storage, food preparation, and eating. The area must have a hand sink equipped with hot and cold running water within three (3) feet of the diaper changing surface, a smooth, nonabsorbent diaper changing surface and floor covering, and a container operated by a foot pedal for soiled and wet diapers.

The center must have and follow diaper changing procedures that have been developed in consultation with a health consultant. The license holder must post the diaper changing procedures in the diaper changing area.

### Historical and Statutory Notes

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1051.

**PART F**

**NUTRITION**

**Section**

**1071. Nutrition Guidelines Established.**

**1072. Availability of Meals and Snacks.**

**1073. Sanitary Food-Handling.**

**1074. Diet of Infant.**

**1075. Drinking Water.**

**1076. Staff to Sit with Children During Meals and Snacks.**

**1077. Nutritionist.**

**1078. Menus.**

**§ 1071. Nutrition Guidelines Established.**

The Mille Lacs Band of Ojibwe hereby establishes that the nutrition guidelines in this Part F be followed for Child Care Programs.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 6.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1071.

**§ 1072. Availability of Meals and Snacks.**

All Child Care programs must provide or ensure the availability of adequate and nutritious meals and snacks appropriate for the ages and needs of the children served. Bag lunches provided by the parent are acceptable. Each regular meal and two (2) snacks or two (2) meals and one (1) snack shall be provided daily for each child in care five (5) through eight (8) hours. A child must be offered a second serving with each meal or snack.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 6.01.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1072.

### **Cross References**

Availability of meals and snacks, child care centers, *see* 8 MLBS § 1541.

### **§ 1073. Sanitary Food-Handling.**

All Child Care Program personnel shall understand sanitation and methods of handling, preparing, and serving food in a safe and sanitary manner following the standards set forth in the USDA Child and Adult Care Food Program (CACFP).

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 6.02.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1073.

### **Cross References**

Sanitation, food, child care centers, *see* 8 MLBS §1545.

### **§ 1074. Diet of Infant.**

The diet of an infant shall be determined by the parents in conjunction with the standards set forth in the USDA Child and Adult Care Food Program (CACFP). The provider must ensure that sanitary procedures and practices are used to prepare, handle, and store formula, milk, breast milk, solid foods, and supplements. Procedures must be reviewed and certified by a health consultant. A center serving infants must:

- (a) Obtain written dietary instructions from the parent of the child;
- (b) Have the infant's feeding schedule available in the food preparation area;
- (c) Offer the child formula or milk and nutritionally adequate solid foods in prescribed quantities at specified time intervals; and
- (d) Label each child's bottle with the child's name and whether the bottle contains formula or breast milk.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 6.03.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1074.

### **Cross References**

Infant diets, child care centers, *see* 8 MLBS § 1544.  
Information and instruction from parents, *see* 8 MLBS § 1143.

### **§ 1075. Drinking Water.**

Drinking water shall be freely available to all children regardless of age. Each child shall be provided with an individual drinking container.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 6.04.

### **§ 1076. Staff to Sit with Children During Meals or Snacks.**

There must be Child Care Program staff seated with the children during meal and snack times.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 6.05.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1076.

### **Cross References**

Staff to sit with children at meals or snacks, child care centers, *see* 8 MLBS § 1542.

### **§ 1077. Nutritionist.**

All meals and snacks shall be critiqued and approved by a licensed nutritionist and posted in a conspicuous place for potential information.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 6.06.

## **§ 1078. Menus.**

When food is provided by the license holder, menus must be planned on a monthly basis and be available for review upon request. A sample menu must be provided to parents at the time of admission. Menus must comport with the nutritional requirements of the USDA, CACFP.

### **Historical and Statutory Notes**

#### **Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1078.

## **PART G**

### **SAFETY**

#### **Section**

**1101. Emergency or Accident Procedures.**

**1102. Fire Extinguishers.**

**1103. Electrical Outlets.**

**1104. Telephones.**

**1105. Hazardous Areas, Conditions and Objects.**

**1106. Painted Surfaces.**

#### **Cross References**

Child care centers, health and safety, *see* 8 MLBS §1501.

First-aid training, *see* 8 MLBS § 1044.

## **§ 1101. Emergency or Accident Procedures.**

- (a) The applicant must develop written policies governing emergencies, accidents, and injuries. The license holder must ensure that written records are kept about incidents, emergencies, accidents, and injuries that have occurred.
- (b) The license holder must keep a record of instruction to all staff persons about how to carry out the policies.
- (c) The policies must contain:
  - (1) Procedures for administering first aid;

- (2) Safety rules to follow in avoiding injuries, burns, poisoning, choking, suffocation, and traffic and pedestrian accidents;
  - (3) Procedures for the daily inspection of potential hazards;
  - (4) Procedures for fire prevention and procedures to follow in the event of a fire, identifying primary and secondary exits, building evacuation routes, the phone number of the fire department, persons responsible for the evacuation of children, and areas for which they are responsible and instruction on how to use a fire extinguisher and how to close off the fire area;
  - (5) Procedures to follow in the event of a blizzard, tornado, or other natural disaster;
  - (6) Procedures to follow when a child is missing;
  - (7) Procedures to follow if an unauthorized person or a person who is incapacitated or suspected of abuse attempts to pick up a child or if no one comes to pick up a child;
  - (8) Procedures for recording accidents, injuries, and incidents involving a child enrolled in the center. The written record must contain the name and age of the person involved; date and place of the accident, injury or incident; type of injury; action taken by staff; and to whom the accident, injury, or incident was reported; and
  - (9) Procedures mandating an annual analysis of the license holder's records and procedures and any modification of the center's policies based on the analysis.
- (d) The license holder must maintain a written record of accidents, injuries, emergencies, and incidents.
  - (e) The license holder must develop procedures to address when the parent(s), guardian(s), or emergency contact(s) fail(s) to pick up a child upon the closing of the child care center, or if the child must be removed from the center as described in §1045. Furthermore, the license holder will note this information in a log to be maintained in the license holder's administrative records.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 7.  
Band Ordinance 31-09, § 1, Exhibit A, § 1731.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, §§ 1101 and 1409.  
Band Ordinance 16-14, Title I, §§ 7 and 13.

### **§ 1102. Fire Extinguishers.**

Fire extinguishers must be serviced annually by a qualified inspector. The name of the inspector and date of the inspection must be written on a tag attached to the extinguisher.

#### **Historical and Statutory Notes**

##### **Source:**

Band Statute 1019-MLC-46, § 7.01.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1102.

#### **Cross References**

Child care centers, fire extinguisher inspections, *see* 8 MLBS § 1508.

### **§ 1103. Electrical Outlets.**

All electrical outlets must be covered or protected when not in use.

#### **Historical and Statutory Notes**

##### **Source:**

Band Statute 1019-MLC-46, § 7.02.

#### **Cross References**

Hazardous areas, conditions and objects, child care centers, *see* 8 MLBS § 1509.

### **§ 1104. Telephones.**

A telephone that is not coin operated must be located within the Child Care Program center. A list of emergency numbers must be posted next to the telephone. The 911 emergency number, when available, must be posted. If 911 emergency number is not available, the numbers listed must be those of the local fire department, police department, emergency transportation, and poison control center.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 7.03, § 7.04.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1104.

**Cross References**

Child care centers, telephone and posted telephone numbers, *see* 8 MLBS § 1507.

**§ 1105. Hazardous Areas, Conditions and Objects.**

- (a) **Hazardous areas.** Kitchens, stairs, and other hazardous areas must be inaccessible to children except during periods of supervised use.
- (b) **Maintenance of areas used by children.** The areas used by children must be free from debris, loose flaking, peeling, or chipped paint, loose wallpaper, or crumbling plaster, litter, and holes in the walls, floors, and ceilings. Rugs must have a non-skid backing or be firmly fastened to the floor and be free from tears, curled or frayed edges, and hazardous wrinkles.
- (c) **Shielding of hot surfaces.** Radiators, fireplaces, hot pipes, and other hot surfaces in areas used by children must be shielded or insulated to prevent burns.
- (d) **Electrical outlets.** Except in a center that serves only school age children, electrical outlets must be tamper proof or shielded when not in use.
- (e) **Condition of equipment, furniture and toys.**
  - (1) Equipment and furniture must be durable, in good repair, structurally sound and stable following assembly and installation. Equipment must be free of sharp edges, dangerous protrusions, points where a child's extremities could be pinched or crushed, and openings or angles that could trap part of child's body. Tables, chairs, and other furniture must be appropriate to the age and size of children who use them. Toys and equipment that are likely to be mouthed by infants and toddlers must be made of a material that can be disinfected. These must be cleaned and disinfected when mouthed or soiled and at least daily.
  - (2) Infant rattles must meet the United States consumer product safety standards contained in the Code of Federal Regulations, Title 16, sections 1510.1 to 1510.4, as adopted on May 23, 1978. All toys and other articles intended for use by children under three (3) years of age that present choking, aspiration, or ingestion hazards because of small parts must meet the size standards in Code of Federal Regulations, Title 16, sections 1501.1 to 1501.5, as adopted on June 15, 1979.

- (f) **Hazardous objects.** Sharp objects, medicines, plastic bags, and poisonous plants and chemicals, including household supplies, must be stored out of reach of children.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1105.

#### **§ 1106. Painted Surfaces.**

All painted surfaces accessible to children shall be free of toxic materials.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 7.09.

#### **Cross References**

Peeling paint, *see* 8 MLBS § 982.

## **PART H**

### **ADMISSIONS**

#### **Section**

**1141. Admissions Guidelines and Policies Established.**

**1142. Age Ranges.**

**1143. Information and Instruction from Parents.**

**1144. Communication Between Family and Facility.**

#### **Cross References**

Sample menus provided at time of admission, child care centers, *see* 8 MLBS § 1543.

#### **§ 1141. Admissions Guidelines and Policies Established.**

The Mille Lacs Band of Ojibwe hereby establishes the admissions guidelines and policies for Child Care Programs in this Part H.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 8.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1141.

### **§ 1142. Age Ranges.**

Each Child Care Program shall have an admission policy that specifies the age ranges of children being served.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 8.01.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1142.

### **§ 1143. Information and Instruction from Parents.**

- (a) Admission procedures developed must provide the care-giver with sufficient information and instruction from the parent to enable the caregiver to make decisions or act in behalf of the child's welfare in the absence of the parent.
- (b) Prior to admission of the child, the caregiver shall obtain written information from a person or persons legally responsible for the child covering the following items:
  - (1) The child's full name, birth date, and current address.
  - (2) The name and address of the parent or parents, or the person(s) legally responsible for the child, and the telephone number with instructions as to how the parent(s) responsible for the child may be reached when child is in the program.
  - (3) Names of persons authorized to take the child from the facility and their address, and names of persons not so authorized.
  - (4) Names, address, and telephone numbers of the health source to be called in case of emergency. Health statement and immunization data as specified in 8 MLBSA § 1043 et seq.
  - (5) Name, addresses, and telephone numbers of person(s) who can assume responsibility for the child if the parent cannot be reached in an emergency.

- (6) Signed authorization to the effect that the parent gives permission to the center to act in an emergency situation when the parent cannot be reached or is delayed in arriving. (In Loco Parentis.)
  - (7) Written permission for participation in specific research, experimentation or publicity activities.
  - (8) All children must have the expressed written permission from their parent or guardian to participate in activities away from the physical facility of the Child Care Program. Sponsorship of the activity shall not be considered a reason to waive this requirement. All written permissions shall be activity specific and must include the type of activity, location, date and time of departure and anticipated arrival. Blanket permission shall not be allowed.
  - (9) Special diet needs shall be followed as stated in the following sections.
  - (10) Written statement of income provided by parents, [Federal Requirement].
- (c) All information received during admission eligibility process is and must remain confidential.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 8.02, 8.03.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1143.

#### **Cross References**

Diet of infant, *see* 8 MLBS § 1074.

#### **§ 1144. Communication Between Family and Facility.**

Admission policies and procedures must ensure initial and continuing communication between the family and the facility to ensure compatibility in their mutual responsibility for the child's welfare.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 8.0392.

#### **Cross References**

Participation in field trips, child care centers, *see* 8 MLBS § 1572.

## **PART I**

### **ADMINISTRATION AND MANAGEMENT**

#### **Section**

**1171. Administration and Management Established.**

**1172. Information to be Submitted to Licensing Committee.**

**1173. Program Coordinator.**

**1174. Hiring Policies: Personnel Policies of Mille Lacs Band of Ojibwe.**

#### **§ 1171. Administration and Management Established.**

The Mille Lacs Band of Ojibwe hereby establishes the administration and management for Child Care Programs.

#### **Historical and Statutory Notes**

##### **Source:**

Band Statute 1019-MLC-46, § 9.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1171.

#### **§ 1172. Information to be Submitted to Licensing Committee.**

Every child program shall submit administrative and management information to the Mille Lacs Band Child Care Licensing Committee. Along with the application for licensure, the information must include:

- (a) Admission procedures and requirements.
- (b) Required information to be kept in each child's confidential record.
- (c) Individualized Educational Program Plan.
- (d) Description of provisions for emergency medical and/or dental care.
- (e) Written documentation on insurance coverage in an amount sufficient to protect the interest of the children and staff.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 9.01.

**§ 1173. Program Coordinator.**

Every Child Care Program shall have a Program Coordinator who shall be responsible and accountable for meeting the requirements of this subchapter.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 9.02.

**§ 1174. Hiring Policies: Personnel Policies of Mille Lacs Band of Ojibwe.**

All Child Care Programs licensed by the Mille Lacs Band of Ojibwe:

- (a) Will follow the hiring policies of the Mille Lacs Band.
- (b) Will follow any additional Federal policies necessary to comply with applicable Federal grant requirements.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 9.03.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1174.

**PART J**

**STAFF REQUIREMENTS**

**Sections**

**1201. Staff Requirements Established.**

**1202. Staff Development Training.**

**1203. Job Descriptions.**

**1204. Staff-to-Child Ratios.**

**1205. Persons Capable of Training Staff.**

**1206. Competence and Health of Personnel.**

**1207. Abuse or Neglect of Children.**

**1208. Duty to Report Abuse or Neglect.**

- 1209. Special Definitions.**
- 1210. Applicant Background Study.**
- 1211. General Staff Qualifications.**
- 1212. Disqualification Factors.**
- 1213. Directors; General Requirements.**
- 1214. Teacher Qualifications.**
- 1215. Assistance Teacher Qualifications.**
- 1216. Aide Qualifications.**
- 1217. Orientation Training.**
- 1218. In-Service Training.**

### **Cross References**

Child care centers, qualifications and training of applicant and staff, *see* 8 MLBS § 1441.

### **§ 1201. Staff Requirements Established.**

The Mille Lacs Band of Ojibwe hereby establishes, in this Part J, the staff requirements for Child Care Programs.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 10.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1201.

### **§ 1202. Staff Development Training.**

15 hours of staff development training for all regular administrative, teaching and support services staff members, including volunteers, must be a part of every Child Care Program's educational program.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 10.01.

Band Ordinance 16-14, Title I, § 8.

### **§ 1203. Job Descriptions.**

Every Child Care Program shall maintain up-to-date job descriptions for all staff which include mandatory staff training participation as an aspect of career development.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 10.02.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1203.

### **§ 1204. Staff-to-Child Ratios.**

- (a) The following staffing ratios shall apply with these specific age groups.

Children of age:	6 weeks-16 months	1 adult to 4 children
	17-33 months	1 adult to 4 children
	34 months-5 years	1 adult to 10 children
	6-11 years	1 adult to 12 children

- (b) The adult-child ratio must be maintained throughout the day. This ratio is based solely on the number of teacher aides in the classroom compared to the total number of children. Children shall not be left unattended for any reason.
- (c) Volunteers for all age groupings may not be counted in the staff-to-child ratio, and must be at least 16 years of age and participate in an orientation to the program.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, §§ 10.03, 10.05, 10.06.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1204.

Band Ordinance 16-14, Title I, § 9.

### **§ 1205. Persons Capable of Training Staff.**

At least one (1) person on the staff must be knowledgeable of the following fields and capable of training adult staff: Early childhood education, growth, development and practices; and first-aid and home nursing.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 10.04.

## **§ 1206. Competence and Health of Personnel.**

All personnel in regular contact with children, including volunteers and drivers, shall be physically, mentally, and emotionally competent to care for children and free from serious communicable disease such as tuberculosis and hepatitis, with negative tuberculosis testing which have been completed within the last 12 months. If the result of the TB test is positive for TB or indeterminate, a chest x-ray is required once every five (5) years there-after. All personnel will be subject to a drug-test upon starting their position and may be subject to random testing throughout their employment.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 10.07.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1206.

### **Cross References**

Child care centers, general staff qualifications, *see* 8 MLBS § 1443.

## **§ 1207. Procedures for Responding to Reports of Abuse or Neglect.**

Employees of any Child Care Center licensed by the Mille Lacs Band are prohibited from abusing and/or neglecting, any child placed under their direct/indirect supervision at a Child Care Center. For the purposes of this section, definitions for abuse and neglect shall be the same as Chapter 13, section 3103.

- (a) Allegations of abuse shall be reported to the Program Director. If the Program Director is the alleged perpetrator, the report may be made to the Commissioner of Education. The Program Director or Commissioner of Education shall be responsible for overseeing the investigation into the allegations.
- (b) For allegations of abuse or neglect, the Program Director will:
  - (1) Immediately respond to all abuse or neglect allegations. This will include documenting in writing what was witnessed or heard. Documentation shall be compiled in a written statement which shall include:
    - (i) Name of the employee alleged to have committed the abuse or neglect;
    - (ii) Time and location of the observed abuse or neglect;
    - (iii) Exact eye-witness description of what actually occurred, hearsay is not

admissible; and

- (iv) Name, date and signature of the person making the report, unless good cause is shown for the reporter to remain anonymous.
  - (2) Ensure confidentiality to the fullest extent.
  - (3) Provide a pre-termination inquiry which allows the employee to respond to the allegations. The Program Director has the discretion to follow this inquiry with a suspension in order to continue the investigation, or deem the investigation completed at this time. Per the Mille Lacs Band Personnel handbook, the employee may not be placed on suspension for longer than 1 to 5 days while the investigation is completed.
  - (4) Inform the alleged perpetrator he or she is not allowed to have contact with any child in the Center's care until the completion of the investigation.
  - (5) Protect the alleged victim from intimidation, retribution, or further abuse.
  - (6) Notify Tribal Police. If necessary, Tribal Police may conduct a separate investigation into any criminal conduct arising from the matter.
- (c) If a preponderance of evidence of abuse or neglect is found, the perpetrator's employment at the Child Care Center will be terminated immediately.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 10.09.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1207.

### **Cross References**

Confrontation of witnesses and assistance of counsel, *see* 1 MLBS § 6.

Domestic abuse prevention, *see* 8 MLBS § 401.

Due process, *see* 1 MLBS § 8.

Duty to report abuse and neglect, *see* 8 MLBS § 301.

Minors in need of care, *see* 8 MLBS § 201.

### **§ 1208. Duty to Report Abuse or Neglect.**

It is the policy of the Mille Lacs Band of Ojibwe to require all personnel of any Child Care Program under its jurisdiction to report any suspected physical and/or sexual abuse of children or physical/psychological neglect of children. Said written report shall be addressed to Family

Services.

### Historical and Statutory Notes

**Source:**

- Band Statute 1019-MLC-46, § 10.08.
- Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1208.
- Band Ordinance 16-14, Title I, § 10.

### Cross References

Duty to report abuse and neglect, *see* 8 MLBS § 301.

### § 1209. Special Definitions.

- (a) **“Accredited Course”** means a course that is offered for credit by or through an accredited post-secondary institution.
- (b) **“Education”** means accredited course work from an accredited post-secondary institution in child care development; children with special needs, early childhood education methods of theory; curriculum planning; child study techniques; family studies; child psychology; parent involvement; behavior guidance; child nutrition; child health and safety; early childhood special education methods of theory; child abuse and neglect prevention; recreational sports, arts, and crafts methods of theory; or coordination of community and school activities.
- (c) **“Experience”** means paid or unpaid employment serving children as a teacher, assistant teacher, or aide, in a licensed child care center, or work as a student intern in a licensed center, a school operated by the commissioner of education or by a legally constituted local school board or a private school.
- (d) **“Student Intern”** means a student of a post-secondary institution assigned by that institution for a supervised experience with children. The experience must be in a licensed center, an elementary school operated by the commissioner of education, or a legally constituted local school board, or private school approved under rules administered by the commissioner of education. The term includes a person who has practiced teaching, student teaching, or carrying out a practicum or internship.

### Historical and Statutory Notes

**Source:**

- Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1209.

**§ 1210. Applicant Background Study.**

An applicant background study of the applicant and all staff persons who will have direct contact with or access to persons served by the child care program is required.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1210.

**§ 1211. General Staff Qualifications.**

Staff persons who have direct contact with or access to children, and volunteers who have direct contact with or access to children and are not under the direct supervision of a staff person, must meet the qualifications in this section:

- (a) Persons who supervise staff persons or volunteers must be at least 18 years old.
- (b) Staff persons must be physically able to care for children and must not present a risk of transmission of reportable communicable disease.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1211.

**§ 1212. Background Disclosure and Disqualification Factors.**

A staff person with direct contact with or access to children in care must disclose the arrest, conviction, and applicant background information if that staff person:

- (a) has a conviction of, has admitted to, has an adjudication of delinquency for, has been charged and is awaiting trial for, or a preponderance of the evidence indicates the person has committed:
  - (1) a crime against a child;
  - (2) an act of physical or sexual abuse;
  - (3) neglect;
  - (4) a felony;

- (5) the same or similar crimes as those in this subsection listed in the laws of another state or of the United States or of any Tribal law;
- (b) has a conviction of, has admitted to, has an adjudication of delinquency for, has been charged and is awaiting trial for, or a preponderance of the evidence indicates the person has committed any misdemeanor offense under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children. The Licensing Committee may evaluate the nature and time of a misdemeanor assault charge as well as other types of misdemeanor crimes not specified in this section to determine whether employment is appropriate.
- (c) has mental illness as defined in Minnesota Statutes, section 245.462, subdivision 20, and the behavior has or may have a negative effect on the ability of the person to provide child care or is apparent during the hour's children are in care; or
- (d) abuses prescription drugs or uses controlled substances, as named in Minnesota Statutes, chapter 152, or alcohol to the extent that the use or abuse impairs or may impair the person's ability to provide child care or is apparent during the hour's children are in care.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1212.

#### **§ 1213. Directors; General Requirements.**

A director must have:

- (a) a baccalaureate or advanced degree in early childhood education; or
- (b) a baccalaureate or advanced degree and coursework equivalent to a major relating to early childhood education, with experience teaching preschool-age children.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1213.

#### **§ 1214. Teacher Qualifications.**

- (a) **Teacher qualifications, general.** A teacher must be at least 18 years old and meet the qualifications in subsection (b) with the following exceptions:
- (1) A registered nurse or licensed practical nurse is qualified as a teacher for infants only.
  - (2) A registered nurse may be used to meet the staff-to-child ratios for a teacher for sick care in a center licensed to operate a sick care program.
- (b) **Teacher education and experience requirements.** A teacher with the credential listed in column A must have the education and experience listed in column B

**Column A**

**Column B**

1. A high school or General Education Development (GED) diploma	Experience: 4,160 hours as assistant teacher  Education 24 quarter credits
2. Diploma from Association Montessori Internationale; preprimary credential, primary diploma, or provisional certificate from American Montessori Society, without a baccalaureate degree	Experience: 2,080 hours as assistant teacher, intern  Education: 12 quarter credits
3. Preprimary credential, primary diploma, or provisional certificate from the American Montessori Society; or diploma from the Association Montessori Internationale with a baccalaureate degree	Experience: 1,040 hours as assistant teacher, intern  Education: no additional required
4. Minnesota technical institute certificate as a Child Development Assistant	Experience: 2,080 hours as assistant teacher  Education: 6 quarter credits.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1214.

**§ 1215. Assistant Teacher Qualifications.**

Assistant Teachers must have:

- (a) At least a child development associate credential;
- (b) Enrolled in a program leading to an associate or baccalaureate degree; or
- (c) Enrolled in a child development associate credential program to be completed within 1 year.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1215.  
Band Ordinance 16-14, Title I, § 11.

### **§ 1216. Aide Qualifications.**

Must be at least 16; if under 18, must be directly supervised by a teacher or assistant teacher at all times except with sleeping children or assisting with toileting and diapering.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1216.

### **§ 1217. Orientation Training.**

The license holder must ensure that every staff person, and volunteers who will have direct contact or access to children and are not under the direct supervision of a staff person, are given orientation training and successfully complete the training before starting assigned duties. Completion of the orientation must be documented in the individual's personnel record. The orientation training must include information about:

- (a) the center's philosophy, child care program, and procedures for maintaining health and safety, and handling emergencies and accidents; and
- (b) specific job responsibilities.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1217.

## **§ 1218. In-Service Training.**

A license holder must ensure that an annual in-service training plan is developed and carried out and that it meets the requirements in the following items:

- (a) The in-service training plan must:
  - (1) be consistent with the center's child care program plan;
  - (2) meet the training needs of individual staff persons as specified in each staff person's annual evaluation report.
- (b) The director and all program staff persons must annually complete a minimum of 15 hours per person of in-service training.
- (c) The annual requirements must be completed within the year for which it was required.
- (d) In-service training requirement must be met by participation in early childhood development training. In this section, "early childhood development training" means training in child development; children with special needs; early childhood education methods of theory; curriculum planning; child study techniques; family studies; parent involvement; behavior guidance; child nutrition; child health and safety; recreation, sports, arts, and crafts, methods of theory, early childhood special education methods of theory; or child abuse and neglect prevention.
- (e) First aid and CPR training may be counted as in-service training.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1218.

## **PART K**

### **PROGRAM OPERATION**

**Section**

**1241. Program Operation Guidelines Established.**

**1242. Records.**

**1243. Informational Documents.**

**1244. Personnel Records.**

- 1245. Child Records.**
- 1246. Administrative Records.**
- 1247. Reporting Requirements.**
- 1248. Other Reporting.**

**§ 1241. Program Operation Guidelines Established.**

The Mille Lacs Band of Ojibwe hereby establishes that Child Care Programs be operated as provided in this Part K.

**Historical and Statutory Notes**

**Source:**

- Band Statute 1019-MLC-46, § 11.
- Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1241.

**§ 1242. Records.**

- (a) The center shall maintain the following types of records:
  - (1) Daily attendance records of children,
  - (2) Employment of staff and their evaluations,
  - (3) Health records of children and staff,
  - (4) Financial records,
  - (5) Insurance, and
  - (6) Vehicle registration and proof of maintenance
- (b) Also records of permission from parents for children for emergency treatment, field trips, special medications, arrangement for picking up children from the center other than parents, approval of architectural plans for renovation plans from a health agency in the community, records of volunteers' time and health status, and an annual inventory of all equipment shall be maintained.

**Historical and Statutory Notes**

**Source:**

- Band Statute 1019-MLC-46, § 11.01.

**Cross References**

Records, child care centers, *see* 8 MLBS § 1671.

### **§ 1243. Informational Documents.**

The Program Coordinator shall assure the following written documents:

- (a) A clear definition of the type of service being offered to the children and their parents,
- (b) Hours of operation,
- (c) Written admissions and enrollment procedures,
- (d) A clearly outlined list of fees and a plan for payment which is given to an interested inquirer on request,
- (e) Regulations covering the belongings of children,
- (f) Transportation arrangements.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1019-MLC-46, § 11.02.

### **§ 1244. Personnel Records.**

The license holder must ensure that a personnel record of each staff person is maintained at the center. The personnel record for each staff person must contain all of the below:

- (a) The staff person's name, home address, home telephone number, and date of birth;
- (b) The staff person's documentation indicating that the staff person meets the requirements of the staff person's job position and the education and experience requirements specified by this chapter; and
- (c) Documentation that the staff person has completed the required first aid and CPR training.

### **Historical and Statutory Notes**

**Source:**

Ordinance 49-13, Title I, § 2 and Exhibit, § 1244.

**§ 1245. Child Records.**

- (a) At the time of enrollment in the center, the license holder must ensure that a record is maintained on each child. The record must contain:
  - (1) The child's full name, birth date, and current home address;
  - (2) The name, address and telephone number of the child's parent(s) or legal guardian(s);
  - (3) Instructions on how the parent(s) or guardian(s) can be reached while the child is in the care of the center;
  - (4) The names and telephone numbers of any persons authorized to take the child from the center;
  - (5) Written authorization for the license holder to act in an emergency or when a parent cannot be reached or is delayed;
  - (6) For children age six (6) weeks to 36 months, a description of the child's eating, sleeping, toileting and communication habits, and effective methods for comforting the child;
  - (7) Documentation of any dietary or medical needs of the child; and
  - (8) Documentation of parent(s) or guardian(s) failing to pick up the child.
- (b) The license holder shall not disclose a child's record to any person other than the child, the child's parent or guardian, the child's legal representative, employees of the license holder, the Band and law enforcement unless the child's parent or guardian has given written consent or as otherwise required by law.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1245.

**§ 1246. Administrative Records.**

All records, policies, and procedures required by this chapter must be maintained within the center and be available for inspection at the request of the Band or IHS.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1246.

### **§ 1247. Reporting Requirements.**

- (a) All licensed Child Care Programs must develop policies and procedures for reporting suspected child maltreatment and must develop policies and procedures for reporting complaints about the operation of the child care program. The policies and procedures must include the telephone numbers of the Tribal child protection agency and Tribal law enforcement.
- (b) The policies and procedures required in paragraph (a) must be available upon request.
- (c) A child care license must include a statement that informs parents who have concerns about their child's care that they may call the licensing entity. The Band shall print the telephone number for the Band in bold and large font on the license issued to child care providers.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1247.

### **§ 1248. Other Reporting.**

- (a) The license holder must inform law enforcement and the Licensing Committee immediately of the death of a child in care at the center.
- (b) The license holder must inform the Licensing Committee within 24 hours of any injury to a child in care in the center that required treatment by a physician.
- (c) The license holder must inform the Licensing Committee within 24 hours of the occurrence of a natural disaster during hours of operation.
- (d) The license holder must ensure that the appropriate health authority is notified within 24 hours of receiving the parent's report of any suspected case of reportable disease as specified in the current Minnesota regulations governing

child care centers (as stated in the most current Minnesota Rules).

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1248.  
Band Ordinance 16-14, Title I, § 12.

## **PART L**

### **INSURANCE**

**Section**

**1271. Insurance of Facility and Vehicles.**

**§ 1271. Insurance of Facility and Vehicles.**

The License holder shall assure the following types of insurance: the center facility, and any vehicle owned or operated by the center or its staff, shall have full comprehensive insurance coverage.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 12.  
Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1271.

## **PART M**

### **FINANCIAL RECORDS**

**Section**

**1301. Financial Records to be Maintained.**

**1302. Income and Expenditures.**

**1303. Fees.**

**1304. Purchase and Inventory Policies.**

**§ 1301. Financial Records to be Maintained.**

The Mille Lacs Band of Ojibwe hereby establishes that the financial records provided for by this Part M be maintained.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 13.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1301.

### **§ 1302. Income and Expenditures.**

The center shall maintain a record of all income regardless of its derivation and record all expenditures.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 13.01.

### **§ 1303. Fees.**

Records shall be kept of all fees obtained from parents, and of their disbursement.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 13.02.

### **§ 1304. Purchase and Inventory Policies.**

The Program Coordinator shall have written policies covering the purchases of the organization and the maintenance of an inventory of the center's equipment.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 13.03.

## **PART N**

## **CHILD CARE LEARNING CENTERS SERVING CHILDREN WITH SPECIAL NEEDS**

### **Sections**

**1341. Integration of Children with Special Needs.**

**1342. Consultant.**

**1343. Obtainment of Information about Special Problems or Needs.**

**1344. Progress Evaluations.**

### **§ 1341. Integration of Children with Special Needs.**

Child Care Programs are encouraged to integrate children with special needs into the group of typical children whenever feasible for the center and for the child. The special needs of the child must be met.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 14.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1341.

### **§ 1342. Meeting with Special Education Teacher and Family.**

- (a) The Child Care Program shall conduct a meeting between the family of a child with special needs, a special education teacher, and any other personnel as necessary prior to the enrollment of any child with special needs.
- (b) The Child Care Program shall have written program modifications based on the needs of the individual child with special needs. These program modifications shall be understood by the program staff.
- (c) Modified equipment and supplies as needed shall be available.
- (d) Training of all staff as needed shall be arranged.
- (e) Modification of the physical facilities shall be made as needed and approved by the I.H.S. inspector.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 14.01.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1342.

**§ 1343. Obtainment of Information About Special Problems or Needs.**

Prior to the admission of any child with special needs, the Child Care Program shall obtain information from the parents, the physician and the state and local education agency about any special problems or needs that may affect the child's use of the program. Where indicated, a psychological evaluation may be made if necessary, and must be made available to the center with the parents' permission.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 14.02.

Band Ordinance 49-13, Title I, § 2 and Exhibit A, § 1343.

**§ 1344. Progress Evaluations.**

The progress of the child with special needs shall be evaluated no less than annually by a qualified consultant.

**Historical and Statutory Notes**

**Source:**

Band Statute 1019-MLC-46, § 14.03.

**SUBCHAPTER 2**

**DROP-IN CHILD CARE PROGRAMS**

<b><u>Part</u></b>	<b><u>Section</u></b>
<b>A. Applicability</b>	<b>1401</b>
<b>B. Special Definitions</b>	<b>1402</b>
<b>C. Special Licensure Requirements</b>	<b>1403</b>
<b>D. Special Staff Requirements</b>	<b>1408</b>
<b>E. Special Health and Safety Requirements</b>	<b>1409</b>

**PART A**

**APPLICABILITY**

**Section**

**1401. Applicability.**

**§ 1401. Applicability.**

In addition to the provisions found in Subchapter I of this Chapter, the following sections are applicable to Subchapter 2: Drop-in Child Care Programs only.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1401.

**PART B**

**SPECIAL DEFINITIONS**

**Section**

**1402. Special Definitions.**

**§ 1402. Special Definitions.**

- (a) **“Controlling individual”** means a public body, governmental agency, business entity, officer, owner, or managerial official whose responsibilities include the direction of the management or policies of a drop-in child care program. For purposes of this subchapter, owner means an individual who has direct or indirect ownership interest in a corporation, partnership, or other business association issued a license under this subchapter. For purposes of this subchapter, managerial official means those individuals who have the decision-making authority related to the operation of the program, and the responsibility for the ongoing management of or direction of the policies, services, or employees of the program.
- (b) **“Drop-in child care program”** means a nonresidential program of child care in which children participate on a onetime only or occasional basis up to a maximum of 90 hours per child, per month that provides care for children listed in the age categories defined above. A drop-in child care program must be licensed under Mille Lacs Band of Ojibwe Statutes governing drop-in child care centers.
- (c) **“Experience”** for purposes of drop-in child care centers, includes paid or unpaid

employment serving children as a teacher, assistant teacher, aide, or a student intern in a licensed child care center, or work as a student intern in a licensed center, a school operated by a state commissioner of education or by a legally constituted local school board, or a private school approved under rules administered by a state commissioner of education.

- (d) **“Interpretive guidelines”** means a policy statement that has been published pursuant to this subchapter which provides interpretation, details, or supplementary information concerning the application of laws or rules. Interpretive guidelines are published for the information and guidance of consumers, providers of service, Band agencies, and others concerned.
- (e) **“Supervision”** for purposes of drop-in child care centers, when a program staff person is within sight and hearing of a child at all times so that the program staff can intervene to protect the health and safety of the child. When an infant is placed in a crib room to sleep, supervision occurs when a staff person is within sight or hearing of the infant. When supervision of a crib room is provided by sight or hearing, the center must have a plan to address the other supervision component.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1402.

## **PART C**

### **SPECIAL LICENSURE REQUIREMENTS**

**Section**

**1403. Application for Licensure.**

**1404. Sanction Orders; Appeals.**

**1405. Requirements to Post Conditional License, Correction, or Sanction Order.**

**1406. Fine Schedule.**

**1407. License or Certification Fee.**

**§ 1403. Application for Licensure.**

An individual, corporation, partnership, voluntary association, other organization or controlling individual that is subject to licensure under this subchapter must apply for a license. The application must be made on the forms and in the manner prescribed by the Band in Chapter 11, subchapter 1 of this Title. The Band will provide the applicant with

instruction in completing the application and provide information about the rules and requirements that affect the applicant.

- (a) An application for licensure must specify one (1) or more controlling individuals as an agent who is responsible for dealing with the Band on all matters provided for in this subchapter and on whom service of all notices and orders must be made. The agent must be authorized to accept service on behalf of all of the controlling individuals of the program. Service on the agent is service on all of the controlling individuals of the program. It is not a defense to any action arising under this subchapter that service was not made on each controlling individual of the program. The designation of one (1) or more controlling individuals as agents under this paragraph does not affect the legal responsibility of any other controlling individual under this chapter.
- (b) An applicant or license holder must have a policy that prohibits license holders, employees, subcontractors, and volunteers, when directly responsible for persons served by the program, from abusing prescription medication or being in any manner under the influence of a chemical that impairs the individual's ability to provide services or care. The license holder must train employees, subcontractors, and volunteers about the program's drug and alcohol policy.
- (c) An applicant and license holder must have a program grievance procedure that permits persons served by the program and their authorized representatives to bring a grievance to the highest level of authority in the program.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-09, § 1, Exhibit A, § 1705.

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1403.

### **§ 1404. Sanction Orders; Appeals.**

- (a) In addition to making a license condition under section 955, the Band may suspend or revoke a license or impose a fine against a license holder who does not comply with applicable law or rule. When ordering sanctions authorized under this section, the Band shall consider the nature, chronicity, or severity of the violation of the law or rule and the effect of the violation on the health, safety or rights of the persons served by the program.
  - (1) **License suspension or revocation.** The Band may act immediately to suspend or revoke a license if a license holder fails to comply fully with applicable laws or rules, the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, if a license holder or an employee

subject to a background study has a disqualification, if a license holder knowingly withholds relevant information from or gives false or misleading information to the Band in connection with an application for a license, in connection with the background study status of an individual, during an investigation, or regarding compliance with applicable laws or rules. A license holder who has had a license suspended or revoked must be given notice of the action by certified mail or personal service. If mailed, the notice must be mailed to the address shown on the application or the last known address of the license holder. The notice must state the reasons the license was suspended or revoked.

- (2) **Fines.** If the license holder is ordered to pay a fine, the notice must inform the license holder of the responsibility for payment of fines and the right to appeal. The license holder shall pay the fines assessed on or before the payment date specified. If the license holder fails to fully comply with the order, the Band may issue a second fine or suspend the license until the license holder complies. A license holder shall promptly notify the Band, in writing, when a violation specified in a sanction order to forfeit a fine is corrected. If upon re-inspection the Band determines that a violation has not been corrected as indicated by the order to forfeit a fine, the Band may issue a second fine. The Band shall notify the license holder by certified mail or personal service that a second fine has been assessed. The license holder may appeal the second fine as provided under this section.
- (b) **Appeal.** Appeals must be made within five (5) business days of receipt of a sanction.
- (1) An appeal hearing must be conducted by the Court of Central Jurisdiction within 30 calendar days, unless an extension is requested by either party and granted for good cause. The burden of proof under this section shall be limited to the Band's demonstration that reasonable cause exists that the license holder's actions or failure to comply with applicable law or rule poses, or the actions of other individuals or conditions in the program poses an imminent risk of harm to the health, safety, or rights of persons served by the program.
  - (2) The Court shall issue findings of fact, conclusions, and a recommendation within ten (10) working days from the date of the hearing. The Band shall consider, but shall not be bound by, the recommendations of the Court. The Band's final sanction order shall be issued within ten (10) working days from the Court's recommendation and the appellant must be notified immediately of the Band's final sanction order.
  - (3) When a license holder appeals a suspension or revocation, the license holder continues to be prohibited from operation of the program. A timely appeal shall stay payment of the fine until the Band issues a final sanction

order.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-09, § 1, Exhibit A, § 1720.

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1404.

### **§ 1405. Requirement to Post Conditional License, Correction, or Sanction Order.**

For license holders, upon receipt of any correction, order of conditional license, or sanction order issued by the Band under this subchapter, the license holder shall post the correction order, order of conditional license, or sanction order in a place that is conspicuous to the people receiving services and all visitors to the facility for two (2) years. When the correction order, order of conditional license, or sanction order is accompanied by a maltreatment investigation memorandum, the investigation memoranda must be posted with the correction order, order of conditional license, or sanction order.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-09, § 1, Exhibit A, § 1719.

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1405.

### **§ 1406. Fine Schedule.**

- (a) Fines shall be assessed as follows (subject to amendment by Band Ordinance):
  - (1) The license holder shall forfeit \$1,000.00 for each determination of maltreatment of a child for which the license holder is determined responsible for the maltreatment;
  - (2) The license holder shall forfeit \$200.00 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff-to-child, and failure to submit a background study; and
  - (3) The license holder shall forfeit \$100.00 for each occurrence of a violation of law or rule other than those subject to a \$1,000.00 or \$200.00 fine above.
- (b) For purposes of this section, “occurrence” means each violation identified in the Band’s fine order.

- (c) When a fine has been assessed, the license holder may not avoid payment by closing, selling, or otherwise transferring the program to a third party. In such an event, the license holder will be personally liable for payment. In the case of a corporation, each controlling individual is personally and jointly liable for payment.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 31-09, § 1, Exhibit A, § 1721.

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1406.

**§ 1407. License or Certification Fee.**

Drop-in center programs with a licensed capacity shall pay an annual nonrefundable license or certification fee based on the following schedule (subject to amendment by Band Ordinance):

<u>Licensed Capacity</u>	<u>License/Certification Fee</u>
1-24 persons	\$225.00
25-49 persons	\$340.00
50-74 persons	\$450.00
75-99 persons	\$565.00
100-124 persons	\$675.00
125-149 persons	\$900.00
150-174 persons	\$1,050.00
175-199 persons	\$1,200.00
200-224 persons	\$1,350.00
225 or more persons	\$1,500.00

**Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1407.

**PART D**

**SPECIAL STAFF REQUIREMENTS**

**Section**

**1408. Staff Requirements.**

**§ 1408. Staff Requirements.**

- (a) A drop-in child care program must be operated under the supervision of a person qualified as a teacher, defined by 8 MLBS § 1214.
- (b) A drop-in child care program must have at least two (2) persons on staff whenever the program is operating.
- (c) In a drop-in child care center, Children that are younger than age 2-1/2 must be in a separate group. This group must be cared for in an area that is physically separated from older children.
- (d) A drop-in child care program must maintain a minimum staff ratio for children age 2- 1/2 or greater of one (1) staff person for each ten (10) children.
- (e) The drop-in child care program will have additional staff on call as a mandatory condition of their employment. The minimum child-to-staff ratio may not be exceeded and no more children may be admitted to the Facility until additional staff has arrived.
- (f) In a drop-in child care program, the minimum staff-to-child ratio for infants up to 16 months of age is one (1) staff person for every four (4) infants. The minimum staff-to-child ratio for children age 17 months to 30 months is one (1) staff for every seven (7) children.
- (g) In drop-in care programs that serve infants and older children, children up to age 2- 1/2 may be supervised by assistant teachers, as long as other staff are present in appropriate ratios (see 8 MLBS § 1447 for qualifications).
- (h) The minimum staff distribution pattern for a drop-in child care program serving children age 2-1/2 or greater is: the first staff member must be a teacher; the second, third, and fourth staff members must have at least the qualifications of a

child care aide; the fifth staff member must have at least the qualifications of an assistant teacher; the sixth, seventh, and eighth staff members must have at least the qualifications of a child care aide; and the ninth staff person must have at least the qualifications of an assistant teacher (see 8 MLBS § 1447 for qualifications).

- (i) A drop-in child care program may care for siblings 16 months or older together in any group, when the program is serving 20 children or less; however all staffing requirements of this sub-chapter must be maintained at all times. For purposes of this subdivision, sibling is defined as sister or brother, half-sister or half-brother, or stepsister or stepbrother.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1408.

## **PART E**

### **SPECIAL HEALTH AND SAFETY REQUIREMENTS**

**Section**

**1409. Mandatory Reporting.**

**1410. Reporting Requirements.**

**1411. Additional Health and Safety Requirements.**

**1412. Facility Safety.**

**§ 1409. Mandatory Reporting.**

The license holder must report neglect, physical or sexual abuse of children in the home, school, or community setting to Family Services.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1410.

Band Ordinance 16-04, Title I, § 14.

**§ 1410. Reporting Requirements.**

- (a) All licensed drop-in child care centers must develop policies and procedures for reporting suspected child maltreatment and must develop policies and procedures for reporting complaints about the operation of a child care program. The policies

and procedures must include the telephone numbers of the local child protection agency for reporting suspected maltreatment and local law enforcement.

- (b) The policies and procedures required in paragraph (a) must be made available upon request.
- (c) Any reports of child abuse or neglect within the drop-in child care center must be submitted to the License holder for investigation.
  - (1) The report must be compiled in a written statement which shall include:
    - (i) Name of the employee alleged to have committed the abuse or neglect;
    - (ii) Time and location of the observed abuse or neglect;
    - (iii) Exact eye-witness description of what actually occurred, hearsay is not admissible; and
    - (iv) Name, date and signature of the person making the report, unless good cause is shown for the reporter to remain anonymous.
  - (2) The License Holder shall have discretion to terminate the alleged perpetrator's employment immediately.
  - (3) The License Holder shall inform local law enforcement and comply with any investigation of criminal charges arising from the matter.
- (d) A child care license must include a statement that informs parents who have concerns about their child's care that they may call the Child Care Licensing Committee. The Band shall print the telephone number for the Band in bold and in large font on the license issued to the child care providers.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1411.  
Band Ordinance 16-04, Title I, § 14.

### **§ 1411. Additional Health and Safety Requirements.**

- (a) A license holder for a drop-in center program will not administer medicine.
- (b) The indoor space and equipment of the center must be clean and disinfected daily and as needed.

- (c) The toilet rooms of the center must be cleaned daily. Toilet training chairs must be emptied, washed with soap and water, and disinfected after each use. Toilets and seats must be washed with soap and water and disinfected when soiled or at least daily.
- (d) A diaper must be changed only in the diaper changing area. The diaper changing area must be separate from areas used for food storage, food preparation, and eating. The area must have a hand sink equipped with hot and cold running water within three (3) feet of the diaper changing surface, a smooth nonabsorbent diaper changing surface and floor covering, and a sanitary container for soiled and wet diapers.
- (e) The center must have and follow diaper changing procedures that have been developed in consultation with a health consultant. The license holder must post the diaper changing procedures in the diaper changing area.
- (f) A child's hands must be washed with soap and water after a diaper change, after use of a toilet or toilet training chair, and before eating a meal or snack. Staff must monitor hand washing and assist a child who needs help. The use of a common basin or a hand sink filled with standing water is prohibited.
- (g) A staff person must wash her or his hands with soap and water after changing a child's diaper, after using toilet facilities, and before handling food or eating.
- (h) The license holder shall provide the following supplies and make them accessible to children: toilet paper, liquid hand soap, facial tissues, and single use paper towels or warm air hand dryers.
- (i) The license holder must ensure that a first aid kit is available within the center. The kit must contain sterile bandages and Band-Aids, sterile compresses, scissors, an ice bag or cold pack, an oral or surface thermometer, and adhesive tape. A current first aid manual must be included. The first aid kit and manual must be accessible to the staff in the center.
- (j) Sharp objects, medicines, plastic bags, and poisonous plants and chemicals, including household supplies, must be stored out of reach of children.
- (k) The center must have a battery operated flashlight and battery operated portable radio.
- (l) Equipment and furniture must be durable, in good repair, structurally sound and stable following assembly and installation. Equipment must be free of sharp edges, dangerous protrusions, points where a child's extremities could be pinched or crushed, and openings or angles that could trap part of a child's body. Tables, chairs and other furniture must be appropriate to the age and size of children who use them. Toys and equipment that are likely to be mouthed by infants and

toddlers must be made of a material that can be disinfected. These must be cleaned and disinfected when mouthed or soiled and at least daily.

- (m) Infant rattles must meet the United States consumer product safety standards contained in the Code of Federal Regulations, Title 16, sections 1510.1 to 1510.4, as adopted on May 23, 1978. All toys and other articles intended for use by children under three (3) years of age that present choking, aspiration, or ingestion hazards because of small parts must meet the size standards in Code of Federal Regulations, Title 16, sections 1501.1 to 1501.5, as adopted on June 15, 1979.
- (n) The areas used by children must be free from debris, loose flaking, peeling, or chipped paint, loose wallpaper, or crumbling plaster, litter, and holes in the walls, floors, and ceilings. Rugs must have a nonskid backing or be firmly fastened to the floor and be free from tears, curled or frayed edges, and hazardous wrinkles.
- (o) Food and water must meet and comply with IHS standards.
- (p) Any play equipment that has tubing, tunnels or otherwise prevents monitoring and observation of activity occurring inside the structure must have walls that are partially or completely transparent, or allow for surveillance of the structure's interior.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-09, § 1, Exhibit A, § 1734.

Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1412.

Band Ordinance 16-04, Title I, § 14.

### **§ 1412. Facility Safety.**

- (a) If the Band has reasonable cause to believe that a potential hazard exists, the Band may request another inspection and written report by a fire marshal, building official, or health authority to verify the absence of hazard, the fees for which the license holder is responsible.
- (b) Radiators, fireplaces, hot pipes, and other hot surfaces in areas used by children must be shielded or insulated to prevent burns.
- (c) Except in a center that serves only school-age children, electrical outlets must be tamper proof or shielded when not in use.
- (d) A minimum temperature of 68 degrees Fahrenheit must be maintained in indoor areas used by children.
- (e) Kitchens, stairs and other hazardous areas must be inaccessible to children except

during periods of supervised use.

- (f) Fire extinguishers must be serviced annually by a qualified inspector. The name of the inspector and date of the inspection must be written on a tag attached to the extinguisher.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-09, § 1, Exhibit A, § 1735.  
Band Ordinance 49-13, Title I, Section 1 and Exhibit A, § 1413.  
Band Ordinance 16-04, Title I, § 14.

## **SUB CHAPTER 3**

### **PRIVATELY-OWNED CHILD CARE CENTERS**

Reserved.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 49-13.

## **CHAPTER 12**

### **CHILD SUPPORT**

**Subchapter**

- 1. General Provisions**
- 2. Paternity**
- 3. Enforcement**

**Section**

- 2001**
- 2031**
- 2051**

## **SUBCHAPTER 1**

### **GENERAL PROVISIONS**

**Section**

**2001. Findings and Purpose.**

- 2002. Sovereign Immunity.**
- 2003. Definitions.**
- 2004. Band Authority.**
- 2005. Judicial Proceedings.**
- 2006. Support Order.**
- 2007. Providing Income Information.**
- 2008. Calculation of Gross Income.**
- 2009. Income from Self-Employment or Operation of a Business.**
- 2010. Social Security or Veterans' Benefit Payments Received on Behalf of a Child.**
- 2011. Potential Income.**
- 2012. Deduction from Gross Income for Non-Joint Children.**
- 2013. Presumptive Child Support Obligation.**
- 2014. Guideline Used in Child Support Determinations.**
- 2015. Non-Cash Support.**
- 2016. Parenting Expense Adjustment.**
- 2017. Written Findings.**
- 2018. Equitable Distribution of Child Support.**
- 2019. Modification of Orders or Decrees.**
- 2020. Child Care Support.**
- 2021. Medical Support.**
- 2022. Ability to Pay; Self-Support Adjustment.**
- 2023. Deviation from Presumptive Child Support Obligation.**
- 2024. Notice to Band Authority.**

### **Historical and Statutory Notes**

The Preamble of Ordinance 26-94 provides: “Be it enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of establishing Child Support and Enforcement for adequate support and nurturing of the children under the jurisdiction of the Band.”

The title of Ordinance 06-10 is: “An Ordinance repealing Subchapter I of Chapter 12 (Child Support) in Title 8 of the Mille Lacs Band Statutes Annotated, and amending this Subchapter in order to ensure that the children under the jurisdiction of the Mille Lacs Band of Ojibwe are provided with parental support and the financial means to promote healthy growth development; and to establish a child support enforcement program within the Band government. This Bill also creates Subchapter II (Paternity) of Chapter 12 of Title 8 to ensure that the father of every child subject to the jurisdiction of the Band is identified and paternity established in order to protect, promote and help provide for the child’s best interest. In addition, this Bill amends Subchapter III (Enforcement) of Chapter 12 of Title 8 to create a consistent enforcement system of child support collection.”

The Preamble of Ordinance 06-10 provides: “It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of repealing Subchapter I of Chapter 12 in Title 8 of the Mille Lacs Band Statutes Annotated in its entirety to ensure that the children under the jurisdiction of the Mille Lacs Band of Ojibwe are provided with parental support and the

financial means to promote healthy growth development; and to establish a child support enforcement program within the Band government. This Bill also creates Subchapter II (Paternity) of Chapter 12 of Title 8 to ensure that the father of every child subject to the jurisdiction of the Band is identified and paternity established in order to protect, promote and help provide for the child's best interest. In addition, this Bill amends Subchapter III (Enforcement) of Chapter 12 of Title 8 to create a consistent enforcement system of child support collection.”

### **Cross References**

Removal of child from proposed adoptive home, support orders, *see* 8 MLBS § 617.

### **§ 2001. Findings and Purpose.**

The Band Assembly finds and determines:

- (a) The health and well-being of the Band depends on the healthy growth, development and well-being of the Band's children.
- (b) The healthy growth, development and well-being of the Band's children require that proper care and support be given to them.
- (c) The healthy growth, development and well-being of the Band's children are jeopardized by financial difficulties and hardship facing many Band children due to a lack of parental support.
- (d) It is a purpose of this chapter and in the best interest of the Band to provide for the establishment of child support obligations that are consistent with traditional Ojibwe values and that motivate parents to provide their children with regular and adequate support in accordance with the parents' resources and abilities.
- (e) It is a purpose of this chapter and in the best interest of the Band to utilize the civil justice system of the Court of Central Jurisdiction and the Band Authority to implement and enforce the child support obligations established in accordance with this chapter.
- (f) This chapter reaffirms Band sovereignty and self-determination by providing for the exercise of Band jurisdiction over child support and paternity cases involving Band children and families.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 1.

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2001.  
Band Ordinance 01-21.

### § 2002. Sovereign Immunity.

Nothing in this chapter shall be construed as a waiver of the sovereign immunity of the Mille Lacs Band of Ojibwe.

### Historical and Statutory Notes

#### Source:

Band Ordinance 26-94, Ch. 29, T. II, § 9.  
Band Ordinance 06-10, Title I, §1, Exhibit A, § 2002.

### § 2003. Definitions.

For the purposes of this chapter, the following terms shall have the meaning assigned to them in this section.

- (a) **“Apportioned Veterans’ Benefits”** means the amount the Veterans Administration deducts from a veteran’s award and disburses to a child or a child’s representative payee. The appointment of veteran’s benefits shall be that determined by the Veterans Administration and governed by the U.S. Code of Federal Regulations (C.F.R.), Title 38, §§ 3.450-3.458.
- (b) **“Arrears”** are the amounts that accrue pursuant to an obligor’s failure to comply with a support order. Past support contained in a support order is arrears if the court order does not contain repayment terms. Arrears also arise by the obligor’s failure to comply with the terms of a court order for repayment of past support. An obligor’s failure to comply with the terms for repayment of amounts owed for past support turns the entire amount owed into arrears.
- (c) **“Band”** means the Mille Lacs Band of Ojibwe.
- (d) **“Band Authority”** means the Mille Lacs Band Child Support Enforcement Program.
- (e) **“Band coverage”** means medical, dental, or other health care benefits provided by the Indian Health Service or the Band’s Circle of Health program.
- (f) **“Basic support”** means the basic support obligation determined under the child support guideline in § 2014 of this Title. Basic support includes support for a child’s housing, food, clothing, transportation, and education costs, and other expenses

relating to the child's care. Basic support does not include monetary contributions for a child's childcare expenses or medical or dental expenses.

- (g) **“Bona fide career change”** or **“aandanokiid awiya,”** as used in this chapter, means an educational pursuit or change of profession that is made in good faith. Any party claiming a bona fide career change for purposes of calculating child support shall bear the burden of proof.
- (h) **“Child”** means a person who is younger than 18 years old and has not been emancipated by order of a court of competent jurisdiction, or a person for whom child support may be ordered pursuant to § 2006 (i).
- (i) **“Court”** means the Band's Court of Central Jurisdiction of the Mille Lacs Band of Ojibwe.
- (j) **“Financial Institution”** means a savings association, bank, trust company, credit union, industrial loan and thrift company, bank and trust company, or savings association, and includes a branch or detached facility of a financial institution.
- (k) **“Gross Income”** means the income of a parent calculated under § 2008 of this Title.
- (l) **“Health care coverage”** means medical, dental or other health care benefits that are provided by one (1) or more health plans. Health care coverage includes fee for service, health maintenance organization, and other types of private health insurance and public health care coverage under which medical services are available to the dependent child(ren).
- (m) **“Health plan”** means a plan, other than any form of public medical, dental or other health care assistance, that provides medical, dental, or other health care benefits and is:
  - (1) provided on an individual or group basis;
  - (2) provided by an employer or union;
  - (3) purchased in the private market; or
  - (4) available to a person eligible to carry insurance for a joint child, including a party's spouse or parent.
- (n) **“IV-D case”** means a case where a party has applied for child support services from a public authority or has assigned to a tribe or a state rights to child support because of the receipt of public assistance under Title IV-D of the Social Security Act, 45 U.S.C. § 309.

- (o) **“Joint child”** means a child of both parents in a support proceeding, whether child support is sought from one (1) or both parents in the proceeding.
- (p) **“Medical support”** means providing medical, dental or other health care benefits for a joint child by carrying health care coverage for the joint child or by contributing to the cost of health care coverage, public coverage, unreimbursed medical expenses, or uninsured medical expenses of the joint child.
- (q) **“Non-cash support”** means support provided in the nature of goods and/or services rather than in cash, which contributes directly to meeting the needs of a child. Non-cash support may include services such as making repairs to an automobile or a home, the clearing or upkeep of property, providing a means for travel, providing needed resources for a child’s participation in tribal customs and practices, or other goods or services that contribute to the needs of a child, and can be reasonably assigned a cash value.
- (r) **“Non-joint child”** means a child of one (1) but not both of the parents in a support proceeding.
- (s) **“Obligee”** means a person to whom child support payments are owed.
- (t) **“Obligor”** means a person obligated to pay child support.
- (u) **“Parentage proceeding”** means the proceeding in which paternity is established through a contested or uncontested process.
- (v) **“Parental Income for determining Child Support (PICS)”** means gross income calculated under §2008 of this Title minus deductions for non-joint children allowed under §2012 of this Title.
- (w) **“Payer of funds”** means a person or entity that provides funds to an obligor, including an employer as defined under 26 U.S.C. § 3401(d), an independent contractor, a payer of workers’ compensation benefits or unemployment insurance benefits, a financial institution, or a tribe making per capita payments.
- (x) **“Parent”** means the lawful mother or father of a child or, where applicable throughout this statute, a third-party guardian.
- (y) **“Per capita income”** and **“per capita payments”** mean monthly bonus payments, minor trust payments to enrolled tribal members authorized by a Tribal Net Revenue Allocation Plan, or both. Per capita payments do not include economic support payments, stimulus payments, or any settlement monies.
- (z) **“Primary physical custodian”** means the parent who provides the primary residence for a child and is responsible for the majority of the day-to-day decisions concerning a child.

- (aa) **“Public assistance”** means temporary financial assistance given to needy persons by a tribal or state government agency.
- (bb) **“Public authority”** means a local unit of government acting on behalf of a tribe or a state that is responsible for child support enforcement and includes but is not limited to the Band Authority.
- (cc) **“Social Security benefit”** means the monthly retirement, survivors, or disability insurance benefits that the Social Security Administration provides to a parent for that parent’s own benefit or for the benefit of a joint child. Social Security benefits do not include Supplemental Security Income benefits that the Social Security Administration provides to a parent for the parent’s own benefit or to a parent due to the disability of a child.
- (dd) **“Support payment”, “support obligation”, “child support payment” or “child support obligation”** means a payment or obligation for basic support, childcare support, and/or medical support of a child pursuant to a support order.
- (ee) **“Support order”** means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by any court (including but not limited to the Band’s Court) or administrative agency of a competent jurisdiction in a marriage dissolution, legal separation, annulment, parentage, custody, child support or other proceeding that establishes or modifies a child support obligation.
- (ff) **“Survivors and dependents’ educational assistance”** means funds disbursed by the Veterans Administration under 38 U.S.C. chap. 35 to a child or the child’s representative payee.
- (gg) **“TANF”** means Temporary Assistance to Needy Families provided under Title IV-A of the Social Security Act.
- (hh) **“Third-Party Guardian”** means a person legally appointed by a parent, spouse, or court of competent jurisdiction having the duty and authority to provide care and control of a child.
- (ii) **“Title IV-A”** refers to Title IV-A of the Social Security Act under which the federal government provides funds to tribes or states to provide temporary financial assistance to families using federal dollars.
- (jj) **“Title IV-D”** means Title IV-D of the Social Security Act under which the federal government provides funds to tribes and states to administer child support programs that provide services related to child support.
- (kk) **“Tribal Court”** means a court established by a tribe, including but not limited to the Band’s Court.

- (ll) **“Tribe”** or **“tribal”** mean a state or federally recognized Indian tribe, including but not limited to the Band.
- (mm) **“Tribunal”** means a tribal or state court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.
- (nn) **“Uninsured medical expenses”** means a joint child’s reasonable and necessary medical, dental, or other health-related expenses if the joint child is not covered by a health plan, Band coverage, or public coverage when the expenses are incurred.
- (oo) **“Unreimbursed medical expenses”** means a joint child’s reasonable and necessary medical, dental, or other health-related expenses if the joint child is covered by a health plan, Band coverage, or public coverage and the plan or coverage does not pay for the total cost of the expenses when the expenses are incurred. Unreimbursed medical expenses do not include the cost of premiums. Unreimbursed medical expenses include, but are not limited to deductibles, co-payments and expenses for orthodontia, prescription eyeglasses and contact lenses, but not over-the-counter medications if coverage is under a health plan.

### **Historical and Statutory Notes**

**Source:**

- Band Ordinance 26-94, Ch. 29, T I, § 4.04.
- Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2003.
- Band Ordinance 01-21.

### **§ 2004. Band Authority.**

- (a) There is hereby established the Mille Lacs Band Child Support Enforcement Program (the Band Authority) within the Band’s Department of Administration.
- (b) The Band Authority is authorized to provide child support enforcement services to all parents and children subject to the jurisdiction of the Band. The Band Authority is authorized, among other things, to:
  - (1) locate custodial parents and noncustodial parents, as well as their sources of income, assets, and debts;
  - (2) seek a determination of parentage;
  - (3) seek the establishment or modification of child support;
  - (4) enforce support orders and laws relating to the duty of support;

- (5) make reasonable information requests from state and tribal governments, to include other Band departments, for the purpose of establishing, modifying, and enforcing a child support obligation; and
  - (6) seek Court orders authorizing holds on Band members' monthly per capita (or other bonus) payments to facilitate either a determination of parentage or the administration of a child support obligation.
- (c) In providing child support enforcement services, the Band Authority may provide the services of an attorney or an attorney's representative to a party seeking to establish, modify or enforce a child support obligation.
- (1) The provision of such services shall not create an attorney-client relationship between the attorney or attorney's representative and the party to whom such services are provided. Attorneys and attorney's representatives employed by or under contract with the Band Authority have an affirmative duty to inform applicants for and recipients of services from the Band Authority that no attorney-client relationship exists or will be formed between the attorney or attorney's representative and the applicant for or recipient of such services. In providing such services, the Band Authority shall be the sole client of the attorney or attorney's representative and an attorney-client relationship shall exist between the attorney or attorney's representative and the Band Authority.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2004.

Band Ordinance 01-21.

### **§ 2005. Judicial Proceedings.**

- (a) The Court shall have jurisdiction under this chapter over all parents and children subject to the jurisdiction of the Band. Except as otherwise provided by Federal law, such jurisdiction shall include, but not be limited to:
  - (1) all persons who are members of or are eligible for membership who reside within the Band's geographic limits,
  - (2) all persons who are alleged to be the parent of a child, including an unborn child, and whose parenting partner is a member of or is eligible for membership in the Band or is a member of or eligible for membership in another tribe and resides within the Band's geographic limits, and

- (3) all persons who knowingly consent to the jurisdiction of the Band under this chapter.
- (b) Except as otherwise provided by Federal law, if another federal, state or tribal court has jurisdiction over any matter provided for in this chapter, the Band Court shall have concurrent jurisdiction over the same matter.
- (c) An action to establish, modify, or enforce a child support obligation may be filed separately or may be joined with an action for divorce, annulment, legal separation, or child custody or guardianship.
- (d) Unless an action to establish, modify, or enforce a child support obligation has been joined with an action for child custody or guardianship, in establishing, modifying, or enforcing a child support obligation, the Court shall not change or modify the custody or guardianship of the child.
- (e) Except as otherwise expressly provided in this chapter, in every action under this chapter:
  - (1) the Court shall inform the parties to the action that they have the right to have a lawyer or other person(s) they have selected represent them in the proceeding at their own expense;
  - (2) if it appears that a party to the action cannot afford private counsel, the Court shall inform the party of available services that might provide counsel at a reduced fee or pro bono;
  - (3) the parties to the action shall have the opportunity to introduce, examine, and cross-examine witnesses in accordance with the Court's rules;
  - (4) the parties to the action shall have the opportunity to discover, offer, or inspect evidence in accordance with the Court's rules; and
  - (5) the parties to the action shall have the opportunity to present arguments and statements in accordance with the Court's rules.
- (f) All judicial proceedings in an action to establish, modify, or enforce a child support obligation are confidential. In accordance with this provision:
  - (1) When providing service by publication in such an action, the names of the children subject to the action shall not be disclosed. Only the children's initials shall be used.
  - (2) Court files and hearings in such an action will be closed to outside observers. Only the parties directly involved, necessary witnesses, and Court personnel shall be present at hearings. The Court may utilize its discretion to permit

other observers, provided that the Court has offered all parties the opportunity to object.

- (3) Any person, including but not limited to any employee or official of the Band, who willfully discloses otherwise confidential information related to an action to establish, modify, or enforce a child support obligation, except as expressly authorized and provided for by Court order or otherwise pursuant to this chapter, and who is found guilty of an unauthorized disclosure of information, may be subject to a civil fine not to exceed \$500.00.
- (g) Child support proceedings should not be discussed with the children involved or with other children in the household. Parents are to refrain from using their children as tools against each other.
- (h) If the Court has knowledge that a protective order exists with respect to a party involved in a child support proceeding, the Court shall not release any private data regarding the physical or employment location of the party protected by the protective order to the party or their representatives against whom the protective order was established. The Court may utilize its discretion to authorize separate proceedings to ensure the safety of the protected party while encouraging the utmost participation by the parties.
- (i) To ensure an equal distribution of child support amongst a supported child or children, the Court may schedule a hearing to address multiple child support orders pertaining to the same child or children. The Court may utilize its discretion to determine how such a hearing will be structured.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 2.  
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2005.  
Band Ordinance 01-21.

### **Cross References**

Disclosure by judge of information relating to pending case, *see* 5 MLBS § 117.

### **§ 2006. Support Order.**

- (a) **General.** Incorporation of support order in decree of dissolution, legal separation, or annulment; provision for child support in other proceedings. The Court shall incorporate in every decree of dissolution, legal separation, or annulment an order providing for the support of the parties' children as provided in this chapter. The

Court shall also provide for the support of the parties' children in any other proceeding related to custody, parenting time, or support.

- (b) **Designation of support and maintenance payments.** Every support order incorporated in a decree of dissolution, legal separation, or annulment shall clearly designate whether payments ordered are for child support or for maintenance of the spouse or former spouse.
  - (1) If payments are ordered for child support and spousal maintenance, the order shall clearly state the amount that is for child support and the amount that is for spousal maintenance.
  - (2) An award of payments from future income or earnings of the parent who is the primary physical custodian of the child or children subject to the order is presumed to be for spousal maintenance, and an award of payments from the future income or earnings of the parent who is not the primary physical custodian of the child or children subject to the order is presumed to be for child support, unless otherwise designated by the Court.
- (c) **Marital misconduct not to affect support obligations.** The Court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.
- (d) **Stipulations for child support.** The Court shall approve a child support stipulation of the parties if each party is represented by independent counsel or if the Court makes a finding that the stipulation is fair to both parties and is in the best interest of the child.
- (e) **Percentage payments.** The Court may order an obligor to pay child support in the form of a percentage of the obligor's net bonuses, commissions, or other forms of compensation, in addition to, or if the obligor receives no base pay, in lieu of, an order for a specific dollar amount.
- (f) **Lien on property; appointment of trustee.** With the exception of property held by the United States in trust for an obligor, the Court may make any support order a lien or charge upon the property of the obligor, either at the time of the entry of the order or by subsequent order upon proper application. In addition, the Court may appoint a trustee to receive funds or other property awarded as support money. When appropriate, the Court may name the Band Authority as trustee.
- (g) **Payments made to Band Authority or other public authority.** In any support order, the Court may require that child support payments be made to the Band Authority or other public authority for the benefit of the obligee.
- (h) **Seasonal income.** The Court shall establish the annual child support obligation of an obligor with a seasonal income so that the obligor makes either the same monthly

payments throughout the year or monthly payments that reflect variations in the obligor's income.

(i) **Duration of support payments.**

(1) Child support payments shall stop when the child is 18 years old unless the Court finds that:

(i) it would be in the best interests of the child to continue support payments until the child is 21 years old; and

(ii) the child is (i) disabled or (ii) between 18 and 21 years old and enrolled in high school on a full-time basis.

(2) If the Court makes such findings, it may order that support payments shall continue while the child is between 18 and 21 years old, but only for so long as the child is disabled or enrolled in high school on a full-time basis.

(3) When a child's full-time high school enrollment status is in dispute, the Court shall make the determination.

(j) **Notice of address or residence change.** Every obligor under a support order shall notify the obligee and the public authority responsible for collection of support money, if any, of a change of address or residence within 60 calendar days of the address or residence change.

(1) The Court may waive or modify the requirements of this paragraph by order if necessary to protect the obligee from contact by the obligor.

(k) **Satisfaction of child support obligation.** The Court may conclude that an obligor has satisfied a child support obligation by providing a home, care, and support for the child while the child was living with the obligor, if the court finds that the child was integrated into the family of the obligor with the consent of the obligee and child support payments were not assigned to a public authority or other public agency.

(l) **Other custodians.** If a child resides with a person other than a parent and the Court approves of the physical custody arrangement, the Court may order child support payments be made to the person having physical custody regardless of whether the person has legal custody. A duly executed Delegation of Parental Authority, on its own, does not establish physical custody.

(m) **Adjustment to support order.** A support order issued under this section may provide that during any period of time of 30 consecutive days or longer that the child is residing with the obligor, the amount of support otherwise due under the order may be reduced.

- (n) **Determination of controlling order.** In situations in which more than one (1) support order involving the same obligor and child exists, the obligor, the obligee, or the public authority responsible for collection of support money, if any, may request that the Court determine which order is the controlling order. The Court shall presume that the latest order that involves the same obligor and child is controlling in the absence of proof to the contrary.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 4.  
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2006.  
Band Ordinance 01-21.

### **§ 2007. Providing Income Information.**

- (a) In any proceeding for dissolution, legal separation, or annulment where the parties have joint children for whom a support order must be entered under this chapter, or in any other proceeding in which a support order may be entered under this chapter, the parties shall serve and file with their initial pleadings or motion documents a financial affidavit disclosing all sources of income for purposes of calculating gross income under § 2008 of this Title.
- (1) The financial affidavit shall include relevant supporting documentation necessary to calculate gross income and parental income for determining child support including, but not limited to, pay stubs for the previous three (3) months and employer statements or statements of receipts and expenses if self-employed. The supporting documentation shall also include relevant copies of each parent's most recent federal tax returns including W-2 forms, 1099 forms, unemployment benefit statements, workers' compensation statements, and all other documents evidencing earnings or income as received that provide verification for the financial affidavit, including verification of per capita income, if applicable.
- (b) In addition to the requirements of § 2007(a), at any time after a proceeding seeking child support payments has been commenced or when a child support order is in effect, a party to the proceeding, the obligor or obligee under the support order, or the Band Authority may request that a party to the proceeding or the obligor or the obligee under the support order produce a copy of the most recent federal tax returns filed with the Internal Revenue Service by the person to whom the request is directed.
- (1) The person to whom the request is directed shall provide a copy of the tax returns to the person making the request within 30 calendar days of receipt of the request unless the request is not made in good faith. A request under this

paragraph may not be made more than once every two (2) years, in the absence of good cause for more frequent requests.

- (c) If a parent subject to the jurisdiction of the Court does not serve and file the financial affidavit and supporting documentation with the parent's initial pleading or motion documents, the Court shall set income for that parent based on credible evidence before the Court or in accordance with § 2011 of this Title. The Court may consider credible evidence from one (1) party that the financial affidavit submitted by the other party is false or inaccurate.
- (d) If the Court determines that a party does not have access to documents that are required to be disclosed under this section, the Court may consider the testimony of that party as credible evidence of that party's income.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 4.01.  
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2007.  
Band Ordinance 01-21.

### **§ 2008. Calculation of Gross Income.**

- (a) Subject to the exclusions and deductions in this section, gross income includes any form of periodic payment to a parent including, but not limited to, salaries, wages, commissions, self-employment income as defined in § 2009 of this Title, workers' compensation, unemployment benefits, annuity payments, military and naval retirement, pensions and disability payments, spousal maintenance payments pursuant to a court order entered in a prior proceeding or in the current proceeding, Social Security and veterans benefits, including Social Security and veterans benefits provided for a joint child to the extent specified in § 2010 of this Title, potential income as defined in § 2011 of this Title, and per capita payments authorized by a Tribal Net Revenue Allocation Plan.
  - (1) Salaries, wages, commissions, or other compensation paid to a parent by third parties shall be included in gross income notwithstanding the parent's participation in an employer-sponsored benefit plan that allows the parent to pay for a benefit or expense using pretax dollars, such as flexible spending plans and health savings accounts.
  - (2) Pension deductions not exceeding 10% of gross wages shall not be included in gross income.
- (b) A parent's gross income does not include compensation received by the parent for employment in excess of a 40-hour week, provided that:

- (1) Child support is ordered in an amount at least equal to the presumptive child support obligation calculated under § 2013 of this Title based on gross income not excluded under this clause; and
- (2) The parent demonstrates and the Court finds that:
  - (i) The excess employment began after the filing of the petition for dissolution, legal separation, or annulment or a petition related to custody, parenting time, or support;
  - (ii) The excess employment reflects an increase in the work schedule or hours worked over that of the two (2) years immediately preceding the filing of the petition;
  - (iii) The excess employment is voluntary and not a condition of employment;
  - (iv) The excess employment is in the nature of additional, part-time or overtime employment compensable by the hour or fraction of the hour; and
  - (v) The parent's compensation structure has not been changed for the purpose of affecting the parent's child support obligation.
- (c) Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be included in the parent's gross income if they reduce the parent's personal living expenses.
- (d) A parent's gross income may be calculated either on an annual or monthly basis. Weekly income shall be translated to monthly income by multiplying weekly income by 4.33.
- (e) A parent's gross income does not include child support payments received by the parent.
- (f) It is a rebuttable presumption that adoption assistance payments, guardianship assistance payments, and foster care subsidies are not gross income. This presumption may be rebutted if such payments are used for the recipient's personal living or other expenses unrelated to the adoption, guardianship, or foster care.
- (g) A parent's gross income does not include the income of the parent's spouse.
- (h) Child support or spousal maintenance payments ordered by a court for a non-joint child or former spouse or ordered payable as part of the current proceeding shall be

deducted from other periodic payments received by the parent making such payments for purposes of determining that parent's gross income.

- (i) A parent's gross income does not include public assistance benefits received under the TANF program, the Minnesota Family Investment Program, or other programs of public assistance based on need.
- (j) A parent's gross income does not include grants and/or scholarships for post-secondary education.
- (k) For purposes of calculating gross income of a third-party guardian or other custodial party who is not a biological parent, the Court shall not utilize the third-party guardian's income.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 4.03.  
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2008.  
Band Ordinance 01-21.

### **§ 2009. Income from Self-Employment or Operation of a Business.**

- (a) For purposes of this chapter, a parent's income from self-employment or operation of a business, including joint ownership of a partnership or closely held corporation, is defined as the parent's share of gross receipts minus the costs of goods sold minus ordinary and necessary expenses required for self-employment or business operation.
- (b) The following items shall be excluded from ordinary and necessary expenses in calculating a parent's income from self-employment or operation of a business: amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses; investment tax credits; and any other business expenses determined by the Court to be inappropriate or excessive for determining gross income for purposes of calculating child support.
  - (1) If challenged, the parent seeking to deduct an expense, including depreciation, has the burden of proving that the expense is ordinary and necessary.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I., § 4.02.  
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2009.

## § 2010. Social Security or Veterans' Benefit Payments Received on Behalf of a Child.

- (a) The amount of the monthly Social Security benefits or apportioned veterans' benefits provided for a joint child shall be included in the gross income of the parent on whose eligibility the benefits are based.
- (b) The amount of the monthly survivors' and dependents' educational assistance provided for a joint child shall be included in the gross income of the parent on whose eligibility the benefits are based.
- (c) If Social Security or apportioned veterans' benefits are provided for a joint child based on the eligibility of the obligor, and are received by the obligee as a representative payee for the child or by the child attending school, then the amount of the benefits shall be subtracted from the obligor's presumptive child support obligation as calculated under § 2013 of this Title.
- (d) If the survivors' and dependents' educational assistance is provided for a joint child based on the eligibility of the obligor, and is received by the obligee as a representative payee for the child or by the child attending school, then the amount of the assistance shall also be subtracted from the obligor's presumptive child support obligation as calculated under § 2013 of this Title.

### Historical and Statutory Notes

#### Source:

Band Ordinance 26-94, Ch. 29, T. I, § 5.01.

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2010.

## § 2011. Potential Income.

- (a) **General.** This section applies to child support orders including orders for past support. If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income.
  - (1) For purposes of this determination, it is a rebuttable presumption that a parent can be gainfully employed on a full-time basis. As used in this section, "full time" means 40 hours of work in a week except in those industries, trades, or professions in which most employers, due to custom practice, or agreement use a normal work week of more or less than 40 hours in a week.
- (b) **Methods.** Determination of a parent's potential income must be made according to one (1) of the following two (2) methods, as appropriate:

- (1) the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings level in the community; or
  - (2) if the parent is receiving unemployment compensation or workers' compensation, the parent's income may be calculated using the actual amount of the unemployment compensation or workers' compensation benefit received.
- (c) **Parent not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis.** A parent is not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis upon a showing by the parent that:
- (1) the unemployment, underemployment, or employment on a less than full-time basis is temporary and will ultimately lead to an increase in income;
  - (2) the unemployment, underemployment, or employment on a less than full-time basis represents a bona fide career change that outweighs the adverse effect of the parent's diminished income on the child; or
  - (3) the unemployment, or underemployment, or employment on a less than full-time basis is because the parent is physically or mentally incapacitated or incarcerated, except where the reason for incarceration is the parent's nonpayment of support.
- (d) **TANF Recipient.** If the parent of a joint child is a recipient of a TANF cash grant, no potential income is to be imputed to the parent.
- (e) **Caretaker.** If a parent stays at home to care for a child who is subject to the child support order, the Court shall consider the following factors when determining whether the parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis:
- (1) parenting and child care arrangements before the child support action;
  - (2) the stay-at-home parent's employment history, recent employment earnings, and the availability of jobs within the community for an individual with that parent's qualifications;
  - (3) the relationship between the employment-related expenses including, but not limited to, child care and transportation costs required for the parent to be employed, and the income the stay-at-home parent could receive from

available jobs within the community for an individual with that parent's qualifications;

- (4) the child's age and health including whether the child is physically or mentally disabled; and
- (5) the availability of child care providers.

This paragraph does not apply if the parent stays at home only to care for non-joint children.

- (f) **Economic Conditions.** A self-employed parent is not considered to be voluntarily unemployed, underemployed, or employed on a less than full-time basis if that parent can show that the parent's net self-employment income is lower because of economic conditions that are directly related to the source or sources of that parent's income.
- (g) **Per Capita Income.** If income is imputed to an obligor and the obligor received per capita income, the Court shall not include the per capita income as part of the obligor's gross income. This provision shall not prevent the Band Authority from intercepting per capita income in order to enforce any child support order.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, §§ 5.02 to 5.04.  
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2011.  
Band Ordinance 01-21.

#### **§ 2012. Deduction from Gross Income for Non-Joint Children.**

- (a) When a parent is legally responsible for a non-joint child or children, a deduction from that parent's gross income shall be calculated under this section if:
  - (1) the non-joint child or children primarily resides in that parent's household; and
  - (2) that parent is not obligated to pay basic child support for the non-joint child or children to the other parent or a legal custodian of the non-joint child or children under an existing order.
- (b) The Court shall use the guideline under § 2014 of this Title to determine the basic child support obligation for the non-joint child or children by using the gross income of the parent for whom the deduction is being calculated. If the number of non-joint

children to be used for the determination is greater than two (2), the determination must be made using the number two (2) instead of the greater number.

- (c) The deduction from gross income for a non-joint child or children is 50% of the guideline amount determined under § 2012(b).

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 5.02.

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2012.

### **§ 2013. Presumptive Child Support Obligation.**

- (a) To determine the presumptive child support obligation of a parent, the Court shall follow the procedure set forth in this section.
- (b) To determine the obligor's basic support obligation, the Court shall:
  - (1) determine the gross income of each parent under § 2008 of this Title;
  - (2) calculate the parental income for determining child support (PICS) of each parent by subtracting from gross income the deduction, if any, for each parent's non-joint children under § 2012 of this Title;
  - (3) determine the percentage contribution of each parent to the combined PICS by dividing the combined PICS into each parent's PICS;
  - (4) determine the combined basic support obligation by application of the guideline in § 2014 of this Title;
  - (5) determine the obligor's share of the basic support obligation by multiplying the percentage figure from § 2013(b)(3) by the combined basic support obligation from § 2014(b)(4); and
  - (6) determine the parenting expense adjustment, if any, as provided in § 2016 of this Title and adjust the obligor's basic support obligation accordingly. If the parenting time of the parties is presumed equal, § 2016 (c) of this Title applies to the calculation of the basic support obligation and the determination of which parent is the obligor.
- (c) The Court shall determine the obligor's child care support obligation as provided in § 2020 of this Title.

- (d) The Court shall determine each parent’s medical support obligation as provided in § 2021 of this Title. Unreimbursed and uninsured medical expenses are not included in the presumptive amount of support owed by a parent and are calculated and collected as described in § 2021 of this Title.
- (e) Subject to the provisions of § 2013(f), the Court shall determine each parent’s total presumptive child support obligation by adding together each parent’s basic support, child care support, and medical support obligations as provided in this section.
- (f) If Social Security benefits or veterans’ benefits are received by one (1) parent as a representative payee for a joint child based on the other parent’s eligibility, the other parent’s presumptive child support obligation shall be reduced by the amount of such benefits in accordance with § 2010 of this Title.
- (g) A parent’s actual child support obligation may be different than the parent’s presumptive child support obligation under the circumstances described in § 2006 (d) of this Title, if the provisions in § 2022 of this Title are applicable, or as a result of the Court’s consideration of the factors identified in § 2023 of this Title.
- (h) A final child support order shall separately designate the amount owed for basic support, child care support, and medical support.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 5.06.

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2013.

### **§ 2014. Guideline Used in Child Support Determinations.**

- (a) **Use of guideline.**
  - (1) The guideline in this section establishes a rebuttable presumption of the appropriate level of basic support for a joint child and shall be used in any judicial or administrative proceeding to establish or modify a support obligation under this chapter. The actual level of basic support for a joint child may deviate from the guideline level in accordance with other provisions of this chapter.
  - (2) The presumptive basic support obligation for a joint child shall be determined by referencing the guideline for the appropriate number of joint children and the combined parental income for determining child support of the parents.

- (3) If a joint child is not in the custody of either parent and a support order is sought against one (1) or both parents, the basic support obligation shall be determined separately for each parent against whom a support order is sought by referencing the guideline for the appropriate number of joint children and that parent's individual parental income for determining child support, not the combined parental incomes for determining child support of both parents.
- (b) **Basic support; guideline.** Unless otherwise agreed to by the parents and approved by the Court when establishing basic support, the Court must order that basic support be divided between the parents based on their proportionate share of the parents' combined monthly parental income for determining child support (PICS). The presumptive level of basic support must be computed in accordance with MINN. STAT. § 518A.35, or other Minnesota child support statute, subject to any contrary Mille Lacs Band law.
- (c) **More than six children.** If a child support proceeding involves more than six (6) children, the Court may derive a support order without specifically following § 2014(b). However, the Court must consider the basic principles encompassed by the guideline and both parents' needs, resources, and circumstances.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 5.07.  
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2014.  
Band Ordinance 01-21.

#### **§ 2015. Non-Cash Support.**

An obligor's provision of non-cash support may satisfy up to 50% of the obligor's child support obligation, but only under the following circumstances:

- (a) The obligor and obligee agree to the type of non-cash support that will be provided and the extent to which it will satisfy the obligor's child support obligation;
- (b) The Court approves the provision of non-cash support in a written order that:
  - (1) states the specific dollar amount of the obligor's total child support obligation;
  - (2) describes the type(s) of non-cash support that will be provided;
  - (3) states that no more than 50% of the obligor's total child support obligation may be satisfied by the provision of such non-cash support; and

- (4) provides that the non-cash support shall not satisfy any portion of the obligor's child support obligation that has been or in the future is assigned to a public authority or other public agency.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2015.

### **§ 2016. Parenting Expense Adjustment.**

- (a) **General.** The parenting expense adjustment under this section reflects the presumption that while exercising parenting time, a parent is responsible for and incurs cost of caring for the child, including, but not limited to, costs of food, transportation, recreation, and household expenses.
  - (1) Every child support order shall specify that the percentage of parenting time means the percentage of time a child is scheduled to spend with the parent during a calendar year according to a court order. Parenting time includes time with the child whether it is designated as visitation, physical custody, or parenting time or is otherwise designated. The percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent, or by using a method other than overnights if the parent has significant time periods or separate days where the child is in the parent's physical custody and under the direct care of the parent but does not stay overnight. The Court may consider the age of the child in determining whether a child is with a parent for a significant period of time.
  - (2) If there is no court order awarding parenting time, the Court shall determine the child support award without consideration of the parenting expense adjustment.

If a parenting time order is subsequently issued or is issued in the same proceeding, then the child support order shall include application of the parenting expense adjustment.
- (b) Calculation of parenting expense adjustment. The obligor is entitled to a parenting expense adjustment calculated as provided in this paragraph. The Court shall:
  - (1) find the adjustment percentage corresponding to the percentage of parenting time allowed to the obligor as follows:

<b>Percentage Range of Parenting Time</b>	<b>Adjustment Percentage</b>
Less than 10%	No adjustment
10% to 45%	12%
45.1% to 50%	Presume parenting time is equal

- (2) multiply the adjustment percentage by the obligor's basic child support obligation to arrive at the parenting expense adjustment; and
  - (3) subtract the parenting expense adjustment from the obligor's basic child support obligation. The result is the obligor's basic support obligation after the parenting expense adjustment.
- (c) Calculation of basic support when parenting time is presumed equal.
- (1) If the parenting time is presumed equal under § 2016(b) and the parental incomes for determining child support of the parents also are equal, no basic support shall be required unless the Court determines that the expenses for the child are not equally shared.
  - (2) If the parenting time is equal but the parents' incomes for determining child support are not equal, the parent having the greater parental income for determining child support shall be obligated for basic support calculated as follows:
    - (i) Multiply the combined basic support calculated under § 2014 of this Title by 0.75;
    - (ii) Prorate the amount under § 2016(c)(2)(i) between the parents based on each parent's proportionate share of the combined PICS; and
    - (iii) Subtract the lower amount from the higher amount. The resulting figure is the basic support obligation after the parenting expense adjustment for the parent with the greater parental income for determining child support.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 6.  
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2016.

## § 2017. Written Findings.

- (a) **No deviation.** If the Court does not deviate from the presumptive child support obligation under § 2013 of this Title, the Court must make written findings that state:
- (1) Each parent's gross income;
  - (2) Each parent's PICS; and
  - (3) Any other significant evidentiary factors affecting the child support determination.
- (b) **Deviation.** If the Court deviates from the presumptive child support obligation under § 2013 of this Title, the Court must make written findings that state:
- (1) Each parent's gross income;
  - (2) Each parent's PICS;
  - (3) The amount of the presumptive child support obligation calculated under § 2013 of this Title;
  - (4) The reasons for the deviation; and
  - (5) How the deviation serves the best interests of the child.
- (c) **Written findings required in every case.** The provisions of this section apply whether or not the parties are each represented by independent counsel and have entered into a written agreement. The Court must review any stipulations presented to it for conformity with § 2013 of this Title. The Court is not required to conduct a hearing, but the parties must provide sufficient documentation to verify the child support determination and to justify any deviation.

### Historical and Statutory Notes

#### Source:

Band Ordinance 26-94, Ch. 29, T. I, § 6.91.

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2017.

## § 2018. Equitable Distribution of Child Support.

Where practical, the Court should seek to establish child support orders that equally apportion child support to all of the children of an obligor.

- (a) **One Order.** Where multiple joint children are supported by one (1) child support order, the Court may order support on a per-child basis.
- (b) **Multiple Orders.** Where an obligor owes child support to separate obligees, the Court may equitably apportion child support by determining the maximum child support amount that the obligor is able to pay and thereafter ensuring that each child is supported equally to the maximum extent possible.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, § 5.071.  
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2018.  
Band Ordinance 01-21.

### **§ 2019. Modification of Orders or Decrees.**

- (a) **Authority.** After entry of a temporary or permanent support order under this subchapter, on motion of either of the parents, a copy of which must be served on a public authority of payments are made through it, or on motion of a public authority, the Court may, from time to time, modify any term or condition of the order or make a new order respecting any matter which it might have made in the original proceeding, to the extent and under the circumstances described in this section.
  - (1) A parent or a public authority may also bring a motion for contempt of court if the obligor is in arrears in support payments.
- (b) **Modification.**
  - (1) The terms of an existing support order may be modified or a new order may be made upon a showing that there has been a substantial change in circumstances from those prevailing when the existing order was entered and that one (1) or more of the terms of the existing order is unreasonable and unfair under the new circumstances.
  - (2) Any one (1) or more of the following facts is sufficient to establish that there has been a substantial change in circumstances from those prevailing when the existing order was entered:
    - (i) substantially increased or decreased gross income of an obligor or obligee;
    - (ii) substantially increased or decreased need of an obligor or obligee of the child or children that are subject to the proceedings;

- (iii) receipt of assistance under the TANF program;
  - (iv) a change in the cost of living for either party as measured by the Federal Bureau of Labor Statistics;
  - (v) extraordinary medical expenses of the child not provided for under § 2021 of this Title;
  - (vi) a change in the availability of appropriate health care coverage or a substantial increase or decrease in health care coverage costs;
  - (vii) the addition of work-related or education-related child care expenses of the obligee or a substantial increase or decrease in existing work-related or education-related child care expenses; or
  - (viii) the emancipation of the child.
- (3) Any one (1) or more of the following facts is sufficient to create a rebuttable presumption that the terms of the existing support order are unreasonable and unfair under the new circumstances:
- (i) the application of the child support guideline in § 2014 of this Title to the current circumstances of the parties results in a calculated basic support obligation that is at least 20% and at least \$75.00 per month higher or lower than that provided in the existing support order or, if the basic support obligation under the existing support order is less than \$75.00, it results in a calculated basic support obligation that is at least 20% higher or lower;
  - (ii) the medical support provisions of the order established under § 2021 of this Title are not enforceable by a public authority or the obligee;
  - (iii) health coverage ordered under § 2021 of this Title is not available to the child for whom the order is established by the parent ordered to provide such coverage;
  - (iv) the existing support obligation is in the form of a statement of percentage and not a specific dollar amount;
  - (v) the gross income of an obligor or obligee has decreased by 20% through no fault or choice of the party; or
  - (vi) a deviation from the child support guideline was granted based on the factor identified in § 2023 (a)(4) of this Title and the child no longer

resides in a foreign country or the factor is otherwise no longer applicable.

- (4) By itself, the fact that an obligor or obligee has become responsible for the support of an additional non-joint child since the entry of an existing support order is not a substantial change in circumstances from those prevailing when the existing order was entered and does not create a rebuttable presumption that the terms of the existing order are unreasonable and unfair. However, § 2012 of this Title shall be considered if there are other grounds which allow a modification of the existing order.
- (5) If an obligor is receiving per capita income, incarceration and corresponding inability to earn an income shall not serve as a basis for modification of a child support order.
- (6) On a motion for modification of support, the Court:
  - (i) shall apply §§ 2013 and 2014 of this Title, and shall not consider the financial circumstances of either parent's spouse, if any; and
  - (ii) shall not consider compensation received by a parent for employment in excess of a 40-hour week if the parent demonstrates, and the Court finds, that:
    - (A) the excess employment began after entry of the existing support order;
    - (B) the excess employment is voluntary and not a condition of employment;
    - (C) the excess employment is in the nature of additional, part-time employment, or overtime employment compensable by the hour or fractions of an hour;
    - (D) the parent's compensation structure has not been changed for the purpose of affecting a support obligation; and
    - (E) in the case of an obligor, existing child support payments are at least equal to the presumptive child support obligation calculated under § 2013 of this Title based on income not excluded under this subparagraph;

provided that, in the case of an obligor who is in arrears in child support payments to the obligee, any net income from excess employment must be used to pay the arrearages until the arrearages are paid in full.

- (7) A modification of support may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on the responding party and on the Band Authority or other public authority if public assistance is being furnished.
  - (8) Subject to the requirements of § 2017 of this Title, the Court need not hold an evidentiary hearing on a motion for modification of support if both parents agree to modify the child support award and submit an Agreed Order to the Court for approval.
  - (9) An enactment, amendment, or repeal of law does not constitute a substantial change in the circumstances for purposes of modifying a child support order except as expressly provided in such enactment, amendment, or repeal.
  - (10) In the event that a single obligor owes child support to separate obligees, the Band Authority may move the Court to simultaneously modify all of the obligor's child support orders within the Court's jurisdiction in order to equally distribute the support amount amongst all of the children.
- (c) **Child Support on Death of Obligor.** Unless otherwise agreed in writing or expressly provided in a support order, provisions for the support of a child are not terminated by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate under the circumstances.
- (d) **Child Support on Death of Obligee.** When a custodial party receiving arrears payments becomes deceased, the Court shall make a determination as to whether the arrears should be expunged or whether the payments should continue and the Band Authority should be appointed as a trustee to disburse ongoing arrears payments to the child(ren), regardless of whether the child(ren) have reached the age of majority.
- (1) If children receiving arrears payments have reached the age of majority, the children may become a party to the child support matter and may motion the Court for forgiveness of the obligor's arrears.
  - (2) If the Band Authority is appointed as a trustee, the Court may require regular reports on how the arrears payments have been disbursed.
- (e) **Automatic Termination of Support.**
- (1) Unless a support order provides otherwise, a child support obligation that specifies a specific amount for a specific child terminates with respect to that child automatically and without any action by the obligor to reduce, modify, or terminate the order when the requirements of § 2006(i) of this Title have been met.

- (2) Unless a support order provides otherwise, a child support obligation for two (2) or more children that is not based on and does not otherwise specify a specific amount for each child continues in the full amount until all of the children for whose benefit the order was made are 18 years old unless modified by the Court. The obligor may request modification of the child support obligation under such an order when one (1) or more of the children become 18 years old. Upon such request, the Court shall determine the new child support obligation under all applicable provisions of this subchapter on the basis of the income of the parties at the time the modification is sought.
- (f) **Form.** The Band Authority shall prepare and make available to Court administrators, obligors, and persons to whom child support is owed a form to be submitted by the obligor or the person to whom child support is owed in support of a motion for modification of an order for support or for contempt of court.
- (g) **Child Care Exception.** Child care support must be based on actual child care expenses. The Court may provide that a decrease in the amount of child care support based on a decrease in actual child care expenses is effective as of the date the expense is decreased.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. I, §§ 5.05, 5.08, Title II, §§ 1, 2.05.  
Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2019.  
Band Ordinance 01-21.

### **§ 2020. Child Care Support.**

- (a) **Child Care Costs.** Unless otherwise agreed by the parents and approved by the Court, the Court must order that work-related or education-related child care costs of joint children be divided between the obligor and obligee based on their proportionate share of the parents' combined monthly PICS.
  - (1) The amount of work-related or education-related child care costs required by this section to be divided between the obligor and obligee is the total amount received by the child care provider from the obligee and any public agency for the joint child or children.
  - (2) Child care costs shall be adjusted by the amount of the estimated federal and state child care credit payable on behalf of the joint child.
- (b) **Determining Costs.**

- (1) The Court must require verification of employment or school attendance and documentation of child care expenses from the obligee and the public authority, if applicable.
- (2) If child care expenses fluctuate during the year because of the obligee's seasonable employment or school attendance, or because the obligor has extended periods of parenting time with the child or children, the Court must determine child care expenses based on an average monthly cost.
- (3) The amount allocated for child care expenses is considered child support but is not subject to a cost of living adjustment under § 2019 of this Title.
- (4) The Court may allow the additional parenting time to a parent with whom a joint child does not reside to care for the joint child while the parent with whom the joint child does reside is working or attending school, if the Court determines this arrangement is reasonable and in the best interests of the child. In making this determination, the Court shall consider:
  - (i) the ability of the parents to cooperate;
  - (ii) methods for resolving disputes regarding the care of the child, and the parents' willingness to use those methods; and
  - (iii) whether domestic abuse has occurred between the parties.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, Title II, § 2.04.

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2020.

### **§ 2021. Medical Support.**

(a) **Medical support order.**

- (1) A completed national medical support notice issued by the Band Authority or a Court order that complies with this section is a qualified medical child support order under the Federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1169(a).
- (2) Every order addressing child support must state:

- (i) The names, last-known addresses, and Social Security numbers of the parents and the joint child that is subject of the order unless the Court prohibits the inclusion of an address or Social Security number and orders the parents to provide the address and Social Security number to the administrator of the health plan providing health care benefits for the joint child.
  - (ii) If a joint child does not presently have appropriate health care coverage, whether appropriate health care for the joint child is available and, if so:
    - (A) The parents' responsibilities for carrying health care coverage;
    - (B) The cost of premiums and how the cost is allocated between the parents; and
    - (C) The circumstances, if any, under which an obligation to provide health care coverage for the joint child will shift from one (1) parent to the other.
  - (iii) If appropriate health care coverage is not available for the joint child, whether a contribution for medical support is required; and
  - (iv) How unreimbursed or uninsured medical expenses will be allocated between the parents.
- (b) **Determining appropriate health care coverage.** In determining whether a parent has appropriate health care coverage for a joint child, the Court must consider the following factors:
- (1) Comprehensiveness of health care coverage providing medical and dental benefits, as well as benefits pertaining to the child's vision.
    - (i) Dependent health care coverage providing medical benefits is presumed comprehensive if it includes medical, dental, and hospital coverage and provides for preventive, emergency, acute, and chronic care.
    - (ii) If both parents have dependent health care coverage providing medical and dental benefits that is presumed comprehensive under this subparagraph, the Court must determine which parent's coverage is more comprehensive by considering what other benefits are included in the coverage.
  - (2) Accessibility.

- (i) Dependent health care coverage is accessible if the covered joint child can obtain services from a health plan provider with reasonable effort by the parent with whom the joint child resides. Health care coverage is presumed accessible if:
  - (A) Primary care is available within 30 miles of the joint child's residence and specialty care is available within 60 miles of the joint child's residence;
  - (B) The health care coverage is available through an employer and the employee can be expected to remain employed for a reasonable amount of time; and
  - (C) No pre-existing conditions exist to unduly delay enrollment in health care coverage.

(3) The joint child's special medical needs.

(4) Affordability.

- (i) Dependent health care coverage is affordable if it is reasonable in cost.
- (ii) If both parents have dependent health care coverage available for a joint child that is comparable with regard to comprehensiveness of medical and dental benefits, accessibility, and the joint child's special needs, the least costly health care coverage is presumed to be the most appropriate health care coverage for the joint child.

**(c) Ordering Health Care Coverage.**

- (1) If a joint child is presently enrolled in a health care plan or plans providing medical and dental benefits, the Court must order that the parent who currently has the joint child enrolled continue that enrollment unless the parents agree otherwise or a parent requests a change in health care coverage and the Court determines that other health care coverage is more appropriate.
- (2) If a joint child is not presently enrolled in a health care plan or plans providing medical and dental benefits, upon motion of a parent or the Band Authority, the Court must determine whether appropriate health care coverage providing medical and dental benefits for the joint child is available to one (1) or both parents.

- (3) If appropriate health care coverage providing medical and dental benefits to the joint child is only available to one (1) parent, the Court must order that parent to carry the coverage for the joint child.
- (4) If appropriate health care coverage providing medical and dental benefits to the joint child is available to both parents, the Court must order the parent with whom the joint child resides to carry the coverage for the joint child, unless:
  - (i) A parent expresses a preference for health care coverage providing medical and dental benefits to the joint child that is available to the parent with whom the joint child does not reside;
  - (ii) The parent with whom the joint child does reside is already carrying dependent health care coverage providing medical and dental benefits for other children and the cost of contributing to the premiums of the other parent's coverage would cause the parent with whom the joint child does not reside extreme hardship; or
  - (iii) The parents agree as to which parent will carry health care coverage providing medical and dental benefits to the joint child and agree on the allocation of costs.
- (5) If the exception in § 2021(c)(4)(i) or (ii) applies, the Court must determine to which parent the most appropriate health care coverage providing medical and dental benefits to the joint child is available and order that parent to carry health care coverage for the joint child.
- (6) If appropriate health care coverage providing medical and dental benefits to the joint child is not available to either parent, the Court must order the parents to contribute toward the actual health care costs of the joint child based on a pro rata share, unless § 2021(c)(7) shall apply.
- (7) If the joint child is receiving any form of public coverage, the parent with whom the joint child does not reside shall contribute a monthly amount toward the actual cost of public coverage.
  - (i) The amount of the noncustodial parent's contribution is determined by applying the noncustodial parent's PICS to the premium schedule for public coverage. If the noncustodial parent's PICS meets the eligibility requirements for public coverage, the contribution is the amount of the premium for the highest eligible income on the appropriate premium schedule for public coverage. For purposes of determining the premium amount, the noncustodial parent's household size is equal to

one (1) parent plus the number of children who are the subject of the child support order.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2021.  
Band Ordinance 01-21.

### **§ 2022. Ability to Pay; Self-Support Adjustment.**

(a) **Ability to pay.**

- (1) It is a rebuttable presumption that a child support obligation should not exceed the obligor's ability to pay. To determine the amount of child support the obligor has the ability to pay, the Court shall follow the procedure set out in this section.
- (2) The obligor's income available for support is the obligor's monthly gross income minus a monthly self-support reserve equal to 120% of the federal poverty guidelines for one (1) person. If the obligor's income available for support is equal to or greater than the obligor's child support obligation calculated under §§ 2013 and 2023 of this Title, the Court shall order child support under §§ 2013 and 2023.
- (3) If the obligor's income available for support is more than the minimum support amount under § 2022(b), but less than the amount calculated under §§ 2013 and 2023 of this Title, the Court shall reduce the child support obligation calculated under § 2013 in the following order, until the child support obligation is equal to the obligor's income available for support:
  - (i) Medical support obligations;
  - (ii) Child care support obligation; and
  - (iii) Basic support obligation.
- (4) If the obligor's income available for support is equal to or less than the minimum support amount under § 2022 (b) or if the obligor's gross income is less than 120% of the federal poverty guidelines for one (1) person, the Court shall order child support in the minimum support amount under § 2022(b).
- (5) If the obligor receives no income and completely lacks the ability to earn income, the Court shall not order child support.

(6) This section does not apply to an obligor who is incarcerated. The Court shall not reduce the child support obligation of an obligor who is incarcerated under this section.

(b) **Minimum support amount.**

(1) The minimum support amount is:

(i) For one (1) or two (2) children, \$50.00 per month;

(ii) For three (3) or four (4) children, \$75.00 per month; and

(iii) For five (5) or more children, \$100.00 per month.

(2) If the Court orders the obligor to pay the minimum support amount under this paragraph, the obligor is presumed unable to pay child care support and medical support.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2022.

**§ 2023. Deviation from Presumptive Child Support Obligation.**

(a) **General factors.** The Court must take into account the factors listed in this section in establishing or modifying a child support obligation. These factors are in addition to the child support guideline in § 2014 of this Title and the other factors used to calculate the presumptive child support obligation under § 2013 of this Title. On the basis of the factors listed in this section, the Court may deviate upward or downward from the presumptive child support obligation. The Court may deviate from the presumptive child support obligation in order to encourage prompt and regular payment of child support, to prevent either parent or the joint child or children from living in poverty, or for other purposes. Among the factors to be considered are the following:

(1) All earnings, income, circumstances, and resources of each parent, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of § 2008 (b) of this Title;

(2) The extraordinary financial needs and resources, physical and emotional conditions, and educational needs of the child to be supported;

- (3) The standard of living the child would enjoy if the parents were currently living together, but recognizing that the parents now have separate households;
- (4) Whether the child resides in a foreign country or more than one (1) year that has a substantially higher or lower cost of living than this country;
- (5) Which parent is entitled to claim the child as a dependent for income tax purposes and the financial benefit that parent receives from claiming the child as a dependent;
- (6) The parents' debts as provided in §2023(b);
- (7) The obligor affirmatively demonstrates having made significant contributions toward the support of the child that have not otherwise been quantified or considered; and
- (8) Whether the obligor's total payments for court-ordered child support exceed the limitations set forth in 24 MLBS §3353.

**(b) Debt owed to private creditors.**

- (1) In establishing or modifying a support obligation, the Court may consider debts owed to private creditors, but only if:
  - (i) The right to support has not been assigned;
  - (ii) The Court determines that the debt was reasonably incurred for necessary support of the child or parent or for the necessary generation of income.
    - (A) If the debt was incurred for the necessary generation of income, the Court may consider only the amount of debt that is essential to the continuing generation of income; and
  - (iii) The parent requesting a deviation from the presumptive child support obligation produces a sworn schedule of the debts, with supporting documentation, showing goods or services purchased, the recipient of them, the original debt amount, the outstanding balance, the monthly payment, and the number of months until the debt will be fully paid.
- (2) A schedule prepared under § 2023(b)(1)(iii) must contain a statement that the debt will be fully paid after the number of months shown in the schedule, barring emergencies beyond the parent's control.

- (3) Any deviation below the presumptive child support obligation that is based on a consideration of debts owed to private creditors must not exceed 18 months in duration. After 18 months the support obligation must increase automatically to the level determined by the Court without consideration of such debts. In addition, the Court may order one (1) or more step increases in the support obligation during the 18-month period to reflect debt retirement.
- (4) If payment of debt is ordered pursuant to this section, the payment must be ordered to be in the nature of child support.
- (c) **Evidence.** The Court may receive evidence on the factors in this section to determine if the presumptive child support obligation should be modified in a particular case.
- (d) **Payments assigned to a public authority.** If the child support payments are assigned to a public authority or other public agency under MINN. STAT. §256.741, the Court may not deviate downward from the presumptive child support obligation unless the Court specifically finds that the failure to deviate downward would impose an extreme hardship on the obligor.
- (e) **Joint legal custody.** An award of joint legal custody is not a reason for deviation from the presumptive child support obligation.
- (f) **Self-support limitation.** If the obligor establishes that, after payment of income and payroll taxes, their monthly income is less than the monthly self-support reserve described in § 2022(a)(2) of this Title, the Court may provide for a downward deviation from the presumptive child support obligation.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title I, § 1, Exhibit A, § 2023.  
Band Ordinance 01-21.

### **§ 2024. Notice to Band Authority.**

The petitioner shall notify the Band Authority of all proceedings for dissolution, legal separation, annulment, determination of parentage, or the custody of a child if either parent is receiving public assistance or applies for it subsequent to the commencement of the proceeding. The notice must contain the full names of the parties to the proceeding and their birth dates.

### **Historical and Statutory Notes**

**Source:**

Ordinance 06-10, Title I, § 1, Exhibit A, § 2024.

## SUBCHAPTER 2

### PATERNITY

#### Section

**2031. Purpose.**

**2032. Paternity Proceedings Generally.**

**2033. [Reserved].**

**2034. Establishing Paternity Through Court Order.**

**2035. Establishing Paternity by Acknowledgment.**

**2036. Paternity Established by Other Jurisdiction.**

#### **§ 2031. Purpose.**

The purpose of this subchapter is to ensure that the father of every child subject to the jurisdiction of the Band is identified and paternity established in order to protect, promote, and help provide for the child's best interests. This shall include—but not be limited to—the health, education, and support of the child; the child's receipt of survivorship, inheritance, and Social Security benefits; and the transmission of the customs and traditions of the Band to the child.

#### **Historical and Statutory Notes**

#### **Source:**

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2031.

Band Ordinance 01-21.

#### **§ 2032. Paternity Proceedings Generally.**

- (a) This subchapter provides for the establishment of paternity through court order and by acknowledgment. Establishment of paternity by court order is generally a contested process but may also be used if an alleged father is deceased or otherwise unavailable. Establishment of paternity by acknowledgment is an uncontested process allowing a father to swear under oath that he is the biological parent of a child.
- (b) An unwed father is not entitled to treatment as a parent under this Title unless his name appears on the child's birth certificate or unless his paternity is established or acknowledged as provided in this subchapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2032.

**§ 2033. [Reserved].**

**Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2033.

**§ 2034. Establishing Paternity Through Court Order.**

- (a) **Who may file.** A child, a child's legal guardian, a child's biological mother, an alleged father of a child, or the Band Authority may file a petition requesting the Court to establish paternity. The biological mother and an alleged father may file jointly.
- (b) **Petition.**
  - (1) A petition to establish paternity shall include the following:
    - (i) The names, dates of birth, addresses, and tribal affiliations, if any, of the biological mother, the alleged father(s), the child, and all others who have legal rights of custody, visitation, or support of the child;
    - (ii) A short statement alleging facts to establish a reasonable possibility of the requisite sexual contact between the biological mother and alleged father;
    - (iii) The marital status of the biological mother and the alleged father(s);
    - (iv) The consent, if any, of the biological mother and the alleged father to establish the alleged father as the biological father of the child;
    - (v) Whether any party has filed an action to determine paternity in any other court or with any agency and, if so, whether a judgment or other determination of paternity has been rendered by any other court or agency;
    - (vi) A copy of the child's certified birth certificate attached as a supporting document; and

- (vii) The notarized signature of the petitioner verifying the truth of the information in the Petition.
- (2) In a case where domestic violence has been an issue, an address is not required for the aggrieved party.
- (c) **Notice.** All parties, including the biological mother and each man alleged to be the biological father, shall be notified of the petition and of all hearings, and shall be given an opportunity to be heard. The party required to provide notice shall do so in compliance with the notice requirements found in the Federal Rules of Civil Procedure.
- (d) **Summons.** The summons to be served on the alleged father(s) along with the Petition shall include the following notice, in addition to providing a time and date for appearance:

NOTICE TO RESPONDENT:

- (1) You have been named in a petition alleging paternity. A judgment of paternity would legally designate the child as your child, grant parental rights to you, create the right of inheritance for the child, obligate you to pay child support until the child reaches the age of 18, or, if the child is disabled or is attending high school on a full-time basis and the Court so orders, until the child reaches the age of 21, and make your failure to pay child support punishable by contempt of court.
- (2) You may request genetic tests which will indicate the probability that you are or are not the father of the child. The Court will order genetic tests on request by you, the Band Authority, or any other party. Any person who refuses to take court-ordered genetic tests may be punished for contempt of court.
- (3) The petitioner has the burden of proving by a preponderance of the evidence that you are the father. If a genetic test shows that you are not excluded as the father and that the statistical probability of your being the father is 92% or higher, you are presumed to be the father.
- (4) The following defenses are available to you:
  - (i) That you were sterile or impotent at the time of conception;
  - (ii) That you did not have sexual intercourse with the mother of the child during the conception period; or
  - (iii) That another man did have intercourse with the mother of the child during the conception period.

- (5) If you fail to appear at any state of the proceedings, including a scheduled genetic test, the Court may enter a default judgment finding you to be the father. A default judgment will take effect 28 days after it is served on or mailed to you, unless within those 28 days you present yourself to the Court and establish good cause for your failure to appear and present yourself for the genetic test. The Court's entry of a default judgment does not make a child eligible for enrollment in the Mille Lacs Band of Ojibwe.
- (e) **Hearing.** The following rules apply to paternity hearings:
- (1) The mother of the child and the alleged father(s) may be compelled to testify at the hearing.
  - (2) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.
  - (3) The hearing shall be conducted by the judge with no jury.
  - (4) Paternity hearings will be closed to outside observers. Only the parties directly involved, necessary witnesses, and Court personnel shall be present at hearings. The Court may utilize its discretion to permit other observers, provided that the Court has offered all parties the opportunity to object.
- (f) **Genetic Tests.**
- (1) If the alleged father(s) is alive and available, the Court may require the child, mother, and alleged father(s) to submit to genetic tests, unless the Court determines it would not be in the best interest of the child in accordance with § 2034(i) of this Title.
  - (2) An alleged father may be excused from the requirement to submit to a genetic test if the Court determines that there is no reasonable possibility that sexual contact occurred at or near the time of conception.
  - (3) If genetic testing is required by the Court, such testing shall be performed by an expert in paternity genetic testing approved by the Court.
    - (i) If such test confirms parentage, the disputing parent shall pay the cost of testing. If the test disproves parentage, the petitioner shall pay the cost of testing.
    - (ii) The Band Authority shall not be required to pay for any genetic testing ordered by the Court in a non-child support matter.

- (4) The Court may order additional genetic tests by other experts qualified in paternity genetic testing upon reasonable request of a party, at that party's expense.
- (g) **Evidence.** The Court may consider the following types of evidence in paternity cases:
- (1) Genetic test results, including the impossibility or the statistical probability of an alleged father's paternity, presented by either expert testimony or a written report accompanied by an affidavit. The following types of genetic tests are admissible as evidence of paternity provided that the results of all tests, when taken together, either exclude an alleged father or yield a statistical probability of at least 92% that the alleged father is the biological father: DNA, HLA (Human Leukocyte Antigens), red blood cell enzyme, red blood antigen, and serum protein tests;
  - (2) Evidence of sexual intercourse between the mother and the alleged father(s) at any possible time of conception;
  - (3) An expert's opinion concerning the statistical probability of an alleged father's paternity, based upon the duration of the mother's pregnancy;
  - (4) Medical or anthropological evidence relating to an alleged father's paternity of the child based on tests which may be ordered by the Court and performed by experts;
  - (5) Cultural evidence, a reputation in the community as to paternity, or both; or
  - (6) Any other reliable evidence which is relevant to the issue of paternity of the child.
- (h) **Presumption of Paternity.** A man is presumed to be the biological father of a child if he and the biological mother were married at the time of the child's birth or if the child was born within 300 days after the marriage was terminated. The presumption can only be overcome by genetic testing proving another man is the father by a statistical probability of 92%.
- (i) **Best Interest of the Child Not to Establish Paternity.** The Court may determine that it is not in the best interest of the child to establish paternity if:
- (1) The child was conceived as a result of rape, incest, sexual abuse of a minor, or sexual assault;
  - (2) A legal proceeding for adoption is pending before a court of competent jurisdiction; or

- (3) The cooperation of the child's custodian in the establishment of paternity is reasonably likely to result in physical or emotional harm to the child or to the child's custodian.
- (j) **Judgment of Paternity After Failure to Appear.** If the respondent is the alleged father and fails to appear for a Court proceeding or for a genetic or other test at any time not waived by the Court, the Court may, if no good cause to the contrary exists, enter an order that the respondent is the father, which shall be served on respondent personally, or by registered or certified mail to his last known address, or by publication if the respondent's address is not known.
- (1) Such order shall take effect 28 days after service unless, within that time, the respondent presents to the Court evidence of good cause for his failure to appear at the proceeding or to undergo the genetic or other test.
- (2) No default order shall be entered by the Court unless the respondent was properly served with notice of the proceeding or test at which he failed to appear in accordance with § 2034(c) and (d) and the Federal Rules of Civil Procedure.
- (k) **Judgment of Paternity.** The judgment or order of the Court determining the existence or nonexistence of paternity shall be based on a preponderance of the evidence and shall be final subject only to an appeal to the Band's Court of Appeals.
- (1) If the judgment or order of the Court is different from the child's birth certificate, the Band Authority shall send the order to the Department of Vital Statistics of the state in which the child was born. The Court shall order the child's parents to reimburse the Band Authority for any associated expenses.
- (l) **Reopening Default Judgment of Paternity.** A default judgment declaring a person to be the father of a child may be reopened upon petition for good cause shown within 91 calendar days of the default judgment.
- (m) **Time for Filing Paternity Action.** A petition to determine paternity may be filed at any time for the purpose of establishing the existence of a father and child relationship. If a petition to determine paternity is brought before the birth of the child, no hearing or other proceeding shall be conducted until after the birth unless the court shall determine that an action is necessary in order to preserve testimony.
- (n) **Hearing Closed, Records Sealed.** Paternity proceedings shall be closed and all records shall be sealed except as ordered by the Court for the purpose of requesting an amended birth certificate, or for any purpose consistent with the best interest of the child.

### Historical and Statutory Notes

**Source:**

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2034.  
Band Ordinance 01-21.

**§ 2035. Establishing Paternity by Acknowledgment.**

- (a) **Request for recognition.** The mother and alleged father of a child born to a mother who was not married to the child's alleged father nor to any other man when the child was conceived nor when the child was born may, in a writing signed by both of them before a notary public and filed with the Court, state and acknowledge under oath that they are the biological parents of the child and wish to be recognized as the biological parents.
  - (1) The recognition must be on the form prepared by the Band Authority under § 2035(f), except that it may also include the joinder in recognition provisions under § 2035(b). The requirement that the mother not be married when the child was conceived nor when the child was born does not apply if her husband or former husband joins in the recognition under § 2035(b).
  
- (b) **Joinder in recognition by husband.** A man who is a presumed father under § 2034(h) of this Title may join in a recognition of parentage that recognizes that another man is the child's biological father.
  - (1) The man who is the presumed father under § 2034(h) must sign an acknowledgment under oath before a notary public that he is renouncing the presumption under § 2034(h) and recognizing that the father who is executing the recognition under this section is the biological father of the child.
  - (2) A joinder in a recognition under this paragraph must be executed within one (1) year after the child's birth and the joinder must be filed with the Court.
    - (i) The joinder must be on a form prepared by the Band Authority.
    - (ii) Failure to properly execute a joinder in a recognition does not affect the validity of the recognition under this section.
    - (iii) A joinder without a corresponding recognition of parentage has no legal effect.
  
- (c) **Revocation of recognition.** A recognition may be revoked in a writing signed by the mother or father before a notary public and filed with the Court within 60 calendar days after the recognition is executed or the date of a hearing in an action relating to the child in which the revoking party is a party.

- (1) A joinder in a recognition may be revoked in a writing signed by the person who executed the joinder and filed with the Court within 60 calendar days after the joinder is executed.
  - (2) Upon receipt of a timely revocation of the recognition of parentage or joinder in a recognition, the Court shall forward a copy of the revocation to the non-revoking parent, or, in the case of a joinder in a recognition, to the mother and father who executed the recognition, and the recognition shall have no further force or effect.
- (d) **Effect of recognition.** Once a recognition has been properly executed and filed with the Court in accordance with § 2035(a), if there are no competing presumptions of paternity under § 2034(h) of this Title or if any such presumption has been renounced under § 2035(b), and if neither the recognition nor the joinder in recognition, if any, has been revoked under § 2035(c) and no other recognition has been filed for the same child, the recognition:
- (1) has the force and effect of a judgment or order determining the existence of the parent-child relationship, is determinative for all purposes related to the existence of the parent and child relationship, and is entitled to full faith and credit in other jurisdictions;
  - (2) precludes any further action to determine parentage regarding the signatory of the recognition, except as provided in § 2035(e); and
  - (3) is a basis for bringing an action:
    - (i) to award legal and physical custody or parenting time to either parent, provided that, until an order is entered granting custody to another, the mother shall have sole custody of the child;
    - (ii) to establish a child support obligation, which may be retroactive for up to two (2) years immediately preceding the commencement of the action;
    - (iii) to obtain an order for contribution to the reasonable expenses of the mother's pregnancy and confinement; and/or
    - (iv) to obtain an order for reimbursement of the costs of blood or genetic testing.
- (e) **Action to vacate recognition.**

- (1) An action to vacate a recognition of paternity may be brought by the mother, father, husband or former husband who executed a joinder, the child who was the subject of the recognition, or the Band Authority.
  - (i) A mother, father, or husband or former husband who executed a joinder must bring the action within one (1) year of the execution of the recognition or within six (6) months after the person bringing the action obtains the results of blood or genetic tests that indicate that the person who executed the recognition is not the father of the child.
  - (ii) A child must bring an action to vacate within six (6) months after the child obtains the results of blood or genetic tests that indicate that the person who executed the recognition is not the father of the child, or within one (1) year of reaching the age of majority, whichever is later.
  - (iii) If the Court finds a prima facie basis for vacating the recognition, the Court shall order the child, mother, father, and husband or former husband who executed a joinder to submit to blood or genetic tests.
    - (A) If the Court issues an order for the taking of blood or genetic tests, the Court shall require the party seeking to vacate the recognition to make advance payment for the costs of the blood or genetic tests.
    - (B) If the party fails to pay for the costs of the blood or genetic tests, the Court shall dismiss the action to vacate with prejudice.
    - (C) The Court may also order the party seeking to vacate the recognition to pay the other party's reasonable attorney's fees, costs, and disbursements.
    - (D) If the results of the blood or genetic tests establish that the person who executed the recognition is not the father, the court shall vacate the recognition.
    - (E) If a recognition is vacated, any joinder in the recognition under § 2035(b) is also vacated.
    - (F) The Court shall terminate the obligation of a party to pay ongoing child support based on the recognition.
    - (G) A modification of child support based on a recognition may be made retroactive with respect to any period during which the moving party has pending a motion to vacate the recognition

but only from the date of service of notice of the motion on the responding party.

- (2) The burden of proof in an action to vacate the recognition is on the moving party. Such request must be on the basis of fraud, duress, or material mistake of fact.
  - (i) The legal responsibilities in existence at the time of an action to vacate, including child support obligations, may not be suspended during the proceeding, except for good cause shown.
- (f) **Recognition form.** The Band Authority shall prepare a form for the recognition of parentage under this section. In preparing the form, the Band Authority shall consult with the individuals specified in § 2035(g). The recognition form must be drafted so that the force and effect of the recognition, the alternatives to executing a recognition, and the benefits and responsibilities of establishing paternity are clear and understandable. The form must include a notice regarding the finality of a recognition, the revocation procedure under § 2035 (c), and the procedure for vacating the recognition under § 2035 (e). The form must include a provision for each parent to verify that the parent has read or viewed the educational materials prepared by the Band Authority describing the recognition of paternity. The individual providing the form to the parents for execution shall provide oral notice of the rights, responsibilities, and alternatives to executing the recognition. Notice may be provided by audiotape, videotape, or similar means. Each parent must receive a copy of the recognition.
- (g) **Paternity educational materials.** The Band Authority shall prepare educational materials for new and prospective parents that describe the benefits and effects of establishing paternity. The materials must include a description and comparison of the procedures for establishment of paternity through a recognition of parentage under this section and an adjudication of paternity under § 2034 of this Title. The Band Authority shall consider the use of innovative audio or visual approaches to the presentation of the materials to facilitate understanding and presentation. In preparing the materials, the Band Authority shall consult with child advocates and support workers, battered women’s advocates and advocates for domestic abuse victims, social service providers, educators, attorneys, hospital representatives, and people who work with parents in making decisions related to paternity. The Band Authority will make the materials available without cost to hospitals, requesting agencies, and other persons for distribution to new parents.
- (h) **Hospital distribution of educational materials; recognition form.** Hospitals that provide obstetric services and the Band Authority shall distribute the educational materials and recognition of parentage forms prepared by the Band Authority to new parents and shall assist parents in understanding the recognition of parentage form in accordance with § 2035 (f).

- (i) **More than one recognition.** If the Court receives more than one (1) recognition of parentage for the same child, the Court shall notify the signatory on each recognition that the recognition is no longer effective and that each man has only a presumption of paternity.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2035.  
Band Ordinance 01-21.

### **§ 2036. Paternity Established by Other Jurisdiction.**

- (a) The Court shall give full faith and credit to properly issued court and administrative orders, judgments, or decrees of other Indian tribes, states, or federal agencies establishing paternity.
  - (1) Such orders will be considered properly issued when the issuing court or administrative agency had personal jurisdiction over the person claimed to be bound by the order and subject-matter jurisdiction over the matter, proper service of process under the law of the issuing jurisdiction was made on such person, and the order was issued pursuant to the laws of that jurisdiction and does not violate the laws of the Band.
- (b) An order described in § 2036(a) must be authenticated by reasonable proof that the document tendered to the Clerk of the Court is a true copy of the order as it is recorded in the agency or court of the issuing jurisdiction.
  - (1) An authentication stamp issued by a clerk of court or custodian of records, or a court seal, is sufficient evidence of authenticity.
- (c) Unless defects in jurisdiction are apparent on the face of an order described in § 2036(a), the person contesting enforcement of the order has the burden of showing the order is not valid. Upon a failure to respond to a notice of the order and to timely contest it, the Court shall enforce it as a Band Court Order.
- (d) Where an order described in § 2036(a) is invalid by reason of a lack of personal jurisdiction in the agency or court of the issuing jurisdiction, the Court may adopt some or all of its provisions as an original order of the Court to the extent that it does not violate the laws of the Band.
- (e) An order described in § 2036(a) does not automatically establish paternity for Band enrollment purposes.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 06-10, Title II, § 2, Exhibit B, § 2036.

## **SUBCHAPTER 3**

### **ENFORCEMENT**

**Section**

**2051. Withholding.**

**2052. Withholding Upon Notice from Obligee or Public Authority.**

**2053. Withholding Hearing; Service of Withholding Order.**

**2054. Effect of Notice or Order for Withholding; Commencement and Amount of Withholding; Orders from Other Jurisdictions.**

**2055. Priority.**

**2056. Employer Expenses.**

**2057. Notice from Obligor to Employer.**

**2058. Notice to Court Upon Termination of Employment.**

**2059. Order Terminating Income Withholding.**

**§ 2051. Withholding.**

- (a) Court-ordered child support shall be withheld from the obligor's income, regardless of the source, in accordance with this subchapter.
- (b) If a determination is made that an obligor has made excess child support payments, the Band Authority must be responsible to immediately reimburse the obligor. To recover its costs, the Band Authority may motion the Court to recoup the excess payments from the obligee.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29. T. II, § 1.

Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2051.

Band Ordinance 01-21.

**§ 2052. Withholding Upon Notice from Obligee or Public Authority.**

- (a) Except as provided in § 2052(c), an employer or other payer of funds must withhold income or other payments from an obligor upon notice from an obligee or public authority when the following conditions are met:

- (1) the obligor is at least 30 days in arrears in making Court-ordered child support payments to the obligee;
  - (2) the obligee or public authority serves written notice of income withholding, showing the current child support obligation and the amount of the arrearage, on the obligor at least 20 days before serving the notice of income withholding and a copy of the Court's order establishing the child support obligation on the employer or other payer of funds;
  - (3) within the 20-day period, the obligor fails to move the Court for an order denying or changing the amount of withholding on the grounds that an arrearage of at least 30 days did not exist as of the date of the notice of income withholding, or that the notice contains a mistake of fact with respect to the amount of the current child support obligation or the amount of the arrearage; and
  - (4) the obligee or public authority serves a copy of the notice of income withholding, showing the current child support obligation and the amount of the arrearage, a copy of the Court's order, and the provisions of this subchapter on the employer or other payer of funds.
- (b) The obligor may, at any time, waive the written notice required by § 2052(a)(2).
- (c) Income or other payments shall not be subject to withholding where:
- (1) Either the custodial or noncustodial parent demonstrates, and the Court enters a finding, that there is good cause not to require withholding of income or other payments; or
  - (2) A signed written agreement is reached between the noncustodial and custodial parent, which provides for an alternative to withholding, and the agreement is reviewed and entered into the record by the Court.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. II, §§ 2.01, 2.03.

Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2052.

**§ 2053. Withholding Hearing; Service of Withholding Order.**

- (a) Within 30 days from the date an obligor files a motion with the Court to deny or change the amount of withholding under § 2052(a)(3) of this Title, the Court shall hold a hearing on the motion and notify the parties of its decision.
  - (1) If the Court finds an arrearage of at least 30 days did not exist as of the date of the notice of income withholding, the Court shall enter an order denying withholding.
  - (2) If the Court finds that an arrearage of at least 30 days existed as of the date of the notice of income withholding, but that there was a mistake in the amount of the current support obligation or the amount of the arrearage, the Court shall order income withholding in the corrected amount. If the Court finds there was no mistake of fact, the Court shall order income withholding in the amount specified in the notice. If the Court orders income withholding, it shall order withholding to begin no later than the first pay period that occurs after 14 days following the date of the hearing.
- (b) The Band Authority will promptly refund amounts which have been improperly withheld.
- (c) If the Court issues an order for withholding under § 2053(a), it shall provide a copy of the order to the Band Authority. The Band Authority shall serve notice of the order on the obligor's employer or other payer of funds using the standard Federal withholding form together with a copy of the order. The Band Authority must allocate amounts across multiple withholding orders to ensure that in no case shall allocation result in a withholding for one (1) of the support obligations not being implemented.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. II, § 3.  
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2053.  
Band Ordinance 01-21.

### **§ 2054. Effect of Notice or Order for Withholding; Commencement and Amount of Withholding; Orders from Other Jurisdictions.**

- (a) Notwithstanding any law to the contrary, a notice of withholding served in accordance with § 2052(a) of this Title or a withholding order issued and served in accordance with § 2053 of this Title, is binding on an employer or other payer of funds who is subject to the jurisdiction of the Band
- (b) Withholding shall begin no later than the first pay period that occurs after 14 days following the date of service of the notice to the obligor's employer or other payer of funds under § 2052(a)(4) of this Title or § 2053(c) of this Title.

- (1) An employer shall not discharge, refuse to hire, or otherwise discipline an employee as a result of a wage or salary withholding authorized by this subchapter.
  - (2) An employer who is found to have violated this provision shall be subject to a fine of \$500.00.
- (c) Except as provided in § 2054(d) and (h), an employer or other payer of funds shall withhold and pay to the obligee or public authority, as specified in the notice served on the employer or other payer of funds:
- (1) the obligor's current child support obligation; and
  - (2) an additional amount not to exceed 20% of the current monthly obligation until the arrearage is paid.
- (d) An employer or other payer of funds shall not withhold an obligor's earnings more than the maximum amount permitted under the Consumer Credit Protection Act, 15 U.S.C. § 1673(b)(2).
- (e) Absent an order to the contrary, if an arrearage exists at the time a support order would otherwise terminate, income withholding shall continue in effect or may be implemented in an amount equal to the support order until all arrears have been paid in full.
- (f) If an employer or other payer of funds fails to withhold income or other payments in accordance with this subchapter, the employer or other payer of funds will be liable for the accumulated amount the employer or other payer of funds should have withheld from the obligor.
- (g) The Band Authority is responsible for receiving and processing income withholding orders from States, Tribes, and other entities, and ensuring that such orders are properly and promptly served on employers and other payers of funds within the Band's jurisdiction. The Band Authority will extend the full range of services available to respond to all requests from, and cooperate with, State and Tribal IV-D agencies.
- (h) The Band, the Court, and the Band Authority will recognize child support orders issued by other Tribes and Tribal organizations and by States, in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B. The Court may not delay enforcement of any foreign child support orders.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. II, §§ 2.02, 4, 5.02.  
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2054.  
Band Ordinance 01-21.

**§ 2055. Priority.**

- (a) A notice or order for withholding under this subchapter or execution or garnishment upon a judgment for child support arrears shall have priority over any other attachment, execution, garnishment, or wage assignment and shall not be subject to the statutory limitations on amounts levied against the income of the obligor, except as provided for in this subchapter. Amounts withheld from an employee's income shall not exceed the maximum permitted by law.
- (b) In the event that there is more than one (1) withholding order for child support for an obligor, the employer or other payer of funds shall put the orders into effect, giving priority first to amounts currently due and not in arrears up to the maximum amount allowed by law. If there are two (2) or more orders for child support which cumulatively exceed the maximum amount allowed by law, the amount each obligee receives from the withholding shall be determined as the amount equal to the number of each obligee's children for whom support payments are due as a percentage of the total number of children for whom support payments are due. This paragraph pertains to withholding only and shall not affect the actual amount of support ordered.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. II, § 5.  
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2055.  
Band Ordinance 01-21.

**§ 2056. Employer Expenses.**

An employer or other payer of funds may deduct \$2.00 from the obligor's remaining income or other payments for each payment made pursuant to a withholding order under this subchapter to cover the expenses involved in the withholding.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 2-94, Ch. 29, T. II, § 6.  
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2055.

### **§ 2057. Notice from Obligor to Employer.**

When an individual is hired for employment, the employer shall request that the individual disclose whether or not the individual has Court-ordered child support obligations that are required by law to be withheld from income and the terms of the Court order. The individual shall disclose this information at the time of hiring. When an individual discloses that the individual owes child support that is required to be withheld, the employer shall begin withholding according to the terms of the order and under this subchapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. II, §7.

Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2057.

### **§ 2058. Notice to Court Upon Termination of Employment.**

When withholding is in effect and the obligor's employment is terminated, the obligor and the obligor's employer or other payer of funds shall notify the Court and the obligee or public authority responsible for child support enforcement of the termination within ten (10) days of the termination date. The notice shall include the obligor's home address and the name and address of the obligor's new employer or payer of funds, if known. Information disclosed under this subchapter shall not be divulged except to the extent necessary for the administration of child support or when authorized by law.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. II, § 7.01.

Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2058.

### **§ 2059. Order Terminating Income Withholding.**

Whenever an obligation for child support terminates under the terms of the order of this chapter, and where the obligation is enforced by income withholding from the obligor, the Court shall enter an order directed to the obligor's employer or other payer of funds, which terminates the income withholding. The order terminating income withholding must specify the effective date of the order, referencing the initial order or decree establishing the support obligation.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 26-94, Ch. 29, T. II, § 8.  
Band Ordinance 06-10, Title III, § 2, Exhibit C, § 2059.

## CHAPTER 13

### CHILD PROTECTION

<u>Subchapter</u>	<u>Section</u>
1. General Provisions	3101
2. Child Protection Court Procedures	3111
3. Child Abuse and Neglect	3141
4. Foster Home Licensing Procedures	3171
5. Guardianships	3201
6. Procedures for the Adoption of Children	3231

#### Historical and Statutory Notes

The preamble of Band Ordinance 01-96 provides:

“Be it enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Ojibwe Indians for the purpose of amending Band Statute 1096 - MLC - 28.

#### § 3001. Declaration of Policy.

- (a) Parents are the foundational and capable caregivers for the sacred life of the child. Where that foundation breaks down, it is the responsibility of the Mille Lacs Band of Ojibwe to ensure the care of its children
- (b) One of the Mille Lacs Band of Ojibwe's basic inherent sovereign rights is the right to make decisions regarding the best interests of Mille Lacs Band children including who should provide for the care, custody and control of its children. This code is intended to assure a safe, stable, nurturing and permanent environment for the Band's children and to provide for the protection of our children, our people and our way of life.
- (c) The principles that shall guide decisions pursuant to this code are: protection of the child's safety, wellbeing and welfare and their sense of belonging; preservation of the child's identity as a tribal member and member of an extended family; preservation of the culture, religion, language, values, and relationships of the Band.

- (d) As an exercise of its inherent sovereignty the Mille Lacs Band has the authority and jurisdiction to formally delegate the authority to its Court of Central Jurisdiction to adjudicate its own customary practices regarding child rearing and child custody.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

### **§ 3002. Effective Date.**

- (a) The effective date of Chapter 13, as amended by Ordinance 33-18 and 16-19, shall be December 1, 2020.
- (b) Chapter 13, as amended by Ordinance 31-17, 33-18, and 16-19, shall not be retroactive or attach new legal consequences to events, orders or decisions preceding the effective date of the statute.
- (c) Any motion or procedure that is pending in an open case before the Court of Central Jurisdiction or Court of Appeals on or after the effective date of December 1, 2020, shall be decided based on the law in effect prior to December 1, 2020.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-18.

Band Ordinance 16-19.

Band Ordinance 51-20.

## **SUBCHAPTER 1**

### **GENERAL PROVISIONS**

**Section**

**3101. Title of Chapter.**

**3102. Purpose.**

**3103. Definitions.**

**3104. Child Protection Records**

**§ 3101. Title of Chapter.**

This chapter shall be entitled “The Child Protection Statute”.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 1A.  
Band Ordinance 31-17.

### **§ 3102. Purpose.**

This subchapter shall be liberally interpreted and construed to fulfill the following expressed purposes:

- (a) to recognize and acknowledge the customs and traditions of the Mille Lacs Band with regards to child-rearing;
- (b) to preserve unity of the family, preferably by separating the child from her or his parents only when necessary;
- (c) to take such actions as may be necessary and feasible to prevent the abuse, neglect or abandonment of children;
- (d) to provide a continuum of services for children and their families ranging from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives;
- (e) to secure the rights of and ensure fairness to the children, parents, grandparents, guardians, custodians, Niiya wen’enyag, or other parties who come before the Court under the provisions of this chapter;
- (f) to ensure that courts from other jurisdictions will be willing to return Mille Lacs Band children to the Band pursuant to this chapter;
- (g) to provide for the welfare, care and protection of the children and families under the jurisdiction of the Mille Lacs Band.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 1.  
Band Ordinance 31-17.

### § 3103. Definitions.

See Title 8, Chapter 1 for general definitions applicable to this chapter. For the purposes of this chapter only, “**he**” means he or she, “**his**” means hers or his, and singular includes plural, and the following additional definitions apply:

- (a) “**Abandon**” or “**Abandonment**” means the failure of the parent, guardian or custodian to provide reasonable support and to maintain regular contact with a child or otherwise maintain a parental relationship, unless the parent establishes that an extreme financial or physical hardship or treatment for mental disability or chemical dependency or other good cause prevent the parent from making contact with the child. Placement of a child, by mutual consent, with extended family members does not constitute abandonment, unless the parent does not abide by the terms, if any, agreed upon by mutual consent. Reasonable support includes both financial and emotional support.
- (b) “**Active Efforts**” means a rigorous and concerted level of case work that uses the prevailing social and cultural values, conditions and way of life of the Mille Lacs Band of Ojibwe to preserve the child’s family and to prevent placement of the child or, if placement occurs, to return the child to the child’s family at the earliest possible time. Family Services must consult with extended family members for help and guidance, and use them as a resource for the child whenever possible. Active efforts may include, but are not limited to:
  - (1) Providing concrete services and access to both tribal and non-tribal services in an on-going manner throughout the case to directly assist the family in accessing and engaging in those services;
  - (2) Arranging visitation and transportation that will take place, whenever possible in the home of the parent, other family members or other non-institutional setting. Visitation shall include close contact with parent, siblings and other relatives. Visitation shall not be withheld for failure to follow a case plan;
  - (3) Using tribally based family preservation and reunification services wherever possible; and
  - (4) Providing services to extended family members to allow them to be considered for placement of the child.
- (c) “**Band Assembly**” means the duly elected Band Assembly of the Mille Lacs Band of Ojibwe, a federally recognized Indian tribe. The Band Assembly is composed of the Speaker of the Assembly and the three (3) District Representatives.
- (d) “**Band Lands**” means lands owned by or held in trust for the Minnesota Chippewa

Tribe, the Mille Lacs Band of Ojibwe Indians, or one (1) or more members of the Mille Lacs Band of Ojibwe Indians, and any other lands subject to the jurisdiction of the Mille Lacs Band.

- (e) **“Case Plan”** means any written plan for the delivery of services to a child, parent, guardian or custodian developed according to the requirements of this chapter.
- (f) **“Chemical Dependency”** means an addiction to alcohol, prescription medication, or illegal drugs.
- (g) **“Child”** means a person who is less than 18 years old and has not been married or emancipated by order of a court of competent jurisdiction.
- (h) **“Child Abuse”** means the infliction of physical, emotional or mental injury on a child, or sexual exploitation of a child and shall include failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that her or his physical, mental or emotional health is endangered.
- (i) **“Child Protection Team”** means a team established to involve and coordinate the child protection services of various agencies as set forth in § 3142 of this chapter.
- (j) **“Child in Need of Protection or Services”** means a child who:
  - (1) is abused as defined in this chapter;
  - (2) is neglected as defined in this chapter;
  - (3) is abandoned as defined in this chapter, or has no parent, guardian or custodian available who is capable and willing to care for him;
  - (4) has suffered, or is likely to suffer a physical injury, sexual abuse, or emotional injury, inflicted upon her or him by other than accidental means, which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions;
  - (5) has not been provided with adequate food, clothing, shelter, medical care, education or supervision by her or his parent, guardian or custodian necessary for her or his health and well-being;
  - (6) exhibits behavior or whose condition or environment is such as to be injurious or dangerous to the child or others—this may include, but is not limited to, exposure of the child to criminal activity in the child’s home;
  - (7) being subject to compulsory school attendance, engages in excessive absenteeism (absent on seven (7) or more school days without a reasonable explanation);

- (8) habitually disobeys the reasonable and lawful demands of her or his parents, guardian or other custodian, and is ungovernable and beyond their control;
  - (9) has committed delinquent or criminal acts, including truancy, as a result of parental pressure, guidance, approval, or failure to properly supervise;
  - (10) has been subjected to ongoing violence in the home whether or not directed toward the child;
  - (11) lives where the manufacturing, sale, or possession of controlled substances takes place in the child's home, on the premises of the child's home, or in a motor vehicle that is located on the premises;
  - (12) is homeless as defined in this chapter; or
  - (13) when used in referring to an unborn child, is exposed to the habitual and frequent use of alcoholic beverages by the expectant mother of the unborn child, or to any use of controlled substances or controlled substance analogs by the expectant mother of the unborn child.
- (k) **“Commissioner of Health and Human Services”** is a position appointed by the Chief Executive and ratified by the Band Assembly in charge of the direction and vision of all of the Band’s Health and Human Services departments.
  - (l) **“Controlled Substance”** is any drug or chemical whose manufacture, possession or use is regulated by the federal government as defined by the FDA. A **Controlled Substance Analog** is a chemical or drug whose chemical makeup is substantially similar to a controlled substance as defined in 21 U.S.C. § 813.
  - (m) **“Conservator”** means a person appointed by the Court to manage the property of the ward as set forth in this chapter.
  - (n) **“Domicile”** means a person’s permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian considers their permanent home.
  - (o) **“Emergency Foster Home”** means a family home, which has been licensed to accept emergency placements of children at any hour of the day or night (see “Foster Home”).
  - (p) **“Emergency Guardianship”** means a guardian who has been granted temporary guardianship status on an emergency basis as set forth in subchapter 5 (§§ 3201-3219) of this chapter.

- (q) **“Extended Family”** is defined according to the customs and traditions of the Mille Lacs Band and includes Niiya’wenh’enh’ (Namesake).
- (r) **“Foster Home”** means a family home, which has been licensed under subchapter 4 (§§ 3171-3174) of this chapter.
- (s) **“Foster Home Recruiter”** means a person selected to inspect and recommend for license foster homes under subchapter 4 (§§ 3171-3174) of this chapter.
- (t) **“General Guardian”** means a guardian who has been granted long term guardianship status as set forth in § 3202 of this chapter.
- (u) **“Guardian Ad Litem”** means, for the purposes of this chapter, a person appointed by the Court to represent the child’s interests before the Court.
- (v) **“Homeless”** describes a situation in which an individual is without permanent housing who may live on the streets; stay in a shelter, mission, single room occupancy facility, abandoned building or vehicle; or repeatedly rely on temporary accommodations in a friend or family members’ home or in any other unstable or non-permanent situation.
- (w) **“Indian”** means any member of a federally recognized Indian tribe, band or community, or Alaska Natives, or a person considered by the tribe, band or community to be Indian.
- (x) **“Solicitor General”** means the Solicitor General or other designated person who appropriately performs the duties and responsibilities set forth in § 3123 of this chapter.
- (y) **“Neglect”** means the:
  - (1) failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health, medical, or other care required for the child's physical or mental health when reasonably able to do so;
  - (2) failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so;
  - (3) failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors such as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in their care; or

- (4) failure to ensure that the child is educated as required by law and individual school policy.
- (5) “Neglect” shall include “abandoned” children.
- (z) **“Open Adoption”** means an adoption, which is intended not to permanently deprive the child of connections to, or knowledge of, her or his natural family.
- (aa) **“Out-of-Home Placement”** means a change in residence for the child away from the home of her or his parent, guardian, or custodian. This term includes, but is not limited to, placement with relatives, foster homes, group homes, emergency shelters, residential facilities, child care institutions and pre-adoptive homes. During this placement period, the Band Family Services department may maintain legal custody of the child.
- (bb) **“Parent”** includes a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been established pursuant to 8 MLBS §§ 2034-2036.
- (cc) **“Parties”** to a child protection matter are:
  - (1) the child’s parent, guardian or custodian;
  - (2) Family Services;
  - (3) the Petitioner;
  - (4) the child’s grandparent by Motion to the Court; and
  - (5) any party who is deemed by the Court to be important to the resolution, whose inclusion is in the best interest of the child, and is granted Party status after Motion and hearing.
- (dd) **“Participants”** to a child protection matter are:
  - (1) The child;
  - (2) The child’s parent who is not a legal custodian;
  - (3) Grandparents or other relative providing care for the child;
  - (4) Foster parent;
  - (5) Responsible social service agency when they are not the petitioner;

- (6) Guardian ad litem for the legal custodian; and
- (7) Any other person deemed by the Court to be important to the best interests of the child.
  
- (ee) **“Reservation”** means the territory under the jurisdiction of the Mille Lacs Band.
- (ff) **“Social Services”** means the Family Services department for the Band that is the responsible social services agency or the Band’s licensed child placement agency.
- (gg) **“Tribal Court”** or **“Court”** means the Court of Central Jurisdiction of the Mille Lacs Band.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 2.  
Band Ordinance 31-17.

#### **§ 3104. Child Protection Records.**

- (a) **Court Records.** A record of all hearings under this chapter shall be made and preserved. All Court records shall be confidential and shall not be open to inspection to any but the following:
  - (1) the child;
  - (2) the child’s parent, grandparent, guardian or custodian;
  - (3) the prospective adoptive parent;
  - (4) the child’s counsel or guardian ad litem;
  - (5) the Court personnel directly involved in the handling of the case;
  - (6) any other person by order of the Court, having a legitimate interest in the particular case or the work of the Court. Access under this subsection shall be by written motion. Absent exigent circumstances, parties listed in subsections 1-4 of Section 3104(a) shall be given notice of the motion and a reasonable opportunity to object to the motion. If the Court grants access to records, it shall do so by written order.
  
- (b) **Law Enforcement and Family Services Records.** Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All

Law Enforcement and Family Services records shall be confidential and shall not be open to inspection to any but the following:

- (1) the child;
- (2) the child's parent, grandparent, guardian or custodian;
- (3) the child's counsel or guardian ad litem;
- (4) Law Enforcement and Family Services personnel directly involved in the handling of the case;
- (5) the Court personnel directly involved in the handling of the case;
- (6) any other person by order of the Court, having a legitimate interest in the particular case or the work of the Court. Access under this subsection shall be by written motion. Absent exigent circumstances, parties listed in § 3104(b)(1)-(4) of this chapter shall be given notice of the motion and a reasonable opportunity to object to the motion. If the Court grants access to records, it shall do so by written order.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 28.  
Band Ordinance 31-17.

## **SUBCHAPTER 2**

### **CHILD PROTECTION COURT PROCEDURES**

**Section**

- 3111. General Jurisdiction.**
- 3112. Jurisdiction Over Extended Family.**
- 3113. Continuing Jurisdiction.**
- 3114. Application of the Indian Child Welfare Act.**
- 3115. Exclusive Jurisdiction.**
- 3116. Transfer to State Court or Other Tribal Courts.**
- 3117. Transfer from Other Courts.**
- 3118. Full Faith and Credit, Conflict of Laws.**
- 3119. Rules of Procedure.**
- 3120. Cooperation and Grants.**
- 3121. Outside Social Services Agencies.**

- 3122. Social Worker.**
- 3123. Solicitor General.**
- 3124. Guardian Ad Litem.**
- 3125. Additional Court Personnel [REPEALED].**
- 3126. Modification, Revocation or Extension of Court Orders.**
- 3127. Appeals.**
- 3128. Emancipation [REPEALED].**
- 3129. Authorization of Medical Treatment.**

**§ 3111. General Jurisdiction.**

- (a) The Court of Central Jurisdiction shall exercise subject matter and adjudicatory jurisdiction over matters arising under this chapter. The jurisdiction of the Court shall be civil in nature and shall include the right to issue all orders necessary to ensure the safety of children within the territorial and personal jurisdiction of the Court as established in § 3111(b) below, as well as other children who have been declared to be wards of the Court. The Court shall also have the power to enforce subpoenas and orders of restriction, fines, contempt, confinement and other orders as appropriate.
- (b) The Court shall have jurisdiction over the following persons under this subchapter:
  - (1) Members of the Band under the age of 18 years;
  - (2) Persons under the age of 18 years who are eligible to become members of the Band;
  - (3) Indians, as defined in § 3103(w) of this chapter, who are under the age of 18 years and who are residing or domiciled within Band Lands or the exterior boundaries of the reservation;
  - (4) Children residing or domiciled within Band Lands or the exterior boundaries of the reservation, for whatever reason, in the home of a member of the Band or other Indians, as defined in subsection 3103(w) of this chapter, as long as the parents, guardian, or custodians have consented to the jurisdiction of the Court. Such consent, once given, may be revoked only with permission of the Court;
  - (5) Children of at least one (1) Band Member who are otherwise ineligible for Band membership, but who are included encompassed by and referenced within Joint Resolution 15-03-207-13, which states, “children of enrolled members of the Mille Lacs Band of Ojibwe shall, for purposes of the Indian Child Welfare Act, be considered enrolled members of the Mille Lacs Band of Ojibwe”;
  - (6) Any person between the ages of 18 and 21 whom the Court previously

retained jurisdiction over and who has elected to remain in Foster Care until the age of 21.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 3.01.  
Band Ordinance 31-17.

### **§ 3112. Jurisdiction Over Extended Family.**

Where the Court asserts personal jurisdiction over an individual under § 3111 of this chapter, the Court shall also have jurisdiction over the person's extended family, including non-member parents of a Band member, whenever the Court deems it appropriate and does not conflict with Federal Due Process procedures.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 3.02.  
Band Ordinance 31-17.

### **§ 3113. Continuing Jurisdiction.**

Where the Court deems it appropriate, the Court may retain jurisdiction over children and their extended families who leave the exterior boundaries of the reservation as set forth in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 3.03.

Band Ordinance 31-17.

**§ 3114. Application of the Indian Child Welfare Act.**

The Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, where they do not conflict with the provisions of this chapter. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the Court unless specifically provided for in this chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 3.041.

Band Ordinance 31-17.

**§ 3115. Exclusive Jurisdiction.**

The Band has exclusive jurisdiction over child custody proceedings, as defined by the Indian Child Welfare Act (25 U.S.C.A. §§ 1901-1963) if the minor is domiciled or resides on lands under the jurisdiction of the Band.

## Historical and Statutory Notes

### Source:

Band Ordinance 31-17.

### § 3116. Transfer to State Court or Other Tribal Courts.

In any proceeding before the Court, where the Court does not retain exclusive jurisdiction, the Court may transfer the proceedings to an appropriate state court or another tribal court where the state or the other Indian tribe has a significant interest in the child and the transfer would be in the best interests of the child. Factors to be considered for the best interest of the child in regards to a transfer may include: the burden of travel for the family; the child's connection to the local community; whether the child has siblings who are members of another tribe; and the services available to the child and family in the state or other tribal court.

## Historical and Statutory Notes

### Source:

Band Ordinance 01-96, § 3.042.

Band Ordinance 31-17.

### § 3117. Transfer from Other Courts.

#### (a) Procedures for Transfer from Other Courts.

- (1) **General.** The Band may petition or move for transfer from any court claiming jurisdiction over child welfare or custody proceedings.

- (2) **Timing.** The Band may intervene in State court child welfare or custody proceedings, as defined in the Indian Child Welfare Act, at any point in the proceedings.
- (3) **Notice to the Band.**
  - (i) The Band Family Services department shall be the agent for service of notice of child welfare or custody proceedings.
  - (ii) The Band Family Services department shall conduct an investigation in collaboration with the state social services agency or review the original investigation report.
  - (iii) The Band Family Services Department will submit their written recommendation for transfer to the Solicitor General at any point in the proceedings.
- (4) **Enrollment Information.**
  - (i) The Band Family Services department shall request enrollment information on the child at the initial investigation. The Band Enrollment Office shall verify the enrollment information immediately.
  - (ii) The Band Family Services Department shall also request information regarding the child's relatives for placement purposes. The Band Enrollment office shall return the relative information within seven (7) days of the request absent good cause.
- (5) **Filing with the Courts.** The Solicitor General or selected representative shall make a motion to transfer with the transferring court within seven (7) business days of receipt of recommendation from the Band Family Services Department and receipt of child's enrollment status with the Band.
- (6) **Acceptance of Transfer.**
  - (i) The Court shall accept all state court transfers of child welfare or custody proceedings initiated by the Solicitor General upon verification of enrollment status in accordance with § 3111 of this chapter.
  - (ii) The Court shall accept all state court transfers of child welfare or custody proceedings initiated by the parents' motion upon the recommendation of the Band Family Services department and verification of enrollment status in accordance with § 3111 of this chapter.

(iii) The Court shall accept all state court transfers of private child custody proceedings initiated by the parents' motion upon verification of enrollment status in accordance with § 3111 of this chapter. The Court may accept state court transfers of private child custody proceedings upon the motion of either parent upon enrollment verification in accordance with § 3111 of this chapter.

(7) **Denial of Transfer.**

(i) The Court may choose to deny a motion for transfer where a transfer of services will not benefit the child, the family or the Band. The Court may consider the ability of the Band Family Services Department to provide specialty services to the family when making this determination.

(ii) The Court's decision not to assert jurisdiction at a given time does not preclude it from asserting jurisdiction at a later time, and the denial of a motion to transfer does not preclude the Band from remaining a party to the case as it moves forward in another jurisdiction.

(8) **Provisional Acceptance.** The Court may also provisionally accept transfer of a child welfare or custody proceeding pending another court's consideration of a motion or petition to transfer jurisdiction. The transfer shall automatically become effective the date the other court orders such transfer.

(b) **Procedures upon Transfer.**

(1) **Petition.** Within five (5) business days of the date of acceptance of Transfer by the Court, Band Family Services shall submit a Child In Need of Protection or Services petition to the Court with the approval of the Solicitor General's Office.

(2) **Reports Included.** The Child in Need of Protection or Services petition shall include the initial investigative report reviewed by the Band Family Services Department upon notice of child custody proceedings. This report may be updated and supplemented with additional materials if the Band Family Services Department finds circumstances have changed since the original investigation. Any supplemental materials must be provided to the Solicitor General's Office within five (5) business days of the date of an acceptance of transfer of jurisdiction.

(3) **Initial Appearance.** The Court shall hold an initial appearance in accordance with this Title no later than two (2) weeks after the Child in Need of Protection or Services petition is filed with the Court.

## Historical and Statutory Notes

### Source:

Band Ordinance 01-96, §§ 3.043, 3.044.

Band Ordinance 31-17.

### § 3118. Comity; Conflict of Laws.

- (a) **State Court Orders.** State child custody orders involving children over whom the Children's Court may exercise jurisdiction may be recognized by the Children's Court only after a full independent review of such state proceedings has determined:
  - (1) the state court had jurisdiction over the child;
  - (2) the provisions of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 were properly followed;
  - (3) due process was provided to all interested persons participating in the state proceedings; and
  - (4) the state court proceedings did not violate the public policies, customs, or common law of the Mille Lacs Band.
  
- (b) **Court Orders of Other Tribal Courts.** Court orders of other tribal courts involving children over whom this Court could take jurisdiction shall be recognized by this Court after the Court has determined:
  - (1) that the other tribal court exercised proper subject matter and personal jurisdiction over the parties; and
  - (2) due process was accorded to all interested parties participating in the other tribal court proceeding.
  
- (c) **Mille Lacs Band Interest.** Because of the vital interest of the Band in its children and those children who may become members of the Band, the statutes, regulations, public policies, customs and common law of the Band shall control in any proceeding

involving an Indian child.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 3.05.

Band Ordinance 31-17.

### **§ 3119. Rules and Procedure.**

The procedures for Child Protection cases shall be governed by the rules of procedure for the Tribal Court that are not in conflict with this chapter.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 4.01.

Band Ordinance 31-17.

### **§ 3120. Cooperation and Grants.**

The Court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any foster care, shelter care, treatment or training program and to receive grants-in-aid to carry out the purposes of this chapter. This authority is subject to the approval of the Band Assembly.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 4.02.

Band Ordinance 31-17.

**§ 3121. Outside Social Services Agencies.**

The Court shall utilize such social services as may be furnished by any tribal, federal or state agency provided that it is economically administered without unnecessary duplication and expense. Outside Local Social Services Agencies may participate in investigation of Child Abuse or Neglect claims, but must coordinate with the Band Family Services Department for any additional contact with Band Families.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 4.03.

Band Ordinance 31-17.

**§ 3122. Social Worker Duties.**

- (a) **Selection.** The Mille Lacs Band shall select Social Workers to carry out the duties and responsibilities set forth in this chapter. The persons carrying out the duties and responsibilities set forth in this section may be labeled Social Workers or any other title that the Court finds appropriate so long as they perform the duties and responsibilities set forth in this section.
- (b) **Qualifications.** The Social Workers shall have an educational background, such as social work or a related degree, and licensing or prior experience in the field of delivering social services to youth and families and shall never have been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense, or any two (2) or more misdemeanor offenses, under federal, state or tribal law involving crimes of violence, sexual assault, molestation, exploitation, contact or

prostitution, crimes against persons, or offenses committed against children as determined by a background check performed in conjunction with required pre-employment processes. Social Workers shall be licensed according to procedures established by the Department of Health and Human Services in accordance with all applicable federal, state, and tribal law.

- (c) **Resource Development.** The Social Workers shall identify and develop resources on the reservation, in conjunction with the Commissioner of Health and Human Services, Court, Chief Executive, and Band Assembly to enhance each tribal child's potential as a viable member of the community.
- (d) **Duties.** Social Workers shall:
  - (1) make investigations as provided in this chapter or as directed by the Court;
  - (2) make reports to the Court as provided in this chapter or as directed by the Court;
  - (3) perform such other duties in connection with the care, custody or transportation of children as the Court may require.
- (e) **Prohibited Duties.** The Social Workers shall not be employed as or be required to perform the duties of a prosecutor or law enforcement official.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 5.01.

Band Ordinance 31-17.

Act 74-22.

### **§ 3123. Solicitor General Duties.**

The Solicitor General shall:

- (a) File petitions with the Court as provided in this chapter;

- (b) Represent the Mille Lacs Band in all proceedings under this chapter; and
- (c) Perform such other duties as the Court may order and as required under this title.

### **Historical and Statutory Notes**

#### **Source:**

Band Ordinance 01-96, § 5.02.

Band Ordinance 31-17.

### **§ 3124. Guardian ad Litem Duties.**

At any stage of private child custody or guardianship proceedings conducted under this chapter the Court shall appoint a guardian ad litem representing the child's best interests. The Court shall appoint a guardian ad litem to represent the child's best interest in all Child In Need of Protection or Services proceedings.

### **Historical and Statutory Notes**

#### **Source:**

Band Ordinance 01-96, § 5.03.

Band Ordinance 31-17.

### **§ 3125. Additional Court Personnel.**

[REPEALED].

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3126. Modification, Revocation or Extension of Court Orders.**

- (a) The Court may hold a hearing to modify, revoke or extend a Court order under this chapter at any time upon the motion of:
  - (1) the child;
  - (2) the child's parent, grandparents, guardian, custodian or wenh'enh;
  - (3) the prospective adoptive parent upon Court order;
  - (4) the child's counsel and guardian ad litem;
  - (5) the Solicitor General;
  - (6) the institution, agency, or person vested with the legal custody of the child or responsibility for protective supervision; or
  - (7) the Court on its own motion.
- (b) Any hearing to modify, revoke or extend a Court order shall be held in accordance with the procedures established for the order at issue.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 27.

Band Ordinance 31-17.

**§ 3127. Appeals.**

- (a) Any party, including the child's wenh'enh, to a Court hearing may appeal a final court order that substantially impacts the rights of the litigant.
- (b) Any party seeking to appeal a final court order shall file a written notice of appeal with the Court within 30 days of the final order.
- (c) For purposes of appeal, a record of proceedings shall be made available to the child, her or his parent, grandparents, guardian or custodian, the child's counsel and others upon court order. Costs of obtaining this record shall be paid by the party seeking the appeal.
- (d) A court order may be stayed by such appeal.
- (e) All appeals shall be conducted in accordance with Band Statute and Court of Central Jurisdiction rules of procedure as long as those provisions are not in conflict with the provisions of this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 29.

Band Ordinance 31-17.

**§ 3128. Emancipation.**

[REPEALED].

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3129. Authorization of Medical Treatment.**

- (a) At any time whether or not a child is under the authority of the Band the Court may authorize medical or surgical care for a child when:
  - (1) **Unavailability of Parent, Guardian or Custodian.** A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case, or
  - (2) **Life Endangerment.** A physician informs the Court orally or in writing that in her or his professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian or other custodian refuses or fails to consent. If time allows in a situation of this type, the Court shall cause every effort to be made to grant the parent, guardian or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life.
- (b) In making its order the Court shall give due consideration to any treatment being given the child by prayer through spiritual means alone or through other methods approved by Band customs, traditions or spiritual practices.
- (c) After entering any authorization under this section, the Court shall reduce the circumstances, finding and authorization to writing and enter it in the records of the Court and shall cause a copy of the authorization to be given to the physician or hospital or both that was involved.
- (d) Oral authorization by the Court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. No physician or hospital nor any nurse, technician or other person under the direction of such physician or hospital shall be subject to criminal or civil liability in Court for performance of care or treatment in reliance on the Court's authorization. Any function performed thereunder shall be regarded as if it were performed with the child's and the parent's authorization.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 23.

Band Ordinance 31-17.

## SUBCHAPTER 3

### CHILD ABUSE AND NEGLECT

#### Section

- 3141. Social Workers.
- 3142. Child Protection Team.
- 3143. Duty to Report Child Abuse and Neglect.
- 3144. Investigation and Removal.
- 3145. Welfare-Check Warrant.
- 3146. Alternatives to Court Action and Removal.
- 3147. Notice of Removal.
- 3148. Restrictions on Placement of Children.
- 3149. Active Efforts Required.
- 3150. Filing A Child in Need of Protection or Services (CHIPS) Petition.
- 3151. Court Hearings Required.
- 3152. Initial Hearing.
- 3153. Notification of Rights.
- 3154. Admit/Deny Hearing.
- 3155. Formal Trial on the Issues.
- 3156. Notice of Formal Trial on the Issues.
- 3157. Default Judgment.
- 3158. Review Hearings.
- 3159. Concurrent Permanency Planning.
- 3160. Transfer of Custody.
- 3161. Permanency Hearing.
- 3162. Waiver of Timelines.
- 3163. Family Services Report.
- 3164. Family Testimony or Report.
- 3165. Placement Preferences.
- 3166. Case Plan.
- 3167. Change in Placement or Visitation.
- 3168. Emergency Placement Report and Hearing.

§ 3141. Social Workers.

- (a) Social Workers shall be employed by the Band Family Services department.
- (b) Family Services may cooperate with such state and community agencies as are necessary to achieve the purposes of this chapter. Family Services may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Band Assembly.
- (c) A Social Worker shall as soon as practicable following the filing of a petition:
  - (1) Receive reports from any source, written or oral, of Children in Need of Protection or Services and be prepared to provide temporary foster care for such children on a 24 hour basis; and
  - (2) Upon receipt of any report or information under subparagraph (1) of this paragraph immediately:
    - (i) notify the appropriate law enforcement agency, and
    - (ii) make prompt and thorough investigation that shall include a determination of the nature, extent, and cause of any condition that is contrary to the child's best interests and the name, age, and condition of other children in the home.
  - (3) Take the child into temporary custody if there are reasonable grounds to believe that the child is suffering from illness or injury that would cause substantial harm to the child without intervention or is in immediate danger from her or his surroundings and that her or his removal is necessary. Law enforcement officials shall cooperate with Family Services personnel to remove a child from the custody of her or his parents, guardian, or custodian when necessary.
  - (4) After investigation, evaluate and assess the home environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent. They shall determine and document whether any of such children are a Child in Need of Protection or Services.
  - (5) Offer to the family of any child found to be in need of protection or appropriate services that may include, but shall not be restricted to, protective services, and document such offer(s).
  - (6) Within 30 days after a referral of a potential Child in Need of Protection or Services, submit a written report of the investigation and evaluation to the Solicitor General and to a central registry maintained by Family Services which shall include a determination as to whether the report was substantiated or unsubstantiated.

- (i) During the investigative stage, no child shall remain in temporary custody for a period exceeding 72 hours, excluding Saturdays, Sundays and holidays, unless a Child in Need of Protection or Services petition is filed.
- (ii) Before offering protective services to a family, a Social Worker shall inform the family that he or she has no legal authority to compel the family to receive such services and of her or his authority to initiate a petition in Court.
- (iii) If the family declines the offered services, the Social Worker shall recommend to the Solicitor General that a Child in Need of Protection or Services petition be filed in Court if he or she believes it to be in the child's best interest.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 6.

Band Ordinance 31-17.

**§ 3142. Child Protection Team.**

- (a) The Mille Lacs Band shall establish a Child Protection Team. The Child Protection Team is established to prevent Indian children from being abused or neglected through the involvement and coordination of various agencies. In cases where children have been abused or neglected, efficient and effective protective services shall be provided so as to immediately secure the children's safety and health. Follow-up actions shall then be taken to stabilize the circumstances for the long-term benefit of the children and, to the extent possible, their family members.
- (b) Prevention of child abuse and neglect is to be emphasized. The child protection team is intended to facilitate the identification of danger signs that will prompt immediate intervention and/or preventive actions to be taken. However, when a child's well-being is found to be endangered, the child protection team should recommend protective services as promptly, efficiently, and effectively as possible. These services are to be provided so as to ensure the child's immediate safety and health.

Once attained, to the extent possible, actions are to be taken to correct the problems that caused the abuse or neglect and prevent it from occurring again. The child protection team should facilitate the development and implementation of a plan to promote the long-term well-being of the child and the appropriate family members.

- (c) The child protection team is technical and advisory in nature. In no way is it intended to undermine the authorities and responsibilities of individual agencies. It is designed to promote cooperation, communication, and consistency among agencies. It is appropriate for the child protection team to debate what actions would best promote the well-being of a child and provide relevant information and advice to decision-making agencies. Confidentiality shall be maintained by all child protection team members.
- (d) The Child Protection Team may consist of behavioral health professionals, chemical dependency counselors, Tribal police officers, school psychologists, Band Family Services staff and advocates, and Tribal Court guardians ad litem, and must include one (1) elder who actively follows and practices Band spirituality. The Child Protection Team may include County Social Services staff and County Police officers by invitation. The Child Protection Team may include, wherever possible, a member of the child's own family who is a positive role model to the child.
- (e) The duties of the child protection team shall include the development and implementation of procedures for facilitating provision of services such as:
  - (1) Identifying available community resources, programs and services;
  - (2) Providing recommendations to various pertinent agencies;
  - (3) Promoting cooperation, communication, and consistency among agencies;
  - (4) Maintaining confidentiality of information.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 7.

Band Ordinance 31-17.

**§ 3143. Duty to Report Child Abuse and Neglect.**

- (a) **Duty to Report.** Any person who has a reasonable cause to suspect that a child has been abused, neglected or abandoned should immediately report the abuse, neglect or abandonment to the Band Family Services department and/or Band Law Enforcement.
- (b) **Persons Specifically Required to Report.** Those persons who are mandated to report suspected abuse or neglect include any physician, nurse, dentist, optometrist, or any other medical or mental health professional; school principal, school teacher, or other school official; social worker; child day care center worker or other child care staff including foster parents, residential care or institutional personnel, counselor; peace officer or other law enforcement official; judge, juvenile counselor, clerk of Court, Solicitor General or other judicial system official.
- (c) **Anonymous Reports.** Any person who has reasonable cause to suspect that a child has been abused, neglected or abandoned, should report the abuse, neglect or abandonment. Those persons reporting, except those specified in paragraph (b) of this section, may remain anonymous.
- (d) **Immunity from Liability.** All persons or agencies reporting, in good faith, known or suspected instances of child abuse or neglect shall be immune from civil liability and criminal prosecution.
- (e) **Malicious and Reckless Reports.** Any person who knowingly or recklessly makes a false report under the provisions of this section shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the Court or jury, plus costs and reasonable attorney fees.
- (f) **Penalty for Not Reporting.** Those persons mandated to report a case of known or suspected abuse or neglect who knowingly fail to do so or willfully prevent someone else from doing so shall be subject to a civil cause of action pursuant to 24 MLBS § 1211 in the Court of Central Jurisdiction.
- (g) **Abuse and Neglect Reports.**
  - (1) **Form of Report:** Those persons mandated to report under paragraph (b) of

this section shall promptly make an oral report to the Mille Lacs Band Family Services Department and then make a written report within 48 hours. Reporters are encouraged to provide a written report as soon as possible within the 48-hour timeframe.

- (2) **Contents of Written Report:** The following information shall be included in the written report:
    - (i) Names, addresses, and tribal affiliation of the child and her or his parents, guardian, or custodian.
    - (ii) The child's age.
    - (iii) The nature and content of the child's abuse and neglect.
    - (iv) Previous abuse or neglect of the child or her or his siblings, if known.
    - (v) The name, age, and address of the person alleged to be responsible for the child's abuse or neglect, if known.
    - (vi) The name and address of the person or agency making the report.
  - (3) Failure to technically adhere to the above reporting requirements shall not serve as a justification to refuse performing an investigation.
  - (4) **Photograph of Visible Trauma:** Persons reporting suspected abuse or neglect may photograph or request X-rays to be taken of the child suspected of being abused and such photographs or X-rays may be introduced into evidence at a hearing.
- (h) **Central Registry.**
- (1) The Mille Lacs Band Family Services and Mille Lacs Band Law Enforcement shall maintain a central registry of reports, investigations, and evaluations made under this chapter. The registry shall contain the information given to Family Services by Band personnel throughout the reservation, including protective services workers, probation officers, caseworkers, and Indian Child Welfare Program employees.

- (2) Data shall be kept in the central registry after the case is closed for three (3) years if the allegations are unsubstantiated and for seven (7) years if the allegations are substantiated (unless the Court orders individual records shall be kept on file beyond that date in order to protect other siblings).
- (3) Data and information in the central registry shall be confidential. Any requests for information made by outside social services agencies, public health and law enforcement agencies, licensed health practitioners, and health and educational institutions may be made available only with the approval of the Director of Family Services. Denial of request by Director of Family Services may be reviewed by the Court upon request. A request for the release of information must be submitted in writing, and such request and its approval shall be made part of the child's file.
- (4) If a person who has made an allegation of abuse requests information on the status of the case, the Mille Lacs Band Family Services Department may only provide information as to whether the allegation was received and investigated. Family Services may not share the status or disposition of the case.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 8.

Band Ordinance 31-17.

### **§ 3144. Investigation and Removal.**

- (a) **Investigation.** The child abuse or neglect report shall be investigated within 48 hours of the time that the report is received by the Family Services Department or other appropriate agency, unless the Court directs otherwise.
- (b) **Authority to Remove.** If the Enforcement or Family Services personnel investigating a report of child abuse or neglect finds that the grounds for removal, listed in paragraph (c) of this section have been met, such person may remove the child from the home in which the child is residing and place the child in a temporary placement or other appropriate placement.

- (c) **Grounds for Emergency Removal.** A child shall not be removed from the home of the child's parents, guardian or custodian without the consent of the parent, guardian or custodian absent a specific order of the Court, except as follows:
- (1) When failure to remove the child may result in a substantial risk of death, permanent injury, or serious emotional harm; or
  - (2) When the parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for her or his own basic necessities of life, and that no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities.
- (d) **Power to Remove.** A Social Worker or Law Enforcement Officer shall have the power to remove a child pursuant to this section provided that:
- (1) Reasonable grounds existed at the time of the removal to believe the removal was necessary;
  - (2) The person removing the child ensures the safety and well-being of the child, until such time as the Court assumes control of the matter; and
  - (3) The person removing the child complies with the notice provisions contained in § 3147 of this chapter.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96.

Band Ordinance 31-17.

### **§ 3145. Child Well-being Warrant.**

- (a) The Court shall have authority to issue a Child Well-being warrant that enables Tribal Police to enter a home for the purpose of conducting a child welfare safety check and removing a child from the premises if necessary to protect the child's health, safety or welfare. Before issuing the warrant, the Court must find the following:
- (1) probable cause to believe that child's health, safety, or welfare is in imminent and substantial danger;

- (2) credible evidence that the child is being held on the premises or property of a person under the jurisdiction of the Court; or
  - (3) prior documented attempts to check on the child or produce the child in Court, including placing the child on a 72-hour hold and the use of a Court Order to produce the child have been ignored, unless Family Services can show good cause for requesting a warrant before any prior attempts at contact have been made.
- (b) No Child Well-being warrant shall be issued except upon statement of fact sufficient to show probable cause that entry to the premises will discover the child. Such probable cause shall be supported by an affidavit based upon reliable information and particularly describing the premises to be entered. It shall also contain specific dates and times of previous attempts to check on the welfare of the child or to compel the family to produce the child in Court that were refused.
- (c) Child Well-being warrants shall only be executed by Tribal Police Officers. The executing Officer may only search those places where a child could be found. Only evidence that is in plain view or discovered while searching in a place where a child could be found may be admissible in Court. The executing officer shall return the warrant to the Court within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) calendar days from the date of issuance. Warrants not returned within such time limits shall be void.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3146. Preliminary Agreements.**

- (a) **Unsubstantiated Report.** When Family Services receives a report of suspected abuse, and finds the allegations unsubstantiated, Family Services may enter into a Voluntary Services agreement with the child, if he or she is able to understand and meaningfully participate in the development and execution of the agreement, the parent, guardian, or custodian, and other parties. An “unsubstantiated report” means the Social Worker has determined that the interests of the child do not require filing a Child in Need of Protection or Services petition, but the family would benefit from

services. This Voluntary Services agreement shall be in writing and signed by the parties.

- (1) If at any time during the period of the Voluntary Services agreement the Social Worker determines that new circumstances exist that may place the child at risk of harm, the Family Services worker may request a new investigation into the said circumstances. This investigation shall be treated as separate and the Voluntary Services agreement may continue unless the new allegations are substantiated and Court intervention becomes necessary.
  - (2) The Voluntary Services agreement will remain in effect for up to six (6) months from the date signed, unless either party withdraws consent to the terms.
- (b) **Substantiated Report, Low Risk.** If the Social Worker finds the needs do not rise to the level of necessary removal, but still finds sufficient evidence to substantiate the report and file a Child in Need of Protection or Service Petition, the Court may direct Family Services to enter into a Protective Services agreement with the child, if he or she is able to understand and meaningfully participate in the development and execution of the agreement, the parent, guardian, or custodian, and other parties.
- (1) A Protective Services agreement may be entered into as an outcome of an Initial Hearing as set out in § 3152 of this chapter. A Protective Services agreement will include a case plan for the child and family to follow. Entering into this agreement will suspend further proceedings in Court as the Family Services Department works with the family to complete the case plan.
  - (2) If at any time during the period of the Protective Services agreement Family Services determines the obligations imposed under the agreement are not being met, the Family Services worker may revoke the agreement and shall recommend to the Solicitor General's Office to proceed with child protection proceedings as if the agreement had never been entered into.
  - (3) The Protective Services agreement will remain in effect for up to six (6) months from the date signed, unless the child, parent, guardian, or custodian is discharged sooner. The Family Services Department may extend a protective supervision agreement once for six (6) additional months upon a motion to the Court.
  - (4) The Protective Services agreement shall include language regarding the requirement to have a status hearing two (2) weeks prior to its expiration.
  - (5) If upon the expiration of the Protective Services agreement, its express terms and conditions have not been fulfilled, the Solicitor General's Office shall continue forward with a Child in Need of Protection or Services petition as if the agreement had never been entered into.

- (6) The Solicitor General may file an amended petition if the circumstances have changed since the initial filing.
  
- (c) **Substantiated Report, Moderate or High Risk.** If the Family Services Worker finds that the allegations of the report are substantiated and the risk of harm to the child is moderate or high, the Family Services worker shall proceed with recommendations to the Solicitor General that a Child in Need of Protection or Services petition be filed in accordance with the provisions of this chapter.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

### **§ 3147. Notice of Removal.**

- (a) **Notice to the Court.** After a child is removed from her or his home, the Social Worker or Law Enforcement Officer who removed the child shall attempt to contact the Court within eight (8) business hours. The attempt to contact the Court shall be documented. Actual notice to the Court shall be made, by the removing person, no later than 12:00 p.m. the next Court working day.
  
- (b) **Notice to the Parent, Guardian or Custodian.** Family Services shall make all reasonable efforts to notify the parents, guardian or custodian within 12 hours of the Court's actual notice of the child's removal. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment, or other location where the parent, guardian or custodian is known to frequent with regularity. If the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 10.

Band Ordinance 31-17.

**§ 3148. Restrictions on Placement of Children.**

A child alleged to be neglected or abused shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders, but may be placed in the following locations:

- (a) A household of a relative of the child who is willing to guarantee to the Court that the child will not be returned to the alleged abusive or neglectful parent, guardian or custodian without the prior approval of the Court and who will be subject to necessary background and home safety checks;
- (b) A licensed foster home or a home otherwise authorized under the law to provide foster care, group-care, or serve as a protective residence;
- (c) A facility operated by a licensed child welfare services company; or
- (d) Any other suitable place, other than a facility for the care and rehabilitation of juvenile offenders to which children adjudicated as juvenile offenders may be confined, and that meets the standards for shelter-care facilities established by the department.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 11.

Band Ordinance 31-17.

**§ 3149. Active Efforts Required.**

The Court, before determining whether a child should be placed in or continue in foster care or be placed for adoption, shall make a determination as to whether active efforts, as defined in

subsection 3103(b), were made to prevent placement or whether active efforts to prevent placement are not required.

### Historical and Statutory Notes

**Source:**

Band Ordinance 31-17.

**§ 3150. Filing a Child in Need of Protection or Services (CHIPS) Petition.**

- (a) **Authorization to File Petition.** Formal child protection proceedings shall be instituted by a CHIPS petition filed by the Solicitor General on behalf of the Band and in the best interests of the child.
- (b) **Time Limitations.** If a child has been removed from the home or is subject to a Protective Services Agreement under § 3246(b) of this chapter, a CHIPS petition shall be filed with the Court no later than 72 hours following the removal.
- (c) **Contents of Petition.** The CHIPS petition shall set forth the following with specificity:
  - (1) The name, birth-date, sex, residence and tribal affiliation of the child;
  - (2) The basis for the Court's jurisdiction;
  - (3) The specific allegations that led to filing the petition;
  - (4) A plain and concise statement of the facts upon which the allegations of why the child in need of protection or services are based, including the date, time and location at which the alleged facts occurred;
  - (5) The names, residences and tribal affiliation of the child's parents, guardian or custodian, if known;
  - (6) The names, relationship and residence of all known members of the child's extended family and all former care givers, if known; and
  - (7) If the child is placed outside of the home, where the child is placed, the facts

necessitating the placement and the date and time of the placement.

- (8) Notice to family and extended family members on behalf of the child in placement.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 12.

Band Ordinance 31-17.

### **§ 3151. Court Hearings Required.**

- (a) **Initial Hearing.** An initial hearing in a CHIPS petition shall be held by the end of the second working day following the filing of a CHIPS petition.
- (b) **Admit/Deny Hearing.** A hearing shall be held within 30 days of the initial hearing. The purpose of the hearing is for the parents, guardian, or custodian to admit or deny the allegations contained in the petition and for the Court to reassess whether continuing Court intervention is necessary to protect the well-being of the child.
- (c) **Formal Trial on the Issues.** If the issues are not resolved at the initial hearing or admit/deny hearing, the Court will set a date for a formal trial on the allegations contained in the petition. The trial will be no later than 90 days after the filing of the CHIPS petition. Requests for pre-trial hearings may be granted at the Court's discretion.
- (d) **Review Hearings.** Review hearings shall be held in accordance with § 3158 of this chapter.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96.

Band Ordinance 31-17.

**§ 3152. Initial Hearing.**

- (a) **Purpose.** The purpose of the initial hearing is to determine whether the petition presents prima facie evidence that the Child is in Need of Protection Services.
- (b) **Advice of Rights.** During the hearing, the Court shall advise the parties of the reason for the hearing and of their basic rights as provided for in § 3153 of this chapter.
- (c) **Nature of Hearing.** The hearing shall be informal in nature. Concerned parties may present evidence or information relating to the situation. Hearsay evidence will not be excluded at this hearing as long as it is otherwise admissible. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, Family Services, the child's extended family and any other person as determined appropriate by the Court shall be admitted.
- (d) **Possible Outcomes of the Initial Hearing:**
  - (1) The CHIPS petition may be dismissed and the child returned to the home with no further intervention from the Band. Custody of the child in this case is returned to the parent or guardian.
  - (2) The Family Services Department may enter into a Protective Services agreement with the family as set out in § 3146 of this chapter. Custody of the child is returned to or remains with the parents or guardian.
  - (3) The child may be returned to the home of the parents, guardian or custodian under the supervision of the Court and another hearing held within 30 days. Custody of the child in this case remains with the Band until the Court determines otherwise.
  - (4) The child may continue in the child's out-of-home placement and an Admit/Deny hearing will be held. Custody of the child in this case remains with the Band until the Court determines otherwise.
- (e) **Notice of Initial Hearing.** The Court shall make all reasonable efforts to advise the parent, guardian or custodian of the time and place of the initial hearing as well as the contents of the petition. The Court shall request that the parent, guardian or custodian be present for the hearing. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment or other location where the person is known to frequent with regularity. If the Court is unable to contact the parent, guardian or custodian, notice shall be given to members of the extended

family of the child.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 13.

Band Ordinance 31-17.

### **§ 3153. Notification of Rights.**

All parties have a right to be represented by an advocate or attorney at their own expense in all proceedings under this chapter, to introduce evidence, to be heard on her or his own behalf, to examine witnesses, and to be informed of possible consequences if the allegations of the petition are found to be true. All parties shall be entitled to advance copies of Court documents as stated in § 3163 of this chapter.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 14.

Band Ordinance 31-17.

### **§ 3154. Admit/Deny Hearing.**

- (a) A second hearing will be held within 30 days following the initial hearing. The purpose of this hearing is for the Court to reassess whether continuing Court intervention is necessary to protect the well-being of the child.
- (b) The Admit/Deny Hearing shall be held according to paragraphs (b), (c), and (e) of § 3152 of this chapter.

- (c) If the parent fails to attend this hearing, parent's counsel may enter a denial on behalf of the parent and the Court may set a date for trial according to § 3155 of this chapter.

### Historical and Statutory Notes

#### Source:

Band Ordinance 01-96, § 15.

Band Ordinance 31-17.

#### § 3155. Notice of Formal Trial on the Issues.

- (a) **Summons.** The Court shall issue a summons to the parent, guardian or custodian and such other persons as appear to the Court to be proper or necessary parties to the proceedings. The summons shall require them to appear personally before the Court at the date and time set for the formal trial.
- (b) **Attachments to Summons.** A copy of the CHIPS petition shall be attached to each summons. The Court shall also attach a notice to the parent, guardian or custodian that advises them of their rights under § 3153 of this chapter.
- (c) **Personal Service.** If the parties to be served with a summons can be found within the territorial jurisdiction of the Mille Lacs Band, the summons, a copy of the CHIPS petition and the notice of rights shall be served personally upon them at least 20 calendar days before the formal trial on the issues.
- (d) **Mail Service.** If there is good cause that the parties cannot be personally served, and if their address is known, the summons, petition and notice of rights may be served by certified mail with a return receipt requested at least 20 business days before the formal trial.
- (e) **Notice to Extended Family.** If the Court cannot accomplish personal or mail service on the parent, guardian or custodian, the Court shall attempt to notify the parent, guardian, or custodian by contacting members of the extended family of the parent, guardian, custodian, and/or the extended family of the child.
- (f) **Service of Summons.** Service of summons may be made under the direction of the Court by any person 18 years of age or older who is not a party to the proceedings.

- (g) **Publication.** In a CHIPS case where it appears within the body of the petition or within an accompanying statement that the parent, guardian or custodian does not reside within the territorial jurisdiction of the Mille Lacs Band, or that their name, place of residence or whereabouts is unknown, as well as in all cases where after due personal service or service by certified mail has been unable to be effected, legal notice may be accomplished by publishing in Inaajimowin, Mille Lacs Band Website, or a newspaper of general circulation in the area where the party is most likely to be made aware of the notice. Publication must be in two (2) consecutive issues of the Inaajimowin (both in print and online), on the Mille Lacs Band website on a page of prominent display for three (3) consecutive weeks, or in a paper of general circulation at least once per week for three (3) consecutive weeks, or any combination thereof. Proof of publication must be provided to the Court Administrator. Proof of publication requires a signed certificate from the editor and/or publisher of the Inaajimowin, Mille Lacs Band website, or the general circulation newspaper. Such notice shall be directed to the parent, guardian or custodian if their names are known, or, if unknown the phrase “to whom it may concern” may be used and applied to and be binding upon any such person whose names are unknown. The name of the Court, the date of the filing of the petition, the date of the hearing, and the object of the proceeding in general terms shall be set forth. There shall be filed with the clerk an affidavit showing publication of the notice. The publication of the notice shall be paid by the Mille Lacs Band Tribal Court. The publication of the notice shall be deemed equivalent to personal service upon all persons known or unknown who have been designated as provided in this paragraph.
- (h) **Contempt Warning.** The summons issued by the Court shall conspicuously display the words:

NOTICE, VIOLATION OF THIS ORDER IS SUBJECT TO PROCEEDINGS FOR CONTEMPT OF COURT PURSUANT TO 24 MLBSA §1210. THE COURT MAY FIND THE PARENT, GUARDIAN OR CUSTODIAN IN CONTEMPT FOR FAILURE TO APPEAR AT A COURT HEARING OR FOR FAILURE TO FOLLOW COURT ORDERS.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 17.

Band Ordinance 31-17.

**§ 3156. Formal Trial on the Issues.**

- (a) **Time Limitation.** The formal trial on the issues will be set for no later than 90 days following the filing of the CHIPS petition. The Court may grant a continuance upon a showing of good cause.
- (b) **Admissibility.** No records, testimony, admissions, or stipulations made at either the initial hearing or the admit/deny hearing shall be admissible at the formal trial. This shall not be construed to prevent the admissibility of any evidence that was presented at these hearings that would be admissible under the Court's rules of evidence.
- (c) **Closed Hearing.** The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's family, and other persons determined to be appropriate by the Court shall be admitted.
- (d) **Advise of Rights.** At the beginning of the hearing, the Court shall advise the parties of the reason for the hearing and of their basic rights as provided for in § 3153 of this chapter.
- (e) **Child Witnesses.** If the Court determines that it is in the best interests of the child and does not violate the rights of a party, the Court may allow the child to testify by means of a videotape deposition, closed circuit television or other appropriate method. If the court does allow these methods to be utilized, the Court shall specifically set out the reasons for this determination on the record.
- (f) **Burden of Proof.** The burden of proof lies with the petitioner. The petitioner must prove that the allegations raised in the Child in Need of Protection or Services petition are more likely true than not, that is, by the preponderance of the evidence, and that the best interests of the child will be served by continued Court intervention.
- (g) **Outcome of Hearing.** At the end of the Formal Trial, the Court shall enter an order making one (1) of the following dispositions of the case:
  - (1) **Dismissal.** The Court may dismiss the CHIPS petition and the child returned to the home. Custody of the child in this case is returned to the parents.
  - (2) **Return to Home.** The Court may find the allegations of the CHIPS petition to be true, but that out of home placement is not needed to protect the child. The Court may, however, due to unresolved problems in the home require compliance with a written Social Service case plan. As part of the case plan, the Court shall stipulate the circumstances under which the matter shall be considered resolved. The Court may delegate the determination of completion of the case plan to the discretion of Family Services. Custody of the child remains with the Band until the case plan is satisfactorily completed. Once Family Services determines the plan is completed, the Solicitor General will

move the Court for dismissal and the Court shall dismiss the case.

- (3) **Temporary Continuance of Out-of-Home-Placement.** The Court may find the allegations of the CHIPS petition to be true and out-of-home placement necessary, but with the performance of specified actions by the parent, guardian, or custodian, the child may be returned absent good cause to the contrary. The order of the Court will specify actions, and the time frames for such actions that parents, guardians, or custodians must accomplish before the child is returned. The order will also specify the reasonable responsibilities of any support agency or personnel to be involved. The Court may delegate the determination of when the necessary actions have been completed to the discretion of Family Services. Custody of the child remains with the Band until the case plan is satisfactorily completed.
- (4) **Out-Of-Home Placement.** The Court may find the allegations of the CHIPS petition to be true and that out-of-home placement continues to be necessary and further that the child may not be returned to the home, absent specific order of this Court. The Court shall review and adopt, as modified by the Court, the case plan presented by Family Services after hearing from the parties. A copy of the case plan shall be attached to the Court's order and incorporated by reference. Once the case plan has been completed, the parties must return to Court for a final determination regarding the custody of the child. Custody of the child remains with the Band until the Court determines otherwise.
- (5) **Written Order.** The Court shall specify in writing the facts, grounds, and statutory sections upon which it relied to make its decisions.

### Historical and Statutory Notes

**Source:**

Band Ordinance 01-96, § 16.

Band Ordinance 31-17.

### § 3157. Default Judgment.

- (a) **When Appropriate.** If the parent, guardian or custodian fails to appear for the formal trial, the Court may find the parent, guardian or custodian in default, and enter a default order of CHIPS and order necessary intervention and appropriate steps the parent,

guardian or custodian must follow to correct the problem.

- (b) **Notice Determination.** Prior to finding a parent, guardian, or custodian in default, the Court must be satisfied actual notice has been given or that all reasonable steps have been taken to provide notice of the formal trial to the parent, guardian or custodian. The Court must also find that the petitioner can substantiate the presence of abuse or neglect through an offer of proof that demonstrates the relevancy of the evidence and the grounds for admissibility.
- (c) **Written Order.** If the parent, guardian or custodian is found in default, the Court shall specify the facts, grounds, and statutory provisions upon which it relied to make the decision.

### Historical and Statutory Notes

**Source:**

Band Ordinance 01-96, § 18.

Band Ordinance 31-17.

### § 3158. Review Hearings.

- (a) **Review Requirement.** The status of all children subject to a CHIPS order shall be reviewed by the Court at least every six (6) months at a hearing to determine whether Court supervision shall continue, except that the first review following a formal trial on the issues shall be held within 90 calendar days of the formal trial on the issues.
- (b) **Return to Home.** A child shall be returned home following a review hearing unless the Court finds that grounds for removal still exist. The Court may, however, due to unresolved problems in the home, continue Court intervention and supervision if appropriate.
- (c) **Written Order.** If continued court intervention is determined to be necessary, the Court shall set forth the following in a written order:
  - (1) What services have been provided or offered to the parent, guardian or custodian to help correct the underlying problem.
  - (2) The extent to which the parent, guardian or custodian has visited or contacted the child, or any reason why such visitation and/or contact has been infrequent

or has not otherwise occurred.

- (3) Whether the parent, guardian or custodian is cooperative with the Court and Family Services.
  - (4) Whether additional services that are reasonably able to be provided should be offered to the parent, guardian or custodian.
  - (5) Whether the parent, guardian or custodian should be required to participate in any additional programs to help correct the underlying problem.
  - (6) Whether Family Services has used active efforts to make it possible for the child to return home. Active efforts include providing services that are:
    - (i) relevant to the safety and protection of the child;
    - (ii) adequate to meet the needs of the child and family;
    - (iii) culturally appropriate;
    - (iv) available and accessible;
    - (v) consistent and timely; and
    - (vi) realistic under the circumstances.
- (d) **Determinations Required for Out-of-Home Placement.** If the Court does not return the child to her or his home, the Court must find:
- (1) that it is contrary to the welfare of the child to return to the child's home;
  - (2) that the child is placed in the least restrictive setting that most approximates a family in which her or his special needs, if any, may be met, and the child is placed within reasonable proximity to her or his home, taking into account any special needs of the child or the favorability of the placement for the child; and
  - (3) that it is in the best interest of the child to be placed under the care and control of the Band's Family Services department.

### Historical and Statutory Notes

Source:

Band Ordinance 01-96, § 19.

Band Ordinance 31-17.

Band Act 69-24.

**§ 3159. Concurrent Permanency Planning.**

- (a) The Commissioner of Health and Human Services shall establish a program for Concurrent Permanency Planning for Child Protection services.
- (b) Concurrent Permanency Planning involves a planning process for children who are placed out of the home of their parents pursuant to a Court order, or who have been voluntarily placed out of the home by the parents for 60 days or more. The Band Family Services department shall develop an alternative permanency plan while making active efforts for reunification of the child with the family. The goals of concurrent permanency planning are to:
  - (1) achieve early permanency for children;
  - (2) decrease children's length of stay in foster care and reduce the number of moves children experience in foster care; and
  - (3) develop a group of families who will work towards reunification and also serve as permanent families for children.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3160. Transfer of Custody.**

- (a) **Established.** The Court may transfer permanent legal and physical custody to a relative or other adult in the best interests of the child according to the following conditions:

- (1) an order for transfer of permanent legal and physical custody shall only be made after the Court has reviewed the suitability of the prospective legal and physical custodian;
- (2) a transfer of legal and physical custody includes responsibility for the protection, education, care, and control of the child and decision-making on behalf of the child;
- (3) a permanent legal and physical custodian may not return a child to the permanent care of a parent from whom the Court removed custody without the Court's approval and without notice to the responsible social services agency if any.

**(b) Custodian Eligibility Factors.**

- (1) Prospective Legal and Physical Custodians must be willing to submit to a background check as part of the petition. If the petition for Legal and Physical Custody does not arise from a Child in Need of Protection or Services case, the Court may require the prospective Custodian to pay a background check fee to Family Services to cover the cost of the background check.
- (2) Any person whose background reveals any convictions involving any of the crimes below shall not be granted custody:
  - (i) Homicide or Attempted Homicide;
  - (ii) Rape, sexual assault, molestation, or exploitation; or
  - (iii) Offenses committed against children (including child abuse).
- (3) Prospective Custodians who have any felony or two (2) or more of the following misdemeanor convictions within the last five (5) years may be subject to further scrutiny from the Court to determine the suitability of granting the petition:
  - (i) physical assault;
  - (ii) battery;
  - (iii) spousal abuse; or
  - (iv) drug-related offenses.

- (4) Any person with a diagnosed mental illness that will adversely affect the ability to carry out custodial duties will not be granted custody. The Court may ask for additional information regarding a person's mental health status if it has reason to believe the child's best interests could be adversely affected.
- (5) A person with a documented history of chemical dependency problems within the last ten (10) years may be required by the Court to submit to assessments such as a Rule 25 test, proof of attendance at AA meetings, or testimonies from reputable sources as to the prospective custodian's sobriety before custody can be granted.

(c) **Petition.**

- (1) Family Services may file a petition naming a fit and willing adult as a proposed permanent legal and physical custodian. The petition shall include a Custodian Report with the following information:
  - (i) A background check;
  - (ii) Housing status and condition of house of the proposed custodian, including Family Services personnel's own observations of cleanliness and safety;
  - (iii) A plan for custodian to continue providing care for the child following custodial placement;
  - (iv) Financial statement detailing the ability of the custodian to care for the child;
  - (v) Financial statement of the child (if any);
  - (vi) Any special services required for the care of the child;
  - (vii) References from community members such as neighbors and additional family members or friends; and
  - (viii) Family Services Staff member's own observations regarding the capabilities of the proposed custodian to care for the child.
- (2) Family Services must make the following determinations regarding permanency for the child prior to the transfer of custody:
  - (i) a determination that reunification and adoption are not appropriate permanency options for the child; and

- (ii) a determination that the child demonstrates a strong attachment to the prospective custodian and the prospective custodian has a strong commitment to caring permanently for the child.
- (3) Supporting information for completing each determination must be documented in the case file and available for review as requested.
- (d) **Court Oversight.** The Court may maintain jurisdiction over the responsible social services agency, the parents or guardian of the child, the child, and the custodian for purposes of ensuring appropriate services are delivered to the child and of ensuring conditions ordered by the Court related to the care and custody of the child are met.
- (e) **Transfer of Custody Procedures.**
  - (1) The petitioner, prospective Custodian, and child, if age 14 or older, shall appear personally at the hearing to establish custody unless excused by the Court for good cause shown.
  - (2) Before establishing custody, the Court must determine that the Petitioner has established by clear and convincing evidence that:
    - (i) the child's parents have consented to the Transfer of Custody;
    - (ii) there is not a parent available and willing to care for the child; or
    - (iii) if there is a parent available and willing to care for the child:
      - (A) the child meets the definition of a child in need of protection because of conduct by the parent;
      - (B) there is a substantial probability of future abuse or neglect if the child were returned to the parent; and
      - (C) the conditions are unlikely to improve within a reasonable period of time.
  - (3) If the child is 14 years of age or older, the child's wishes regarding the proposed Transfer of Custody shall be considered by the Court.
  - (4) If the Court is satisfied as to the suitability of the Transfer of Custody, it may enter an order granting custody under such terms or conditions that the Court finds appropriate.
  - (5) The term of the custody arrangement expires when the child reaches the age of 18 or the Transfer of Custody is terminated by order of the Court.

- (f) **Additional Transfer of Custody Provisions.** All Transfer of Custody proceedings shall follow the provisions of §§ 3213 (General Guardian Duties, Powers, and Limitations), 3214 (Management of Property), and 3215 (Annual Guardianship Report) of this chapter.

### Historical and Statutory Notes

**Source:**

Band Ordinance 31-17.

### § 3161. Permanency Hearing.

- (a) **Frequency.** A permanency hearing to review the permanency plan shall be held within 12 months of the date a child is considered to have entered out-of-home placement or within 30 days of a judicial determination that active efforts to reunify the child and family are not required due to aggravated circumstances. Aggravated circumstances include, but are not limited to abandonment, torture, chronic abuse, and sexual abuse. A review hearing to analyze the permanency plan shall be held at least once every 12 months thereafter while the child is in out-of-home placement.
- (b) **Purpose.** The purpose of the permanency hearing is to review the permanency plan for that child. If reunification is not the goal, within 12 months of the placement, a judicial determination must be made whether or not Family Services made active efforts to finalize the permanency plan that is in effect or an alternative permanency plan. Alternative permanency plans include reunification, adoption, cultural or customary adoption, transfer of legal custody or Permanent Guardianship, placement with a fit and willing relative or placement in another planned permanent living arrangement.

### Historical and Statutory Notes

**Source:**

Band Ordinance 31-17.

### § 3162. Waiver of Timelines.

- (a) Timelines established in this chapter may be waived by mutual consent in writing of Petitioner and parent, guardian or custodian subject to the petition.
- (b) An extension of timelines may be granted by the Court provided that circumstances exist to justify an extension.

### Historical and Statutory Notes

#### Source:

Band Ordinance 31-17.

### § 3163. Family Services Report.

- (a) **Requirement of a Family Services Report.** To aid the Court in its decision, a Family Services report consisting of a written evaluation of matters relevant to the disposition of the case shall be made by the person or agencies filing the petition.
- (b) **Contents of a Family Services Report.** The Family Services report shall include the following points, and be made available to the Court, and the parties as deemed appropriate by the Court, at least three (3) business days prior to a CHIPS review hearing:
  - (1) A summary of the problem.
  - (2) What steps, if any, have the parent, guardian, custodian or Family Services personnel already taken to correct the problem.
  - (3) What services could benefit the parent, guardian, or custodian, but are not available in the community.
  - (4) A report on how the child is doing in her or his current placement since the last hearing. If there have been any moves, the report will contain the reason for such moves.
  - (5) Dates of contacts with parent, guardian or custodian and the child since the first hearing was held, method of contact, duration, and subjects discussed.

- (6) If there have been no contacts with the parent, guardian, or custodian by the social worker, what efforts have been made to contact such parties.
- (7) An assessment of when the child is expected to return home.
- (8) A list of who the extended family members are and a list of contacts or attempts to contact such family members regarding placement of the child. Family Services shall demonstrate continued efforts to update the list of extended family members at least for each Review Hearing or more frequently as ordered by the Court.
- (9) Documentation of how Family Services has performed Active Efforts as set out in § 3149 of this chapter;
- (10) Family Services personnel shall develop a case plan and shall make recommendations for the next six (6) months. Such recommendations will include:
  - (i) A treatment plan for the parents, guardian or custodian.
  - (ii) Future placement of the child.
  - (iii) What services should be provided for the child, if services are needed.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 20.

Band Ordinance 31-17.

### **§ 3164. Family Testimony or Report.**

The members of the child's family and extended family may submit reports, documents, or provide oral testimony regarding their position and to aid in the Court's decision at any stage in the proceedings.

## Historical and Statutory Notes

### Source:

Band Ordinance 31-17.

### § 3165. Placement Preferences.

- (a) **Least Restrictive Setting.** If a child cannot be returned home, the child shall be placed in the least restrictive setting that most approximates a family in which her or his special needs, if any, may be met. The child shall also be placed within reasonable proximity to her or his home, taking into account the favorability of the placement and/or any special needs of the child. The placement restrictions set forth in § 3148 of this chapter shall be followed.
- (b) **Order of Preferences.** Whenever appropriate, a child shall be placed in a home with the following characteristics, which shall be given preference in the following order:
  - (1) The child's non-offending parent. whether Indian or non-Indian.
  - (2) Members of the extended family including Niiya'wenh'enh' whether Indian or non-Indian. The agency overseeing placement of the child should look first at family members who have had a connection to the child or any family members who have requested the child be placed with them before moving on to other family members or the other placement options listed in subsection (b).
  - (3) An Indian family of the same Band as the child.
  - (4) An Indian family.
  - (5) Foster Homes with specialized training to address the specific medical or emotional needs of the child.
  - (6) A non-Indian family who has agreed to maintain the child's connection to her or his culture.
- (c) **Following the Order of Preferences.** Family Services shall work to find an appropriate placement to meet the specific needs of the child in each category before moving on to the next and shall document each attempt to find a placement within

each category. Family Services shall consult with a panel of elders, who actively follow and practice Band spirituality. In all categories, Family Services shall work to place sibling groups together wherever possible.

- (d) **Non-Indian Family Placements.** Subsection (b)(6) of this section is not meant to be a permanent placement option. If a child is placed in a foster home under subsection (b)(6), Family Services shall continue to look for alternative placement options within the child's family, Band, or with another Indian family on an ongoing basis. Any placement under subsection (b)(6) shall be reviewed by the Court no later than six (6) months after placement to assess whether an alternative placement has been found.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 21.

Band Ordinance 31-17.

### **§ 3166. Case Plan.**

- (a) The case plan must be designed to achieve placement in the most family-like setting possible, and in accordance with the Band's placement preferences, and consistent with the child's best interests and special needs.
- (b) The case plan shall be a written document that is a distinct part of the child's case record. The case plan must be developed no later than 60 calendar days from the time the Band assumes responsibility for the placement and care of the child.
- (c) The case plan shall be developed jointly with the parent, guardian, or custodian of the child, and the child's guardian ad litem if he or she has one, and shall include the following:
  - (1) A description of the foster home or residential setting where the child is to be placed, and an explanation of why that placement is appropriate;
  - (2) An explanation of the efforts that were offered and made to prevent the need for removal of the child from her or his home;
  - (3) A description of the care and services the child will receive in the foster home, both to meet the needs of the child while in foster care, and to document what

steps have been made toward achieving the permanent goal;

- (4) A description of the services the child and her or his parents will receive with the objective of allowing the child to return home;
- (5) A discussion of why the care and services provided to the child under the plan are appropriate;
- (6) A description, when the child reaches the age of 16, of the programs and services that will help the child to prepare for the transition from foster care to independent living; and
- (7) Include, to the extent available, the health and education records of the child, which include:
  - (i) the names and addresses of the child's health and education providers;
  - (ii) their grade level performance;
  - (iii) their school record;
  - (iv) assurances that the child placement in foster care takes in to account the proximity to the school in which the child is enrolled at the time of placement;
  - (v) a record of immunizations;
  - (vi) any known medical problems;
  - (vii) any medications;
  - (viii) any other relevant health and education information determined to be appropriate by the Band.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3167. Change in Placement or Visitation.**

If at any time during a CHIPS proceeding, there is a change in the Child's placement or a substantial change to the child's visitation plan (for example, a change from unsupervised to supervised visits), Family Services must notify the parties within 24 hours and provide the reason for the change.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3168. Emergency Placement Report and Hearing.**

- (a) **Report.** In the event of a report and investigation requiring a child to be placed out-of-home for a second time in the course of an open CHIPS proceeding either after a trial home visit, protective supervision, or reunification for a time, Family Services shall file a supplementary Court report to notify the Court, Solicitor General and parties which child was removed and when. This report should include a narrative of why the child was removed and where he or she was placed, unless the safety of the child requires that information to be withheld.
- (b) **Hearing.** The Court will schedule a hearing specifically on the topic of the removal within 72 hours.
  - (1) If the parties agree with the circumstances that initiated the removal or fail to appear to object to the placement, the Court will order the placement and indicate whether there is need for a revised case plan.
  - (2) If the parties disagree with the circumstances that initiated the removal, the Court will set an evidentiary hearing to be held within ten (10) calendar days of the Revised Placement Hearing.

**Historical and Statutory Notes**

**Source:**

## **SUBCHAPTER 4**

### **FOSTER HOME LICENSING PROCEDURES**

#### **Section**

- 3171. Inspection and Licensing Procedures.**
- 3172. Foster Home Requirements.**
- 3173. The Foster Family.**
- 3174. Renewal and Revocation.**
- 3175. Appealing a License Denial or Revocation.**
- 3176. General Care for Foster Children.**
- 3177. Recruiting and Training.**

#### **§ 3171. Inspection and Licensing Procedures.**

- (a) The Mille Lacs Band Family Services department shall select one (1) or more persons as the Foster Home Licensor. The Foster Home Licensor shall examine homes of Band members and others who seek to foster Band children. The Foster Home Licensor shall submit a recommendation to the Band Assembly, who shall act upon said recommendation within 30 calendar days of receipt.
- (b) Family Services shall develop a policy for determining the maximum number of children to be placed in a licensed foster home at any given time. The policy will take into account such factors as space, help available, and family/sibling groups.
- (c) Any license issued by the Band shall apply only to the residence where the family is living at the time an application for a license is made, and a permanent change of residence automatically requires a new licensing home study and procedure. The foster care parents are required to notify the Foster Home Licensor whenever a change of residence is contemplated.
- (d) The foster care parents must also notify the Foster Home Licensor whenever a change in the household occurs. Examples of a change in the household include, but are not limited to:

- (1) if one (1) of the foster care parents is arrested for or convicted of a felony or gross misdemeanor crime. Such arrest or conviction shall result in an immediate suspension of the license and removal of all foster children from the home.
  - (2) if one (1) of the foster parents moves out of the residence, or if any other person moves into the residence, the Foster Home Licensor must be informed within 72 hours. A foster home may not have adults dwell in the residence without a prior background check. Failure to timely notify the Foster Home Licensor of a change in circumstance may result in the suspension of the license.
- (e) The Commissioner of Health and Human Services has the authority to extend reciprocity to Foster Homes licensed by other Foster Home Licensing Agencies.
  - (f) The provisions of this Chapter, as well as the Placement Preferences in § 3165 of this chapter, shall be enforceable from the date of passage forward. Any Foster Homes licensed or placements before the date these provisions are passed may continue until the children are no longer placed with them.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 24.01.

Band Ordinance 36-03, § 1.

Band Ordinance 31-17.

### **§ 3172. Foster Home Requirements.**

- (a) **Physical Structure.** The home shall be constructed, arranged and maintained so as to provide for the health and safety of all occupants. The Foster Home Licensor may, upon 24 hours' notice, inspect a foster care dwelling at any time. The Foster Home shall be free from fire and structural hazards as well as unvented gas or oil heaters. Fireplaces, space heaters, steam radiators, and hot surfaces, such as steam pipes, shall be shielded against accidental contact. Every closet door latch shall be able to be opened from the inside. All bathroom door locks shall be designed to permit the opening of the locked door from the outside in an emergency.

- (b) **Housekeeping.** Heating, ventilation, and light shall be sufficient to provide a comfortable, airy atmosphere. Furnishing and housekeeping shall be adequate to protect the health and comfort of the foster child.
- (c) **Food Preparation and Storage.** Foster Homes must have a safe and accessible water and milk supply. Food and cooking utensils shall be stored to protect from dust, vermin, leaking pipes or other contamination. Food needing refrigeration shall be stored at a temperature that will prevent spoilage and bacterial growth. Appliances regularly used in food storage and preparation shall be safe and in good working order.
- (d) **Hazardous Materials.** All medicines, chemicals, cleaning supplies, and other toxic substances shall be stored out of reach of children. They must not be stored with or immediately beside food products. The use of potentially hazardous materials or tools by a foster child shall be supervised.
- (e) **Sleeping Arrangements.** Comfortable beds shall be provided for all members of the family. Sleeping rooms must provide adequate opportunities for rest. Sleeping spaces must be consistent with the needs for privacy of the individual foster child and adequate space for personal belongings must be provided. All sleeping rooms must have a window of a type that may be opened readily and may be used for evacuation in the event of an emergency. Separate sleeping areas must be provided for children over age six (6) who are of the opposite sex. Children, other than infants and/or during times of emergencies such as illness, shall not share sleeping quarters with adults in the household. Exceptions that take into account special cultural traditions and/or the needs of large sibling group placements may be made when such exceptions are not to the detriment of the child.
- (f) **Play Areas.** Play space shall be available and free from hazards that might be dangerous to the life or health of the child. The Foster Home Licensor may also require outdoor play space be enclosed if necessary for safety.
- (g) **Smoke Free Environment.** All foster homes licensed by the Mille Lacs Band of Ojibwe shall be smoke free. Foster parents or others living in the home may smoke outside only and at a distance of ten (10) feet from any entrances or windows to the home. Ceremonial tobacco and the use of cedar, sage or sweet grass for purifying are exempt from this requirement.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 24.02.

**§ 3173. The Foster Family.**

- (a) **Health.** All members of the household must be in such physical and mental health as will not adversely affect either the health of the child or the quality and manner of the child's care. If necessary, the Foster Home Licensor may request that the prospective foster parents' health shall be assessed through a physical examination administered and signed by a licensed physician, stating the family is in good health and free from any physical or mental illness that might be detrimental to a foster child. Physical handicaps of the foster parents shall be a consideration only as it affects their ability to provide adequate care to foster children or may affect an individual child's adjustment to the foster family. Cases shall be evaluated on an individual basis with the assistance of a medical consultant when needed.
  
- (b) **Character.** Members of the foster family or household shall be of good character and habits. Good character is exhibited by qualities such as maturity, stability, flexibility, ability to cope with stress, capacity to give and receive love, and strong moral values.
  - (1) Every member of the household 13 years and older must submit to a fingerprint based background check of national crime information databases.
  - (2) Any person whose background reveals any convictions involving any of the crimes below shall not be granted a Foster Home License:
    - (i) crimes of violence (including homicide);
    - (ii) rape, sexual assault, molestation, or exploitation; or
    - (iii) offenses committed against children (including child abuse).
  - (3) Household members may not have any felony or two (2) or more misdemeanor convictions within the last five (5) years for:
    - (i) physical assault;
    - (ii) battery;
    - (iii) spousal abuse; or
    - (iv) drug-related offenses.

- (4) Exceptions concerning non-sexual felony or misdemeanor convictions may be made given adequate information is provided indicating that a change of character has occurred.
- (5) There can be no chemical dependency problems within the household. If there have been previous issues, the chemically dependent person must present documentation that he or she has been chemically free for at least 12 months. All household members age 13 and older will be asked to complete a UA upon initial license or re-license and will be subject to random UA checks thereafter or UA checks requested based on a suspicion of drug use.
- (c) **Community.** The person in charge of the foster home shall be of suitable temperament to care for the children, shall understand the special needs of the child as an Indian person and shall be capable of bringing the child up as an Indian person who is well-adjusted and able to get along both within the tribal community and in the non-Indian community as well. Prospective foster parents shall provide four (4) references to the Foster Home Licensor for additional information regarding the prospective foster parent's character and role in the community.
- (d) **Parenting Abilities.** Foster parent's motivation for application should be examined, as well as attitudes of significant members of the extended family regarding child placement. Foster parents should have the capacity to provide for the foster child's needs while giving proper consideration to their own children and should have a realistic assessment of the positive and negative aspects of foster parenthood, including acceptance of the temporary nature of foster care.
- (e) **Age.** At least one (1) foster parent must be at least 21 years old (unless a member of the child's extended family), but there is no upper age level provided the foster parent has the physical and emotional stamina to deal with the care and guardianship of a foster child. The foster parent must be willing, when necessary, to cooperate with the biological parents and must be willing to help the family re-establish necessary family ties.
- (f) **Family Composition.** A foster home does not necessarily have to have both a male and a female foster parent. The Foster Home Licensor may, at her or his discretion, certify a foster home with a single foster parent or same sex partners who wish to be foster parents, provided that each foster parent displays the outstanding qualities necessary to raise a foster child. Without specific approval by the Band Assembly, a foster home shall not be licensed whenever any member of the family is mentally ill or on convalescent status from a mental hospital or is on parole or probation or an inmate of a penal or correctional institution.
- (g) **Income.** The foster parent must have an income sufficient to care for all individuals in the foster home. The Foster Home Licensor may take into account any eligible foster care stipend when determining the financial ability of the foster care parents.

- (h) **Young Children.** Any time a pre-school foster child is placed in a foster home there must be at least one (1) foster parent in full-time attendance. For school age children, the foster parent must show the arrangements that will be made for those periods of time when both foster parents are employed. Infants and young children shall never be left alone without competent supervision.
- (i) **Standards.** The standards Foster Home Licensor shall use in judging the above criteria shall be those of the Mille Lacs Band Indian community.
- (j) **Authorization.** The Foster Home Licensor is authorized to make a complete investigation to determine the adequacy of the foster care home. The Foster Home Licensor shall be authorized to examine not only the potential foster home parents, but also any other person who is familiar with the applicants and is familiar with the type of care they provide to the children.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96.

Band Ordinance 31-17.

### **§ 3174. Renewal and Revocation.**

A foster home license must be renewed every two (2) years. When reviewing for renewal, if any circumstances have changed that endangers the foster children, the Foster Home Licensor shall not renew the license and immediately place the foster children in another foster placement. The Foster Home Licensor also has the discretion to remove children from a particular foster home, and revocation of the foster home license remains at the discretion of the Band Family Services department.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3175. Appealing a License Denial or Revocation.**

- (a) If a Foster Home License is denied or revoked, the prospective foster family may appeal the decision by requesting a review from the Mille Lacs Band Commissioner of Health and Human Services.
  - (1) If the Mille Lacs Band Commissioner of Health and Human Services finds reason to believe the family is fit to be a foster home, he or she may issue a waiver of the denial or revocation, stating the reasons for issuing a license.
  - (2) Such waiver shall be submitted to the Band Assembly for a vote. The Band Assembly may seek particular input on the recommendation from the prospective foster family's District Representative.
  - (3) If the Band Assembly upholds the denial, that decision shall be final.
- (b) Denial of a Foster Care License due to failure to comply with Federal background standards is not appealable.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 24.03.

Band Ordinance 31-17.

**§ 3176. General Care for Foster Children.**

- (a) **Daily Routine.** The daily routine of a foster child shall be such as to promote good health, rest and play habits. Specific age-appropriate agency guidelines shall be given to each foster family to follow.
- (b) **Medical Care.** Medical care for a child in foster care is the responsibility of the Band Family Services Department. Only the Band Family Services Department may consent to medical treatment for the child. However, the responsibility for a child's

day-to-day health needs rests with the foster parents. In case of sickness or accident to a child, immediate notice shall be given to the Foster Home Licensor and Social Worker assigned to the family. No foster child shall be given prescription medicine not specifically prescribed for him. Any prescribed medicine must be given by an adult and exactly in the manner prescribed.

- (c) **Discipline.** The foster care parents shall not subject the child to verbal abuse, derogatory remarks directed at the child, the child's natural parents or relatives, or to threats to expel the child from the foster home. No child shall be deprived of meals, mail or family visits as a method of discipline. When discipline or consequences must be administered, it shall be done with understanding and reason. The method of discipline will be that which is accepted by the people of the Mille Lacs Band community.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 24.04.

Band Ordinance 31-17.

### **§ 3177. Recruiting and Training.**

- (a) Family Services has an ongoing obligation to recruit new foster families for licensing and to support and provide training for those interested in becoming foster parents to meet the licensing requirements.
- (b) Family Services shall provide training, or facilitate opportunities for training elsewhere, for foster parent or prospective foster parent in order to provide specialized care for children with special medical or emotional needs.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

## **SUBCHAPTER 5**

### **GUARDIANSHIPS**

#### **Part**

**A. Guardianship of Children**

**B. Guardianship of Adults**

#### **Section**

**3201**

**3221**

## PART A

### GUARDIANSHIP OF CHILDREN

#### Section

- 3201. Purpose.
- 3202. Nominating or Appointing a Guardian.
- 3203. Types of Guardianship.
- 3204. General Guardianship.
- 3205. Emergency Guardianship.
- 3206. Best Interest Factors.
- 3207. Who May File Guardianship Petition.
- 3208. Guardian Eligibility Factors.
- 3209. Contents of Guardianship Petition.
- 3210. Guardianship Report.
- 3211. Guardianship Procedures.
- 3212. Guardianship Order.
- 3213. General Guardian Duties, Powers, and Limitations.
- 3214. Emergency Guardian Duties.
- 3215. Management of Property.
- 3216. Annual Guardianship Report.
- 3217. Motions to Modify Guardianship Orders.
- 3218. Motions to Revoke Guardianship.
- 3219. Motions to Remove Guardian.
- 3220. Motions to Terminate Guardianship.

#### § 3201. Purpose.

The purpose of a Guardianship is to provide a child with long term stability. In the event of a Guardianship petition arising from a voluntary placement agreement or Court order, when it appears that reunification with the child's parents is not possible, the Court may appoint a Guardian for the person and/or property of a child under the Court's jurisdiction.

#### Historical and Statutory Notes

Source:

Band Ordinance 01-96.

Band Ordinance 31-17.

**§ 3202. Nominating or Appointing a Guardian.**

The appointment of a Guardian may be made on the petition of a relative or other person on behalf of the child, or a petition of the child if the child is at least 14 years of age. Before making such appointment, the Court must cause such notice as the Court deems reasonable to be given to any person having the care of the child, and to such other relatives of the child as the Court may deem proper. If the Guardianship petition arises from a Child Protection case, notice shall be given to all parties involved in the Child Protection case.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.01.

Band Ordinance 31-17.

**§ 3203. Types of Guardianship.**

The types of guardianship shall include General Guardianship and Emergency Guardianship.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.02.

Band Ordinance 31-17.

### **§ 3204. General Guardianship.**

The Court may appoint a guardian for the child upon a finding of clear and convincing evidence that the guardianship is necessary for the care of the child and under such terms and conditions as the Court sets forth in the written order. A guardianship provides for permanent custody of a child to someone other than the parent, although there may be no termination of the parental rights of the parents. A guardianship shall also include the management of the child's property, if he or she has any, according to § 3215 of this chapter. The parent and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.

### **Historical and Statutory Notes**

#### **Source:**

Band Ordinance 01-96, § 25.04.

Band Ordinance 31-17.

### **§ 3205. Emergency Guardianship.**

- (a) The Court may appoint an emergency guardian under such terms and conditions as the Court sets forth in the written order. An emergency guardianship shall be in effect no longer than 180 days at which point the Court must review its status. Upon review, the emergency guardianship may be terminated if the Court determines that it is in the best interests of the child to return the child to the parent, guardian or custodian, or be changed to general guardianship status pending the procedures set forth in this subchapter. During the emergency guardianship, the parent and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the Court.
- (b) An emergency guardianship may be granted through an ex parte motion for guardianship only when it is established by clear and convincing evidence that immediate and irreparable injury, loss, or damage will result to the child before the adverse party or that party's attorney can be heard in opposition. In any application for ex parte relief, the Court may require a demonstration or explanation of the efforts made to notify affected parties, or the reasons why such efforts were not made. The reasons supporting ex parte relief should be recited in the order.

## Historical and Statutory Notes

### Source:

Band Ordinance 01-96, § 25.05.

Band Ordinance 31-17.

### § 3206. Best Interest Factors.

**Best Interests of the Child** is defined as a variety of factors including:

- (a) the ability of the Band and community to provide for the care of the child;
- (b) the wishes of the Band, parents, party or parties;
- (c) the preference of the child if the child is 14 years of age or older and can express a preference;
- (d) the intimacy of the relationship between the parties and the child demonstrating a strong attachment of the child to the prospective guardian and a strong commitment of the prospective guardian to care for the child;
- (e) the child's adjustment to home, school and community;
- (f) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (g) the permanence, as a family unit, of the existing or proposed guardian's home;
- (h) the mental and physical health of all individuals involved;
- (i) the capacity and disposition of the parties to give the child love, affection, guidance and to continue educating the child in the child's culture and heritage.

## Historical and Statutory Notes

**Source:**

Band Ordinance 31-17.

**§ 3207. Who May File Guardianship Petition.**

A guardianship petition under this Section shall be initiated by:

- (a) a petition of any person on behalf of the child;
- (b) a petition of the child her or himself if he or she is 14 years of age or older; or
- (c) the prospective guardian.

## Historical and Statutory Notes

**Source:**

Band Ordinance 01-96, § 25.06.

Band Ordinance 31-17.

**§ 3208. Guardian Eligibility Factors.**

- (a) Petitioners for guardianship must be willing to submit to a background check as part of their petition. If the petition for Guardianship does not arise from a Child in Need of Protection or Services case, the Court may require the petitioner to pay a background check fee to Family Services to cover the cost of the background check.
- (b) Any person whose background reveals any convictions involving any of the crimes below shall not be granted guardianship:

- (1) homicide or attempted homicide;
  - (2) rape, sexual assault, molestation, or exploitation; or
  - (3) offenses committed against children (including child abuse).
- (c) Petitioners who have any felony or two (2) or more misdemeanor convictions within the last five (5) years for the following may be subject to further inquiry from the Court to determine the suitability of granting the guardianship:
- (1) physical assault;
  - (2) battery;
  - (3) spousal abuse; or
  - (4) drug-related offenses.
- (d) Any person with a diagnosed mental illness that will adversely affect the ability to carry out guardian duties will not be granted guardianship. The Court may ask for additional information regarding a person's mental health status if it has reason to believe the child's best interests could be adversely affected.
- (e) A person with a documented history of chemical dependency problems within the last ten (10) years may be required by the Court to submit to assessments such as a rule 25 test, proof of attendance at AA meetings, or testimonies from other Band members as to the prospective guardian's sobriety before the guardianship can be granted.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

### **§ 3209. Contents of Guardianship Petition.**

- (a) The petition for guardianship shall include the following, to the best information and belief of the petitioner:
  - (1) The full name, address and tribal affiliation (if any) of the petitioner;

- (2) The full name, sex, date and place of birth, residence and tribal affiliation of the child;
  - (3) The basis for the Court's jurisdiction;
  - (4) The relationship of the proposed guardian to the child;
  - (5) The name and address of the person or agency having legal or temporary custody of the child;
  - (6) The type of guardianship requested;
  - (7) A full description and statement of value of all property owned, possessed, or in which the child has an interest (if any);
  - (8) A brief statement as to the motivation for becoming a guardian; and
  - (9) The name of any potential successor guardians proposed. Potential successor Guardians must be willing to submit to a background check at the time of the original petition and are subject to the same eligibility factors found in § 3208 of this chapter. Successor Guardians are also subject to the same placement preference order set out in § 3165 of this chapter.
- (b) All petitions must be signed and dated by the petitioners, and must be notarized or witnessed by a clerk of the Court.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.07.

Band Ordinance 31-17.

### **§ 3210. Guardianship Report.**

- (a) Upon the filing of a guardianship petition, the Court shall immediately request that the Family Services Department or other qualified agency conduct a guardianship

report on the proposed guardian and assess the best interests of the child. The guardianship report shall contain:

- (1) A background check and UA on all household members age 13 years and older;
  - (2) Housing status and condition of house of the proposed guardian, including the Family Services personnel's own observations of cleanliness and safety;
  - (3) A plan of care for the child to be developed by the Family Services worker and proposed guardian;
  - (4) Financial statement of the guardian;
  - (5) Financial statement of the child (if any);
  - (6) Any special services required for the care of the child;
  - (7) References from community members such as neighbors and additional family members or friends; and
  - (8) The Family Services Staff member's own observations regarding the capabilities of the proposed guardian to care for the child.
- (b) No final determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the Court. The guardianship report shall be submitted to the Court at least ten (10) calendar days before the guardianship hearing. The Court may order additional reports as it deems necessary.

## Historical and Statutory Notes

### Source:

Band Ordinance 01-96, § 25.08.

Band Ordinance 31-17.

### § 3211. Guardianship Procedures.

- (a) The petitioner and child, if age 14 or older, shall appear personally at the hearing to establish the guardianship unless excused by the Court for good cause shown.
- (b) Before conferring a guardianship, the Petitioner must establish and the Court must determine that clear and convincing evidence supports a finding that:
  - (1) the child's parents have consented to the guardianship via a voluntary placement agreement;
  - (2) there is not a parent available and willing to care for the child; or
  - (3) if there is a parent available and willing to care for the child:
    - (i) the child meets the definition of a child in need of protection because of conduct by the parent; or
    - (ii) there is a substantial probability of future abuse or neglect if the child were returned to the parent, and the conditions are unlikely to improve within a reasonable period of time, or there has been a determination that adoption or reunification are not appropriate permanency options for the child.
- (c) If the child is 14 years of age or older, the child shall be consulted regarding the proposed guardianship by the Court.
- (d) If the Court is satisfied as to the suitability of the guardianship, it may:

- (1) enter an order granting a general guardianship under such terms or conditions that the Court finds appropriate;
  - (2) enter an order granting an emergency guardianship for a stated period under such terms or conditions that the Court finds appropriate;
- (e) The term of a general guardianship expires when the child reaches the age of 18 or the guardianship is terminated by order of the Court.

## Historical and Statutory Notes

### Source:

Band Ordinance 01-96, § 25.09.

Band Ordinance 31-17.

### § 3212. Guardianship Order.

An order establishing guardianship of a child shall include a specific statement establishing who has custody of the child, a time-frame (if emergency guardianship) and the specific circumstances in which a parent may petition the Court for review of custody (if any). Before issuing the order, the Court must ensure that the prospective guardian understands her or his duties and powers as set out in § 3213 of this chapter along with any other information the Court finds pertinent.

## Historical and Statutory Notes

### Source:

Band Ordinance 31-17.

### § 3213. General Guardian Duties, Powers, and Limitations.

- (a) **Traditional Ways and Cultural Ties.** Any appointment under this section shall encourage and arrange for a child to maintain cultural ties with the Band, to be informed of the tradition and customs of the Band, to attend powwows and ceremonies, and to have the opportunity to learn her or his native language.
- (b) **Duties.**
  - (1) A Guardian appointed by the Court shall:

- (i) Use the degree of care, diligence, and good faith when acting on behalf of the child that an ordinarily prudent person exercises in her or his own affairs;
  - (ii) Advocate for the child's best interests;
  - (iii) Demonstrate the utmost degree of trustworthiness, loyalty, and fidelity in relation to the child; and
  - (iv) Maintain a fiduciary duty when dealing with the child's finances. A fiduciary duty requires that the Guardian consider the child's interests over her or his own.
- (2) A Guardian must also:
- (i) Notify the Court of any change in address of the guardian or child;
  - (ii) Make medical, dental and psychiatric care decisions;
  - (iii) Make decisions related to education;
  - (iv) Make decisions related to mobility and travel;
  - (v) Give consent to military service where appropriate;
  - (vi) Consent/refuse visitation by relatives, subject to limitations set out in the Court order.
- (c) **Powers.** A Guardian appointed by the Court may be bestowed with the following powers:
- (1) The ability to manage the child's estate, while maintaining the fiduciary duty set forth in subsection (b) above.
  - (2) The ability to seek child support according to the policies and procedures set forth in Chapter 12 of this Title.
- (d) **Limitations.** When a guardian has been appointed by the Court for a child, the Court may grant legal custody and care of the child and management of her or his property until such child arrives at the age of 18, marries, is emancipated by a court of proper authority, or until the guardian is legally discharged; provided, however, that said guardian shall not have the authority without express written consent of the Court to dispose of any real or personal property of the child in any manner. The guardian is also prohibited from using coercion, threats or manipulation to access the child's funds upon the child reaching the age of 18. The disposal of the child's real or personal property in any way shall subject said person to contempt of court and/or to civil penalties or remedies, including restitution provided by the Court.

## Historical and Statutory Notes

### Source:

Band Ordinance 31-17.

### § 3214. Emergency Guardian Duties.

- (a) **Traditional Ways and Cultural Ties.** Any appointment under this section shall encourage and arrange for a child to maintain cultural ties with the Band, to be informed of the tradition and customs of the Band, to attend powwows and ceremonies, and to have the opportunity to learn her or his native language.
- (b) **Duties.**
  - (1) A Guardian appointed by the Court shall:
    - (i) Use the degree of care, diligence, and good faith when acting on behalf of the child that an ordinarily prudent person exercises in her or his own affairs;
    - (ii) Advocate for the child's best interests;
    - (iii) Demonstrate the utmost degree of trustworthiness, loyalty, and fidelity in relation to the child; and
    - (iv) Maintain a fiduciary duty when dealing with the child's finances. A fiduciary duty requires that the Guardian consider the child's interests over her or his own.
  - (2) A Guardian must also:
    - (i) Notify the Court of any change in address of the guardian or child;
    - (ii) Make medical, dental and psychiatric care decisions;
    - (iii) Make decisions related to education;
    - (iv) Make decisions related to mobility and travel;

- (v) Give consent to military service where appropriate;
- (vi) Consent/refuse visitation by relatives, subject to limitations set out in the Court order.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3215. Management of Property.**

- (a) Within 45 calendar days after the appointment of a general guardian, the guardian shall prepare and submit to the Court an inventory and appraisal of the Child's belongings and estate.
- (b) The appraisal shall be made by a disinterested person who shall certify under oath to their appraisal and may receive reasonable compensation for their services.
- (c) No appraisal shall be required of items of obvious, readily ascertainable value, e.g., bank account assets, or where the value of the estate is reasonably believed by the guardian to be less than \$1,000.00. If no appraisal is required, the guardian shall certify under oath to the obvious or estimated value of the assets not appraised.
- (d) A copy of the appraisal will be sent by the Court Administrator to the Office of Management & Budget for record keeping. OMB is charged with the joint responsibility to assure that none of the child's Trust account is spent by the Guardian without prior permission by the Court per § 3213 of this chapter.
- (e) In the event of a Guardian petitioning the Court for permission to dispose of the child's property, the Guardian must demonstrate that the need was an unforeseen emergency and would be used for the health, education, or general welfare of the child. The Court shall review the petition and, if approved, provide an order allowing the Guardian to apply to the Band Assembly for a Hardship Loan. The Guardian must receive approval from Band Assembly before access to the child's funds may be granted.

- (f) Nothing in this section shall preclude a child from inheriting from her or his biological family members. In the event of the child inheriting after the Guardianship has been established, the Guardian has 30 calendar days to submit a revised appraisal to the Court.
- (g) In the event of the child's death, any physical and/or monetary property belonging to the child shall be distributed to the child's heirs.

### **Historical and Statutory Notes**

#### **Source:**

Band Ordinance 01-96, § 25.10.

Band Ordinance 31-17.

#### **§ 3216. Annual Guardianship Report.**

General Guardians shall file an annual report on or about the anniversary of the guardianship or at such a time as is ordered by the Court. The purpose of said report is to update the Court on the status of the guardianship and well-being of the child. The report shall include the following information:

- (a) A statement regarding the child's status in school (i.e., whether he or she is attending regularly, has had any incident reports and any steps taken to correct any problems that have arisen);
- (b) A statement regarding the child's health and overall well-being (i.e., regular well-child check-ups, medical care for any injuries, or hospitalization);
- (c) A statement regarding the child's mental health and whether any steps have been taken to address any issues that have come up (i.e., whether the child is seeing a counselor or spiritual advisor or participating in any therapy);
- (d) A statement regarding any interactions the child has had with law enforcement and the outcome of those interactions (i.e., whether the child has been in Court, sentenced,

or on probation, etc.); and

- (e) A statement accounting for any of the child's property, which has been disposed of within the last year and the reason for its disposal.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

### **§ 3217. Motions to Modify Guardianship Orders.**

- (a) The Court may modify any order or decree made by it, but no modification of an order shall be made until there has been a hearing after due notice to all persons concerned.
- (b) The Court may hold a hearing to modify a Guardianship order at any time upon motion of any of the following:
  - (1) the child age 14 years or older.
  - (2) the child's parents.
  - (3) the guardian of the child.
  - (4) the guardian ad litem.
- (c) The motioning party bears the burden of proving by a preponderance of the evidence that modification of the Guardianship order is in the best interest of the child as set out in § 3206 of this chapter.
- (d) The motioning party may seek a modification of a variety of things, including, but not limited to:
  - (1) child Support.
  - (2) the power to manage the child's property.
  - (3) a change from Emergency to General Guardian.

- (4) creating or changing a visitation schedule for parents or other family members.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

### **§ 3218. Motions to Revoke Guardianship.**

- (a) Revocation is the voluntary relinquishment of a guardianship by a guardian. The need for a guardianship itself may continue with the Band Family Services Department taking custody of the child and renewing a search for a suitable Guardian.
- (b) The Court may set aside any order or decree made by it, but no revocation of an order shall be made until there has been a hearing after due notice to all persons concerned.
- (c) The Court may hold a hearing to revoke a guardianship order at any time upon the motion of the guardian.
- (d) The motioning party bears the burden of proving by a preponderance of the evidence that revocation of the guardianship is in the best interests of the child as set out in § 3206 of this chapter.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

### **§ 3219. Motions to Remove Guardian.**

- (a) Removal is the process to discharge a guardian from her or his role due to her or his failure to perform the guardian's duties as set forth in § 3213 of this chapter. This may include a failure to participate in the plan of care set forth in the original Court order for Guardianship. The need for a guardianship itself may continue with the Band Family Services Department taking custody of the Child and renewing a search for a suitable Guardian.
- (b) The Court may order a removal of a guardian for cause, but no removal shall be made until there has been a hearing after due notice to all persons concerned.
- (c) The Court may hold a hearing to remove a guardian at any time upon the motion of any of the following:
  - (1) the child age 14 years or older.
  - (2) the child's grandparent or parent.
  - (3) the child's relatives having a legitimate interest in the particular case.
  - (4) the guardian ad litem.
  - (5) the Band's Family Services Department.
- (d) The motioning party bears the burden of proving by clear and convincing evidence that the guardian is or has been neglecting the child and/or estate and is or has been refusing or is unable to perform the guardian's duties. The motion must include factual allegations of neglect or failure to fulfill the guardian's duties.
- (e) Nothing in this section precludes the Band Family Services Department from opening their own CHIPS investigations and/or petition against the guardian.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

### **§ 3220. Motions to Terminate Guardianship.**

- (a) Termination is the process whereby the entire guardianship is terminated. This can

occur upon the child reaching the age of majority, the child becoming emancipated by the Court's order, or a motion to terminate being granted.

- (b) An order vesting legal custody of a child to an individual shall be for an indeterminate period.
- (c) The Court, upon motion of a party seeking termination of a guardianship order and being satisfied all parties were properly notified of the motion, may schedule a hearing to consider termination of its order.
- (d) The Court may hold a hearing to terminate a guardianship order at any time upon motion of any of the following:
  - (1) the child age 14 years or older.
  - (2) the child's parents.
  - (3) the child's grandparents.
  - (4) the guardian ad litem.
- (e) The motioning party bears the burden of proving by clear and convincing evidence that that termination of the guardianship is in the best interest of the child as set out in § 3206 of this chapter.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.04.

Band Ordinance 31-17.

## **PART B**

### **GUARDIANSHIP OF ADULTS**

## **Section**

- 3221. Types of Guardianship.**
- 3222. Grounds for Appointment of Guardian or Conservator.**
- 3223. Contents of Guardianship or Conservatorship Petition.**
- 3224. Guardianship and Conservatorship Report.**
- 3225. Guardian and Conservator Eligibility Factors.**
- 3226. Accounting.**
- 3227. Motion to Modify Guardianship or Conservatorship.**
- 3228. Motion to Revoke Guardianship or Conservatorship.**
- 3229. Motion to Remove Guardian or Conservator.**
- 3230. Motion to Terminate Guardianship or Conservatorship.**

### **§ 3221. Types of Guardianship.**

- (a) The Court may appoint a guardian of the person, which entails the responsibility for the care and custody of the member. The Court may appoint a conservator of a member, which entails responsibility for the administration and management of the member's property. The Court shall explicitly state whether the appointment is a guardianship of the person, conservator or both based on the needs of the proposed ward and the abilities of the proposed guardian or conservator.
- (b) The guardianship or conservatorship may be either temporary or permanent, based on the needs of the ward. The Court shall explicitly state whether the guardianship or conservatorship is temporary or permanent. If the guardianship or conservatorship is temporary, the Court shall establish regular review hearings every 90 calendar days to reevaluate the needs of the ward.

### **Historical and Statutory Notes**

#### **Source:**

Band Ordinance 31-17.

### **§ 3222. Grounds for Appointment of Guardian or Conservator.**

- (a) The Court, when it appears necessary in order to protect the best interests of a vulnerable adult member of the Mille Lacs Band, may appoint a guardian or conservator of the member of the tribe under the following circumstances:

- (1) The adult is found to be incapacitated and incapable of caring for her or himself and such incapacity is a significant impediment to her or his health and well-being; or
  - (2) For purposes of appointment of a conservator, the adult is found to be unable or unwilling to competently administer her or his financial affairs.
- (b) Whether a proposed ward is capable of caring for her or himself and/or her or his finances, shall be evaluated by at least two (2) qualified physicians who shall provide written statements as to their determinations.
  - (c) In addition to the testimony of the physicians in subsection (b) above, the Court shall review the Family Services report. The Court may also hear additional testimony from relevant sources such as the Elder Services investigator, Tribal Police, Family Services, or any other person with direct knowledge of the elder or vulnerable adult's ability to care for her or himself and/or her or his finances.
  - (d) The determination of incapacitation shall be made only after petition, notice, and hearing.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

### **§ 3223. Contents of Guardianship or Conservatorship Petition.**

The petition for guardianship or conservatorship shall include the following, as best the petitioner is able to ascertain in good faith:

- (a) The full name, sex, date and place of birth, residence and tribal affiliation of the proposed ward;
- (b) The full name, address, age, and relationship if any to the proposed ward of the petitioner;
- (c) The names and addresses of any other person seeking guardianship or conservatorship over the same proposed ward;
- (d) The basis for the Court's jurisdiction;

- (e) Whether the petitioner seeks appointment as guardian or conservator and a statement of the reason that the appointment is sought.
- (f) A full description and statement of value of the proposed ward's assets and liabilities, with an estimate of the value of any property owned, possessed or in which the proposed ward has an interest, including any income and receivables to which the proposed ward is entitled.
- (g) All petitions must be signed and dated by the petitioners, and must be notarized or witnessed by the Clerk of Tribal Court.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

### **§ 3224. Guardianship and Conservatorship Report.**

Upon the filing of a petition for guardianship or conservatorship, the Court shall immediately order Family Services or other qualified agency to conduct a guardianship evaluation on the proposed guardian or conservator and on the proposed ward. The resulting guardianship report shall contain all pertinent information necessary to assist the Court in determining the best interests of the proposed ward, including a report on the guardian's or conservator's eligibility pursuant to the requirements of this section, as well as whatever other information the agency believes to be relevant. The report shall be filed with the Court within 30 days and a copy shall be provided to all parties who have received notice of the petition.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3225. Guardian and Conservator Eligibility Factors.**

- (a) Petitioners for guardianship and conservatorship must be willing to submit to a finger-print background check and a urinalysis as part of their petition. For any party other than Family Services, the Court may require the petitioner to pay a background check fee to Family Services to cover the cost of the background check, except in cases of indigence.
- (b) Any person whose background reveals any convictions involving any of the crimes below shall not be granted guardianship or conservatorship:
  - (1) homicide or attempted homicide;
  - (2) rape, sexual assault, molestation, or exploitation; or
  - (3) offenses committed against children (including child abuse) or other vulnerable adults.
- (c) Petitioners who have any felony or two (2) or more of the following misdemeanor convictions within the last five (5) years may be subject to further inquiry from the Court to determine the suitability of granting the guardianship or conservatorship:
  - (1) physical assault;
  - (2) battery; or
  - (3) drug or controlled substance-related offenses.
- (d) Any person with a diagnosed mental illness, which will significantly and adversely impair the ability to carry out guardian or conservator duties will not be granted guardianship or conservatorship. The Court may ask for additional information regarding a person's mental health status if it has reason to believe the proposed ward's best interests could be affected.
- (e) A person with a documented history of chemical dependency problems may be required by the Court to submit to assessments as recommended by Mille Lacs Band Behavioral Health, proof of attendance at AA meetings, or testimonies from other reliable Band members as to the prospective guardian's sobriety, before the guardianship can be granted.
- (f) In conducting an inquiry into the suitability of the proposed guardian or conservator, the Court shall consider whether the person proposed to serve as guardian or conservator is insolvent or has declared bankruptcy during the five (5) years

immediately prior to filing the guardianship or conservatorship petition, or has a conflict of interest that would preclude or substantially impact the person from acting in the proposed ward's best interest.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3226. Accounting.**

Upon appointment of guardianship and/or conservatorship, the guardian or conservator shall provide an accounting of the ward's finances every 30 calendar days to the Court. The accounting shall include all income and expenditures made with the ward's money and/or any property sales or investments made on behalf of the ward.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3227. Motion to Modify Guardianship or Conservatorship.**

- (a) The Court may modify any order or decree made by it, but no modification of an order shall be made until there has been a hearing after due notice to all persons concerned.
- (b) The Court may hold a hearing to modify a guardianship or conservatorship order at any time upon motion of any of the following:
  - (1) the ward;

- (2) the guardian or conservator of the ward;
  - (3) the guardian ad litem; or
  - (4) the Mille Lacs Band Family Services Department.
- (c) The motioning party bears the burden of proving by a preponderance of the evidence that modification of the Guardianship order is in the best interest of the ward.
- (d) The motioning party may seek a modification of any part of the existing guardianship or conservatorship order, including but not limited to:
- (1) the power to manage the ward's property; or
  - (2) a change from Temporary to Permanent Guardian.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

### **§ 3228. Motion to Revoke Guardianship or Conservatorship.**

- (a) Revocation is the voluntary relinquishment of a guardianship or conservatorship by a guardian or a conservator. The guardianship or conservatorship itself may continue with a successor guardian taking over the role or Family Services may act as temporary guardian until a new permanent one can be found.
- (b) The Court may set aside any order or decree made by it, but no revocation of an order shall be made until there has been a hearing after due notice to all persons concerned.
- (c) The Court may hold a hearing to revoke a guardianship or conservator order at any time upon the motion of the guardian or conservator.
- (d) The motioning party bears the burden of proving by a preponderance of the evidence that revocation of the guardianship or conservatorship is in.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3229. Motion to Remove Guardian or Conservator.**

- (a) Removal is the process to remove a guardian or conservator from her or his role due to her or his failure to adequately perform the guardian's or conservator's duties. This may include a failure to properly account for the ward's finances. The guardianship itself may continue with a successor guardian taking over the role.
- (b) The Court may order a removal of a guardian or conservator for cause, but no removal shall be made until there has been a hearing after due notice to all persons concerned.
- (c) The Court may hold a hearing to remove a guardian or conservator at any time upon the motion of any of the following:
  - (1) the ward;
  - (2) the ward's relatives having a legitimate interest in the particular case;
  - (3) the guardian ad litem; or
  - (4) the Mille Lacs Band Family Services Department.
- (d) The motioning party bears the burden of proving by clear and convincing evidence that the guardian or conservator is or has been neglecting the ward and is or has been refusing or is unable to perform the guardian's or conservator's duties. The motion must include factual allegations of neglect or failure to fulfill the guardian's duties.
- (e) Nothing in this section precludes the Band Family Services Department from opening their own investigations and/or petition against the guardian.

## Historical and Statutory Notes

### Source:

Band Ordinance 31-17.

### § 3230. Motion to Terminate Guardianship or Conservatorship.

- (a) Termination is the process whereby the entire guardianship or conservatorship is terminated. A motion to terminate may be made if the ward has regained the ability to care for her or himself and/or her or his finances, or new evidence is presented that the need for a guardianship or conservatorship has changed.
- (b) The Court, upon motion of a party seeking termination of a guardianship or conservatorship order and being satisfied all parties were properly notified of the motion, may schedule a hearing to consider termination of its order. The Court may hold a hearing to terminate a guardianship or conservatorship order at any time upon motion of any of the following:
  - (1) the ward;
  - (2) the ward's family members with a legitimate interest in the case;
  - (3) the guardian ad litem; or
  - (4) the Mille Lacs Band Family Services Department.
- (c) The motioning party bears the burden of proving by clear and convincing evidence through at least two (2) different physician evaluations that that termination of the guardianship is in the best interest of the ward.

## Historical and Statutory Notes

### Source:

Band Ordinance 31-17.

## SUBCHAPTER 6

### PROCEDURES FOR THE ADOPTION OF CHILDREN

#### Section

- 3231. Purpose.
- 3232. Open Adoptions.
- 3233. Consent to Adoption.
- 3234. Execution of Consent to Adoption.
- 3235. Receiving Notice of Private Adoption Proceedings.
- 3236. Who May File an Adoption Petition.
- 3237. Contents of Adoption Petition.
- 3238. Notice.
- 3239. Home Studies.
- 3240. Withdrawal of Consents.
- 3241. Adoption Preferences.
- 3242. Background Investigation.
- 3243. Hearing Procedures.
- 3244. Visitation Agreement.
- 3245. Contact Agreement.
- 3246. Adoption Decree.

#### § 3231. Purpose.

The adoption code shall be liberally interpreted and construed as an exercise of the inherent sovereign authority of the Mille Lacs Band of Ojibwe to fulfill the following express purposes:

- (a) To embody and promote the basic traditional values of the Mille Lacs Band of Ojibwe regarding the protection and care of the Band's children. The Mille Lacs Band of Ojibwe believes that it is the responsibility of the Band, the Band communities, and extended families to protect, care for, and nurture our children.
- (b) To promote the belief of the Mille Lacs Band of Ojibwe that children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their unique cultural heritage including their customs, history, language, religion and values.

- (c) To provide for the best interests of the Band, Band communities, and the Band's children.
- (d) To afford judicial processes that allow for formal adjudications that address the issues of the rights, responsibilities, care, custody and control of minor children when the biological parents are unable or unwilling to provide a safe, stable, nurturing and permanent environment for their children by conferring jurisdiction upon the Mille Lacs Band's Court to hear and adjudicate such matters.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3232. Open Adoptions.**

Adoptions under this statute shall be in the nature of “Open Adoptions.” The purpose of such open adoptions is not to permanently deprive a child of connections to, or knowledge of, the child’s biological family. The purpose of adoptions shall be to give the adoptive child a permanent home. To this end the following shall apply and be contained in all adoptive orders and decrees:

- (a) The adoptive parents and adoptive child shall be treated under the law as if the relationship was of a biological child and parent, except as set forth herein.
- (b) The adoptive child shall have an absolute right, absent a compelling reason to the contrary, to information and knowledge about her or his biological family and heritage.
- (c) The adoptive child and members of the child’s biological extended family, including parents, shall have the right of reasonable visitation with each other, subject to reasonable controls of the adoptive parents.
- (d) Adoption shall not serve to prevent an adoptive child from inheriting from a biological parent in the same manner as any other biological child. The biological parent shall not be entitled to inherit from an adoptive child in the same manner as

parents would otherwise be entitled to inherit. An adoptive child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as the biological parents and child.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.01.

Band Ordinance 31-17.

**§ 3233. Consent to Adoption.**

- (a) **When Not Required:** Written consent to an adoption shall not be required if:
  - (1) the parent's rights have been terminated;
  - (2) the parent has relinquished their parental rights;
  - (3) the parent has been declared by the Court as incompetent or incapable to perform parental duties of the child;
  - (4) the parents are deceased;
  - (5) the paternal biological parent has failed to legally establish his paternity of the child within one (1) year of receiving actual or constructive notice of the birth of the child.
  
- (b) **When required:** Written consent to an adoption shall be required from:
  - (1) the biological or adoptive mother;
  - (2) the biological, adoptive, or acknowledged father;
  - (3) the custodian, if empowered to consent;
  - (4) the Court, if the custodian is not empowered to consent;
  - (5) the child, if the child is over 14 years of age.

## Historical and Statutory Notes

### Source:

Band Ordinance 01-96, § 26.02.

Band Ordinance 31-17.

### § 3234. Execution of Consent to Adopt.

Written consent to an adoption shall be executed and acknowledged before the Court. Consent shall not be accepted or acknowledged by the Court until 14 days after the birth of a child. A certified interpreter shall be provided for the person consenting to the adoption if they do not understand English. The consent of a child over the age of 14 years shall be given orally either in open court, or in chambers with the judge and any other persons the judge deems necessary to be present.

## Historical and Statutory Notes

### Source:

Band Ordinance 01-96, § 26.03.

Band Ordinance 31-17.

### § 3235. Receiving Notice of Private Adoption Proceedings.

- (a) When the Band receives notice from an outside adoption agency of private adoption proceedings in process for a Band member or eligible Band member, Family Services shall notify the parties and the Court exercising jurisdiction of the Band's intention to be a party in the proceedings. As a party to the proceedings, the Band shall request a Contact Agreement be made with the parties which ensures the child be notified of her or his status as a Band member and allows for the child to maintain contact with the Band. The Contact Agreement may also require notification to the Band of any future name or address changes of the child.

- (b) Upon notification of adoption proceedings, Family Services shall also make every effort to contact the biological, Band-member parent to ensure her or his consent was willingly and freely given.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3236. Who May File an Adoption Petition.**

Any person may file a petition for adoption. The petition shall be initiated by the person proposing to adopt. In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife, except that if one (1) of the spouses is the natural or adopted parent of the proposed adoptee, said person shall not be required to join in the petition.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.04.

Band Ordinance 31-17.

**§ 3237. Contents of Adoption Petition.**

- (a) The petition for adoption shall include the following, to the best information and belief of the petitioner:
  - (1) the full name, address, and tribal affiliation of the petitioner;
  - (2) the full name, sex, residence, date and place of birth, and tribal affiliation of the proposed adoptee;

- (3) the length of time the proposed adoptee has been at her or his current placement;
  - (4) the name by which the proposed adoptee shall be known if the petition is granted;
  - (5) the basis for the Court's jurisdiction;
  - (6) a full description and statement of value of all property owned, or possessed in which the proposed adoptee has an interest;
  - (7) the relationship of the petitioner to the proposed adoptee;
  - (8) the name, address, and telephone number of any other relatives who may have an interest in the care, custody and control of the minor child to the best of the petitioner's knowledge;
  - (9) the names and addresses of any person or agency whose consent to aid adoption is necessary;
  - (10) a statement or a copy of the final order terminating or suspending the parental rights of the biological parent;
  - (11) a statement as to why a final order for adoption is in the best interests of the proposed adoptee and the best interests of the proposed adoptee's tribe;
  - (12) a statement as to basis for the adoption supported by a home study, medical, psychiatric, child protection worker, family member and/or psychological reports or testimony; and
  - (13) a statement that no similar action is pending in a tribal or state Court having jurisdiction over the child.
- (b) Where there is more than one (1) proposed adoptee, and the proposed adoptees are siblings, only one (1) petition shall be required for the adoption of all or any combination of the siblings, provided that each sibling proposed to be adopted be named in the petition.
- (c) All petitions must be signed and dated by the petitioner, and must be notarized or witnessed by a clerk of the Court.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.05.

Band Ordinance 31-17.

**§ 3238. Notice.**

- (a) Upon the filing of a petition seeking an order for an adoption of a minor child, the Court shall order a home study as set out in § 3239 of this chapter. Upon the Court's receipt of the contents of the home study report, the Court shall cause written notice of such hearing to be served upon the petitioner; the child's tribe; extended family members as determined by the Band Enrollment office immediately after the filing of the petition, if any; caretaker, if any; and appropriate agencies of the Band that may either have an interest in the proceedings or be of assistance to the Court in adjudicating the matter. Such notice shall be served in the manner provided for in section (b) below.
- (b) Notice shall be given by personal service. If service cannot be made personally, the Court may authorize service by registered mail at the last known address of the person to be served. If notice cannot be served by registered mail, the Court may authorize service by publication in the newspaper of the reservation, and a newspaper of general circulation in the county where the Court is located, once a week for three (3) consecutive weeks. All notices served whether personally or by registered mail shall be received by the person named therein no less than ten (10) calendar days prior to the date set for the hearing. No hearing can be held sooner than ten (10) calendar days after the last publication where service is made.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, §§ 26.06, 26.07.

Band Ordinance 31-17.

**§ 3239. Home Studies.**

- (a) When a petition for the adoption of a child is filed with the Court, the Court shall immediately request that the Family Services Department or other qualified agency conduct a home study on the petitioner and report on the child. The home study and report shall relate the circumstances of the home, the petitioner and their ability, physically, mentally and financially to assume the responsibilities of a parent of the child. The home study shall contain other pertinent information designed to assist the Court in determining the best placement for the child including fingerprint background check information on all persons over the age of 13 living in the prospective adoptive home. The home study will also address the issue of whether or not the home most closely resembles that of the child's culture, identity, and where applicable, the child's tribal affiliation.
- (b) The home study report shall be completed within 30 days of the Court's order. No determination can be made on a petition for adoption until the home study and report has been completed and submitted to and considered by the Court. All parties must have ten (10) days' notice to review the home study before the hearing. A continuance may be requested if any party has not been given proper notice of the home study. The Court may order additional home studies as it deems necessary.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.08.

Band Ordinance 31-17.

### **§ 3240. Withdrawal of Consents.**

- (a) Any consent given under the provisions of this subchapter (§§ 3231-3246) may be withdrawn by the person or agency that gave the consent at any time prior to the entry of a final decree of adoption. No reason need be stated and no hearing need be held on such withdrawal.
- (b) All withdrawals must be written and notarized or witnessed by a clerk of the Court, with the original being filed with the Court.
- (c) Within two (2) years after the entry of a decree of adoption, said decree may be vacated upon a petition being filed and a showing that the consent that made the adoption possible was obtained through fraud or duress. Upon such a showing the

Court shall vacate the decree and return the adopted person to that status he or she had prior to entry of the decree.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.09.

Band Ordinance 31-17.

### **§ 3241. Adoption Preferences.**

The preference of placement in adoption shall be in the following order unless the Court determines that the child's best interests require deviation from the preferences:

- (a) extended family members, whether Indian or non-Indian, including Niiya'wenh'enh';
- (b) an Indian family of the same Band as the child;
- (c) an Indian family;
- (d) adoptive Families with specialized training to address the specific medical or emotional needs of the child;
- (e) non-Indian Families who agree to maintain the Child's connection to her or his culture.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.10.

Band Ordinance 31-17.

**§ 3242. Background Investigation.**

- (a) Petitioners for adoption must be willing to submit to a background investigation as part of their petition. If the petition for Adoption does not arise from a Child in Need of Protection or Services case, the Court may require the petitioner to pay a background check fee to Family Services to cover the cost of the background check.
- (b) Any person whose background reveals any convictions involving any of the crimes below shall not be granted adoption:
  - (1) homicide or attempted homicide;
  - (2) rape, sexual assault, molestation, or exploitation; or
  - (3) offenses committed against children (including child abuse).
- (c) Petitioners who have any felony or two (2) or more of the following misdemeanor convictions within the last five (5) years may be subject to further inquiry from the Court to determine the suitability of granting the adoption:
  - (1) physical assault;
  - (2) battery;
  - (3) spousal abuse; or
  - (4) drug-related offenses.
- (d) The Court may review the circumstances of any felony or misdemeanor revealed in a background check and consider the nature of the crime and length of time that has lapsed since the crime was committed. The Court may also request testimony or character references be given to determine whether the Petitioner's current life circumstances would be suitable for raising a child. If the Court finds it is in the best interest of the child, the Court may waive the requirements in subsection (c) of this section that would otherwise bar the petitioner from the adoption.
- (e) Any person with a diagnosed mental illness which will significantly affect the ability to carry out parenting duties will be given extra consideration before the adoption may be granted. The Court may request testimony or character references be given to determine whether the Petitioner's mental illness would significantly impact her or his ability to raise the child.
- (f) A person with a documented history of substance abuse problems may be required by the Court to submit to assessments before the adoption can be granted.

- (g) In conducting an inquiry into the suitability of the proposed adoptive parent, the Court shall consider whether the person petitioning for adoption is insolvent or has declared bankruptcy during the five (5) years immediately prior to filing the adoption petition, or has a conflict of interest that would preclude or substantially impact the person from acting in the child's best interest.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3243. Hearing Procedures.**

- (a) An adoption hearing shall be held within 90 calendar days of receipt of an adoption petition from the prospective adoptive parent. The Court shall conduct the hearing to determine if it is in the best interests of the child to be placed with the petitioners. In determining the best interests of the child, the Court shall examine:
  - (1) the validity of written consent;
  - (2) a termination or suspension of parental rights order;
  - (3) the length of time of the child's wardship by the Court (if applicable);
  - (4) the special conditions of the child;
  - (5) the parent communication with the child;
  - (6) the minor's consent to adoption, if the child is over 14 years of age;
  - (7) the home studies or other reports; and
  - (8) the order of preference of placement.
- (b) The petitioner and the proposed adoptee shall appear personally at the hearing. During the hearing the Court shall advise the parties of their basic rights as provided in § 3153 of this chapter. The judge shall examine all persons separately, and may, if satisfied that all other requirements of this section have been met, enter a final decree of adoption, or may place the child in the legal custody of the petitioner for a period not to exceed six (6) months prior to entering a final decree of adoption.
- (c) If the Court determines that the adoption will not be in the child's best interest, or finds that all of the requirements of this chapter have not been met, it may deny the

- petition and make any other order it deems necessary for the care and custody of the child consistent with this chapter.
- (d) Proceedings for the termination or suspension of the parental rights and proceedings for adoption may be considered and determined at one (1) hearing provided that all the requirements of this subchapter (§§ 3231-3246) governing termination or suspension are complied with fully.
  - (e) The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. Hearsay evidence will not be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family and other persons determined to be appropriate by the Court shall be allowed in the proceedings.
  - (f) In all cases, the Court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order. The Court may make findings that it is in the child's best interests that a final order for an adoption be entered and the Court shall specify the basis of those findings.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.11.

Band Ordinance 31-17.

### **§ 3244. Visitation Agreement.**

At any point in the proceedings, the prospective adoptive family and the biological family may come to an agreement as to the possibility and nature of visitation between the child and her or his biological family. Any such agreement shall be included in the final adoption decree per § 3246 of this chapter.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3245. Contact Agreement.**

At any point in the proceeding, the biological family or Family Services, on behalf of the Band, may request that the prospective adoptive family agree to allow and support the child in maintaining contact with the Band. Any such agreement shall be included in the final adoption decree per § 3246 of this chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 31-17.

**§ 3246. Adoption Decree.**

If the Court finds that the requirements of this chapter have been met and that the child's best interests will be satisfied, a final decree of adoption may be entered. Such an order shall include, but is not limited to, the following:

- (a) A statement that the child has been adopted by the petitioner and the two (2) shall thenceforth sustain toward each other the legal relation of parent and child, and shall have all the rights and shall be subject to all the duties of that relation, including all of the rights of a child of the whole blood to inherit from any person, in all respects, under the provisions of inheritance and succession of the Band statutes or custom.
- (b) A notice indicating the new name of the child, if any.
- (c) Any agreement made between the adoptive family and biological family as to visitation.
- (d) Any agreement made between the adoptive family and the tribe regarding maintaining contact with the tribe.

## Historical and Statutory Notes

**Source:**

Band Ordinance 01-96, § 26.12.

Band Ordinance 31-17.

# TITLE 9 – EDUCATION

**Chapter**

**1. Consolidated Nay-Ah-Shing School Board**

**Section**

**1**

## CHAPTER 1

### CONSOLIDATED NAY-AH-SHING SCHOOL BOARD

**Section**

- 1. Consolidated Nay-Ah-Shing School Board.**
- 2. Membership and Voting.**
- 3. Election of Members.**
- 4. Terms of Office.**
- 5. Eligibility for Board Membership.**
- 6. Removal from Office.**
- 7. Vacancies.**
- 8. Power and Duties of the Nay-Ah-Shing School Board.**
- 9. Education State of the Band Report and Needs Assessment.**
- 10. Hearings.**
- 11. Bylaws.**
- 12. Responsibility for Unacceptable Performance of Duties.**
- 13. Meetings.**
- 14. Powers Reserved to Band Assembly.**
- 15. Powers and Duties of Commissioner of Education.**
- 16. Local Indian Education Committees.**
- 17. Admission to Nay-Ah-Shing School.**
- 18. Compulsory Attendance of School Age Pupils.**
- 19. Obligations of the Nay-Ah-Shing School Board.**
- 20. Bequests, Gifts, and Trusts.**
- 21. Records.**
- 22. Health.**
- 23. Sectarian Materials or Teaching.**
- 24. In Loco Parentis.**

- 25. Office of Management and Budget.**
- 26. Appropriations.**
- 27. Veto Authority of Chief Executive.**
- 28. Solicitor General.**
- 29. Sovereign Immunity.**

### **§ 1. Consolidated Nay-Ah-Shing School Board.**

A Commission to be known as the Nay-Ah-Shing School Board is hereby chartered and authorized as an independent subdivision of the Executive Branch of tribal government with those powers as delegated by the Band Assembly.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 1.

### **§ 2. Membership and Voting.**

The Consolidated Nay-Ah-Shing School Board shall be a five-member board. with each member having the title of Board Member, with the exception of the leader whose title shall be Chairperson. Each Board Member shall have one (1) vote at regular and special meetings; the Chairperson shall only vote in the case of a tie.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 2.

### **§ 3. Election of Members.**

Each Board Member shall be elected, two (2) from District I, one (1) from District II, and one (1) from District III. The Chairperson shall be elected from an at large voting position.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 3.

### **§ 4. Terms of Office.**

The term of office for each Board Member shall be four (4) years. The positions will be staggered with two (2) members (Districts I and III) being elected in June 1990, and every four (4) years thereafter, and the Chairperson and two (2) other members (Districts I and II) being elected in June 1992, and every four (4) years thereafter.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 4.

### **§ 5. Eligibility for Board Membership.**

- (a) Any Board Members or Chairperson elected by the residents of a district shall be an enrolled member of the Band and at least 21 years of age as of the date of certification of candidates by the Joint Session of the Band Assembly.
- (b) Any Board Member elected or appointed must reside for at least one (1) year prior to the primary election within their voter district.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 5.

### **§ 6. Removal from Office.**

Any Board Member may be removed from office for just cause as determined by 3 MLBS § 28.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 6.

### **§ 7. Vacancies.**

- (a) In the event that a Board Member resigns, is removed as a Board Member, or is otherwise unable to complete her or his term as a Board Member or there is otherwise a vacancy, the vacancy shall be filled by appointment.
- (b) The District Representative from the District where the vacancy occurs shall provide the Chief Executive with the names of two (2) eligible persons from which the Chief Executive shall nominate one (1) person to fill the vacancy that is subject to ratification of the Band Assembly.
- (c) If a District Representative does not submit the names of two (2) eligible persons to the Chief Executive within 30 calendar days of a vacancy, the Chief Executive shall appoint an individual to complete the term.

- (d) In the event that the vacancy occurs in the Chair position, the Chief Executive shall make the nomination that is subject to the ratification of the Band Assembly.
- (e) In the event the Chief Executive fails to nominate a person to fill a vacancy for the Chair position within 30 calendar days of a vacancy, the Secretary-Treasurer shall appoint an individual to complete the term.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 7.

### **§ 8. Powers and Duties of the Nay-Ah-Shing School Board.**

- (a) The Consolidated Nay-Ah-Shing School Board shall have power to establish educational policy for the benefit of Band members and non-Band members attending a Band school.
- (b) The Board shall prepare a uniform system of records for the Band's school(s).
- (c) The Board shall have general supervision over all Band 0-12 School Programs and shall establish policy for:
  - (1) approval of requests for any educational, scientific research,
  - (2) minimum criteria for passage to succeeding grades and graduation,
  - (3) appropriate student conduct and disciplinary procedures,
  - (4) any satellite or expanded services for Band 0-12 School Programs,
  - (5) the preparation and authorization of educational grants and contracts related to all Band 0-12 School Programs; and
  - (6) the implementation of rules and regulations for any Band 0-12 School education-related subject matter statute.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 8.

Band Ordinance 31-11, § I.2(1) and Exhibit A § 8.

### **§ 9. Educational State of the Band Report and Needs Assessment.**

The Consolidated Nay-Ah-Shing School Board shall annually prepare an Educational State of the Band report to the Chief Executive and the Band Assembly no later than August 1 of each year and biannually conduct a needs assessment into all areas of its jurisdiction. By August 1 of each year, the Commissioner of Education and the Nay-Ah-Shing School Board shall concur on appropriate levels for academic achievement, culture and language, and staffing for the upcoming year.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 9.

### **§ 10. Hearings.**

The Consolidated Nay-Ah-Shing School Board shall have the power to hold subject matter public hearings on education related topics.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 10.

Band Ordinance 31-11, § I.2(2) and Exhibit A § 10.

### **§ 11. Bylaws.**

The Consolidated Nay-Ah-Shing School Board shall adopt a set of bylaws establishing its rules of procedure and other internal governance matters within 90 calendar days of passage of this Chapter. Said Bylaws shall be ratified by Band Assembly.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 11.

### **§ 12. Responsibility for Unacceptable Performance of Duties.**

In exercising any powers granted, each Board Member shall not be immune from any responsibility that results from willful, knowledgeable, and unacceptable performance of their duties.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 12.

### **§ 13. Meetings.**

The Consolidated Nay-Ah-Shing School Board may meet up to twice a month with an agenda prepared in advance by the Chairperson. The Chairperson shall give at least 24-hour's notice for any Special meetings.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 13.

### **§ 14. Powers Reserved to Band Assembly.**

Any and all powers not specifically listed are reserved to the Band Assembly.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 14.

### **§ 15. Powers and Duties of Commissioner of Education.**

The Commissioner of Education shall have general and day-to-day supervisory authority over all Nay-Ah-Shing School department employees and the power and duty to:

- (a) attend regularly scheduled and special School Board Meetings,
- (b) negotiate and execute contracts with individuals and funding agencies of the United States or any private foundations for any education related matters,
- (c) exercise the day-to-day administration of all educational activities, including supervisory authority over any and all Education employees,
- (d) authorize the expenditure of all education funds under her or his jurisdiction, provide the School Board with a copy of each budget and notify the Board of all expenditures and budget modifications, and be accountable for the lawful disbursement of such funds,
- (e) oversee the employment, discipline, or termination of Education employees according to the policies set forth in the Mille Lacs Band Personnel Policy Manual,
- (f) open or close school sessions for just cause,
- (g) issue Commissioner's Orders on any subject matter within her or his jurisdiction

- pursuant to the authority conferred by Band statute,
- (h) with the School Board, determine annual student achievement standards,
  - (i) report to the School Board on matters of concern to the Board; and
  - (j) put forward budget requests, in consultation with the School Board.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 15.  
Band Ordinance 31-11, § I.2(3) and Exhibit A § 15.

### **§ 16. Local Indian Education Committees.**

All local Indian Education Committees shall be disbanded with powers transferred to the Nay-Ah-Shing School Board upon the date of enactment of this Chapter. Authorities granted by the Mille Lacs Reservation Business Committee to said Committees are hereby revoked and rescinded.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 16.

### **§ 17. Admission to Nay-Ah-Shing School.**

All schools under the jurisdiction of the Band, which are supported by Band revenue or any funds of the United States, shall admit any enrolled member of the Band who is of school age and has not been expelled from any other school for violation of federal law. Notwithstanding the provision of any law to the contrary, the conduct of all pupils attending a Band sanctioned school shall be governed by a single set of reasonable rules and regulations established by the School Board. The School Board shall further establish a single set of reasonable admission standards that contain uniform minimum school age entrance requirements.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 17.

### **§ 18. Compulsory Attendance of School Age Pupils.**

- (a) Every child between the chronological age of six (6) and 16 years of age shall attend

a Band School or Public School of the State of Minnesota, for the full duration of the academic year. Nay-Ah-Shing schools shall be in session no less than 180 instructional days in an academic year, unless exigent circumstances arise. In that case, at the discretion of the School Board and with the approval of the Band Assembly, there may be no less than 175 instructional days in the academic year.

- (b) Any student between 16 and 18 years of age seeking to withdraw from school must:
  - (1) attend a meeting with school personnel, accompanied by their parent or guardian, to discuss the educational opportunities available to the student, including alternative educational opportunities; and
  - (2) provide a written election, signed by the student's parent or guardian, giving permission for the minor child to withdraw from school.
- (c) It shall be the duty of the School Board or its designee to determine the legitimacy of all absences from the school for any pupil. Excuses for any absence shall be determined from uniform standards as established by the School Board.
- (d) The School Board or its designee shall, by registered mail, notify the parents or guardians of any pupil who is unexpectedly absent from school. On the fifth unexcused absence within a school quarter, the School Board shall, by registered mail, notify the parents or guardians to appear before the School Board for a formal hearing to discuss the matter. Upon the continuation of unexcused absences or upon failure of the parents or guardians to appear before the School Board, the School Board shall request that the appropriate social services agency file a civil complaint (Child Protection Petition) in a court of competent jurisdiction.
- (e) Any person who is found guilty of civil violations of this section shall be subject to a fine not to exceed \$100.00. Continued civil violations shall subject the parent or guardian to contempt of court and an additional fine.
- (f) For purposes of this section, parents or legal guardians shall be deemed liable for the truancy of minors who are under their direct supervision in the Court of Central Jurisdiction or any court of competent jurisdiction.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 18.  
Band Ordinance 31-11, § I.2(4) and Exhibit A § 18.  
Band Ordinance 68-12. § I.

### **§ 19. Obligations of the Nay-Ah-Shing School Board.**

The Nay-Ah-Shing School Board shall have the following duties and obligations under this

Chapter:

- (a) to establish rules relating to qualifications of essential personnel, course of study or training, methods of instruction and training, size of classrooms, equipment, supervision of pupils, parent consultation, and any other rules or standards within its statutory authority,
- (b) to provide a free education to all children attending any Band 0-12 School,
- (c) to furnish free textbooks to all pupils,
- (d) to establish a cultural and language educational program,
- (e) to ensure that each student can converse in the native language of Ojibwe upon high school graduation,
- (f) to establish curriculum that incorporates Band history as well as the history of other tribes in the United States,
- (g) to establish curriculum that incorporates an understanding of the Band government structure,
- (h) to establish college preparatory classes in the high school; and
- (i) to establish curriculum that teaches personal financial independence and general economics to students.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 19.  
Band Ordinance 31-11, § I. 2(5) and Exhibit A § 19.

### **§ 20. Bequests, Gifts, and Trusts.**

The School Board may receive, for the benefit of Indian children in any Band educational program, bequests, donations, or gifts for any proper purpose and apply the same to the purpose designated.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 20.

### **§ 21. Records.**

The School Board shall keep records of all meetings and all transcripts thereof. Such records shall be prima facie evidence of the facts therein stated. The Board shall also keep records of student achievement, attendance, and related issues. All such records shall be private and confidential and shall only be disclosed pursuant to a confidentiality policy adopted by the School Board.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 21.

### **§ 22. Health.**

The School Board shall establish a policy for physical examinations for all pupils enrolled at Band 0-12 grade schools. Employees of the School Board shall show freedom from contagious diseases in accordance with rules established by the Coordinator of Health Services. The Coordinator of Health Services shall be the Nurse Practitioner or Community Health Nurse at Ne-ia-shing Clinic. The Commissioner of Health & Human Services, in conjunction with the School Board, shall be responsible for the development of all health-related rules, regulations, and policies for the 0-12 grade school programs. The School Board shall adopt any such rule, regulation, or policy recommended by the Commissioner of Health & Human Services unless they find compelling cause to reject such rule, regulation, or policy.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 22.

### **§ 23. Sectarian Materials or Teaching.**

The School Board shall ensure that sectarian materials of any type are not provided to pupils that promote beliefs inconsistent with the cultural laws and traditions of the Band. They shall further ensure that all Band 0-12 grade school programs remain free of sectarian beliefs and political activism of any kind.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 23.

### **§ 24. In Loco Parentis.**

The School Board shall not assume parental rights for any child while such child is in attendance

at a Band school. Corporal punishment shall not be permitted as a form of discipline in any policy adopted by the School Board.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 24.

### **§ 25. Office of Management and Budget.**

The Office of Management and Budget shall retain financial responsibility for the general books of accounting for all education-related funds of the Band.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 25.

### **§ 26. Appropriations.**

The Band Assembly shall retain appropriation authority over all education-related funds. As required by Band law, appropriation requests shall be prepared on a biennial basis and forwarded to the Chief Executive for submission to the Band Assembly no later than September 1 of each odd-numbered year.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 26.

### **§ 27. Veto Authority of Chief Executive.**

The Chief Executive may veto any official action of the School Board within five (5) business days of receipt of any such policy, rule, or regulation provided there is concurrent ratification of such veto by the Band Assembly within ten (10) business days of an Executive veto.

- (a) In the event of the Band Assembly's refusal to ratify any such veto, said action of the School Board shall be implemented.
- (b) If the Band Assembly concurs with the Chief Executive's veto, the official action of the School Board shall fail to take effect.
- (c) Upon receipt of notice of any such Executive veto, the Chairperson of the School Board shall appear before the Band Assembly to justify the School Board's official

action to the Band Assembly. Such justification shall be submitted in writing at least one (1) calendar day before formal oral hearing before the Band Assembly.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 27.

### **§ 28. Solicitor General.**

- (a) The Solicitor General shall represent the interest of the School Board in matters before the Court of Central Jurisdiction with the exception of those issues in which the interests of the Band override the interest of the School Board.
- (b) Should there be any doubt as to the proper interpretation of any part of this Chapter, the Commissioner of Education shall submit such question to the Solicitor General, who should issue a written opinion thereon.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 29.

Band Ordinance 31-11, § I.2(6) and (7).

### **§ 29. Sovereign Immunity.**

Nothing in this Chapter shall be construed as a waiver of sovereign immunity of the Band in any state or federal court of competent jurisdiction.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 33-03, § 30.

Band Ordinance 31-11, § I.2(8).

# TITLE 10 – CULTURAL RESOURCES

<u>Chapter</u>	<u>Section</u>
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## CHAPTER 1

### HISTORICAL PRESERVATION

<u>Subchapter</u>	<u>Section</u>
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## SUBCHAPTER 1

### GENERAL PROVISIONS

#### Section

1. Title.
2. Legislative Findings-Federal Laws Preemption.
3. Definitions.
4. Nondisclosure.
5. Cultural Items Presently Used.

#### § 1. Title.

This Title shall be known as the Mille Lacs Band of Ojibwe Cultural Resources Protection Statute.

#### Historical and Statutory Notes

#### Source:

Band Statute 1072-MLC-23, T. I, § 1.

## **§ 2. Legislative Findings-Federal Laws Preemption.**

(a)

- (1) Under the federal Archaeological Resources Protection Act of 1979, 16 U.S.C. 470cc(c), the federal officials must notify the Mille Lacs Band of Ojibwe whenever a permit application is being considered which might adversely affect any religious or cultural off-reservation site.
- (2) Under the Federal Archaeological Resources Protection Act, 16 U.S.C. 470cc(g)(2), no federal permit for excavation or removal of any archaeological resource located within the jurisdiction of the Mille Lacs Band of Ojibwe can be issued without the consent of the Band.
- (3) There can be no exchange or disposition of archaeological resources from the Mille Lacs Band of Ojibwe without the consent of the Band pursuant to the federal Archaeological Resources Protection Act, 16 U.S.C 470dd.
- (4) The National Historic Preservation Act, 16 U.S.C. § 470 et seq., declares a national policy to work in partnership with Indian tribal governments to protect cultural resources and provides a mechanism by which tribal governments may carry out the provisions of that Act (16 U.S.C. § 471, 470a(c)).
- (5) The Band Assembly finds that an orderly procedure must be established for considering the acting upon such notifications, requests, and review functions.

(b)

- (1) The National Historic Preservation Act does not confer upon state governments the power to nominate sites within Indian reservations to the National Register.
- (2) The Band Assembly finds that the power to make such nominations to the National Register must be exercised by the Mille Lacs Band of Ojibwe and that an effective procedure must be established to carry out this activity.
- (3) The Band Assembly hereby declares its intent to preempt the field of nominations to the National Register of archaeological and historical sites located with the Mille Lacs Band of Ojibwe.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 2.

### § 3. Definitions.

As used in this chapter, the following words and phrases shall each have the designated meaning, unless a different meaning is expressly provided for, or from the context a different meaning is clearly indicated.

- (a) **"Archaeological Resources"** means any remains of the past human life or activities which are of archaeological or historical interest. Such material remains shall include, but not limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, talus slide depressions, cairns, graves, human skeletal remains, or any portion or piece of any of the foregoing items. The material or remains may also include non-fossilized or fossilized paleontological specimens, or any portion or piece thereof, whether or not found in an archaeological context. No item shall be treated as an archaeological or historic resource unless such an item is at least 50 years of age.
- (b) **"ARPA"** means the Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470aa et seq.
- (c) **"Band's Register of Historic and Archaeological Properties"** means the tribal register of districts, sites, buildings, structures and objects significant in tribal history, architecture, archaeology or culture, as determined by the Board and maintained by the Department.
- (d) **"Board"** means the Federation Cultural Resources Board.
- (e) **"Department"** means the Federation of Archaeological and Historical Programs.
- (f) **"Effect"** means any condition of the undertaking that causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archaeological, or cultural characteristics that qualify the property to meet the criteria of the Band's Register or the National Register. An effect occurs when an undertaking changes the integrity of location, design, setting, materials, workmanship, feeling or association of the property that contributes to its significance in accordance with the Band's Register or the National Register criteria. An effect may be direct or indirect. Direct effects are caused by the undertaking and occur at the same time and place. Indirect effects include those caused by the undertaking that are later in time or farther removed in distance, but are foreseeable. Such effects may include changes in the pattern of land use, population, density or growth rate that may effect any properties of historical, architectural, archaeological, or cultural significance.
- (g) **"Historic property"** means any prehistoric or historic district, site, building, structure or object significant in tribal history, architecture, archaeology, culture or religion. The term includes all artifacts, records, remains and reburial sites designated by the Federation Cultural Board

- (h) **"National Register"** means the National Register of Historic Places.
- (i) **"NHPA"** means the National Historic Preservation Act of 1966, 16 U.S.C. § 470 et seq.
- (j)
  - (1) **"Undertaking"** means any governmental, governmentally assisted or licensed action, activity or program or the approval, sanction, assistance, or support of any non-governmental action, activity or program. Undertakings include new and continuing projects and program activities that are
    - (i) directly undertaken by government agencies;
    - (ii) supported in whole or in part through governmental contracts, grants, subsidies, loans, loan guarantees or other forms of direct or indirect funding assistance;
    - (iii) carried out pursuant to a governmental lease, permit, license, certificate, approval or other form of entitlement or permission; or,
    - (iv) proposed by a Federal, State or other governmental agency for legislative authorization or appropriation.
  - (2) Site-specific undertakings affect areas and properties that are capable of being identified at the time of approval by the governmental agency.
  - (3) Non-site-specific undertakings have effects that can be anticipated on Band's Register or National Register and eligible properties but cannot be identified in terms of specific geographical areas or properties at the time of approval. Non-site-specific undertakings include Federal or State approval of Federal or State plans pursuant to legislation, development of comprehensive or area wide plans, agency recommendations for legislation and the establishment or modification of regulations and planning guidelines.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 3.

#### **§ 4. Nondisclosure.**

Information concerning the nature and location of any archaeological resource or historic property may not be made available to any person unless the Director determines that such disclosure would further the purposes of the statute and would not create an undue risk of harm

to such resources or the site at which such resources are located. The Department and the Board are authorized to withhold from disclosure information relating to the location of sites of objects listed on the Bands Register or the National Register upon a determination that the disclosure of specific information would create a risk of destruction or harm to such sites or objects.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 14.

### **Cross References**

Comprehensive survey, *see* 10 MLBS § 501.

### **§ 5. Cultural Items Presently Used.**

In relationship to the protection of conservation of Historical or Archaeological resources, there is no authority granted by this Title that would allow the Band or the Department to take, regulate or preserve any item of traditional Ojibwe religion or culture that is presently being used or has been used by members of the Mille Lacs Band of Ojibwe without the written approval of the owner, keeper or the appropriate religious leaders who are concerned with the said article.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 18.

## **SUBCHAPTER 2**

### **FEDERATION CULTURAL RESOURCES BOARD**

**Section**

- 101. Establishment of Federation Cultural Resources Board; Membership.**
- 102. Officers.**
- 103. Quorum.**
- 104. Meetings.**
- 105. Principal Office.**
- 106. Oath of Office.**
- 107. Powers and Duties of the Board; Undertakings Off-Reservation.**
- 108. Undertakings On-Reservation.**
- 109. Disposition of Archaeological Resources.**
- 110. Governmental Rulemaking.**
- 111. Regulation by Board.**

- 112. Annual Reports.**
- 113. Records.**
- 114. Cooperation with Agencies and Organizations.**
- 115. Comprehensive Plan; Board Review.**
- 116. Band's Register; Review of Nominations.**
- 117. National Register; Review of Nominations.**
- 118. Education.**
- 119. Review by Court of Central Jurisdiction.**

**§ 101. Establishment of Federation Cultural Resources Board; Membership.**

The Board shall be composed of the Director of the Cultural Department, the Chairperson of the Elderly Advisory Board, the Commissioner of Natural Resources Department, a Band archaeologist, and Band staff attorney designated by the Chief Executive.

**Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 4.

**§ 102. Officers.**

The Board shall elect from among its members a Chairperson, a Vice-Chairperson and a Secretary. In the absence of the Chairperson the Vice-Chairperson shall preside, and in the absence of both the Chairperson and Vice-Chairperson, the Secretary shall preside.

**Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 4.01.

**§ 103. Quorum.**

Four (4) members of the Board shall constitute a quorum. The Chairperson will vote only in the event of a tie.

**Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 4.02.

**§ 104. Meetings.**

Meetings of the Board shall be held at quarterly intervals. Emergency meetings may be held upon 12-hours actual notice, and business may be transacted, provided that not less than a majority of the full Board concurs in the proposed action.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 4.03.

### **§ 105. Principal Office.**

The principal office of the Board shall be the Mille Lacs Government Center.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 4.04.

### **§ 106. Oath of Office.**

Each member of the Board shall take the following oath before beginning her or his duties:

"I promise to faithfully execute all provisions of the Federation Cultural Resources Protection Ordinance and any regulations promulgated in furtherance thereof, and to be bound by the Mille Lacs Statutes, the jurisdiction of the Court of Central Jurisdiction and the Mille Lacs Band and to otherwise faithfully perform my duties as outlined by the law."

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 4.05.

### **Cross References**

Oath for Band offices, *see* 5 MLBS § 115.

Official oath of office, *see* 2 MLBS § 8.

### **§ 107. Powers and Duties of The Board; Undertakings Off-Reservation.**

The Board is empowered to participate in the review of permitting process where a federal or state officer has or should notify the Band pursuant to ARPA, 16 U.S.C. § 470cc(c), the NHPA, or the American Indian Religious Freedom Act, 42 U.S.C. § 1996, that an undertaking is proposed or an application is being considered for a permit which might adversely affect any off-reservation archaeological resource or historic property.

## Historical and Statutory Notes

**Source:**

Band Statute 1072-MLC-23, T. I, § 5.

### **§ 108. Undertakings On-Reservation.**

The Board is authorized and directed to review any proposed undertaking that might adversely affect any on-reservation archaeological resource of historic property included on or eligible for inclusion on the Band's Register or the National Register. The Board is also empowered to consider requests for consent to on-reservation excavation or removal of archaeological resources as an initial application or as referred by officials acting pursuant to ARPA, 16 U.S.C. § 470cc(g)(2), the NHPA, or the American Indian Religious Freedom Act. (42 U.S.C.A. § 1996.)

## Historical and Statutory Notes

**Source:**

Band Statute 1072-MLC-23, T. I, § 5.01.

### **§ 109. Disposition of Archaeological Resources.**

The Board is empowered to consider requests for exchange or dispositions of archaeological resources (see 16 U.S.C. § 470dd) and to determine what conditions, if any, should be attached if consent is given.

## Historical and Statutory Notes

**Source:**

Band Statute 1072-MLC-23, T. I, § 5.02.

### **§ 110. Governmental Rulemaking.**

As directed by the Chief Executive, the Board is empowered to initiate, comment and participate in federal, state or other governmental rule making processes concerning matters pertaining to its expertise (see 16 U.S.C. §§ 470s, 470ii).

## Historical and Statutory Notes

**Source:**

Band Statute 1072-MLC-23, T. I, § 5.03.

### **§ 111. Regulation by Board.**

For the purpose of carrying into effect the provisions of this Title or of supplying any deficiency therein, the Board may make such regulations not inconsistent with the spirit and intent of this Title as are deemed necessary or advisable. All such regulations shall have the same force and effect as if incorporated in this Title.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 16.

#### **§ 112. Annual Reports.**

The Board shall prepare a comprehensive annual report for submission to the Chief Executive, which shall report on the activities carried out under the provisions of this Title, and shall make such recommendations as the Board deems appropriate as to changes or improvements needed in the provisions of this Title. Such report shall include a summary of actions undertaken by the Board in reviewing proposed undertakings, applications for excavation or removal permits, and nominations for the Band's Register and the National Register.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 5.04.

#### **§ 113. Records.**

The Board shall maintain records of its proceedings. All proceedings shall be documented in writing, to be distributed to the Band Assembly not more than five (5) days following a meeting.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 5.05.

#### **§ 114. Cooperation with Agencies and Organizations.**

The Board is authorized and directed to consult and cooperate, to the extent feasible, with other Tribal and non-Tribal government departments and agencies, and with private organizations involved in historical and archaeological protection activities, including the National Trust for Historic Preservation, the Inter-National Center for the study of Preservation and Restoration of Cultural Property, museums and organizations of professionals. Cooperation activities shall include providing assistance to other agencies and organizations, and coordinating the planning and conduct of historic preservation programs.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 5.06.

#### **§ 115. Comprehensive Plan; Board Review.**

The Board is authorized and directed to review the comprehensive Reservation-wide archaeological and historic preservation plan prepared by the Department. The Board is further authorized to approve the plan and submit it to the Chief Executive or to direct the Department to change the plan until it met with its approval.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 5.07.

#### **Cross References**

Comprehensive plan, *see* 10 MLBS § 502.

#### **§ 116. Band's Register; Review of Nominations.**

The Board is authorized and directed to review nominations of properties to the Band's Register submitted by the Department, and to approve those that qualify as significant in tribal history, architecture, archaeology, cultural, or religious sites.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 5.08.

#### **Cross References**

Band's Register, *see* 10 MLBS §§ 401, 402.

Department powers and duties, nominations to Band's Register, *see* 10 MLBS § 202.

#### **§ 117. National Register; Review of Nominations.**

The Board is authorized and directed to review forms or reports proposing to nominate properties to the National Register, assure adequate public participation in the nomination process, and to recommend to the Chief Executive those properties it deems appropriate for nomination for listing on the National Register.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 5.09.

### **Cross References**

National Register, *see* 10 MLBS §§ 403, 404.

Preparation by Department of nomination forms, *see* 10 MLBS § 203.

### **§ 118. Education.**

The Board is authorized to develop and operate a program of information and education, for tribal members and/or the general public, concerning cultural resources and protection of properties listed on the Band's Register.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 5.10.

### **§ 119. Review by Court of Central Jurisdiction.**

The Director, the Solicitor General, or any applicant or permittee aggrieved by any decision of the Board may petition the Court of Central Jurisdiction for a hearing to review such decision. A written notice of appeal must be filed with the Clerk of Court within 20 days of such adverse decision; provided, however, that such limitation period shall not apply to ban the petition of the Solicitor General or the Director of the Department where such would be contrary to the Band interest in preservation of archaeological resources or historic properties.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 17.

### **Cross References**

Subject-matter jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 111.

## **SUBCHAPTER 3**

### **POWER AND DUTIES OF FEDERATION CULTURAL DEPARTMENT**

**Section**

- 201. Powers and Duties.**
- 202. Nominations to the Band's Register.**
- 203. Nominations to National Register; Preparation of Forms.**
- 204. Assistance to Boards.**
- 205. Records and Salvage.**
- 206. Tribally-Owned Properties.**
- 207. Transfer of Property on Band's Register.**
- 208. Promotion of Preservation Efforts.**
- 209. Annual Report.**

**§ 201. Powers and Duties.**

The Federation Cultural Department shall have the duties and powers set out in this subchapter, which shall be in addition to such powers and duties provided by prior Statutes of the Mille Lacs Band of Chippewa as are not inconsistent with this Title.

**Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 6.

**§ 202. Nominations to the Band's Register.**

The department is directed to nominate to the Board all sites, buildings, districts and objects within the reservation that appear to qualify for listing on be Band's Register. The Department shall, in order to compile the information needed to make the nominations:

- (a) Conduct a comprehensive survey of all historic properties on the reservation pursuant to 10 MLBS § 501.
- (b) Compile an inventory that includes basic information about the location and history of each property.
- (c) Evaluate each property surveyed with regard to its historic, archaeological, anthropological, religious and cultural significance.
- (d) Based on the evaluation described in subsection (c), place each surveyed property into one (1) of four (4) categories of significance.

**Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 6.01.

**Cross References**

Band's Register, *see* 10 MLBS §§ 401, 402.  
Board review of nomination, *see* 10 MLBS § 116.

### **§ 203. Nominations to National Register; Preparation of Forms.**

The Department shall prepare nominations forms for those properties that appear to be eligible for placement on the National Register, and present them to the Board.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T.1, § 6.02.

#### **Cross References**

Board review of nominations, *see* 10 MLBS § 117.  
National Register, *see* 10 MLBS §§ 403, 404.

### **§ 204. Assistance to Boards.**

The Department shall assist and consult with the Administrative Policy Board and the Board on issues relating to the conservation of historic and archaeological resources and on other matters within the scope of their duties.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T.1, § 6.03.

### **§ 205. Records and Salvage.**

The Department shall initiate measures to ensure, at a minimum, that where a property listed on the Band's Register is to be substantially altered or affected, timely steps be taken to make or have made records, including measured drawings, photographs and maps of the property, and that a copy of records then be deposited in the tribal archives for future use and reference. The Department shall use its best efforts to assure adequate surveying testing, to salvage, analysis and duration of artifacts, where such is feasible.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T.I, § 6.04.

## **§ 206. Tribally-Owned Properties**

The Department shall initiate measures and procedures to provide for the maintenance, preservation, rehabilitation or restoration, of tribally-owned and registered sites at professional standards prescribed by the Director of the Department.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T.I, § 6.05.

## **§ 207. Transfer of Property on Band's Register.**

The Department shall cooperate with purchasers and transferees of any property listed on the Band's Register in the development of viable plans to use such property in a manner compatible with preservation objectives and which does not result in a unreasonable burden in the public interest.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T.I, § 6.06.

## **§ 208. Promotion of Preservation Efforts.**

The Department is authorized to take the following actions for the purpose of promoting historic preservation efforts:

- (a) Develop and make available to Band Agencies information concerning professional methods and techniques for identifying, preserving, stabilizing, improving, restoring and maintaining, archaeological and historic properties.
- (b) Advise Band agencies in the evaluation, identification, preservation, stabilizing, improvement, restoration and maintenance of historic and archaeological properties.
- (c) Encourage in cooperation with the Board, public interest and participation in archaeological and historic preservation.
- (d) Conduct studies in such areas as the adequacy of federal, state and band laws pertaining to archaeological and historic preservation activities.
- (e) Encourage training and education in the field of archeological and historic preservation.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T.I, § 6.07.

**§ 209. Annual Report.**

The Department shall submit annually a comprehensive report of its activities and the results of its studies to the Chief Executive and the Board, and from time to time submit such additional and special reports as the Department deems advisable. These reports may propose such legislative enactments and other actions as, in the judgment of the Department, are necessary and appropriate to carry out its recommendations.

**Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T.I, § 6.08.

**SUBCHAPTER 4**

**PERMITS**

**Section**

- 301. Damaging or Adverse Effects: Prohibited Acts.**
- 302. Illegal Possession or Transfer of Archaeological or Historic Resources.**
- 303. Contents of Permit Application.**
- 304. Filing of Application.**
- 305. Criteria.**
- 306. Board Action.**
- 307. Terms and Conditions of Permit.**
- 308. Duration of Permit.**
- 309. Interim Permits.**
- 310. Duties of Permittees.**
- 311. Suspension and Revocation of Permits.**
- 312. Hearing.**
- 313. Emergency Stop Work Orders.**

**§ 301. Damaging or Adverse Effects: Prohibited Acts.**

No person shall excavate, remove, damage or otherwise alter, deface or adversely affect any archaeological resource or historic property unless such activity is pursuant to a permit duly issued under this Title.

**Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T.I, § 7.

**§ 302. Illegal Possession or Transfer of Archaeological or Historic Resources.**

No person shall sell, purchase, exchange, transfer, transport, receive, possess or offer to sell, purchase or exchange any archaeological resource or historic property if such resource is excavated or removed from Reservation lands in violation of the prohibition contained in 10 MLBS § 301.

**Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 7.01.

**§ 303. Contents of Permit Application.**

An application for a permit to excavate, remove, alter, damage, or otherwise adversely affect archaeological resources or historic properties from Reservation land shall include information concerning the time, scope, location and specific purpose of the proposed work, together with such other information as the Board deems necessary. Each application must be accompanied by a definite outline of the proposed work, indicating the name of the individuals or group making the request, the date proposed for beginning the work, the length of time proposed to be devoted to it and the person who will have immediate charge of the work. The application must also contain an exact statement of the character of the work, whether examination, excavation or gathering, the museum in which the collections made under the permit are to be permanently preserved, and, where such museum is off-reservation, the length of time proposed by the application before such collections are to be returned to the reservation. The application must be accompanied by a sketch plan and a legal description of the particular site or area to be affected, so definite that it can be located on a map with accuracy. Each application shall be signed by the applicant and verified on oath or affirmation, and shall contain the promise of the applicant to abide and be bound by all of the provisions of this Title and by all other Band laws.

**Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T.I, § 8.

**Cross References**

Archaeological research methodology, *see* Nat. Res. Comm. Order 157-92.

**§ 304. Filing of Application.**

Each application for a permit must be filed with the Board and the director of the Cultural Department.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 8.01.

### **§ 305. Criteria.**

A permit may be issued pursuant to an application submitted in strict accordance with 10 MLBS §§ 303 and 304, if the Board determines that:

- (a) The applicant has demonstrated its qualifications to carry out the proposed activity by submitting to the Board references and a resume showing prior successful experience in archaeological field work, site surveying, excavation techniques and reporting;
- (b) Adequate mitigation efforts are guaranteed that will avoid any adverse effect on properties included on or eligible for inclusion on the Band's Register or the National Register, or that acceptance of an adverse effect on such properties is clearly in the Band's best interest;
- (c) The archaeological resources or historic properties which are excavated or removed will remain the property of the Band; and,
- (d) The activity pursuant to such permit is not inconsistent with any management plan applicable to the lands concerned.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 8.02.

### **Cross References**

Band's Register, *see* 10 MLBS §§ 401, 402.

National Register, *see* 10 MLBS §§ 403, 404.

### **§ 306. Board Action.**

The Board shall allow the department a reasonable opportunity to comment on each application for a permit. The board shall make its decision to issue or deny a permit within six (6) months after the date the application was filed; Provided, however, that the Board may make an unlimited number of three (3) month extensions of such review period upon providing the applicant with a written explanation of the factors requiring such an extension. Applicants shall be notified of Board action by certified mail.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T.I, § 8.03.

### **§ 307. Terms and Conditions of Permit.**

Any permit may contain such terms and conditions that the Board deems necessary to carry out the purposes of this Title. Each permit shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Title and other laws applicable to the permitted activity. The permit may contain provisions requiring restoration of the site of its former condition. Every permit shall be issued in the name of the applicant therefore, and no permit shall be transferable; nor shall the holder of any permit allow any other person to use the permit. The Board may require that a bond be posted as a prerequisite to issuance of a permit.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 8.04.

### **§ 308. Duration of Permit.**

Each permit shall be effective for three (3) years from the date of its issuance or for such shorter period as may be specified therein. The terms of each permit may be extended on order of the Board for proper cause upon finding that the work has been diligently prosecuted under the permit. Failure to begin work under a permit within six (6) weeks after it is granted, or failure to diligently prosecute such work after it has begun, shall make the permit void without any order or proceeding by the Board.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T.1, § 8.05.

### **§ 309. Interim Permits.**

Persons who received approval from the Board to excavate or adversely affect any archaeological resource or historic property prior to the date of enactment of Band Statute 1072-MLC-23 may receive an interim permit to continue work during the period that their application for a permit is pending before the Board, under the following procedure:

- (a) Within 30 days after the date of enactment of Band Statute 1072- MLC-23, such person shall file with the Board a declaration, stating the time approval was received, the location of the property the purpose of the work, and the work done. The declaration shall be accompanied by an application for a permit.
- (b) Upon filing of the declaration and the application, the Board shall issue an interim permit. The Department shall determine whether the alleged authority to affect the property was validly obtained, the Board shall revoke the interim permit.
- (c) Such interim permit shall be in effect until the Board approves or denies the application for the permit.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23. T.1, § 8.06.

### **§ 310. Duties of Permittees.**

During the course of the undertaking, each permittee shall report monthly and quarterly to the Board. Monthly reports shall contain a brief summary statement of the work performed during the month, and quarterly reports shall contain a catalog of collections and photographs made during the quarter. Each permittee shall cooperate fully with any and all inspections conducted by the Department or the Board. No part of any collections shall leave the reservation unless the express written consent of the Board has been given in the form of a Temporary Removal License. Such license shall at all times accompany the artifacts while off the reservation.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 9.

### **§ 311. Suspension and Revocation of Permits.**

Any permit issued under this chapter may be suspended or revoked by the Board in accordance with the procedures set forth in 10 MLBS §§ 312 and 313, upon determination:

- (a) That the permittee has violated any provision of the permit, this Title, or other applicable law;
- (b) That relevant circumstances have changed since the granting of the permit so that the application would no longer meet the criteria of 10 MLBS § 305;
- (c) That material misrepresentations were contained in the application; or

- (d) That the permit was improvidently granted.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 10.

### **§ 312. Hearing.**

Upon written notice specifying the alleged grounds for revocation for suspension, filed with the Board by the Chairperson or the Director of the Department, the Board shall schedule a hearing to determine the matter, which hearing shall not be less than five (5) days nor more than 30 days after the service of such notice upon the permittee. The permittee shall be entitled to an opportunity to appear at such hearing and controvert the allegations in support of revocation or suspension.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 10.01.

### **§ 313. Emergency Stop Work Orders.**

Upon finding that a delay in suspending or revoking a permit for the period required by a hearing would be contrary to the Band's interest in preserving archaeological or historic properties, the Board may issue a written stop work order, directing the permittee immediately to cease and desist all excavation, removal or other activity pursuant to the permit. It shall be unlawful for any person to disobey a stop work order. In all cases where a stop work order has been issued, the Board shall immediately schedule a hearing to determine the matter, which hearing shall not be less than two (2) days nor more than ten (10) days after the date of the stop work order, unless continued by the Board upon motion of the permittee.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 10.02.

## **SUBCHAPTER 5**

### **REGISTERS**

**Section**

**401. Band's Register of Archaeological and Historic Properties; Nomination and Acceptance.**

**402. Band's Undertakings Upon Property Listed in Band's Register.**

**403. National Register; Nomination of Reservation Properties.**

**404. Band Undertakings Upon Properties Listed in National Register.**

**§ 401. Band's Register of Archaeological and Historic Properties; Nomination and Acceptance.**

There is hereby established a Band's Register of Cultural Properties, which shall be a register of prehistoric or historic districts, sites, building, structures and objects significant in tribal history, architecture, archaeology, culture or religion. Nominations at the Band's Register may be made by any person. Acceptance or rejection of any nomination shall be made by the Board.

**Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 11.

**Cross References**

Board review of nominations, *see* 10 MLBS § 116.

Department powers and duties, nominations to Band's Register, *see* 10 MLBS § 202.

**§ 402. Band's Undertakings Upon Property Listed in Band's Register.**

Whenever the Mille Lacs Band has direct or indirect jurisdiction over a proposed Band or Band assisted undertaking, or has authority to license or permit any undertaking, the Board shall, prior to the approval of the expenditure of any Band funds on the undertaking or prior to the issuance of any license or permit, as the case may be, take into account the effect of the undertaking on any district, site, building, structure or object that is included or eligible for inclusion in the Band's Register. The Board and the Director shall be afforded a reasonable opportunity to comment with regard to such undertaking.

**Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 11.01.

**Cross References**

Permit criteria, adverse effects on properties, *see* 10 MLBS § 305.

**§ 403. National Register; Nomination of Reservation Properties.**

Nomination of any district, site, building, structure, or object located within the Reservation for inclusion in the National Register shall be made by the Band Assembly.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 12.

### **Cross References**

Board review of nominations, *see* 10 MLBS § 117.

Preparation of nomination forms by Department, *see* 10 MLBS § 203.

### **§ 404. Band Undertakings Upon Properties Listed in National Register.**

Whenever the Chief Executive has direct or indirect jurisdiction over a proposed Band or Band-assisted undertaking or has authority to license any undertaking, the Board shall, prior to the approval of the expenditure of the Band funds on the undertaking or prior to the issuance of any license or permit, as the case may be, take into account the effect of the undertaking on any district, site, building, structure or object within the Reservation that is included in or eligible for inclusion in the National Register. The Board and the Director shall be afforded a reasonable opportunity to comment with regard to such undertaking.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 12.01.

### **Cross References**

Permit criteria, adverse effects on properties, *see* 10 MLBS § 305.

## **SUBCHAPTER 6**

### **SURVEY AND COMPREHENSIVE PLAN**

**Section**

**501. Comprehensive Survey.**

**502. Comprehensive Plan.**

**§ 501. Comprehensive Survey.**

A comprehensive Reservation-wide survey of archaeological and historical properties shall be conducted by the Director of the Department and submitted to the Board. The long-range

objective of the comprehensive survey shall be the identification, protection and preservation of all archaeological resources, districts, sites, buildings, structures and objects within the Reservation that are potentially significant to tribal history, architecture, archaeology, culture or religion. The survey shall be conducted in as timely a manner as possible and shall encompass all historic properties and archaeological resources, regardless of title, boundaries or ownership. Survey data shall be maintained by the Department in an accessible location and shall be kept up to date so that information is readily available to Band planners during the decision-making process. The survey data need not be published but shall be physically organized and indexed in a manner to provide for easy access. Availability of survey data to the general public may be limited if, in the opinion of the Department such availability might result in damage to archaeological resources or historic properties. An end result of the overall survey process is nomination of property significant to Band history, architecture, archaeology, culture or religion to the Band's Register or the National Register.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 13.

### **Cross References**

Department powers and duties, nominations to Band's Register, *see* 10 MLBS § 202.

Nondisclosure, *see* 10 MLBS § 4.

Registers, *see* 10 MLBS § 401 et seq.

### **§ 502. Comprehensive Plan.**

A comprehensive Reservation-wide archaeological and historic preservation plan shall be prepared by the Department and submitted to the Board. The plan shall consist of a report or series of reports on the Reservation archaeological and historic preservation program. These reports shall describe, analyze and make future projections about the program. The archaeological and historic preservation plan shall include an explanation of the philosophy or rationale behind the program components, a report on the current status of each component, an evaluation of the effect of each component, and the projection of future plans.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 13.01.

### **Cross References**

Board review and approval of comprehensive plan, *see* 10 MLBS § 115.

## SUBCHAPTER 7

### ENFORCEMENT

#### Section

**601. Prohibited and Required Acts.**

**602. Criminal Offenses.**

**603. Civil Penalties.**

#### **§ 601. Prohibited and Required Acts.**

It shall be unlawful and prohibited for any person to do any act the performing of which is prohibited under this chapter or to fail to do any act the performance of which is required under this chapter.

#### **Historical and Statutory Notes**

##### **Source:**

Band Statute 1072-MLC-23, T. I, § 15.

#### **§ 602. Criminal Offenses.**

The procedure established for criminal offenses under the Mille Lacs Statutes shall be utilized for violations of this chapter committed by persons subject to tribal criminal jurisdiction. In the event that the defendant pleads guilty or is found guilty of committing an offense, the Court may impose all or any of the following penalties:

- (a) A fine of not less than \$10.00 or more than \$500.00;
- (b) A jail term of not less than one (1) day nor more than six (6) months;
- (c) Forfeiture of any articles seized by reason of illegal activities prohibited by this chapter, under the procedures established by statute.

#### **Historical and Statutory Notes**

##### **Source:**

Band Statute 1072-MLC-23, T. I, § 15.01.

#### **Cross References**

Criminal procedure, *see* 24 MLBS § 4001 et seq.

#### **§ 603. Civil Penalties.**

The Mille Lacs Band may bring an action for a civil penalty against any person who is alleged to have engaged in an activity which is violative of this chapter, including any person who is not subject to Band criminal jurisdiction. The Band also may bring an action for forfeiture of any articles possessed in violation of this chapter. Such civil penalty and forfeiture actions shall be brought under the procedures established in the Civil Law Statute. Any person violating the provisions of this chapter shall be subject to exclusion from the Reservation under 2 MLBS § 201, et seq. Such relief as may be fashioned by the Court shall be intended to be remedial in nature and not punitive and should compensate the Band for the damage done to the archaeological or historic resources of the Reservation and its archaeological and historic resources. Such relief shall also be intended to coerce the individuals into obeying this chapter and regulations promulgated hereto and not to punish such individuals for violation of this chapter and such regulations. Search, seizure and forfeiture of articles possessed in violation of this chapter shall be pursuant to 1 MLBS § 1 et seq. The Court may also order the forfeiture of any bond, the revocation of any permits, the return of any property which has been removed from the Reservation or the restoration of any archaeological resources or historic property to its former or customary condition. In assessing civil penalties, the court may consider as factors the archaeological or commercial value of the resources involved, or the cost of restoration and repair of the resource and the archaeological or historic site involved.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. I, § 15.02.

### **Cross References**

Due process of law, *see* 1 MLBS § 8.

Unreasonable searches and seizures, *see* 1 MLBS § 2.

## **CHAPTER 2**

### **PROTECTION OF BURIAL GROUNDS**

**Section**

**1001. Definitions.**

**1002. Permits.**

**1003. Violation; Penalties.**

**1004. Force and Effect of Chapter.**

**§ 1001. Definitions.**

The Mille Lacs Reservation Band of Ojibwe hereby establishes that the following definition of terms be utilized when interpreting this chapter.

(a) **"Artifact"** means:

- (1) a usually simple object (as a tool or ornament) showing human workmanship or modification;
- (2) a product of civilization;
- (3) a product of artistic endeavor.
  
- (b) **"Burial ground"** means the site or location whereupon there has been performed the act or process of burying.
- (c) **"Cemetery"** means a burial place; a burial ground.
- (d) **"Historic"** means of or relating to times or events of written history.
- (e) **"Indian"** means American Indian, a member of any of the aboriginal peoples of the western hemisphere.
- (f) **"Monument"** means a burial vault; a memorial stone or a building erected in remembrance of a person or event.
- (g) **"Prehistoric"** means of or relating to times or events of written history.
- (h) **"Ruin"** means the remains of something destroyed.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. III, § 1.

### **§ 1002. Permits.**

Permits for the examination of ruins, burial grounds, cemeteries, the excavation of archaeological sites and the gathering of objects of antiquity upon the lands under the jurisdiction of the Mille Lacs Band of Ojibwe may be granted by the Mille Lacs Reservation Business Committee to institutions or persons which they may deem properly qualified to conduct such examinations, excavation or gathering, subject to such rules and regulations as they may prescribe.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. III, § 2.

### **§ 1003. Violation; Penalties.**

- (a) Any person who shall appropriate, excavate, injure or destroy any Indian cemetery, Indian burial mound or burial ground, historic or prehistoric ruin or monument, or any object of antiquity situate on lands owned or controlled by the Mille Lacs Band of Ojibwe or under their jurisdiction without the written permission of the Mille Lacs Reservation Business Committee having jurisdiction over said lands within the boundaries of the Mille Lacs Indian Reservation, Minnesota, shall upon conviction be fined in the sum of not more than \$500.00 or imprisonment for a period not to exceed six (6) months or shall suffer both fine and imprisonment, in the discretion of the Court.
- (b) In addition to the above penalty, whosoever shall violate this chapter may be subject to civil suit for both actual damages plus punitive damages in the amount of \$500.00 by any aggrieved party. The Mille Lacs Reservation Business Committee shall be considered an aggrieved party and may sue any violator in the name of the Mille Lacs Band of Ojibwe.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. III, § 3.

### **Cross References**

Historical preservation, enforcement, *see* 10 MLBS § 601.

### **§ 1004. Force and Effect of Chapter.**

Pursuant to the provisions of P.L. 280 (28 U.S.C. 1360), this chapter shall be given full force and effect in the determination of any civil cause of action brought in the Courts of the State of Minnesota.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. III, § 4.

## **CHAPTER 3**

## **ARCHIVES**

### **Section**

**2001. Purpose.**

**2002. Archival Program.**

**2003. Protection of Records.**

- 2004. Transfer of Records.**
- 2005. Archivist Access to Current Records.**
- 2006. Records Management.**
- 2007. Access to Records.**

**§ 2001. Purpose.**

The Federation Fund Archives, FFA, has been established for the purpose of preserving and making available for research materials which help to document the founding, development, organization, management and achievements of the Federation Fund. The collections also contain information on the Chippewa of the Mississippi (both before and after the formation of the FFA in 1855), and general information on Indian History and the history of Chippewa of the Mississippi. The records reflect the FFA dealings with government agencies, private foundations, the business community, fraternal and labor organizations, individual donors and members, and most importantly, treaties with the United States Government.

**Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. II, § I.

**§ 2002. Archival Program.**

The Archivist shall collect, arrange, and describe the archival records of the FFA. They shall make available to qualified researchers all open archival record series.

**Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23. T. II, § 2.

**§ 2003. Protection of Records.**

The Archivist shall protect the integrity of the records in their custody. They shall guard them against defacement, alteration, or theft; they shall protect them against physical damage by excessive exposure to light, dampness, and dryness; and they shall ensure that their evidentiary value is not impaired in the normal course of rehabilitation, arrangement, and use.

**Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. II, § 2.01.

**§ 2004. Transfer of Records.**

- (a) On behalf of the FFA the Archivist is authorized to receive all the noncurrent records of the organization.
- (b) Any record-creating division, department, or campaign area of the FFA is directed to release to the Archives for preservation and administration such records legally in its custody that no longer are needed for the transaction of the current business of the office, whenever the Archivist is well and able to receive and take possession of them.
- (c) The records of any division, department, or campaign area shall, prior to or upon the termination of the existence and functions of that office, be transferred to the custody of the Archives unless otherwise directed by the Archivist.
- (d) Since all records created by an employee in the performance of her or his duties legally are the property of the FFA, upon termination of employment all individuals shall transfer to the Archives those records no longer needed for the current operations of their respective offices. In no case shall anyone remove such records from the FFA Headquarters or the area offices, or destroy same without the prior permission of the Archivist.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, § 3.

#### **§ 2005. Archivist Access to Current Records.**

The Archivist shall have the right of reasonable access to and examination of all current FFA records.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. II, § 3.04.

#### **§ 2006. Records Management.**

The Archivist, together with the Executive Director, Assistant Executive Director, Secretary of the Corporate, and the several division and department heads, shall develop guidelines and procedures for the management of the current records of both FFA Headquarters and the area offices. They shall determine retention and disposal schedules for all types of records, and see to it that such schedules are observed by all divisions, department, and campaign areas.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. II, § 4.

**§ 2007. Access to Records.**

- (a) The FFA Archives conforms to the "Standards for Access to Research Materials in Archival and Manuscript Repositories," as approved by the Council on the Society of American Archivists in December 1973.
- (b) It is the policy of the FFA that all record series contained in its Archives be opened to qualified researchers ten (10) years after the creation of the record except for certain record series which are closed for either shorter or longer periods of time. A complete list of open and closed record series may be obtained from the FFA Archivist.

**Historical and Statutory Notes**

**Source:**

Band Statute 1072-MLC-23, T. II, § 5.

**CHAPTER 4**

**CEMETERIES**

**Section**

**3001. Establishment of the Mille Lacs Band Cemetery Association.**

**3002. Purposes.**

**3003. Powers and Responsibilities.**

**3004. Membership.**

**3005. Duration.**

**3006. Authorized Activities.**

**3007. Board of Trustees.**

**3008. Officers.**

**3009. Employees.**

**3010. Operations.**

**3011. By-Laws.**

**3012. Regulation of the Cemetery.**

**§ 3001. Establishment of the Mille Lacs Band Cemetery Association.**

The Mille Lacs Band of Ojibwe ("Band") hereby establishes the Mille Lacs Band Cemetery Association ("Association"). The Association shall be a distinct, non-profit legal entity that is separate and apart from the Band.

## Historical and Statutory Notes

**Source:**

Band Ordinance 41-16.

### § 3002. Purposes.

The purposes of the Association are:

- (a) to acquire the existing Lake View Cemetery (“Cemetery”), including all real and personal property appurtenant thereto, from Kathio Township;
- (b) to hold and manage the Cemetery and all such property appurtenant thereto, unless such property is not needed for cemetery purposes; and
- (c) to protect, preserve, and improve the burying grounds within the Cemetery.

## Historical and Statutory Notes

**Source:**

Band Ordinance 41-16.

### § 3003. Powers and Responsibilities.

Except as otherwise provided in this chapter, the Association shall have all of the powers and responsibilities of a cemetery association under Band law, provided that the Association shall not dispose of any real property it acquires without the prior written approval of the Chief Executive and Band Assembly, and provided further that the Association shall not dispose of any real property needed or being used for cemetery purposes except to another lawful cemetery association possessing all of the powers and responsibilities of a cemetery association under law. Upon its acquisition of the Cemetery and all property appurtenant thereto, the powers and responsibilities of the Association shall include, but not be limited to, the following:

- (a) to set walkways and, if necessary, relocate gravestones on or near graves so as to preserve the alignment of walkways, provided that any unmarked graves shall be preserved as completely as possible, without removing the bodies interred therein;
- (b) to make regulations governing the location of future graves and the opening of graves;
- (c) to set and charge a uniform fee for the privilege of burial in the cemetery, which may be adjusted from time to time;
- (d) to provide for the upkeep and maintenance of the Cemetery;

- (e) to assist in locating gravesites, with the understanding that records of burials in the Cemetery are not always accurate or available; and
- (f) to remove shrubs or trees that have overgrown a gravesite or that have otherwise become unsightly or a nuisance, provided that the Association will make reasonable efforts to inform known living descendants of an individual buried in an affected gravesite before removing such shrubs or trees.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 41-16.

### **§ 3004. Membership.**

The membership of the Association shall consist of:

- (a) all enrolled members of the Band;
- (b) all other persons who have an ancestor or relative buried in the Cemetery and who choose to become members of the Association; and
- (c) any other person who chooses to become a member of the Association, upon approval of the Association's Board of Trustees. The Association will charge a one-time membership fee to all Association members except enrolled members of the Mille Lacs Band. The Association will not collect dues from its members, but may request voluntary contributions from them.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 41-16.

### **§ 3005. Duration.**

The duration of the Association shall be perpetual unless the Association, with the approval of the Chief Executive and Band Assembly, transfers the Cemetery and all property appurtenant thereto to another lawful cemetery association possessing all of the powers and responsibilities of a cemetery association under Band law.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 41-16.

### § 3006. Authorized Activities.

The Association is authorized to engage in any lawful activity that is reasonable and necessary to achieve its purposes or to exercise its powers and fulfill its responsibilities, including but not limited to:

- (a) entering into and performing contracts;
- (b) employing personnel and retaining independent contractors, including accountants and attorneys;
- (c) establishing, maintaining, and carrying out employee benefit plans, either on its own or through the Band;
- (d) compromising or otherwise settling disputes; and
- (e) suing or being sued, but only in the Mille Lacs Band Court of Central Jurisdiction.

### Historical and Statutory Notes

**Source:**

Band Ordinance 41-16.

### § 3007. Board of Trustees

The activities of the Association shall be managed by a Board of Trustees ("Board") in accordance with the following provisions:

- (a) **Composition, Appointment and Election.** There shall be five (5) positions on the Board. Two (2) of the positions on the Board will be filled by the Band's Commissioner of Natural Resources and its Historic Preservation Officer, each of whom shall serve on the Board during their terms in office. Such service shall be a part of their respective job responsibilities, and shall not entitle them to additional compensation or remuneration. The other three (3) positions on the Board shall be appointed in the following manner:
  - (1) One (1) position shall be filled by appointment of the Chief Executive subject to ratification by the Band Assembly. The initial appointee shall serve a two-year term. After the expiration of the term, any subsequent appointment, other than to fill a vacancy prior to the end of a term, shall be two (2) years.
  - (2) One (1) position shall be filled by appointment of the Secretary-Treasurer subject to ratification by the Chief Executive. The initial appointee shall serve a two-year term. After the expiration of the term, any subsequent

appointment, other than to fill a vacancy prior to the end of the term, shall be two (2) years.

- (3) One (1) position shall be filled by the District I Representative subject to ratification by the Chief Executive. The initial appointee shall serve a two-year term. After the expiration of the term, any subsequent appointment, other than to fill a vacancy prior to the end of the term, shall be two (2) years.

(b) **Vacancies.**

- (1) A Board seat shall be considered vacant under the following circumstances:
  - (i) if there is a vacancy in the position of Band Commissioner of Natural Resources or Band Historic Preservation Officer, in which case the corresponding Board seat shall be considered vacant;
  - (ii) in the event of the death or resignation of a Trustee; or
  - (iii) if the Board finds that a Trustee is unable or unwilling to serve.
- (2) If a Board seat is considered vacant, the vacancy shall be filled as follows:
  - (i) by appointment of the Chief Executive and ratified by the Band Assembly, in the case of a vacancy in the position held by the Band's Commissioner of Natural Resources or its Historic Preservation Officer, until such time as a new Commissioner of Natural Resources or Historic Preservation Officer takes office;
  - (ii) by appointment of the Chief Executive, Secretary-Treasurer, and District I Representative subject to ratification as provided in § 3007(a), in the case of a vacancy in the position held by one (1) of the other three (3) initial appointees, until the end of such appointee's term; and
  - (iii) by appointment of the Chief Executive, Secretary-Treasurer, and District I Representative subject to ratification as provided in § 3007(a), in the case of a vacancy held by one (1) of the other three (3) positions of the Board subsequently appointed, until the end of such member's term.

(c) **Meetings.**

- (1) **Association's Annual Membership Meeting.** The Association will hold an annual membership meeting, in which officers of the Association shall make a full report of the activities of the Association, including a financial report. The date and time of the meeting will be set by the Board.

- (2) **Board Meetings.** The Board shall hold an annual Board meeting following the Association's annual membership meeting for the appointment of officers of the Association. The Board may establish a schedule for regular Board meetings by resolution setting the date and time for such meetings. Special meetings of the Board may be called by the Board's Chairperson on her or his own initiative or at the request of any two (2) Trustees, to be held at a convenient date and time determined by the person or persons calling the meeting.
- (3) **Meeting Locations.** All meetings of the Association and the Board shall be held in the Band's Government Center or in another Band facility made available to the Association and the Board at no charge.
- (4) **Notice of Meetings.** Notice of the Association's annual membership meeting shall be published at least seven (7) calendar days before the meeting in the Mille Lacs Band newspaper, Government Center and District Community Centers bulletin boards, and upon the Band website. No notice is required for annual or regular Board meetings. Notice of special Board meetings shall be given at least three (3) business days in advance of the meeting by written notice delivered personally or by mail, telefax, electronic mail, or other similar means to each Trustee at her or his business or home address or to an electronic mail address designated by such Trustee in writing. If mailed, the notice shall be deemed to be given three (3) calendar days after being deposited in the United States mail properly addressed with postage prepaid. Notice need not be given to a Trustee who waives notice either before or after the meeting or who participates in the meeting without timely objection as to notice. Notice also need not be given to a meeting resumed after adjournment. Neither the business to be transacted at nor the purpose of any special Board meeting need be specified in the notice or waiver of notice.
- (d) **Quorum.** Except as otherwise provided in this Ordinance, three (3) Trustees shall constitute a quorum for the transaction of business at any meeting of the Board, but if less than a quorum is present, a majority of the Trustees present may adjourn the meeting from time to time without further notice.
- (e) **Manner of Acting.** Except as otherwise provided in this Ordinance, the act of a majority of the Trustees present at a Board meeting at which a quorum is present shall be the act of the Board.
- (f) **Presumption of Assent.** A Trustee present at a Board meeting, who neither casts a vote nor expressly abstains from voting on a Board action taken at the meeting, shall be presumed to have assented to the action unless her or his dissent is entered in the minutes of the meeting of he or she files a written dissent to the action with the person acting as the Secretary of the meeting before the adjournment thereof or

forwards such dissent by certified or registered mail to the Secretary of the Association immediately after the adjournment of the meeting.

- (g) **Committees.** The Board, by affirmative vote of three (3) Trustees, may delegate specific authority possessed by the Board to a committee of at least two (2) Trustees ("Committee"), provided such delegation shall not operate to relieve the Board or any Trustee of any responsibility imposed by this Ordinance or other applicable law.
- (h) **Telephone Meetings.** The Trustees may participate in any meeting of the Board or a Committee by means of a telephone conference call or similar communications system by which all persons participating in the meeting can hear each other, and such participation shall constitute presence at the meeting.
- (i) **Action without a Meeting.** Any Board or Committee action may be taken without a meeting if consent is expressed in writing, setting forth the action taken, and signed by all Trustees or Committee members, as the case may be. Such written consent shall have the effect of a unanimous vote at a meeting.
- (j) **Compensation.** There shall be compensation for service as a member of the Board of Trustees as provided by the Association's By-laws.
- (k) **Limited liability and indemnification.** The Association shall indemnify any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding either civil, criminal, administrative or investigative by reason of the fact that he or she is or was a director, officer, agent or employee acting on behalf of the Association, or is or was serving at the request of the Association as a director or officer of another enterprise or corporation, against expenses, including attorneys' fees and costs, judgments, fines and amounts paid in settlement actually and reasonably incurred by her or him in connection with such action, suit or proceeding, to the extent that such person is not otherwise indemnified. The Association shall not be required to indemnify such director, officer, agent or employee if independent counsel shall determine pursuant to a judicial decision in any such action, suit or proceeding or independently, in case of settlement, that the director, officer, agent or employee has failed to act in good faith and with that degree of diligence, care and skill which ordinary prudent people would exercise under similar circumstances in like positions.

### Historical and Statutory Notes

**Source:**

Band Ordinance 41-16.

**§ 3008. Officers.**

The officers of the Association shall consist of a Chairman of the Board, a Vice Chairman of the Board, a Secretary, a Treasurer, and such other officers as the Board may deem necessary or appropriate, all of whom shall be appointed and hold office as follows:

- (a) **Appointment and Term.** Officers shall be appointed by the Board at the annual Board meeting. Unless the Board specifies a shorter term, each Officer shall hold office until the next annual Board meeting and until her or his successor is appointed and assumes office. Any two (2) or more Offices may be held by the same person except Chairman and Vice Chairman or Chairman and Secretary.
- (b) **Resignation, Removal and Vacancies.**
  - (1) Any Officer may resign by giving written notice to the Association. The resignation shall be effective when given, unless a later effective date is specified in the notice.
  - (2) The Board may remove any officer with or without cause.
  - (3) The resignation or removal of an Officer who also serves as a Trustee shall not also terminate that person's status as a Trustee, unless the resignation so states or that person's position on the Board is considered vacant under § 3007(b) above.
  - (4) As provided below, the Chairman and Vice Chairman of the Board must also be Trustees. Accordingly, upon termination of either Officer's status as a Trustee, her or his status as Officer shall also terminate.
  - (5) If a vacancy occurs in any Office of the Association for any reason, the Board shall appoint a successor to fill the vacancy for the remainder of the unexpired term.
- (c) **Chairman of the Board.** The Chairman of the Board ("Chairman") shall be appointed from among the Trustees and shall preside at all Board meetings and have such other powers and duties as the Board may prescribe.
- (d) **Vice Chairman of the Board.** The Vice Chairman of the Board ("Vice Chairman") shall be appointed from among the Trustees. In case of the absence, disability or death of the Chairman, the Vice Chairman shall exercise and perform all powers and duties of the Chairman. The Vice Chairman shall have such other powers and duties as the Board may prescribe.
- (e) **Secretary.** The Secretary shall:
  - (1) take minutes of all Board and Committee meetings, and maintain a book thereof at the Band Government Center, reporting the time and place of the

meeting, how it was authorized, the notice given, the names of those present at the meeting, and the actions taken;

- (2) keep at the Band Government Center a book containing a copy of this Ordinance and all subsequent actions of the Chief Executive and Band Assembly with respect to the Association and Cemetery;
  - (3) keep at the Band Government Center copies of any By-Laws adopted by the Board in accordance with this Ordinance;
  - (4) keep at the Band Government Center annual and quarterly financial statements showing in reasonable detail the Association's assets and liabilities and the results of its operations; and
  - (5) make the foregoing books and records available at all reasonable times for review and inspection by the Trustees, Chief Executive, Commissioner of Finance, Band Assembly, and their designees.
- (f) **Treasurer.** The Treasurer shall:
- (1) supervise and control the maintenance of fiscally responsible accounts for the Association's assets, liabilities, receipts, disbursements, and other financial affairs;
  - (2) cause the books of these accounts to be open at all reasonable times for review and inspection by the Trustees, Chief Executive, Commissioner of Finance, Band Assembly, and their designees;
  - (3) prepare or oversee the preparation of annual and quarterly financial statements showing in reasonable detail the Association's assets and liabilities and the results of its operations, and cooperate with the Secretary of the Association in making such statements available in accordance with paragraph 8(3)(iv) above;
  - (4) deposit all funds and other financial assets of the Association with the Band's Office of Management and Budget;
  - (5) receive or cause to be received, and give or cause to be given, receipts for moneys paid to or on behalf of the account of the Association;
  - (6) request the Commissioner of Finance to disburse, or cause to be disbursed, all funds of the Association as may be directed by the Board, taking proper vouchers for such disbursements;

- (7) render to the Trustees, whenever they may require, accounts of all transactions engaged in as Treasurer and accounts showing the financial condition of the Association; and
- (8) have such other powers and duties as the Board may prescribe.
- (g) **Other Officers; Delegation.** The Board may appoint other Officers as it considers necessary or appropriate. These Officers shall have powers and duties as the Board may prescribe. In case of the unavailability or disability of any Officer, the Board may from time to time temporarily delegate her or his powers or duties to another Officer or Trustee.
- (h) **Compensation.** The Officers shall serve with compensation as provided by the Association's By-laws.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 41-16.

### **§ 3009. Employees.**

- (a) **Management of Cemetery.** Employees of the Band's Community Development Public Works Department ("Public Works") shall oversee the operation of the Cemetery, however, the Board may hire a Cemetery Manager to oversee the operation of the Cemetery in accordance with this Ordinance. The Cemetery Manager may be hired for such term, and on particular terms and conditions, as the Board considers necessary or appropriate to serve the best interests of the Association. Public Works or the Cemetery Manager shall not be a member of the Board. Public Works or the Cemetery Manager shall report to the members of the Association at the Association's annual membership meeting, and shall report to the Board at each regular and special meeting of the Board.
- (b) **Other Employees.** The Board may hire other employees as it considers necessary or appropriate to serve the best interests of the Association, on terms and conditions it considers appropriate.
- (c) **Right to Terminate.** The Board may terminate an employee who is not an employee of Public Works, with or without cause, but the termination shall be without prejudice to the contract rights, if any, of the person so terminated.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 41-16.

### § 3010. Operations.

- (a) **Source of Funds.** The Association shall have three (3) sources of funds:
  - (1) burial fees collected under § 3003(c) above;
  - (2) gifts and donations, which shall be tax deductible to the maximum extent permitted by law; and
  - (3) membership fees collected from non-Band Member Association members under § 3004(c) above.
  
- (b) **Deposit and Expenditure of Funds.** All funds of the Association shall be deposited with the Office of Management and Budget and maintained in a separate, earmarked account for the Association. The Association, in consultation with the Commissioner of Finance, shall use a portion of its funds to establish a permanent trust fund for the benefit of the Association, which shall also be managed by the Office of Management and Budget and held in a separate, earmarked account for the Association. The Commissioner of Finance will disburse the Association's funds on behalf of the Association when requested to do so in accordance with § 3008(e)(6) above, provided that no funds will be disbursed for any purpose other than the authorized purposes of the Association under this Ordinance. The Association's funds shall not be used or obligated by the Band or any other person or entity for any other purpose.
  
- (c) **Authority to Sign or Endorse Written Instruments.** All checks, drafts, other orders for the payment of money, notes or other evidence of indebtedness, and securities or other valuable instruments, issued in the name of or payable to the Association, and all written contracts of the Association, shall be signed or endorsed on behalf of the Association by the Officer(s) and employee(s) the Board may designate by written resolution. No Officer or employee of the Association shall have power to bind the Association by contract or otherwise unless authorized to do so by this Ordinance or by the Board.
  
- (d) **Fiscal Year.** The Board shall determine the fiscal year of the Association.

### Historical and Statutory Notes

**Source:**

Band Ordinance 41-16.

### § 3011. By-Laws.

The Board may adopt, amend, or repeal by-laws of the Association, provided that the bylaws may not contain provisions inconsistent with the provisions of this Ordinance or applicable law.

## Historical and Statutory Notes

**Source:**

Band Ordinance 41-16.

### § 3012. Regulation of the Cemetery.

- (a) Upon its acquisition by the Association, the use of the Cemetery shall be subject to the regulations in this section.
- (b) The Cemetery shall be open to the public from two (2) hours before sunrise until two (2) hours after sunset, provided that these hours may be modified by the Association. With the exception of officers or employees of the Association, who the Association has authorized to be on the premises during closed hours, it shall be unlawful to be on the premises of the Cemetery except when it is open to the public. It shall also be unlawful to engage in any activities on the premises of the Association other than those normally associated with burials, visitation of grave sites, memorial services, or upkeep and maintenance of the Cemetery. The Association shall post notice of these provisions in a conspicuous place at or near the entrance to the Cemetery. A person who violates a provision of this paragraph shall be guilty of a civil and criminal trespass under Band law.
- (c) No person shall open a grave without first obtaining permission from the Association. A person applying for permission to open a grave shall submit an application to the Association at least 24 hours before the opening. A person in charge of opening a grave shall be responsible for closing the grave and leaving the gravesite in good condition.
- (d) Headstones and other markers must be placed inside gravesites and in accordance with any directives of the Association regarding such placement.
- (e) Flowers placed in the Cemetery must be placed in non-breakable containers within a gravesite.
- (f) No hedges, fences, walls, curbing, railings, or other similar structures may be placed around a gravesite or elsewhere within the Cemetery without approval in writing from the Association.
- (g) Any person who violates any provision in paragraphs c, d, e, or f above shall be guilty of a civil offense, punishable by a civil penalty of not less than \$100.00 and not more than \$500.00, and shall be liable to the Association for the costs of removing or relocating any offending item and any damages caused by such item, together with the Association's reasonable attorneys' fees, all as determined by the Mille Lacs Band Court of Central Jurisdiction.

## Historical and Statutory Notes

**Source:**

Band Ordinance 41-16.

# **TITLE 11 – ENVIRONMENT, NATURAL RESOURCES, ANIMALS AND PLANTS**

<b><u>Chapter</u></b>	<b><u>Section</u></b>
<b>1. Environmental Protection</b>	<b>1</b>
<b>2. Solid Waste Disposal Recycling</b>	<b>1001</b>
<b>3. Natural Resource Protection Code</b>	<b>2001</b>
<b>4. Animals</b>	<b>3001</b>
<b>5. 1837 Treaty Conservation Code for the Minnesota Ceded Territory</b>	<b>4001</b>

## **Historical and Statutory Notes**

Band Statute 1163-MLC-21, T.I, § 18.01 provides: "If any provisions of the Band Statute, or the application thereof, to any person, business, corporation or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Band Statute which can be given effect without the invalid provisions or application and to this end, the provisions of this Band Statute are declared severable."

## **CHAPTER 1**

### **ENVIRONMENTAL PROTECTION**

<b><u>Subchapter</u></b>	<b><u>Section</u></b>
<b>1. General Provisions</b>	<b>1</b>
<b>2. Environmental Protection Ordinance</b>	<b>101</b>
<b>3. Litter</b>	<b>201</b>

## **Historical and Statutory Notes**

The Preamble of Band Statute 1163-MLC-21 provides: "It is enacted by the Band Assembly of the Non-Removable Mille Lacs Bands of Chippewa Indians for the purpose of amending the environmental laws to establish minimum requirements for air, water, land and natural resource pollution control within the territorial jurisdiction of the Non-Removable Mille Lacs Bands of Chippewa Indians."

## **SUBCHAPTER 1**

## GENERAL PROVISIONS

### Section

1. Purpose.
2. Creation of Environmental Protection Commission.
3. Selection and Terms of Office of Environmental Protection Commission.
4. Environmental Protection Directives.
5. Powers and Duties of Environmental Protection Commission.
6. Entry Upon Property.
7. Reports to Band Assembly.
8. Emergency Powers.
9. Jurisdictional Authority.
10. Judicial Authority.
11. Duty to Notify and Avoid Pollution.
12. Enforcement.
13. Law Enforcement and Natural Resources Officers; Powers.
14. Criminal Penalties.
15. Civil Penalties.
16. Defenses.
17. Actions to Recover Penalties or Damages.
18. Actions for Declaratory or Equitable Relief.
19. Exempt Acts.
20. Jurisdiction and Service of Process.
21. Notice to Band of Summons and Complaint.
22. Intervention.
23. Burden of Proof.
24. Collateral Estoppel.
25. Res Judicata.
26. Relief.
27. Rights and Remedies Non-Exclusive.
28. Statute of Limitations.
29. Recovery of Litigation Costs and Expenses.
30. Sovereign Immunity.
31. Construction.

### § 1. Purpose.

- (a) The purpose of Subchapters 1 and 2 of this chapter is to achieve a reasonable degree of purity of air, water, land, and natural resources of the Band consistent with the maximum enjoyment and use thereof in furtherance of the welfare of all persons within the jurisdiction of the Band. Subchapters 1 and 2 of this chapter are enacted by the inherent aboriginal and sovereign rights of the members of the Non-Removable Mille Lacs Bands of Ojibwe, the Treaties of 1837 and 1855, and by the authority vested in the Non-Removable Mille Lacs Bands of Ojibwe under Article I, Section 3;

Article VI, Sections 1 and 2; and Article XIII of the Constitution of the Minnesota Chippewa Tribe.

- (b) It is the purpose of Subchapters I and II of this chapter to establish and further the environmental policies of the Bands to provide for the prevention, control and abatement of the pollution of the air, water, and land, so far as feasible and practical, in furtherance of conservation of the natural resources and public health and safety of all territories subject to the jurisdiction of the Band. It is hereby declared that such efforts are necessary for the protection of present and future vital security interests of the Band and its members.
- (c) It is the purpose of Subchapters 1 and 2 of this chapter, to safeguard the air, waters and lands of the Band from pollution by preventing any new pollution and abating pollution existing upon enactment of this Band Statute, under a program consistent with the declaration of policy hereinafter stated and the minimum environmental standards established by the laws and regulations promulgated by the United States of America, unless supplemented by more restricted standards of Band law.
- (d) It is the purpose of Subchapters 1 and 2 of this chapter, to perpetuate commonly held traditional beliefs, amongst American Indian people that human beings have a duty to peacefully co-exist within the natural environment. Human beings further have a natural duty to protect the environment which provides humans with life-sustaining natural resources.
- (e) It shall be the public policy of the Non-Removable Mille Lacs Bands of Ojibwe that each person has an inalienable right to the protection, preservation, and enhancement of air, water, land and other natural resources located within the jurisdiction of the Band and that each person has a legal duty to aid in the protection, preservation and enhancement of air, water, land and other natural resources located within the jurisdiction of the Band, so that all human beings may live in harmony with nature.
- (f) It shall be the public policy of the Non-Removable Mille Lacs Bands of Ojibwe to enact and enforce a series of environmental protection measures which shall, at a minimum equal the environmental protection laws of the United States of America and, if necessary and prudent exceed the minimum standards established by federal law.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 1.

### **Cross References**

Band governmental power and sovereignty, see 2 MLBS § 1.

## **§ 2. Creation of Environmental Protection Commission.**

There is hereby created within the Natural Resources Administration, a separate administration to be known as the Environmental Protection Commission of the Non-Removable Mille Lacs Bands of Ojibwe.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 2.

## **§ 3. Selection and Terms of Office of Environmental Protection Commission.**

- (a) The Environmental Protection Commission shall be comprised of a five-member commission chaired by the Commissioner of Natural Resources. The remaining members of the Commission shall be nominated by the Chief Executive and confirmed by the Band Assembly to a four-year term of office to expire on June 30, 1992, and every four (4) years henceforth from this date.
- (b) The members of the Commission shall be nominated as a consequence of their individual education, abilities, knowledge of nature, concern and commitment demonstrated for the environmental resources of the Band. The composition of the Commission shall not be restricted to members of the Band and at least one (1) seat shall be filled by a person from the community surrounding the lands subject to the jurisdiction of the Band.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 3.

## **§ 4. Environmental Protection Directives.**

The public acts and deeds of the Agency shall be published in the form of Environmental Protection Directives. Such written Directives shall be in uniform format, numbered consecutively and have expiration dates. The Commissioner of Natural Resources is authorized to execute such Directives in the name of the Commission, and to act in the name of the Commission when public necessity so dictates a documented need to do so, or as set forth in 11 MLBS § 8.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 3.02.

## **§ 5. Powers and Duties of Environmental Protection Commission.**

The Environmental Protection Commission shall have the following powers and responsibilities:

- (a) To administer and enforce all environmental protection regulations, herein enacted, of the United States of America and the Non-Removable Mille Lacs Bands of Ojibwe;
- (b) To investigate the extent, character and effect of pollution of the air, water, land or natural resources of the Band and to gather data and information necessary or desirable in the administration or enforcement of pollution laws, and to make such classification of the air, water, land or natural resources of the Band as it may deem advisable; and, to take such measures as necessary to abate pollution;
- (c) To establish and alter such reasonable standards and regulations for quality air, water, lands and other natural resources of the Band in relation to the public use and enjoyment of the members as necessary to implement the purposes of Subchapters 1 and 2 of this chapter;
- (d) To adopt, issue, reissue, modify, deny, or revoke, enter into or enforce reasonable orders, permits, variances, standards, regulations, schedules of compliance, and stipulation agreements, under such conditions as it may prescribe, in order to prevent, control or abate pollution of the air, waters, lands, or natural resources subject to the jurisdiction of the Band;
- (e) To exercise all powers, duties and responsibilities, which are reasonably necessary for the protection of the air, water, lands, and natural resources of the Band. All such authority so exercised pursuant to this subsection shall be consistent in scope and nature with authority delegated to the United States Environmental Protection Agency by act of Congress or federal judicial interpretation of such act.
- (f) To enter into cooperative agreements with any environmental protection agency of the United States, the State of Minnesota or any other federally recognized Indian tribe relating to the purposes of Subchapters 1 and 2 of this chapter.
- (g) To receive and accept money, property or services from any person or from any agency described in subsection (f) or from any other source for any purpose within the scope of its functions, in the name of the Non-Removable Mille Lacs Bands of Ojibwe. All monies so received are hereby appropriated for such purposes in like manner and subject to like provisions of law as the corresponding appropriations of all Band revenue. The Commission shall have no authority to waive the sovereign immunity of the Non-Removable Mille Lacs Bands of Ojibwe as a requisite to receipt of any domestic assistance or private funding.

- (h) To issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the emission of air contaminants, or for the installation or operation of any emission facility, air contaminant treatment facility, potential air contaminant storage facility, or storage facility, or any part thereof, or for the sources or emission of either air or noise pollution on lands subject to the jurisdiction of the Band.
- (i) To issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the storage, collection, transportation, processing, or disposal of waste, or for the installation or operation of any system or facility, or any part thereof related to the storage, collection, transportation, processing, or disposal of waste.
- (j) To prohibit the introduction, storage, collection, processing, disposal, or transportation of hazardous waste on lands subject to the jurisdiction of the Band.
- (k) To hold public hearings as it may deem necessary or advisable for the discharge of its duties under this act. All hearings conducted by the Environmental Protection Commission shall be recorded and transcribed. All final records, studies, reports and other documents prepared in final form by order of, or for consideration of, the Commission, are confidential records of the Non-Removable Mille Lacs Bands of Ojibwe. Notwithstanding the foregoing, the Commission may disclose any such information in order to comply with federal law and regulation, to the extent and for the purposes of such federally required disclosure.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, § 4.

#### **§ 6. Entry Upon Property.**

Whenever the Commission deems it necessary for the purposes of Subchapters I and II of this chapter, the Commission or any member, employee, or agent thereof, when authorized by it, may enter upon any property subject to the jurisdiction of the Band or public lands not subject to the jurisdiction of the Band, for the purpose of obtaining information or conducting surveys or investigations.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 4.12.

#### **§ 7. Reports to Band Assembly.**

The Environmental Protection Commission shall, before December 1 of each year, prepare a report of progress on abatement and control of air, water, land or natural resource pollution with recommendations for legislation in furtherance of the Band's environmental policies.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-2 1, T.I, § 20.

#### **§ 8. Emergency Powers.**

In the event that there is imminent and substantial danger to health and welfare of the members of the Band as a result of the pollution of air, water, land or natural resources; upon such finding, the Environmental Protection Commission may by emergency directive order the immediate discontinuance of abatement of such pollution without notice and without a hearing, or at the request of the Commission, the Solicitor General of the Band may bring an action in the name of the Band in any court of competent jurisdiction for a temporary restraining order to immediately abate or prevent such pollution. Such Commission directive or temporary restraining order shall remain effective until notice, hearing and determination are affected pursuant to other provisions of law, or, in the interim, as otherwise ordered. Such Commission directive shall be appealable to the Court of Central Jurisdiction.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 21.

#### **§ 9. Jurisdictional Authority.**

The Environmental Protection Commission shall exercise all the environmental jurisdiction possessed by the Non-Removable Mille Lacs Bands of Ojibwe as stated herein:

- (a) The Non-Removable Mille Lacs Bands of Ojibwe shall exercise concurrent environmental jurisdiction with the United States of America over the air space encompassing all lands and waters subject to the jurisdiction of the Band.
- (b) The Non-Removable Mille Lacs Bands of Ojibwe shall exercise concurrent environmental jurisdiction with the United States of America over all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation system, drainage systems and all other accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon lands of the Mille Lacs Bands of Ojibwe.
- (c) The Non-Removable Mille Lacs Bands of Ojibwe shall exercise concurrent environmental jurisdiction with the United States of America over:

- (1) all lands within the exterior boundaries of the Mille Lacs Reservation and Sandy Lake Reservation as established by the Treaty of 1855;
  - (2) all lands held in trust by the United States of America for the benefit of the Minnesota Chippewa Tribe, which are lawfully delegated to the jurisdiction of the Mille Lacs Bands; and, all lands held in trust by the United States of America for the benefit of the Non-Removable Mille Lacs Bands of Ojibwe;
  - (3) all lands subject to the jurisdiction of the Band pursuant to federal law, notwithstanding the issuance of any patent, and including rights-of-way running through said lands;
  - (4) all individual allotments for the benefit of any member of the Non-Removable Mille Lacs Bands of Ojibwe which are located within the exterior boundaries of the Mille Lacs and Sandy Lake Reservations as established by the Treaty of 1855;
  - (5) all lands held in fee status in the name of the Non-Removable Mille Lacs Bands of Ojibwe which are located within the exterior boundaries of the Mille Lacs and Sandy Lake Reservations as established by the Treaty of 1855.
- (d) The criminal and civil jurisdiction of the Non-Removable Mille Lacs Bands of Ojibwe shall extend to all enrolled members of the Mille Lacs Bands of Ojibwe, enrolled members of the Minnesota Chippewa Tribe who reside within the territorial jurisdiction of the Mille Lacs Bands of Ojibwe, Indians from other tribes who enter the territorial jurisdiction, including Indian Country, of the Mille Lacs Bands of Ojibwe, Indians from other tribes who enter the territorial jurisdiction of the Mille Lacs Bands of Ojibwe by virtue of residency, employment or violation of Mille Lacs Band Statute(s) within the territorial jurisdiction of the Mille Lacs Bands of Ojibwe.
- (e) The exercise of civil jurisdiction of the Non-Removable Mille Lacs Bands of Ojibwe over non-Indians, in environmental protection causes of action shall exist to the extent authorized by the laws of the United States of America. The criminal jurisdiction of the Non-Removable Mille Lacs Bands of Ojibwe shall not extend to non-Indians.
- (f) The jurisdiction of the Non-Removable Mille Lacs Bands of Ojibwe shall extend to all persons, political sub-divisions and their officers and agents, public or private corporations, associations, partnerships and any other individuals or entities who shall violate the environmental protection laws of the Band within the exterior boundaries of the Mille Lacs and Sandy Lake Reservations or on lands held in trust or fee status in the name of the Band, as authorized pursuant to the laws of the United States of America.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 5.

**Cross References**

Jurisdiction of Court of Central Jurisdiction, *see* 5 MLBS §§ 111-113.

**§ 10. Judicial Authority.**

- (a) The Court of Central Jurisdiction shall have original jurisdiction over any civil or criminal violation of the environmental protection laws of the Non-Removable Mille Lacs Bands of Ojibwe, subject to the provisions of 11 MLBS § 9.
- (b) The Court of Central Jurisdiction is hereby authorized to dismiss and transfer any cause of action where jurisdiction cannot be lawfully exercised, to any court of competent jurisdiction entitled to adjudicate said cause of action.

**Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 6.

**Cross References**

Jurisdiction of Court of Central Jurisdiction, *see* 5 MLBS §§ 111-113.

**§ 11. Duty to Notify and Avoid Pollution.**

It is the duty of every person subject to the jurisdiction of the Non-Removable Mille Lacs Bands of Ojibwe to notify the Environmental Protection Commission immediately of the discharge, accidental or otherwise, of any substance or material under its control which, if not recovered, may cause pollution of the air, waters, lands or natural resources of the Band, and the responsible person shall recover as rapidly and as thoroughly as possible such substance or materials, and take immediately, such other action as may be reasonably possible to minimize or abate pollution of the air, waters or lands of the Band.

**Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 8.

**§ 12. Enforcement.**

The provisions of Subchapters 1 and 2 of this chapter and all regulations, standards, orders, stipulation agreements, schedules of compliance and permits adopted or issued by the Environmental Protection Commission for the prevention, control, or abatement of pollution of

the air, water, lands or natural resources subject to the jurisdiction of the Mille Lacs Bands of Ojibwe may be enforced by any one (1) or any combination of the following:

- (a) Criminal prosecution;
- (b) Action to recover civil penalties;
- (c) Injunctions;
- (d) Action to compel performance; or
- (e) Other appropriate action in accordance with other provisions of Subchapters 1 and 2 of this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 7.

### **§ 13. Law Enforcement and Natural Resources Officers; Powers.**

Any duly authorized law enforcement officer or natural resources officer of the Non-Removable Mille Lacs Bands of Ojibwe is hereby authorized to take all action to the extent of their authority that may be necessary or proper for the enforcement of Subchapters I and II of this chapter, regulations, standards, directives, stipulation agreements, variances; schedule of compliance or permits.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 7.01.

#### **Cross References**

Enforcement, Environmental Protection Ordinance, *see* 11 MLBS § 105.

### **§ 14. Criminal Penalties.**

- (a) Any Indian who willfully or negligently violates any provision of Subchapters 1 and 2 of this chapter, or any standard, regulation, variance, directive, stipulation agreement, schedule of compliance or permit issued or adopted by any environmental protection agency or government which violation is not included in subsection (b), shall upon conviction be guilty of an environmental offense and may be sentenced to imprisonment for no longer than 180 days and/or a fine not to exceed \$5,000.00.

- (b) Any Indian who willfully or negligently violates any provision of Subchapter 1 or 2 of this chapter or the provision of any federal law enacted for the protection of the environment which is incorporated by reference into the laws of the Mille Lacs Bands of Ojibwe, shall upon conviction, be guilty of an environmental offense and may be punished by a fine schedule as promulgated by the Commissioner of Natural Resources.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 9.

#### **Cross References**

Violations and penalties, Environmental Protection Ordinance, *see* 11 MLBS § 106.

### **§ 15. Civil Penalties.**

- (a) Any person subject to the jurisdiction of the Band who violates any provision of Subchapter 1 or 2 of this chapter or any provision of any federal law enacted for the protection of the environment which is incorporated by reference into this chapter, or any standard regulation, variance, directive, stipulation agreement, schedule of compliance or permit issued or adopted by any environmental protection agency of government shall forfeit and pay to the Band a penalty, in an amount to be determined by the court, of not more than \$5,000.00 per day of violation.
- (b) In addition, in the discretion of the court, the defendant may be required to:
  - (1) Forfeit and pay to the Band a sum which will adequately reimburse any vendor for the reasonable value of cleanup and other expenses directly resulting from unauthorized discharge of pollutants, whether or not accident; and
  - (2) Forfeit and pay to the Band an additional sum to constitute just compensation for any loss or destruction of wildlife, fish or other aquatic life, and birds and for other proven actual damages to the Band caused by an unauthorized discharge of pollutants.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 10.

#### **Cross References**

Violations and penalties, Environmental Protection Ordinance, *see* 11 MLBS § 106.

## **§ 16. Defenses.**

As a defense to any said damages, the defendant may prove that the violation was caused solely by:

- (a) natural causes;
- (b) negligence on the part of the Mille Lacs Bands of Ojibwe of some other unit of government; or
- (c) an act or failure to act which constitutes sabotage or vandalism, or (d) any combination of the foregoing subsections.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 10.03.

## **§ 17. Actions to Recover Penalties or Damages.**

The civil penalties and damages provided for in 11 MLBS § 16 may be recovered by a civil action brought by the Solicitor General in the name of the Non-Removable Mille Lacs Bands of Ojibwe in the Court of Central Jurisdiction or in any other court of competent jurisdiction of the State of Minnesota or Wisconsin provided that this chapter is utilized to commence and determine the rights and obligations of the parties, pursuant to the provisions of 28 USC 1360(d) or any other applicable federal law.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 10.04.

### **Cross References**

State civil jurisdiction, Environmental Protection Ordinance violations, *see* 11 MLBS § 128.

## **§ 18. Actions for Declaratory or Equitable Relief.**

Any person residing on trust land subject to the jurisdiction of the Band, the Solicitor General, on behalf of the Band or any instrumentality or administration of the Band may maintain a civil action in the Court of Central Jurisdiction for declaratory or equitable relief in the name of the Non-Removable Mille Lacs Bands of Ojibwe against any person, for the protection of the air, water, land or other natural resources located within the jurisdiction of the Band, whether publicly or privately owned, from pollution, impairment or destruction.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 11.

### **§ 19. Exempt Acts.**

No action shall be permitted pursuant to 11 MLBS § 18 for acts taken by a person which do not and cannot reasonably be expected to pollute, impair, or destroy any other air, water, land or natural resources located within the jurisdiction of the Band. Neither shall actions be permitted under 11 MLBS § 18 for conduct taken by a person pursuant to established environmental quality standards of Band law, any regulation, rule, declaration, license, stipulation agreement or permit issued by the Mille Lacs Environmental Protection Commission.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 11.01.

### **§ 20. Jurisdiction and Service of Process.**

As to any cause of action arising under 11 MLBS § 18, the Court of Central Jurisdiction may exercise personal jurisdiction to the extent permissible by the laws of the Mille Lacs Bands and the United States and service of process on any person who is subject to the jurisdiction of the Court of Central Jurisdiction may be made by personally serving the summons upon the defendant who may be outside of the jurisdiction of the Band with the same effect as though the summons had been personally served within the jurisdiction of the Band.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 14.

### **Cross References**

Personal jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 113.

### **§ 21. Notice to Band of Summons and Complaint.**

Within seven (7) days after commencing such action, the plaintiff shall cause a copy of the summons and complaint to be served upon the Solicitor General and the Commissioner of Natural Resources.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 11.02.

**§ 22. Intervention.**

In any action maintained under 11 MLBS § 18, the Solicitor General may intervene as a matter of right and may appoint special counsel where as a result of such intervention he or she may represent conflicting or adverse interests. Other interested parties may be permitted to intervene on such terms as the court may deem just and equitable in order to effectuate the purposes and policies of Subchapters 1 and 2 of this chapter.

**Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 11.03.

**§ 23. Burden of Proof.**

- (a) In an action maintained pursuant to 11 MLBS § 18, where the subject of the action is conduct governed by any provision of Subchapter 1 or 2 of this chapter or an action by the Environmental Protection Commission, whenever the plaintiff shall have made a prima facie showing that the conduct of the defendant violates or is likely to violate any provisions of this Act or any action by the Environmental Protection Commission, the defendant may rebut the prima facie showing by the submission of evidence to the contrary.
- (b) In any other action maintained pursuant to 11 MLBS § 18, whenever the plaintiff shall have made a prima facie showing that the conduct of the defendant has, or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resource located within the jurisdiction of the Band, the defendant may rebut the prima facie showing by the submission of evidence to the contrary. The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative and the conduct at issue is consistent with and reasonably required for promotion of the public health, safety and welfare in light of the Band's paramount concern for the protection of the overall environment from pollution, impairment or destruction. Economic considerations alone shall not constitute a defense hereunder.
- (c) In an action maintained under 11 MLBS § 18, the plaintiff shall have the burden of proving that the environmental quality standard, limitation, regulation, rule, directive license, stipulation agreement or permit is inadequate to protect the air, water, land or other natural resources located within the jurisdiction of the Band from pollution, impairment or destruction by showing material evidence of such inadequacy.

**Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 12.

**§ 24. Collateral Estoppel.**

Where any action maintained pursuant to 11 MLBS § 18 results in a judgment in favor of the defendant that no violation of Subchapter 1 or 2 this chapter has occurred by said defendant, the judgment shall not stop the Band from re-litigation of any or all of the same issues with the same or other defendants unless the Band brought the prior action against the same or other defendant.

**Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 11.04.

**§ 25. Res Judicata.**

Where any action maintained pursuant to 11 MLBS § 18 results in a judgment in favor of the plaintiff, the judgment shall be res judicata between the parties in any action the Band may bring against the same defendant.

**Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 11.05.

**§ 26. Relief.**

The Court of Central Jurisdiction may grant declaratory relief, temporary and permanent equitable relief, or may impose such conditions on the party as are necessary or appropriate to protect the air, water, land or other natural resource located within the jurisdiction of the Band from pollution, impairment or destruction. When the court grants temporary equitable relief, it may require the plaintiff, except where the Band is plaintiff, to post a bond sufficient to indemnify the defendant for damages suffered because of the temporary relief, if permanent relief is not granted.

**Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 13.

**Cross References**

Injunctions, Environmental Protection Ordinance, *see* 11 MLBS § 107.

### **§ 27. Rights and Remedies Non-Exclusive.**

No existing civil or criminal remedy for any wrongful action shall be excluded or impaired by Subchapter 1 or 2 of this chapter. The rights and remedies herein shall be in addition to any administrative, regulatory, statutory or common law right and remedies now or hereafter available.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 15.

### **§ 28. Statute of Limitations.**

Proceedings in respect of an environmental offense pursuant to any provisions of Subchapter 1 or 2 of this chapter, may be instituted at any time within three (3) years after the time when the subject matter of the proceedings was discovered.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 17.

### **§ 29. Recovery of Litigation Costs and Expenses.**

In any action brought by the Solicitor General, in the name of the Band, pursuant to Subchapter 1 or 2 of this chapter, for civil penalties, injunctive relief, or in an action to compel compliance, if the Band shall finally prevail, and if the proven violation was willful, the Band, in addition to other penalties provided in 11 MLBS § 15, may be allowed an amount determined by the court to be the reasonable value of all or a part of the litigation expenses incurred by the Band. In determining the amount of such litigation expenses to be allowed, the court shall give consideration to the economic circumstances of the defendant.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.I, § 16.

### **§ 30. Sovereign Immunity.**

The Non-Removable Mille Lacs Bands of Ojibwe shall not be subject to any environmental suit in any court of competent jurisdiction without the expressed enactment of law by the Band Assembly.

## Historical and Statutory Notes

**Source:**

Band Statute 1163-MLC-21, T.I, § 19.

### **§ 31. Construction.**

The Solicitor General or exterior legal counsel and the Court of Central Jurisdiction whichever is applicable, shall liberally construe the provisions of Subchapters 1 and 2 of this chapter so as to provide for the full force and effect of the purposes therein stated.

## Historical and Statutory Notes

**Source:**

Band Statute 1163-MLC-21, T.I, § 18.

## SUBCHAPTER 2

### ENVIRONMENTAL PROTECTION ORDINANCE

#### Section

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- 125. Subsurface Resources.**
- 126. Forestry-Policy and Goals.**
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- 128. State Civil Jurisdiction.**

#### **Historical and Statutory Notes**

The Preamble of Band Statute 1091-MLC-24 provides: "It is enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians in order to exercise a more effective form of tribal government to regulate the natural resources of the Mille Lacs Band of Chippewa Indians."

#### **§ 101. Title of Subchapter.**

This subchapter shall be known as the Mille Lacs Band of Ojibwe Environmental Protection Ordinance.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.II, § 1.

#### **§ 102. Statement of Purpose**

The Mille Lacs Band of Ojibwe Natural Resource Protection Ordinance to protect the natural resources within the jurisdiction of the Mille Lacs Band of Ojibwe as defined under the Constitution of the Minnesota Chippewa Tribe pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), amended June 15, 1935 (49 Stat. 3781) and approved by the Secretary of Interior on July 24, 1936. This subchapter is to provide a uniform set of standards which are necessary to supplement the Mille Lacs Reservation's Conservation Code, so that hunting, fishing, trapping, wild rice and all other natural resources of Reservations' and Bands' may be preserved and protected. Where such Band laws and standards do not exist and are not promulgated, these laws and standards will apply. And whereas the Mille Lacs Band of Ojibwe finds that water is the primary resource of the natural resources system, the protection of the quality and quantity of the water resources is the primary objective of these laws and furthermore, the inter-relationships of water and other natural resources is such that the management of soil, timber, air and mineral resources has both direct and indirect effects upon the quality and quantity of the water, fish, wild rice and wildlife resources. These and all other interaction of resources will be considered when planning and management activities are engaged.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 1.01.

Band Statute 1163-MLC-21, T.II, § 1.01.

#### **Cross References**

**§ 103. Definitions.**

- (a) **"Band"** means the Mille Lacs Band of Ojibwe and the constituent Bands of the Non-Removable Mille Lacs Band of Ojibwe.
- (b) **"Clearcutting"** means any timber harvested and timber cutting on any and all tracts of land where the standing timber remains after harvesting or cutting is less than 40 trees of 8 inches or greater dbh per acre.
- (c) **"Day"** means a 24-hour period which shall be from 12:00:00 a.m. to 11:59:59 p.m. in the Central Time zone of the United States.
- (d) **"Lake"** means anybody or accumulation of water, whether natural or artificial, the majority of which is open water, which is an area ten (10) acres or more, and in depth at least 15 feet at some point.
- (e) **"Marsh, Wetland"** means anybody or accumulation of water whether natural or artificial, whether or not seasonal, where a majority area of the surface water contains emergent vegetation.
- (f) **"Non-Point Source"** means man-made or man-induced pollution from any and all sources not included in the point source definition.
- (g) **"Open Water"** means a water surface absent of emergent vegetation.
- (h) **"Person"** means any municipality, governmental sub-division, public or private corporation, individual, partnership, or other entity, including but not limited to association, commission or any interstate body, and includes any officer or governing or managing body of any municipality, governmental subdivision, or public or private corporation or other entity.
- (i) **"Point Source"** means any discernible, confined, and discrete conveyance, including but not limited to any pipe, stack, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
- (j) **"Pollution, Water Pollution, Air Pollution"** means the man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of the waters or atmosphere of the Mille Lacs Band of Ojibwe.
- (k) **"Pond"** means anybody or accumulation of water, whether natural or artificial, the majority of which is open water, which is an area less than ten (10) acres, whether or not seasonal.

- (l) **"River, Stream"** means any waterway or watercourse, whether natural or artificial, whether or not seasonal, which follows a flow channel to any lake, pond, marsh, river or to any other accumulation of water.
- (m) **"Road"** means any roadway, whether paved; graveled or otherwise surfaced, which is maintained for public use of four-wheeled vehicles.
- (n) **"Standard"** means water quality and quantity standards, air quality standards and soil protection standards as outlined in this Mille Lacs Band of Ojibwe Resource Protection Ordinance.
- (o) **"Waters of the Mille Lacs Band of Ojibwe"** means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifer, irrigation system, drainage systems and all other accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon lands of the Mille Lacs Band of Ojibwe, and which are contained with, flow through or border upon any other lands where Mille Lacs Band of Ojibwe member's rights of hunting, fishing, trapping and gathering rice are reserved.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 2.

Band Statute 1163-MLC-21, T.I, § 2.

#### **§ 104. Jurisdiction.**

- (a) The jurisdiction of the Mille Lacs Band of Ojibwe under this subchapter shall extend to:
  - (1) All lands within the exterior boundaries of the constituent Bands of the Non-Removable Mille Lacs Band of Ojibwe as created by treaty, Executive Order, or federal act, notwithstanding the issuance of any patent and including rights-of-way running through said land.
  - (2) All dependent Mille Lacs Band of Chippewa communities within the state of Minnesota.
  - (3) All Mille Lacs Band of Ojibwe allotments, whether within or without the boundaries of member Bands, the Indian titles to which have not been extinguished, including rights-of-way running through the same.
- (b) Jurisdiction shall extend over all persons or corporations whether Indian or non-Indian.

### Historical and Statutory Notes

**Source:**

Band Statute 1091-MLC-24, § 3.

Band Statute 1163-MLC-21, § 3.

### Cross References

Jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 111.

### § 105. Enforcement.

This Title shall be enforced by Reservation Conservation Officers or any other duly appointed officers of the Mille Lacs Band of Ojibwe or its member Bands or any other persons as provided by the Ordinance of the Mille Lacs Band of Ojibwe or its member Bands.

### Historical and Statutory Notes

**Source:**

Band Statute 1091-MLC-24, § 4.

Band Statute 1163-MLC-24, T. II, § 4.

### Cross References

Law enforcement and natural resources officers, powers, environmental protection, *see* 11 MLBS § 13.

### § 106. Violations and Penalties.

Any violation of this subchapter shall be considered a civil offense subject to the following penalties:

- (a) Pay the cost of any necessary cleanup, restoration or reclamation caused by the violation, as ordered by the Court of Central Jurisdiction, or by any administrative body with jurisdiction.
- (b) Pay any actual damages for injury to property, life or resources of any person, corporation, or public body or governmental agency.
- (c) Pay as punitive damages a penalty of up to \$500.00 per day for each day of continuing violation.

### Historical and Statutory Notes

**Source:**

Band Statute 1091-MLC-24, § 5.

Band Statute 1163-MLC-21, T.II, § 5.

### **Cross References**

Civil penalties, environmental protection, *see* 11 MLBS § 15.

Criminal penalties, environmental protection, *see* 11 MLBS § 14.

### **§ 107. Injunctions.**

All violations of this subchapter may be enjoined by order of any court with jurisdiction to prevent continuing violations. Any violation of said order shall be in addition to said above penalties and subject to punishment for contempt of court. Punishment for said contempt shall be at the discretion of the court, subject only to those limitations prescribed by law.

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1091-MLC-24, § 5.04.

Band Statute 1163-MLC-21, T. II, § 5.04.

### **Cross References**

Actions for declaratory or equitable relief, environmental protection, *see* 11 MLBS § 18.

### **§ 108. Notice of Violation.**

The Mille Lacs Band of Ojibwe or its member Bands through their duly appointed officers shall give a written notice to any violators of this subchapter. Said notice shall be served upon any violator by giving a copy of said notice to the violator if he or she can be located within the jurisdiction of the Mille Lacs Band of Ojibwe or its member Bands. Service of said notice may be given to serving a copy to said violator or leaving the notice at the residence or place of business of said violator, with any adult and who resides in the residence or is employed at the business of the violator. In the event the person or business causing the violation is not within the jurisdiction of the Mille Lacs Band of Ojibwe or its member Bands, then a notice may be posted on the land where offense is occurring. It shall be posted in a conspicuous place. A copy shall also be mailed to the last known residence or business address of the violator.

Said notice shall specify the nature of the violation, the location of the violation, and the section of this subchapter being violated. It shall set a date for a hearing before the court or administrative body as established by Band law. Said hearing shall be no sooner than five (5) days after service of said notice. In the event that no actual service can be made on a violator because he or she cannot be found, does not have a residence or place of business within the jurisdiction of the Mille Lacs Band of Ojibwe, then said notice of violation shall be published twice during two (2) consecutive weeks in a newspaper in the county where said violation occurred. An affidavit of said publication shall be filed with the appropriate court or administrative body and shall constitute proof of service of said notice.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 6.

Band Statute 1163-MLC-21, T.II, § 6.

**§ 109. Default.**

In the event a defendant fails to appear before the court or appropriate administrative body on the date set for a preliminary appearance, the court or administrative body may declare the defendant to be in default and award any appropriate relief to the complainant as provided by this subchapter.

**Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 6.01.

Band Statute 1163-MLC-21, T.II, § 6.01.

**§ 110. Setting Hearing Date.**

In the event a defendant does appear on the date set in the notice of violation, the court or administrative body hearing said matter shall set a date as soon as practicable for a full evidentiary hearing on the violation if the defendant denies the violation or responsibility for the violation.

**Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 6.02.

Band Statute 1163-MLC-21, T.II § 6.02.

**§ 111. Sewage Disposal System Permits.**

- (a) Permits shall be required for all of the following activities and application for said permits shall be on forms supplied by the Mille Lacs Band of Ojibwe:
  - (1) Construction of septic systems and drainfields, and any other type of individual or multifamily sewage disposal system, whether the construction is for a new system or for the up-grading of an old system.
  - (2) Municipal, community, and village sewage treatment plant, and any other sewage disposal system.
- (b) Approval for said permits shall be obtained from the Public Works Commissioner on the reservation where said activity will occur.

- (c) Fees for said permits shall be the sum specified by the Band Ordinance and so stated on the appropriate application form.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 7.

Band Statute 1163-MLC-21, T.II, § 7.

#### **§ 112. Permits Generally.**

Permits shall be required for all of the following activities and application for said permits shall be on forms supplied by the Mille Lacs Band of Ojibwe. Approval for said permits must be obtained from the Department of Natural Resources on the reservation where said activity will occur. Fees for said permits shall be the sum specified by the Ordinance and so stated on the appropriate application form.

- (a) Any and all excavation, mining, road building, draining, dredging, filling, and any other earth removal or disposition projects with the exception of excavation necessary for single family housing units.
- (b) Any and all insecticide, herbicide, fungicide, algacide, and any other pesticide use, no matter the application procedure, with the exception for household use of pesticides for public health measures.
- (c) Any and all industrial and commercial point source discharges into the Mille Lacs Band of Ojibwe waters.
- (d) Any and all commercial and private non-point source discharges into the Mille Lacs Band of Ojibwe waters.
- (e) Any and all commercial and private air emissions relating to the production of goods, products or materials.
- (f) Any and all forestry clearcutting activities and cutting of timber by any method where the tract to be logged is adjacent to any lake, stream, pond or road.
- (g) Any and all developments and improvements of parks, landings, beaches, harbors and canals and other related facilities, whether public or private.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 8.

Band Statute 1163-MLC-21, T.II, § 8.

#### **Cross References**

Herbicides, use on noxious weeds, *see* Nat. Res. Comm. Order 133-90.

### **§ 113. Environmental Assessments and Impact Statements.**

The issuance of any and all permits will be preceded by an Environmental Assessment Worksheet. These assessments shall be completed by the MLBC Research Laboratory, based upon work plans submitted by the permittee and site inspection, laboratory analysis and any other pertinent data. If in the findings of the assessment, an Environmental Impact Statement is proposed, then a public hearing to determine the necessity of the Environmental Impact Statement will be conducted. If an Environmental Impact

Statement is requested by the Mille Lacs Band of Ojibwe Environmental Board, the MLBC Research Laboratory will produce and present, within 90 days of the date of request, and at the permittee's expense, an EIS for public hearing before said Mille Lacs Band of Ojibwe Environmental Board. The decision of the Mille Lacs Band of Ojibwe Environmental Board for issuance or non-issuance of the permit based on the findings of the EIS shall be final.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 9.

Band Statute 1163-MLC-21, T.II, § 9.

### **§ 114. Format for the Environmental Impact Statement.**

The components of all Environmental Impact Statements shall be as follows:

- (a) environmental impacts, both beneficial and degrading;
- (b) social impacts, both beneficial and degrading; and
- (c) economic impacts, both beneficial and degrading.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 10.

Band Statute 1163-MLC-21, T.II, § 10.

### **§ 115. Variances.**

Any and all requests for a variance from the provisions of this subchapter shall be presented before, and subject to the approval of the appropriate Mille Lacs Band Assembly in the manner they shall prescribe. The decision of the Mille Lacs Band Assembly shall be final.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 11.

Band Statute 1163-MLC-21, T.II, § 11.

#### **§ 116. Water-Policy and Goals.**

The waters of the Mille Lacs Band of Ojibwe will be protected from degradation. The quality of the water will be maintained or improved to guarantee the treaty rights of the members of the Mille Lacs Band of Ojibwe.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 12.

Band Statute 1163-MLC-21, T.II, § 12.

#### **Cross References**

Injection wells, *see* Nat. Res. Comm. Order 107-89.

#### **§ 117. Water-Definitions.**

- (a) **"Ambient"** means that concentration which exists without point source pollution as established by MLBC Research Lab.
- (b) **"LC<sub>50</sub>"** means the concentration of toxicant that is lethal (fatal) to 50% of the sensitive resident species organisms tested under the test conditions in a specific time.
- (c) **"Toxicant, Toxic Substance"** means those pollutants or combination of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the MLBC, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organism or its offspring.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1163-MLC-21, T.II, §§ 13.01-13.03.

**§ 118. Water-Standards.**

- (a) All standards will be interpreted to mean a maximum allowable limit unless otherwise stated.

<u>Constituent</u>	<u>Concentration or Limits</u>
Alkalinity	20 mg/l or more as CaCO <sub>3</sub> for fresh water aquatic life except where natural concentration are less
Ammonia	.02 mg/l as (un-ionized ammonia) for fresh water aquatic life
Arsenic	50 ug/l for domestic water supply
Barium	1 mg/l for domestic water supply
Beryllium	11 ug/l for the protection of aquatic life in soft fresh water 1,100 ug/l for the protection of aquatic life in hard fresh water
Boron	750 ug/l
Cadmium	10 ug/l for domestic water supply.  <u>Aquatic Life</u> Soft Water: 0.4 ug/l Hard Water: 1.2 ug/l
Chlorine	2.0 ug/l for salmonid fish 10 ug/l for other fresh water fish
Chromium	50 ug/l for domestic water supply 100 ug/l for fresh water aquatic life
Fecal Coliform Bacteria	200 colonies/100 ml.
Color	75 color units on platinum-cobalt scale for domestic water supplies
Copper	1 mg/l for domestic water supply 0. 1 X 96 hours LC <sub>50</sub> for fresh water aquatic life
Cyanide	5.0 ug/l for fresh water aquatic life

Gases, total dissolved	110% of saturation at existing atmosphere and hydrostatic pressures								
Iron	0.3 mg/l for domestic water supply 1.0 mg/l for fresh water aquatic life								
Lead	50 ug/l for domestic water supply 0.1 X 96 hour LC <sub>50</sub> for fresh water aquatic life								
Manganese	50 ug/l for domestic water supply and fresh water aquatic life								
Mercury	2.0 ug/l for domestic water supply .05 ug/l for fresh Water aquatic life								
Nickel	.01 X 96 hour LC <sub>50</sub> for fresh water aquatic life								
Nitrate, Nitrite	10 mg/l nitrate nitrogen for domestic water supply, not to exceed ambient NO <sub>2</sub> -NO <sub>3</sub> for all water systems, as established by MLBC Research Lab								
Oil and Grease	Domestic water supplies virtually free from oil and grease .01 X 96 hour LC <sub>50</sub> for fresh water aquatic life								
Dissolved Solids and Salinity	250 mg/l for chlorides and sulfates in domestic water supply.								
	<table border="1"> <thead> <tr> <th>Natural Salinity %</th> <th>% Variation Permitted</th> </tr> </thead> <tbody> <tr> <td>0-3.5</td> <td>1</td> </tr> <tr> <td>3.5-13.5</td> <td>2</td> </tr> <tr> <td>13.5-35</td> <td>4</td> </tr> </tbody> </table>	Natural Salinity %	% Variation Permitted	0-3.5	1	3.5-13.5	2	13.5-35	4
Natural Salinity %	% Variation Permitted								
0-3.5	1								
3.5-13.5	2								
13.5-35	4								
Settleable and Suspended Solids and Turbidity	Fresh water fish and other aquatic life; settleable and suspended solids should not reduce the depth of the compensation point for photosynthetic activity								
Sulfide	2 ug/l undissociated H <sub>2</sub> S for fresh water aquatic life								
Sulfate	Not to exceed ambient SO <sub>4</sub> for all waters, as established by MLBC Research Lab								
Temperature	No thermal pollution shall be discharged into any waters on the reservations								
Dissolved O <sub>2</sub>	5.0 mg/l minimum for fresh water aquatic life								

Pesticides	No measurable amounts of any pesticide or any other toxicant will occur in any surface or groundwater
pH	5-9 for domestic water supply 5.5-9.0 for fresh water aquatic life
Phenol	1 ug/l for all waters
Phosphorus	Not to exceed ambient total phosphorus for all water systems as established by MLBC Research Lab
Polychlorinate Biphenyls (PCB)	.001 ug/l for all waters
Phthalate esters	0.1 ug/l for fresh water aquatic life
Selenium	10 ug/l for domestic water supply .01 X 96 hour LC <sub>50</sub> for fresh water aquatic life
Silver	50 ug/l for domestic water supply .01 X 96 hour LC <sub>50</sub> for fresh water aquatic life
Zinc	5 mb/l for domestic water supply .01 X 96 hour LC <sub>50</sub> for fresh water aquatic life

- (b) Any and all man made or man induced regulation of water flow on or through any Reservation of the Mille Lacs Band of Ojibwe shall be subject to the stipulations set forth in this subchapter for the provision of adequate water quantities for the preservation and protection of natural resources.
- (c) No littering, refuse or garbage disposal will be permitted in any waters of the Mille Lacs Band of Ojibwe.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, §§ 13, 14.

Band Statute 1163-MLC-21, T.II, §§ 13, 14.

#### **Cross References**

Litter, *see* 11 MLBS § 201.

Solid waste disposal, *see* 11 MLBS § 1001.

### **§ 119. Air-Policy and Goals.**

The air quality within the reservations is affected by many pollutants and chemicals, which may travel through the atmosphere from distant sources. These chemicals and pollutants are deposited on reservation lands and waters, the result being a direct threat to the natural resources of the reservation. Pursuant to Class I-Air Quality.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 15.

Band Statute 1163-MLC-21, T. II, § 15.

#### **§ 120. Air-Definitions.**

"**BACT, best available control technology**" means that method of limiting emissions to the minimum amount possible.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 16.

Band Statute 1163-MLC-21, T.II, § 16.

#### **§ 121. Air-Standards.**

These standards will be those as set forth by 42 U.S.C. § 7474 and the Clean Air Act. (42 U.S.C. § 7401 et seq.)

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 17.

Band Statute 1163-MLC-21, T.II, § 17.

#### **§ 122. Soils-Policy and Goals.**

The soils within the jurisdiction of the Mille Lacs Band of Ojibwe are an integral part of the total natural resource spectrum. Fish, furbearers, wild rice and other wildlife are directly affected by the types of, and the maintenance of, vegetative cover upon the soils. The management of these soils will be within this context. The Band and its members shall make every reasonable effort to use alternatives to harmful chemicals upon the soils. Notwithstanding the previous sentence, herbicides, pesticides, and other chemicals may be used on the soils to the extent determined necessary, subject to approval of the appropriate permit under § 112.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 18.  
Band Statute 1163-MLC-21, T.II, § 18.  
Band Ordinance 55-21.

### **§ 123. Soil-Definitions.**

"Soil" means all soils, metals, minerals, gases, liquid, gravels or other elemented or complexed materials, in any physical state, which lie on or in the earth's surface to a depth of 15 feet.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 19.  
Band Statute 1163-MLC-21, T.II, § 19.

### **§ 124. Soils-Standards.**

- (a) Natural erosion rectification measures, such as seeding, planting or otherwise establishing vegetative cover, will be utilized by the landowner.
- (b) Permits will be required for any project or development other than farming which involves excavation, soil removal or disposition, and shall include provisions for the seeding or planting to establish vegetative cover.
- (c) Agricultural lands shall be protected from wind and water erosion through the use of sound agricultural principles, including but not limited to, terracing, tree breaks, grass waterways and maintaining vegetative cover on tilled lands during the non-growing season.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 20.  
Band Statute 1163-MLC-21, T.II, § 20.

### **§ 125. Subsurface Resources.**

Groundwater-refer to 11 MLBS § 103. All other subsurface resources will be managed at the discretion of the Mille Lacs Band of Ojibwe-Department of Natural Resources. Management will include analysis of potential environmental effects for all exploration, mining, or extractions, which are or may be practiced on the lands under the jurisdiction of the Mille Lacs Band of Ojibwe.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 21.

Band Statute 1163-MLC-21, T.II, § 21.

**§ 126. Forestry-Policy and Goals.**

The forestry resource on the lands under the jurisdiction of the Mille Lacs Band of Ojibwe will be managed to preserve and protect said lands in a perpetually productive state. This will be done by applying sound silvicultural practices to the harvesting of the timber, and by making provision for new forest growth as timber is removed. The guiding document shall be CFR 25, Part 141, Forestry Manual 53 BIAM, dated June 21, 1978, and supplements. Any superseding documents pertaining to forestry management on Indian lands will be subject to the approval of the governing body of the Mille Lacs Band of Ojibwe.

**Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 22.

Band Statute 1163-MLC-21, T.II, § 22.

**Cross References**

Firewood harvest, *see* 11 MLBS § 2401.

**§ 127. Forestry-Standards.**

- (a) No clearcutting of timber will be permitted within a 100-foot border of any lake, pond or river.
- (b) No clearcutting of timber will be permitted within 100 feet of any road.
- (c) Permits for logging will include stipulations for the re-seeding of logged area and logging equipment trails.
- (d) Users of insecticides, herbicides, or any other chemical or pesticides for forestry management activities will be required to obtain a permit.

**Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 23.

Band Statute 1163-MLC-21, T. II, § 23.

**§ 128. State Civil Jurisdiction.**

Any person, upon a violation of Subchapter 1 or 2 of this chapter, may bring a civil cause of action in the appropriate state court seeking damages pursuant to the provisions of Title 28, United States Code, § 1360; P.L. 83-280 which states:

"Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this Section."

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1091-MLC-24, § 24.

Band Statute 1163-MLC-21, T. II, § 24.

#### **Cross References**

Actions to recover penalties or damages, environmental protection, *see* 11 MLBS § 17.

### **SUBCHAPTER 3**

#### **LITTER**

##### **Section**

**201. Definitions.**

**202. Littering.**

**203. Littering on Highways.**

**204. Littering in Natural Areas.**

**205. Litter Removal In Lieu of Forfeiture.**

##### **§ 201. Definitions.**

“**Litter**” means things lying about in disorder; bits or scraps of rubbish scattered about; untidiness, disorder; to make messy or untidy with things scattered about; to scatter about carelessly.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1164-MLC-6, § 8.09.

##### **§ 202. Littering.**

Whoever unlawfully deposits garbage, rubbish, offal, or the body of a dead animal, or other litter in or upon any public or tribal highway, public waters or the ice thereon, public or tribal lands, or without the consent of the owner, private land, or water or ice thereon, shall be subject to a forfeiture not to exceed \$25.00.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1164-MLC-6, § 56.

#### **§ 203. Littering on Highways.**

- (a) Any person who shall throw, deposit, place or dump, or cause to be thrown, deposited, placed or dumped upon any street or highway or upon any public, tribal or privately owned land adjacent thereto without the owner's consent any snow, ice, glass bottle, glass, nails, tacks, wire, cans, garbage, swill, papers, ashes, refuse, carcass of any dead animal, offal, trash or rubbish or any other form of offensive matter or any other substance likely to injure any person, animal or vehicle upon any such street or highway shall be subject to a forfeiture not to exceed \$500.00.
- (b)
  - (1) Any person who drops, or permits to be dropped or thrown, upon any highway any of the material specified in subsection (a), shall immediately remove the same or cause it to be removed.
  - (2) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.
- (c) No person shall drop or hurl any destructive or injurious material or object at or upon any motor vehicle upon any highway or the occupants thereof.
- (d)
  - (1) Any person who violates any provision of subsection (b) or (c), shall be subject to a forfeiture not to exceed \$500.00.
  - (2) Any person who violates any provision of subsection (a) or (b)(1) shall be subject to a forfeiture not to exceed \$5,000.00.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1164-MLC-6§§57, 58.03.

## **Cross References**

Solid waste, disposal onto highways or roads, *see* 11 MLBS § 1009.

### **§ 204. Littering in Natural Areas.**

- (a) No person shall drain, throw or deposit upon the lands and waters within a natural area designated by the Commissioner of Natural Resources any substance that would mar the appearance, create a stench, destroy the cleanliness or safety of the land, or would be likely to injure any animal, vehicle, or person traveling upon those lands and waters. The operator of a vehicle or watercraft, except a school bus or a vehicle transporting passengers for hire and regulated by the Interstate Commerce Commission, shall not permit articles to be thrown or discarded from the vehicle upon any lands or waters within a natural area so designated.
- (b) Any person who, within the limits of any natural area designated by the Commissioner of Natural Resources shall willfully cut, injure, or destroy any live tree, shrub, timber, evergreen, or ornamental plant of any kind, or who shall willfully injure, remove, destroy, deface, or mutilate any guide-board, guide-post, furniture, fixture, improvement, monument, tablet, or other public or tribal property shall be subject to a forfeiture not to exceed \$5,000.00.
- (c) The Commissioner of Natural Resources is delegated the authority to designate natural areas for the purpose of subsections (a) and (b). Such areas shall have positive outdoor values which may include but need not be limited to recreation, hunting, fishing, trapping, ricing, scenic beauty, or spiritual significance.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1164-MLC-6, § 58.

### **§ 205. Litter Removal In Lieu of Forfeiture.**

The Court of Central Jurisdiction may, in lieu of imposing the forfeiture provided for by 11 MLBS §§ 202 and 203, permit any person to remove litter from public or tribal lands under the direction of the Commissioner of Natural Resources for a period of time to be set by the Court.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1164-MLC-6, § 58.03.

## **CHAPTER 2**

## SOLID WASTE DISPOSAL AND RECYCLING

### Section

- 1001. Definitions.
- 1002. Solid Waste Handling and Storage.
- 1003. Responsibility of Owner or Occupant.
- 1004. Containers.
- 1005. Timely Transfer to Collection or Disposal Sites.
- 1006. Dumping.
- 1007. Collection or Disposal Site Operations.
- 1008. Waste from Outside Band Territory.
- 1009. Disposal onto Highways or Roads.
- 1010. Public Nuisances and Health Hazards.
- 1011. Hazardous Waste Disposal.
- 1012. Recycling.
- 1013. Collection and Transport.
- 1014. Fees.
- 1015. Powers of Tribal Police and Conservation Officers.
- 1016. Sanctions.
- 1017. Administration.
- 1018. Sovereign Immunity.

### Historical and Statutory Notes

Band Statute 1233-MLC-20, T.II, § 10 provides: "Section 10. Severability. If any provision of this Title or its application to any person or set of circumstances is held invalid, the remainder of the Title or its application to other persons or circumstances shall not be affected."

### Cross References

Water standards, Environmental Protection Ordinance, *see* 11 MLBS § 118.

### § 1001. Definitions.

The following definitions shall apply to the terms listed as used throughout this chapter:

- (a) **“Collection site”** means those places at which the Band or Band-licensed collectors receive solid waste.
- (b) **“Collector”** means any natural or legal person, including such person's employees and agents, who gather another person's solid waste.
- (c) **“Hazardous waste”** means any solid waste deemed hazardous by the U.S. Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, (42 U.S.C.A. § 6901 et seq.) as amended.

- (d) **“Resident”** means any person who has a permanent residence or place of business within the territorial jurisdiction of the Mille Lacs Band, including temporary or seasonal residences or businesses.
- (e) **“Solid waste”** means all waste, garbage, rubbish, trash and other discarded solid waste material resulting from residential, commercial, agricultural, industrial, community and other human activities, including hazardous waste and liquid waste contained within solid waste, but excluding sewage and related human waste.
- (f) **“Solid waste operator”** means Mille Lacs Band employees, appointees or contractors who are responsible for the operation and maintenance of any solid waste collection or disposal sites within the territorial jurisdiction of the Band.
- (g) **“Transfer station”** means the existing solid waste collection site owned by the Mille Lacs Band for the purpose of collecting, transporting, and disposing of solid waste.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1233-MLC-20, T.II, § 2.

### **§ 1002. Solid Waste Handling and Storage.**

Solid waste within the territorial jurisdiction of the Mille Lacs Band shall be handled, stored, collected, transported, transferred, processed and disposed of in accordance with the provisions of this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1233-MLC-20, T.II, § 3.

### **§ 1003. Responsibility of Owner or Occupant.**

Except as otherwise provided in this chapter, the owner or occupant of any premises shall be responsible for the sanitary storage of all of the solid waste produced by such person and accumulated at the premises. Unless otherwise provided for in a written rental agreement or lease, the tenant of any single-unit detached residence and the landlord of any multi-unit residence shall be responsible for the provision and maintenance of solid waste storage containers pursuant to 11 MLBS § 1004.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1233-MLC-20, T.II, § 3.01.

#### **§ 1004. Containers.**

Solid waste shall be stored in durable, rust resistant, nonabsorbent, water tight, rodentproof and easily cleanable containers possessing a close-fitting, insect-tight cover.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1233-MLC-20, T. II, § 3.02.

#### **§ 1005. Timely Transfer to Collection or Disposal Sites.**

Solid waste shall be transferred to Band approved collection sites or E.P.A. approved disposal sites in a timely manner, in order to prevent noxious odors and other public nuisances or health conditions, by the person responsible for the provision and maintenance of solid waste storage containers.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1233-MLC-20, T.II, § 3.03.

#### **§ 1006. Dumping.**

No person shall leave, deposit, or dump solid waste within the territorial jurisdiction of the Mille Lacs Band, except that solid waste may be temporarily deposited in storage containers pursuant to 11 MLBS §§ 1002 to 1005 and may be deposited at approved collection and disposal sites.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1233-MLC-20, T.II, § 4.

#### **§ 1007. Collection or Disposal Site Operations.**

Solid waste disposal at approved collection or disposal sites within the territorial jurisdiction of the Band shall only be in the manner and during the posted daytime hours of operation prescribed by the Public Works Commission.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1233-MLC-20, T.II, § 4.01.

**§ 1008. Waste from Outside Band Territory.**

No person shall dispose of solid waste generated on lands outside the territorial jurisdiction of the Band, nor shall a non-resident dispose of any solid waste, on lands within the territorial jurisdiction of the Band without the permission of the Band.

**Historical and Statutory Notes**

**Source:**

Band Statute 1233-MLC-20, T.II, § 4.02.

**§ 1009. Disposal onto Highways or Roads.**

No person shall dispose of solid waste from any stopped or moving vehicle onto federal, state, county or Band highways, roads or right-of-ways within the territorial jurisdiction of the Band.

**Historical and Statutory Notes**

**Source:**

Band Statute 1233-MLC-20, T.II, § 4.03.

**Cross References**

Littering on highways, *see* 11 MLBS § 203.

**§ 1010. Public Nuisances and Health Hazards.**

No person shall dispose of or burn solid waste on any lands within the territorial jurisdiction of the Band in a manner that is likely to cause a public nuisance or health hazard.

**Historical and Statutory Notes**

**Source:**

Band Statute 1233-MLC-20, T.II, § 4.04.

**Cross References**

Nuisance, *see* 24 MLBS § 301.

**§ 1011. Hazardous Waste Disposal.**

Hazardous waste shall not be disposed of on lands within the territorial jurisdiction of the Band.

**Historical and Statutory Notes**

**Source:**

Band Statute 1233-MLC-20, T.II, § 4.05.

**§ 1012. Recycling.**

The Public Works Commission shall seek assistance from county, state, federal and other sources for the purposes of developing and maintaining a waste recycling program and collection site for the Band for the purposes of reducing waste and disposal costs and conserving natural resources. The Commission shall encourage residents to cooperate with waste recycling programs.

**Historical and Statutory Notes**

**Source:**

Band Statute 1233-MLC-20, T.II, § 5.

**§ 1013. Collection and Transport.**

- (a) All solid waste shall be transported in a manner which prevents the waste from leaking, blowing or falling off of the transport vehicle.
- (b) Commercial vehicles or containers used for the collection and transportation of solid waste shall be covered, leak-proof, durable and of easily cleanable construction. The vehicles and containers shall be cleaned regularly in order to prevent nuisances, pollution and insect breeding and shall be maintained in good repair.
- (c) Commercial collectors and transporters of solid waste shall be required to obtain a license from the Public Works Commission prior to commencing any collection or transportation activities on lands within the territorial jurisdiction of the Mille Lacs Band. Obtaining a license pursuant to this Section does not exempt a person or entity from any other provision of the Mille Lacs Band Statutes Annotated requiring a license or permit in order to conduct business.

**Historical and Statutory Notes**

**Source:**

Band Statute 1233-MLC-20, T.II, § 6.

**§ 1014. Fees.**

The Public Works Commission shall establish fees to be charged to individuals and businesses for the disposal of solid waste at designated collection and disposal sites. These fees shall be reviewed at least annually by the Commission.

### Historical and Statutory Notes

**Source:**

Band Statute 1233-MLC-20, T.II, § 7.

### § 1015. Powers of Tribal Police and Conservation Officers.

All Mille Lacs Band Tribal Police and Conservation Officers shall be empowered to enforce this chapter.

### Historical and Statutory Notes

**Source:**

Band Statute 1233-MLC-20, T.II, § 8.

### § 1016. Sanctions.

- (a) A fine, not to exceed \$5000.00, may be imposed for each violation of this chapter. Each day during which a violation exists shall constitute a separate violation. Any personal property, including vehicles and other equipment, which has been used in connection with a violation may be seized and forfeited.
- (b) In addition to any judicially imposed sanctions, the Public Works Commission may revoke the license of any violator of this chapter.
- (c) Nothing herein shall prevent the Mille Lacs Band or an individual party from bringing suit in the Court of Central Jurisdiction in order to obtain injunctive relief or money damages because of a violation of this chapter.

### Historical and Statutory Notes

**Source:**

Band Statute 1233-MLC-20, T.II, § 8.

### Cross References

Nuisance, *see* 24 MLBS § 301.

### § 1017. Administration.

The Mille Lacs Band of Ojibwe-Public Works Commission shall temporarily be responsible for the administration of this chapter and of any Band-owned solid waste collection facilities or systems.

### Historical and Statutory Notes

**Source:**

Band Statute 1233-MLC-20. T.II, § 1.

**Cross References**

Public Works Commission, see 13 MLBS § 1.

**§ 1018. Sovereign Immunity.**

Nothing contained in this chapter shall be construed as a waiver of sovereign immunity by the Mille Lacs Band of Ojibwe.

**Historical and Statutory Notes**

**Source:**

Band Statute 1233-MLC-20, T.II, § 9.

**CHAPTER 3**

**NATURAL RESOURCE PROTECTION CODE**

<b><u>Subchapter</u></b>	<b><u>Section</u></b>
<b>1. General Provisions</b>	<b>2001</b>
<b>2. Fishing</b>	<b>2101</b>
<b>3. Hunting and Trapping</b>	<b>2201</b>
<b>4. Wild Rice</b>	<b>2301</b>
<b>5. Firewood Harvest</b>	<b>2401</b>
<b>6. Fires</b>	<b>2501</b>
<b>7. Enforcement</b>	<b>2601</b>

**Historical and Statutory Notes**

The Preamble of Band Statute 1162-MLC-50 provides: "It is enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Chippewa Indians, for the purposes of preserving the political integrity, protecting economic security and promoting the health and welfare of Band members, a Code for the regulation and protection of natural resources which regulate all hunting, trapping, fishing and gathering of wild rice within the territories governed by the Mille Lacs Band and this Code shall be enforced against Band members and others under the jurisdiction of the Band." Band Statute 1162-MLC-50, §§ 1 and 4.12 provide:

"Section 1. Scope of Amending Provision. Band Statutes 1017-MLC-7, 1030-MLC-7 are hereby repealed in their entirety and replaced by the provisions of this act."

"Section 4.12. Section Headings. Section headings and titles are provided for the convenience of the reader.

They are not part of the statute and do not modify the language otherwise stated." Band Ordinance 07-97 (Chapter 5, § 4001 et seq., of this Title), § 1.08 provides: "All Band ordinances, resolutions and orders inconsistent with this ordinance are hereby repealed. To the extent that this ordinance imposes greater restrictions than those contained in any other ordinance, resolution or order, the provisions of this ordinance shall govern."

### **Cross References**

1837 Treaty Conservation Code for the Minnesota Ceded Territory, *see* 11 MLBS § 4001.  
Great Lakes Indian Fish and Wildlife Compact, *see* 2 MLBS § 1151  
Purple loosestrife control, *see* Nat.Res.Comm. Orders 108-89, 133-90.  
Search lights (sky trackers), regulation of use, *see* Nat.Res.Comm. Order 172-93.  
Shoreland area management, *see* Nat.Res.Comm. Order 170-93.

## **SUBCHAPTER 1**

### **GENERAL PROVISIONS**

#### **Section**

- 2001. Definitions.**
- 2002. Powers of Commissioner of Natural Resources.**
- 2003. Duties of Commissioner of Natural Resources.**
- 2004. Geographical Restriction of Regulations.**
- 2005. Off-Reservation Regulations.**
- 2006. Orphan Animals.**
- 2007. Taking for Religious or Ceremonial Purposes.**
- 2008. Medicinal Plants.**

#### **§ 2001. Definitions.**

As used in this chapter, the following terms shall have the meanings given to them in this section:

- (a) **"Band Fishing License"** means a license issued by the Commissioner of Natural Resources to a member of the Mille Lacs Band of Chippewa, which license authorizes her or him to fish in accordance with the provisions of this chapter.
- (b) **"Band Hunting License"** means a license issued by the Commissioner of Natural Resources to an enrollee of the Mille Lacs Band of Ojibwe, which license authorizes her or him to hunt or trap in accordance with the provisions of this chapter.
- (c) **"Band Ricing License"** means a license issued by the Commissioner of Natural Resources to an enrollee of the Mille Lacs Band of Ojibwe, which license authorizes her or him to gather wild rice in accordance with the provisions of this chapter.

- (d) **“Big Game”** means deer, bear, elk and moose.
- (e) **“Closed Season”** means the period during which protected wild animals may not be taken.
- (f) **“Commercial Fishing Permit”** means a permit issued by the Commissioner of Natural Resources to a Mille Lacs Band of Ojibwe enrollee under 11 MLBS § 2114.
- (g) **“Commercial Purposes”** means the taking of fish for barter or sale.
- (h) **“Commercial Taking”** means the taking of big game, small game or fur bearing animals for the purpose of barter or sale of furs, pelts, hides or the flesh of such animals.
- (i) **“Elderly”** means Band member or non-Band member who is enrolled in a federally recognized tribe, shall be defined as one who has attained the chronological age of 55.
- (j) **“Firearm”** means any rifle, muzzleloader, shotgun, handgun, or other type of weapon which will or is designed to or may readily be converted to expel a shot or projectile by means of an explosive, gas, or compressed air; the frame or receiver of any such weapon; or any firearm silencer.
- (k) **“Firearm Silencer”** means any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer, and any part intended only for use in such assembly or fabrication.
- (l) **“Fur Bearing Animals”** mean beaver, mink, marten, raccoon, fisher, fox, wolf, muskrat and otter.
- (m) **“Game Fish”** include brook trout, brown trout, crappie, grayling, lake trout, large mouth bass, muskellunge, northern pike, rainbow trout, rock bass, sauger, small mouth bass, sturgeon, sunfish and walleye.
- (n) **“Migratory Birds”** mean any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in 50 C.F.R. section 10.13, or which is a mutation or a hybrid of any such species, including any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists or is composed in whole or in part of any such bird or any part, nest or egg thereof.
- (o) **“Mille Lacs Reservation”** means all land within the exterior boundary described in the Treaty of 1855, to wit: "the following fractional townships, viz: forty-two north, of range twenty-five west; forty-two north, of range twenty-six west; and forty-two and forty-three north, of range twenty-seven west; and also, the three (3) islands in the southern part of Mille Lacs, exterior boundary of Sandy Lake Reservation as described in the Treaty of 1855, all contiguous waters, and all other trust properties

under the jurisdiction of the Mille Lacs Band, its enrolled members, and of the Minnesota Chippewa Tribe and delegated to the Non-Removable Mille Lacs Band of Ojibwe."

- (p) **“Motor Vehicle”** means self-propelled motor driven vehicles.
- (q) **“Non-Band Fishing License”** means a license issued by the Commissioner of Natural Resources to any member of a federally recognized Tribe who is not enrolled in the Mille Lacs Band of Ojibwe, which license authorizes her or him to fish in accordance with this chapter.
- (r) **“Non-Band Hunting License”** means a license issued by the Commissioner of Natural Resources to any member of a federally recognized Tribe who is not enrolled in the Mille Lacs Band of Ojibwe, which license authorizes her or him to hunt in accordance with this chapter.
- (s) **“Non-Band Ricing License”** means a license issued by the Commissioner of Natural Resources to a member of a federally recognized Tribe who is not enrolled in the Mille Lacs Band of Ojibwe which license authorizes her or him to gather wild rice in accordance with this chapter.
- (t) **“Non-Game Fish”** include buffalo fish, burbot, bullheads, carp, catfish, coho, dogfish, gar, quillback, perch, sheephead, suckers, tulibee, and whitefish.
- (u) **“Non-Indian Fishing License”** means a license issued by the Commissioner of Natural Resources to anyone who is not eligible for a license under 11 MLBS § 2101 or 2107, which authorizes such person to fish in accordance with this chapter.
- (v) **“Non-Indian Hunting License”** means a license issued by the Commissioner of Natural Resources to anyone who is not eligible for a license under 11 MLBS §§ 2201 or 2208, which authorizes such person to hunt in accordance with this chapter.
- (w) **“Non-Indian Ricing License”** means a license issued by the Commissioner of Natural Resources to anyone who is not eligible for a license under 11 MLBS §§ 2301 or 2303, which authorizes such person to gather wild rice in accordance with this chapter.
- (x) **“Non-Removable or Mille Lacs Band of Chippewa”** shall be the duly constituted and successor tribal government of the Mille Lacs Band.
- (y) **“Open Season”** means the period during which wild animals may be taken.
- (z) **“Paddy Rice”** means that wild rice crop grown in artificially constructed paddies.
- (aa) **“Personal Use”** means the taking of fish for any purpose other than commercial purposes.

- (bb) **“Possession”** means both actual and constructive possession and any control of the things referred to.
- (cc) **“Protected Wild Animals”** shall include all wild animals which are accorded some measure of protection in the name or manner of taking.
- (dd) **“Small Game”** means all wild animals and birds not defined as big game or fur bearing animals or game or non-game fish.
- (ee) **“Special Permit”** means a permit issued by the Commissioner of Natural Resources, or her or his designee, exempting the recipient from one (1) or more of the regulations contained herein, upon a finding by her or him that granting of the exemption will not endanger the resource.
- (ff) **“Taking”** or **“Hunting”** shall include pursuing, shooting, killing, capturing, trapping, snaring and netting wild animals and all lesser acts such as intentionally disturbing, harrying, worrying or placing, setting drawing, using any net, trap or other device to take wild animals, and includes every attempt to take, every act of assistance to any other person in taking or attempting to take wild animals.
- (gg) **“Transport”** or **“Transportation”** means carrying or moving by any instrumentality, attempting to do so, or accepting or receiving wild animals for transportation or shipment.
- (hh) **“Wild Animals”** means all living creatures, not human, wild by nature, endowed with sensation and power of voluntary motion, and includes quadruped, mammals, birds, fish, amphibious reptiles, crustaceans and mollusks.
- (ii) **“Wild Rice”** means that rice crop which grows naturally or as a result of reseeding in the natural lakes and waters, including lakes resulting from flood control structures, of the Mille Lacs Band of Ojibwe.

#### Historical and Statutory Notes

**Source:**

Band Statute 1162-MLC-50, § 2.  
Band Act 70-24.

#### Cross References

Game violations, criminal offenses, *see* 24 MLBS § 1256.  
"Wetland" defined, *see* Nat. Res. Comm. Order 162-92.

### § 2002. Powers of Commissioner of Natural Resources.

The Commissioner of Natural Resources shall have powers of regulation over all matters of land, air, water, environmental protections and anything and everything related to the conservation and protection of natural resources under the jurisdiction of the Mille Lacs Band of Ojibwe.

- (a) He shall have power to open and close all seasons for hunting, fishing, trapping, and the gathering of wild rice by the issuance of a Commissioner's order with the concurrence of the Spiritual Advisor on all matters related to her or his duties.
- (b) He shall be responsible for the development of a natural resource management plan and certify to the feasibility of all economic development plans which involve the natural resources with the concurrence of the Spiritual Advisor.
- (c) He shall have the power to make any and all regulations for the taking, possession and transportation of wild animals, fish, bird or grain from trust territory under the jurisdiction of the Band.
- (d) The Commissioner shall not possess authority over law enforcement officials under the jurisdiction of the Band.
- (e) The Commissioner may do all things deemed by her or him as desirable in the preservation, protection and propagation in their natural state of all desirable species of wild animal, bird, or fish upon the concurrence of the Spiritual Advisor.
- (f) The Commissioner shall have the power to acquire through gift, lease, purchase, in the name of the Band, lands or any interest in lands deemed suitable for the future interests of the Band.
- (g) He shall have power to negotiate contracts in the furtherance of natural resource development within the jurisdiction of the Band.
- (h) He shall have authority to secure funds from the government of the United States or any private foundation for the purpose of fulfilling her or his legal mandate.
- (i) He shall be a member of the Administration Policy Board.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 3.

#### **Cross References**

Buck hunting season, *see* 11 MLBS § 2213.  
Commercial fishing regulations, *see* 11 MLBS § 2115.  
Doe hunting season, *see* 11 MLBS § 2212.  
Elk or moose season, *see* 11 MLBS § 2215.  
Fishing seasons, *see* 11 MLBS § 2107.  
Fur bearing animal season, *see* 11 MLBS § 2216.

Hunting and trapping seasons, generally, *see* 11 MLBS § 2228.  
Migratory birds, regulatory authority, *see* 11 MLBS § 2285.  
Off reservation regulations, *see* 11 MLBS §§ 2004, 2005.  
Small game hunting season, *see* 11 MLBS § 2209.

### **§ 2003. Duties of Commissioner of Natural Resources.**

The Commissioner of Natural Resources shall perform all duties and responsibilities and shall exercise all authority delegated to her or him by the Mille Lacs Band of Ojibwe by this chapter, including, but not limited to:

- (a) Issuance of all Band licenses and permits authorized by this chapter.
- (b) Proposal of amendments to this chapter and adoption of additional regulations by Commissioner's Order as found necessary.
- (c) Setting of seasons where none are specifically provided, closing or shortening existing seasons when necessary for the preservation of the resource, or extending or opening seasons when it is determined that it will not harm the resource.
- (d) Setting limits on the manner or amount of taking of fish, game, or wild rice, when necessary for the conservation of the resource, or altering limits specifically provided by these regulations.
- (e) Waiving the fee for issuance of any license or permit authorized by this chapter to elderly Band members and elderly non-Band members who are enrolled in a federally recognized tribe.
- (f) Reviewing on an annual basis or more frequently the numbers of each type of permit or license outstanding, with particular emphasis on any commercial permits or specific permits which may be outstanding, to determine whether or not it is in the best interests of conservation to continue such licenses.
- (g) Keeping and maintaining an up-to-date and accurate list of all persons to whom each type of permit and license has been issued.
- (h) Revocation of any permit or license authorized by these regulations upon conviction of any violation of the Conservation Code of this or any other Minnesota Chippewa Tribe Reservation.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 3.01.

### **§ 2004. Geographical Restriction of Regulations.**

All sections of the Mille Lacs Band Statutes Annotated and all Commissioner's Orders issued thereunder pertaining to fishing, spearing, netting, hunting, trapping, or ricing which do not by their terms apply to the off-reservation ceded territory as described by 2 MLBS § 107, apply only to activities undertaken on the Mille Lacs Reservation as defined by 11 MLBS § 2001(n).

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 4.60.

#### **§ 2005. Off-Reservation Regulations.**

The Commissioner of Natural Resources is delegated the authority to promulgate by Commissioner's Order regulations controlling member fishing, spearing, netting, hunting, trapping, and ricing in the off-reservation territory as described by 2 MLBS § 107.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50. § 4.61.

#### **Cross References**

Migratory bird hunting off reservation, memorandum agreement with U.S. Fish and Wildlife Service, *see* Nat. Res. Comm. Order 144-90.

Taking fish by angling off of tribal lands, *see* Nat. Res. Comm. Order 171-93.

#### **§ 2006. Orphan Animals.**

Any live wild animal captured by any person and which is too young, too injured, or too ill to reasonably be expected to survive if left uncared for and which cannot lawfully be killed under this chapter or any Commissioner's Order issued hereunder, shall be deemed to be under the protection of the Band and shall be reported by the finder within 24 hours of capture to the Commissioner of Natural Resources. The Commissioner shall determine the proper disposition of the animal which may include but is not limited to placement with the finder, placement with another individual or agency, return to the wild, or killing.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 13.

#### **Cross References**

Possession of live migratory game birds, *see* 11 MLBS § 2274.

### **§ 2007. Taking for Religious or Ceremonial Purposes.**

Any Band member may apply for a permit, on forms prescribed by the Commissioner of Natural Resources, to take for religious or ceremonial purposes any plant or animal which it would be otherwise unlawful to take under this chapter or any Commissioner's Order issued hereunder. A permit for such taking, specifying the name and other identifying information of the permittee, the species to be taken, the sex of any animal to be taken, the locality where the taking is permitted, the dates upon which the taking is permitted, and other information deemed pertinent by the Commissioner of Natural Resources, may be issued by the Commissioner upon receipt of a completed application form and approval of the Elderly Advisory Board, the Chief Executive of the Band, and the Commissioner. No such permits may be granted if the Elderly Advisory Board determines that no bona fide religious or ceremonial purpose would be served by the taking, if the Chief Executive determines that the general interests of the tribe would be injured by the taking, or if the Commissioner determines that conservation interests would be injured by the taking.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 15.

#### **Cross References**

Endangered species, use for religious purposes, *see* Nat. Res. Comm. Order 84-88.

### **§ 2008. Medicinal Plants.**

Individual members may take naturally occurring plants for medicinal purposes without a permit.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 15.01.

## **SUBCHAPTER 2**

### **FISHING**

**Section**

- 2101. Band License.**
- 2102. Non-Band License.**
- 2103. Non-Indian License.**
- 2104. License Fees.**
- 2105. Minnesota Licenses.**
- 2106. Constructive Knowledge.**

- 2107. Specific Regulations-Fishing for Personal Use.
- 2108. Seasons.
- 2109. Closure.
- 2110. Rare and Endangered Species.
- 2111. Spearing and Netting Permits.
- 2112. Minors.
- 2113. Transportation.
- 2114. Commercial Fishing.
- 2115. Specific Regulations-Commercial Fishing.

#### **Cross References**

Taking fish by angling off of tribal lands, *see* Nat. Res. Comm. Order 171-93.

#### **§ 2101. Band License.**

Every enrollee of the Mille Lacs Band of Ojibwe who takes fish within the Mille Lacs Reservation shall have in her or his possession a proper Band fishing license. This license must be in her or his possession whenever taking, possessing or transporting fish within the Reservation and whenever possessing or transporting fish anywhere within the United States, which fish were lawfully taken within the Reservation.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 5.

#### **§ 2102. Non-Band License.**

If the Commissioner of Natural Resources determines that it is in the best interest of the Mille Lacs Band of Ojibwe, it may issue a non-Band fishing license to any enrolled member of a federally recognized Indian tribe who is not enrolled with the Band. Such a permit must be in the possession of any such person who takes fish within the Mille Lacs Reservation or who transports or possesses fish lawfully taken on the Reservation any place within the United States.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 5.01.

#### **§ 2103. Non-Indian License.**

If the Commissioner of Natural Resources determines that it is in the best interest of the Mille Lacs Band of Ojibwe, it may issue non-Indian fishing licenses in numbers determined by her or him to be suitable. The Commissioner may also, by Commissioner's Order, establish resident and

non-resident classes of non-Indian licenses. Any license issued under this section must be in the possession of the person to whom issued when taking fish within the Mille Lacs Reservation or transporting or possessing fish lawfully taken on the Reservation any place within the United States.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 5.02.

#### **§ 2104. License Fees.**

Fees may also be charged by the Commissioner of Natural Resources for the issuance of the permits and licenses required by this statute. The Commissioner of Natural Resources may in her or his discretion charge a greater fee for a non-Band fishing license than for a Band fishing license. The Commissioner may also in her or his discretion charge a greater fee for a non-Indian fishing license than for a Band fishing license and may charge different fees and establish different conditions and different numbers of resident and nonresident classes of non-Indian licenses.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 5.03.

#### **§ 2105. Minnesota Licenses.**

No Indian shall be required to purchase or possess a Minnesota fishing license when fishing within the Mille Lacs Reservation or when possessing or transporting fish, lawfully taken within the Reservation, anywhere within the United States.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 5.04.

#### **§ 2106. Constructive Knowledge.**

All rules and regulations relating to the taking, possession or transportation of fish shall be as adopted in this chapter subject to amendment on an annual basis by the Commissioner of Natural Resources and all persons accepting Band, non-Band or non-Indian licenses shall be deemed to know of any such modifications, whether or not the licensee has actual knowledge.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 5.05.

**§ 2107. Specific Regulations-Fishing for Personal Use.**

The following regulations are hereby imposed on the taking for personal use of game and non-game fish:

- (a) No fish may be taken by means of explosives, drugs, poisons, lime, medicated bait or other deleterious substances.
- (b) There shall be no taking of game fish for any purpose by use of gill nets except where such taking is for personal use.
- (c) Game fish season shall be closed between March 31 and the closest Saturday to May 15. No gill nets shall be used during this period for the taking of any fish.
- (d) There shall be no netting in rivers or streams or within 500 feet of the mouth of rivers and streams between March 31 and June 15 of each year. There shall also be no netting in areas duly closed by the Commissioner of Natural Resources.
- (e) Nets for personal use shall be limited to 100 feet in length per license.
- (f) Muskellunge shall not be taken with a spear.
- (g) Fish houses must be conspicuously marked with the licensee's name and license number.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 5.06.

**§ 2108. Seasons.**

Seasons for the taking of the various game species of fish may be shortened by the Commissioner of Natural Resources.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 5.07.

**§ 2109. Closure.**

The Commissioner of Natural Resources may in her or his discretion close specified lakes or spawning areas to all fishing if he or she determines that further fishing in such lakes or spawning areas will harm the resource, or may close such lakes or spawning areas to fishing for specified species of fish when he or she determines that such species will be endangered by further taking.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 5.08.

#### **§ 2110. Rare and Endangered Species.**

There shall be no taking of any species of fish determined by the Commissioner of Natural Resources to be rare or endangered.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 5.09.

#### **Cross References**

Endangered and threatened species, *see* Nat. Res. Comm. Order 37-86.

#### **§ 2111. Spearing and Netting Permits.**

It shall be illegal for any person under the jurisdiction of the Band to participate in fishing, spearing or netting activities at any time without a valid Band permit. It shall be a civil offense for any person, of any age, to participate in any fishing, spearing, or netting activities without a valid Band permit.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 5.10.

#### **§ 2112. Minors.**

It shall be illegal for any adult under the jurisdiction of the Band over the chronological age of 18 to engage any person of a lesser chronological age in any fishing, netting, or spearing activity when said minor does not personally possess a valid permit.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 5.11.

**§ 2113. Transportation.**

- (a) It shall be illegal for any person under the jurisdiction of the Non-Removable Mille Lacs Band of Ojibwe to transport without just cause, by any means, any game fish taken, by any means for the purpose of personal financial gain.
- (b) Just cause shall mean a cause outside legal or cultural cause which must be based on reasonable grounds, and these must be a fair and honest cause or reason, regulated by good faith.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 5.12.

**§ 2114. Commercial Fishing.**

Fish may not be taken for commercial purposes within the Reservation, provided, that upon proper application the Commissioner of Natural Resources may in her or his discretion issue a commercial fishing permit for non-game fish species to Band members upon determination that a limited amount of commercial fishing will not harm the resource. The Commissioner of Natural Resources shall strictly regulate the manner of fishing, the type of fish taken, and the amount of the take under such a permit.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 6.

**§ 2115. Specific Regulations-Commercial Fishing.**

All persons operating under a commercial fishing permit as provided by 11 MLBS § 2114 shall be subject to the following regulations regarding transportation of fish:

- (a) A person operating under a commercial fishing permit shall have in her or his possession at all times both the commercial fishing permit and her or his Band fishing license.
- (b) All nets used for taking fish must be identified as Indian nets.

- (c) Each permittee may use no more than 600 feet of net for commercial purposes.
- (d) Any person holding a personal netting license in addition to a commercial permit shall be limited to using a total of 600 feet for all purposes.
- (e) All non-game fish taken under the valid commercial fishing permit may be possessed in quantities prescribed in such license and bought, sold, or transported during any season designated by the Commissioner of Natural Resources. Such fish may be frozen or cured during open season, and when so cured or frozen may be transported, bought, or sold at any time.
- (f) All live game fish taken incidentally in a commercial fishing operation shall be released immediately to the waters from which taken. All dead or injured game fish may be retained for personal use.
- (g) When shipping non-game fish taken under a Band fishing license and commercial fishing permit, the parcel must be plainly marked on the outside stating the name, address, and license number of the shipper and the kind and number of such fish contained in the package. The waybill or receipt issued by any common carrier to a shipper shall specify the pounds and species of such fish so shipped.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 6.01.

**SUBCHAPTER 3**

**HUNTING AND TRAPPING**

**Part**

**A. General Provisions**

**B. Migratory Birds**

**Section**

**2201**

**2261**

**PART A**

**GENERAL PROVISIONS**

**Section**

**2201. Band License.**

**2202. Non-Band License.**

**2203. Non-Indian License.**

**2204. License Fees.**

- 2205. Minnesota Licenses.
- 2206. Constructive Knowledge.
- 2207. License Required.
- 2208. Rare and Endangered Species.
- 2209. Small Game Season.
- 2210. Specified Small Game Bag and Possession Limits.
- 2211. Big Game Bag Limits.
- 2212. Season for Does.
- 2213. Season for Bucks.
- 2214. Deer Tags.
- 2215. Elk and Moose.
- 2216. Season for Furbearers.
- 2217. Furbearer Tags.
- 2218. Shipment of Furs.
- 2219. Personal Use of Hides or Pelts.
- 2220. Commercial Hunting and Trapping.
- 2221. Motor Vehicles.
- 2222. Night Hunting; Shining.
- 2223. Populated Areas.
- 2224. Firing Down or Across Roads.
- 2225. Permit Required.
- 2226. Minors.
- 2227. Possession of Untagged Big Game.
- 2228. Hunting and Trapping Seasons.

#### **§ 2201. Band License.**

Every enrollee of the Mille Lacs Band of Ojibwe who hunts or traps within the Mille Lacs Reservation must have in her or his possession a proper Band hunting license. This license must be in her or his possession at all times when carrying firearms within the Reservation, shooting, trapping or taking within the Reservation any small game, big game or fur bearing animals, or when possessing or transporting any place in the United States any small game, big game or fur bearing animal lawfully taken within the Reservation.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 7.

#### **§ 2202. Non-Band License.**

If the Commissioner of Natural Resources determines that it is in the best interests of the Mille Lacs Band of Ojibwe, he or she may issue a non-Band hunting license to any Indian enrolled in a federally recognized Tribe who is not enrolled with the Mille Lacs Band. Such license must be in the possession of any such person who carries firearms on the Reservation or who shoots, traps

or takes within the Reservation any small game, big game or fur bearing animal or who possesses or transports any place in the United States any small game, big game or fur bearing animal lawfully taken within the Reservation.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 7.01.

#### **§ 2203. Non-Indian License.**

If the Commissioner of Natural Resources determines that it is in the best interests of the Mille Lacs Band of Ojibwe, he or she may issue non-Indian hunting licenses in numbers determined by her or him to be suitable. The Commissioner may also, by Commissioner's Order, establish resident and nonresident classes of non-Indian license. Any license issued under this section must be in the possession of the person to whom issued when carrying firearms on the Reservation or when shooting, trapping, or taking within the Reservation any small game, big game or fur bearing animal or when possessing or transporting any place in the United States any small game, big game or fur bearing animal lawfully taken within the Reservation.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 7.02.

#### **§ 2204. License Fees.**

Fees may be charged in the discretion of the Commissioner of Natural Resources for the issuance of licenses required under 11 MLBS §§ 2201 and 2202. The Commissioner of Natural Resources may charge a higher fee for the issuance of a non-Band license than for a Band hunting license. The Commissioner may also in her or his discretion charge a greater fee for a non-Indian hunting license than for a Band hunting license and may charge different fees and establish different conditions and different numbers of resident and nonresident classes of non-Indian licenses.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 7.03.

#### **§ 2205. Minnesota Licenses.**

No Indian shall be required to purchase or possess a Minnesota big game, small game or trapping license when engaged in hunting or trapping of game within the Mille Lacs Reservation or when possessing or transporting game, lawfully taken, anywhere within the United States.

### Historical and Statutory Notes

**Source:**

Band Statute 1162-MLC-50, § 7.04

### § 2206. Constructive Knowledge.

All regulations regarding the taking, possessing or transportation of small game, big game and fur bearing animals adopted in this statute are subject to amendment on an annual basis by the Commissioner of Natural Resources and all persons accepting Band, non-Band or non-Indian licenses shall be deemed to know of any such modifications, whether or not the licensee has actual knowledge.

### Historical and Statutory Notes

**Source:**

Band Statute 1162-MLC-50, § 7.05.

### § 2207. License Required.

Possession of a valid Band hunting license or non-Band hunting license shall be required for the taking, possession or transportation of all big game, small game and fur bearing animals.

### Historical and Statutory Notes

**Source:**

Band Statute 1162-MLC-50, § 7.06.

### § 2208. Rare and Endangered Species.

There shall be no taking, possession or transportation whatsoever of bald eagle, elk, golden eagle, timber wolf or any species determined by the Commissioner of Natural Resources to be rare or endangered.

### Historical and Statutory Notes

**Source:**

Band Statute 1162-MLC-50, § 7.07.

### Cross References

Endangered and threatened species, *see* Nat. Res. Comm. Order 37-86.

### § 2209. Small Game Season.

The small game season shall be September 1 to and including March 1. There shall be no limitation as to the season, number or manner of taking of rabbit or squirrel.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 7.08.

**§ 2210. Specified Small Game Bag and Possession Limits.**

The taking of ruffed grouse, sharp-tailed grouse and spruce hen shall be limited to six (6) per day per person, and the possession and transportation of these types of small game shall be limited to 12 at any given time.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 7.09.

**§ 2211. Big Game Bag Limits.**

The taking of deer and bear shall be limited to one (1) each per season, provided that a special license may be issued permitting the taking of one (1) additional deer upon a showing that a greater need for sustenance exists.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 8.

**§ 2212. Season for Does.**

The season for does shall be within the period of September 1 to January 31, inclusive.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 8.01.

**§ 2213. Season for Bucks.**

The season for bucks shall be July 1 to January 31, inclusive.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 8.02.

### **§ 2214. Deer Tags.**

Each licensee will be furnished with a locking seal which shall be affixed to the deer between the tendon and bone and around the bone of the leg so that such seal cannot be removed without breaking the lock.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 8.03.

### **§ 2215. Elk and Moose.**

The taking of elk and moose shall not be permitted; however, the Commissioner of Natural Resources may authorize a moose or elk season.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 8.04.

### **§ 2216. Season for Furbearers.**

The season for the trapping and taking of fur bearing animals shall be October 1 to and including April 30, except the taking of fox, wolves, marten and fisher, which seasons shall be determined annually by the Commissioner of Natural Resources.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 8.05.

### **§ 2217. Furbearer Tags.**

All fur bearing animals taken pursuant to these regulations and all traps used pursuant to these regulations shall bear the number of the licensee's Band or non-Band hunting license.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 8.06.

**§ 2218. Shipment of Furs.**

When shipping furs taken under a Band or non-Band hunting license, the parcel must be plainly marked on the outside stating the name, address and license number of the shipper and kind and number of skins contained in the package. The waybill or receipt issued by any common carrier to a shipper shall specify the number and species of furs so shipped.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 8.07.

**§ 2219. Personal Use of Hides or Pelts.**

Hides or pelts adapted to personal use need not carry the license number of the taker once the adaption is completed.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 8.08.

**§ 2220. Commercial Hunting and Trapping.**

There shall be no commercial taking of big game, small game or fur bearing animals with the following exceptions, for which no special commercial license is needed other than the Band or non-Band hunting license:

- (a) **Taking.** The skins of all fur bearing animals may be taken commercially according to the regulations of 11 MLBS §§ 2216 to 2219.
- (b) **Deer.** The hides of deer may be possessed and transported for commercial purposes and when transported or shipped the taker must comply with the regulations set forth in 11 MLBS § 2218 if otherwise lawfully taken.
- (c) **Beaver, muskrat, rabbit, raccoon.** Beaver, muskrat, rabbit and raccoon may be taken for commercial purposes, and when the flesh of these animals is transported or shipped, the taker must comply with the regulations set forth in 11 MLBS § 2209.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50. § 9.

**§ 2221. Motor Vehicles.**

There shall be no taking of any animal from moving motor vehicles, including snowmobiles.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50. § 10(a).

**§ 2222. Night Hunting; Shining.**

- (a) It shall be illegal for any person under the jurisdiction of the Band to hunt, possess or transport any big or small game, with the exception of raccoon, that is taken at night and with or without the aid of artificial light for the purpose of hunting without just cause. Artificial light shall mean all types of light which is not generated by nature. The hunting technique commonly known as poaching with an artificial light shall be illegal for purposes of this section.
- (b) There shall be no taking of big game or small game, except raccoon, with the use of artificial lights.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, §§ 10(b), 10.03.

**§ 2223. Populated Areas.**

There shall be no hunting within 500 feet of any public campground during the season within which it is open for public use, or within 500 feet of any occupied dwelling.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 10(c).

**§ 2224. Firing Down or Across Roads.**

There shall be no firing down or across any public road.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 10(d.)

**§ 2225. Permit Required.**

It shall be illegal for any person under the jurisdiction of the Band to participate in any hunting activity on trust property under the jurisdiction of the Band without a valid hunting permit. It shall be a civil offense for any person, of any age, to participate in any hunting activity without a valid permit.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 10.01.

**§ 2226. Minors.**

It shall be illegal for any adult under the jurisdiction of the Band, over the chronological age of 18 to engage any person of a lesser chronological age in any hunting activity when said minor does not personally possess a valid hunting permit.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 10.02.

**§ 2227. Possession of Untagged Big Game.**

It shall be illegal for any person to possess any big game which is not tagged with the official hunting tag of the Band, any other federally recognized Band or Tribe on any trust property under the jurisdiction of the Band.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 10.04.

**§ 2228. Hunting and Trapping Seasons.**

The Commissioner of Natural Resources, may shorten or lengthen the seasons provided by these regulations, may impose restrictions were none are set forth, or may close and prohibit trapping or hunting of specified species of small game, big game, or fur bearing animals, when he or she determines that such acts are in the best interests of the resource. The Commissioner of Natural

Resources may also impose such other restrictions on manner of taking and bag limits as he or she deems necessary for preservation of the resource.

### Historical and Statutory Notes

**Source:**

Band Statute 1162-MLC-50, § 12.

## PART B

### MIGRATORY BIRDS

**Section**

- 2261. Taking, Possession, Transport and Export.**
- 2262. Methods.**
- 2263. Closed Season.**
- 2264. Shooting Hours.**
- 2265. Daily Limit.**
- 2266. Wanton Waste of Migratory Game Birds.**
- 2267. Possession Prohibited If Unlawfully Taken.**
- 2268. Possession During Closed Season.**
- 2269. Possession Limit.**
- 2270. Opening Day of Season.**
- 2271. Field Possession Limit.**
- 2272. Tagging Requirement.**
- 2273. Custody of Birds of Another.**
- 2274. Possession of Live Birds.**
- 2275. Termination of Possession.**
- 2276. Gift of Migratory Game Birds.**
- 2277. Transportation Prohibited If Unlawfully Taken.**
- 2278. Transportation of Birds of Another.**
- 2279. Species Identification Requirement-Transportation.**
- 2280. Marking Package or Container-Transportation.**
- 2281. Exportation Prohibited If Unlawfully Taken.**
- 2282. Species Identification Requirement.**
- 2283. Marking Package or Container-Exportation.**
- 2284. Migratory Bird Preservation Facility.**
- 2285. Annual Rules.**

### Cross References

Memorandum of understanding with US Fish and Wildlife Service on taking of migratory birds *see* Nat. Res. Comm. Orders 132-90, 152-92, 173-93.

Off-reservation migratory bird hunting, memorandum agreement with US Fish and Wildlife Service, *see* Nat. Res. Comm. Order 144-90.

## **§ 2261. Taking, Possession, Transport and Export.**

Migratory birds may be taken, possessed, transported, and exported only as provided by this chapter and Commissioner's Orders issued hereunto. Migratory birds has the meaning given to it at 11 MLBS § 2001(m).

### **Historical and Statutory Notes**

#### **Source:**

Band Statute 1162-MLC-50, § 11.

## **§ 2262. Methods.**

Migratory birds on which open seasons are prescribed may be taken by any method except those prohibited in this section. No person shall take migratory game birds:

- (a) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance.
- (b) From or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water.
- (c) From or by any means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one (1) or both legs may take from any stationary motor vehicle or stationary motor-driven land conveyance.
- (d) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and/or the sails furled, and its progress therefrom has ceased. Provided that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power.
- (e) By the use or aid of live birds as decoys; although not limited to, it shall be a violation of this subsection for any person to take migratory waterfowl on an area where tame or captive live ducks or geese are present unless such birds are and have been for a period of ten (10) consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.
- (f) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds.

- (g) By the aid of baiting or on or over any baited area. As used in this subsection, "baiting" shall mean the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on, or over any areas where hunters are attempting to take them; and "baited areas" means any area where shelled, shucked, or unshucked, wheat or other grain, salt, or other feed whatsoever capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such shall remain a baited area for ten (10) days following complete removal of all such corn, wheat or other grain, salt, or other feed. However, nothing in this subsection shall prohibit:
- (1) The taking of all migratory birds, including waterfowl, on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shocked on the field where grown, or grains found scattered solely as a result of normal agricultural planting or harvesting; and
  - (2) The taking of all migratory birds, except waterfowl, on or over land where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed has been distributed or scattered as the result of bona fide agricultural operations or procedures, or as a result of manipulation of a crop or other feed on the land where grown for wildlife management purposes, provided that manipulation for wildlife purposes does not include the distributing or scattering of grain or other feed once it has been removed from or stored on the field where grown.
- (h) As limited to the taking of ducks, geese, swans, and coots, (*Fulica americana*), while possessing shotshells loaded with shot other than steel shot or such shot approved as nontoxic by the Commissioner of Natural Resources, in any area declared a non-toxic shot zone by the Commissioner of Natural Resources.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.01.

#### **Cross References**

Steel shot required, *see* Nat. Res. Comm. Order 31-85.

#### **§ 2263. Closed Season.**

No person shall take migratory birds during the closed season.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.02.

**§ 2264. Shooting Hours.**

No person shall take migratory game birds except during the hours open to shooting as prescribed by annual regulations promulgated by the Commissioner of Natural Resources pursuant to 11 MLBS § 2285.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.03.

**§ 2265. Daily Limit.**

No person shall take in any one (1) calendar day, more than the daily bag limit or negotiate annually aggregate daily bag limit, whichever applies.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.04.

**§ 2266. Wanton Waste of Migratory Game Birds.**

No person shall kill or cripple any migratory game bird pursuant to this part without making a reasonable effort to retrieve the bird and retain it in her or his actual custody at the place where taken or between that place and either:

- (a) his automobile or principal means of land transportation;
- (b) his personal abode or temporary or transient place of lodging;
- (c) a migratory bird preservation facility as defined by 11 MLBS § 2284;
- (d) a post office; or
- (e) a common carrier facility.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.05.

**§ 2267. Possession Prohibited If Unlawfully Taken.**

No person shall at any time, by any means, or in any manner possessor have in custody any migratory game bird or part thereof taken in violation of any provision of 11 MLBS §§ 2262 to 2266 or in violation of any Commissioner's Order issued under 11 MLBS § 2285.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.06.

**§ 2268. Possession During Closed Season.**

No person shall possess any freshly killed migratory game birds during the closed season.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.061.

**§ 2269. Possession Limit.**

No person shall possess more migratory game birds taken in the United States than the possession limit or the aggregate possession limit, whichever applies.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.062.

**§ 2270. Opening Day of Season**

No person on the opening day of the season shall possess any freshly killed migratory game birds in excess of the daily bag limit or aggregate bag limit, whichever applies.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.063.

**§ 2271. Field Possession Limit.**

No person shall possess, have in custody, or transport more than the daily bag limit or aggregate daily bag limit, whichever applies, of migratory game birds, tagged or not tagged, at or between the place where taken and either:

- (a) his automobile or principal means of transportation;
- (b) his personal abode or temporary or transient place of lodging;
- (c) a migratory bird preservation facility as defined by 11 MLBS § 2284;
- (d) a post office; or
- (e) a common carrier facility.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.064.

#### **§ 2272. Tagging Requirement.**

No person shall put or leave any migratory game birds at any place (other than at her or his personal abode), or in the custody of another person for picking, cleaning, processing, shipping, transportation, or storage (including temporary storage), or for the purpose of having taxidermy services performed, unless such birds have a tag attached signed by the hunter stating her or his address, the total number and species of birds, and the date such birds were killed. Migratory game birds being transported in any vehicle as the personal baggage of the processor shall not be considered as being in storage or temporary storage.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.065.

#### **§ 2273. Custody of Birds of Another.**

No person shall receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by 11 MLBS § 2272.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.066.

#### **§ 2274. Possession of Live Birds.**

Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become a part of the daily bag limit. No person shall at any time or by any means possess or transport live migratory game birds taken under authority of this Part, except as provided by 11 MLBS § 2006.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.067.

#### **§ 2275. Termination of Possession.**

Subject to all other requirements of this Part, the possession of birds taken by any hunter shall be deemed to have ceased when such birds have been delivered by her or him to another person as a gift; or have been delivered by her or him to a post office, a common carrier, or a migratory bird preservation facility as defined by 11 MLBS § 2284 and consigned for transport by the Postal Service or a common carrier to some person other than the hunter.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.068.

#### **§ 2276. Gift of Migratory Game Birds.**

No person may receive, possess, or give to another any freshly killed migratory game birds as a gift, except at the personal abode of the donor or donee, unless such birds have a tag attached signed by the hunter who took the birds stating such hunter's address, the total number and species of birds, and the date such birds were taken.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.07.

#### **§ 2277. Transportation Prohibited If Unlawfully Taken.**

No person shall at any time, by any means, or in any manner transport any migratory game bird or part thereof taken in violation of any provision of 11 MLBS §§ 2262 to 2266, or in violation of any Commissioner's Order issued under 11 MLBS § 2285.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.071.

**§ 2278. Transportation of Birds of Another.**

No person shall transport migratory game birds belonging to another person unless such birds are tagged as required by 11 MLBS § 2272.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.072.

**§ 2279. Species Identification Requirement-Transportation.**

No person shall transport within the United States any migratory game birds, except doves and band-tailed pigeons (*Columba fasciata*), unless the head or one (1) fully feathered wing remains attached to each such bird at all times while being transported from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50 § 11.073.

**§ 2280. Marking Package or Container-Transportation.**

No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee, and an accurate statement of the numbers of each species of birds therein contained clearly and conspicuously marked on the outside thereof

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.074.

**§ 2281. Exportation Prohibited If Unlawfully Taken.**

No person shall at any time, by any means, or in any manner export or cause to be exported any migratory game bird or part thereof taken in violation of any provision of 11 MLBS §§ 2262 to 2266, or in violation of any Commissioner's Order issued under 11 MLBS § 2285.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.08.

**§ 2282. Species Identification Requirement.**

No person shall export migratory game birds unless one (1) fully feathered wing remains attached to each such bird while being transported from the United States and/or any of its possessions to any foreign country.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.081.

**§ 2283. Marking Package or Container-Exportation.**

No person shall export migratory game birds via the Postal Service or common carrier unless the package or container has the name and address of the shipper and the consignee, and an accurate statement of the number of each species of birds therein contained clearly and conspicuously marked on the outside thereof.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.082.

**§ 2284. Migratory Bird Preservation Facility.**

"Migratory Bird Preservation Facility" means:

- (a) Any person who, at her or his residence or place of business and for hire or other consideration;
- (b) Any taxidermist, cold-storage facility or locker plant which for hire or other consideration; or
- (c) Any hunting club which, in the normal course of operations, receives, possesses, or has in custody any migratory game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storing, or shipping.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.09.

## **§ 2285. Annual Rules.**

The Commissioner of Natural Resources is delegated the authority to promulgate annual rules pertaining to seasons, bag limits, possession limits, and hunting hours for the on-reservation migratory bird season and the off-reservation migratory bird season in the territories defined by 2 MLBS § 107.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 11.10.

## **SUBCHAPTER 4**

### **WILD RICE**

**Section**

- 2301. Band License.**
- 2302. Non-Band License.**
- 2303. Non-Indian License.**
- 2304. License Required.**
- 2305. License Fees.**
- 2306. Regulations.**
- 2307. Determination and Posting of Season.**
- 2308. Watercraft and Flails.**
- 2309. Poles.**
- 2310. Paddy Rice.**
- 2311. Constructive Knowledge.**

### **Cross References**

Explosives, use to remove obstructions to water flow on wild rice beds, *see* Nat. Res. Comm. Order 56-87.

## **§ 2301. Band License.**

Every enrollee of the Mille Lacs Band of Ojibwe who harvests wild rice within the Mille Lacs Reservation shall have in her or his possession a proper Band ricing license. This license must be in her or his possession whenever harvesting, possessing or transporting wild rice within the Reservation and whenever possessing or transporting wild rice anywhere within the United States, when such wild rice was lawfully harvested within the Reservation.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, §14.

**§ 2302. Non-Band License.**

If the Commissioner of Natural Resources determines that it is in the best interests of the Mille Lacs Band of Ojibwe, he or she may issue a non-Band ricing license to any enrolled member of a federally recognized Tribe who is not enrolled with the Mille Lacs Reservation.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 14.01.

**§ 2303. Non-Indian License.**

If the Commissioner of Natural Resources determines that it is in the best interests of the Mille Lacs Band of Ojibwe, he or she may issue non-Indian ricing license in numbers determined by her or him to be suitable. The Commissioner may also, by Commissioner's Order, establish resident or nonresident classes of non-Indian licenses. Any license issued under this section must be in the possession of the person to whom issued when gathering wild rice on the Mille Lacs Reservation.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 14.02.

**2304. License Required.**

Every Indian who gathers wild rice within the Mille Lacs Reservation must have in her or his possession a proper ricing license.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 14.03.

**§ 2305. License Fees.**

Fees may be charged in the discretion of the Commissioner of Natural Resources for the issuance of ricing licenses. The Commissioner of Natural Resources may in her or his discretion charge a greater fee for a non-Band ricing license than for a Band ricing license. The Commissioner may also charge a greater fee for a non-Indian ricing license than for a Band license and may charge

different fees and establish different conditions and different numbers of resident and nonresident classes of non-Indian licenses.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 14.04.

#### **§ 2306. Regulations.**

All regulations regarding the gathering of wild rice shall be as adopted in this chapter, subject to amendment on an annual basis by the Commissioner of Natural Resources, and subject to the power of the Commissioner of Natural Resources, or her or his agents, to regulate opening and closing of particular beds.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 14.05.

#### **§ 2307. Determination and Posting of Season.**

The Commissioner of Natural Resources shall determine each year, and shall post notices announcing, the season for the harvest of wild rice that year and the length of time per day during which wild rice may be harvested.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 14.06.

#### **§ 2308. Watercraft and Flails.**

No watercraft may be used for the harvest of wild rice other than a boat, skiff or canoe propelled by hand, which boat, skiff or canoe may have a top width of not more than 36 inches and a length of not more than 18 feet, nor may any machine or device be used for the harvest of wild rice other than a flail not more than 30 inches in length, nor more than one (1) pound in weight, which flail must be held and operated by hand.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 14.07.

#### **Cross References**

Watercraft, *see* 20 MLBS § 1.

**§ 2309. Poles.**

No pole may be used for propelling any watercraft utilized for the gathering of wild rice unless such pole is forked at the end, with each branch less than 12 inches in length.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 14.08.

**§ 2310. Paddy Rice.**

None of the provisions of this subchapter shall apply to the gathering of paddy rice.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 14.09.

**§ 2311. Constructive Knowledge.**

All rules and regulations relating to the harvest of wild rice shall be as adopted in this chapter, subject to amendment on an annual basis by the Commissioner of Natural Resources, and all persons accepting Band, non-Band, or non-Indian licenses shall be deemed to know of any such modifications, whether or not the licensee has actual knowledge.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 14.10.

**SUBCHAPTER 5**

**FIREWOOD HARVEST**

**Section**

**2401. Definitions.**

**2402. Permit Requirement.**

**2403. Prohibited Acts.**

**2404. Cutting or Maiming Wood.**

**2405. Duties of Bureau of Indian Affairs.**

- 2406. **Duties of Tribal Members.**
- 2407. **Permits for Firewood Harvest.**
- 2408. **Fees.**
- 2409. **Natural Resource Officer Powers; Confiscation.**
- 2410. **Failure to Comply with Directives.**
- 2411. **Unauthorized Removal of Wood.**
- 2412. **Jurisdiction.**
- 2413. **Penalties.**

### **Cross References**

Forestry, policy, goals and standards, *see* 11 MLBS §§ 126, 127.

### **§ 2401. Definitions.**

The Band Assembly hereby defines the following terms as related to this chapter:

- (a) **Firewood Harvest Permit.** Shall mean a license issued by the Natural Resource Office or Clerk of Court which authorizes an enrolled member to cut trees and stumps in accordance with this chapter.
- (b) **Identified or Marked Trees.** Shall mean any and all trees marked for cutting with yellow paint.
- (c) **Live Trees.** Shall mean trees that are standing, bearing fruit or blossoms, or green leaves; whatever the tree species may be.
- (d) **Salvage Trees/Dead or Down Trees.** Shall mean any and all trees that are damaged or blown down.
- (e) **Slash/Tops.** Shall mean the branch extensions from a tree.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 22.

### **§ 2402. Permit Requirement.**

Any enrolled member of the Minnesota Chippewa Tribe may harvest any species of tree provided he or she has a valid wood-cutting permit in her or his possession which designates the type of wood product to be cut and the legal cord amount authorized.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 16.

**§ 2403. Prohibited Acts.**

No enrolled member of the Minnesota Chippewa Tribe shall:

- (a) cut any unmarked species of wood product for firewood,
- (b) leave any stump that exceeds 12 inches in height from ground-base to top level of stump, unless provided for by permit,
- (c) leave tops which lie greater than four (4) feet from the ground,
- (d) cut any species of wood for firewood purposes that is outside of the exterior boundaries of the permit's applicability,
- (e) leave any marked tree uncut and unfelled completely to the ground, or (f) be wasteful or misuse any species of wood or stumpage.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 16.01.

**§ 2404. Cutting or Maiming Wood.**

No enrolled member of the Minnesota Chippewa Tribe shall cut, maim or do anything which hinders the normal natural development of any species of wood while engaged in firewood harvest activity on tribal or Band trust property.

**Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 16.02.

**§ 2405. Duties of Bureau of Indian Affairs.**

- (a) It shall be the jurisdiction of the Natural Resources section of the Minnesota Agency in consultation with the Band to designate any trust properties as eligible for harvestation. The Minnesota Agency shall be additionally responsible for identifying all species of trees for harvestation.

- (b) The Minnesota Agency of the Bureau of Indian Affairs shall recommend to the Band the amount of fees which may be charged by the Band for each cord of wood depending upon the species which is to be harvested.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 17.

#### **§ 2406. Duties of Tribal Members.**

- (a) Each member of the Minnesota Chippewa Tribe who is issued a permit to harvest firewood shall not harvest or deface any unmarked or unidentified trees lest he or she be liable for payment of three (3) times the value of each tree harvested or defaced.
- (b) Each member of the Minnesota Chippewa Tribe who is issued a permit to harvest firewood shall be responsible for keeping all roads to the harvest site open and maintained in good condition.
- (c) Each member of the Minnesota Chippewa Tribe who is issued a permit to harvest firewood shall be responsible for providing her or his own labor, equipment (suitable cutting tools include chainsaws, axes, and other hand tools), supplies, transportation, supervision and incidentals necessary to perform the work.
- (d) Each member of the Minnesota Chippewa Tribe who is issued a permit to harvest firewood shall agree to indemnify and save and hold the Band harmless from any and all claims or causes of action relating to personal injury, death or damage to property arising from performance of the terms of the permit.
- (e) Each member of the Minnesota Chippewa Tribe who is issued a permit to harvest firewood shall possess salvage rights during the term of her or his permit on those lots he or she is permitted to harvest. All salvage felled trees shall be removed before each permit expires.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 18.

#### **§ 2407. Permits for Firewood Harvest.**

- (a) Any Natural Resource Officer or the Clerk of Court shall be authorized to issue to any enrolled member of the Minnesota Chippewa Tribe a permit to harvest firewood in accordance with the provisions of Band law.

- (b) Each permit issued shall expire 30 days from the date of issuance. Each tribal member shall be eligible to renew an expired permit for an additional 15 days provided weather conditions hampered her or his attempts to harvest firewood.
- (c) All permits shall expire on the required delivery date stated upon any contractual agreement between the Band and the Bureau of Indian Affairs.
- (d) Each wood cutting permit issued to a member of the Minnesota Chippewa Tribe shall state what species of tree is authorized for cutting, whether live and/or dead trees are authorized for cutting, and the area of land where cutting shall be authorized.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 19.

#### **§ 2408. Fees.**

The Band Assembly hereby establishes the personal use fee for a firewood harvest permit as \$5.00. A vendor permit fee of \$25.00 shall be charged for firewood harvest. Additionally, a fee of \$5.00 is hereby established for each cord of wood harvested under a vendor's permit.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 23.

#### **§ 2409. Natural Resource Officer Powers; Confiscation.**

The Natural Resource Officer of the Band shall be authorized to monitor for compliance all provisions of this subchapter. He or she shall be empowered to issue citations for violations of this subchapter and confiscate property of any enrolled member for failure to comply with any legal desist order of the Natural Resource Officer for violations of law. Any confiscated property shall be held by the Band until the Court of Central Jurisdiction has issued a legal decision on the matter.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 20.

#### **§ 2410. Failure to Comply with Directives.**

Any enrolled member who is issued a permit to harvest firewood who fails to comply with a legal directive of the Natural Resource Officer shall after legal hearing before the Court of

Central Jurisdiction have her or his permit revoked and/or be levied a fine not to exceed \$500.00 and/or be banished from harvesting firewood for a period not to exceed two (2) normal harvesting seasons.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 20.01.

#### **§ 2411. Unauthorized Removal of Wood.**

Any person who removes any species of wood without a valid permit shall be liable for a fine of three (3) times the value of the wood. Said wood is hereby established as \$80.00 per cord.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 24.

#### **§ 2412. Jurisdiction.**

The Court of Central Jurisdiction shall have jurisdiction over all legal matters involved with this subchapter.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 21.

#### **Cross References**

Natural Resource Protection Code, jurisdiction, *see* 11 MLBS § 2601.

Subject-matter jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 111.

#### **§ 2413. Penalties.**

The Court of Central Jurisdiction shall be authorized to issue any or all of the following punitive measures for violation(s) of provisions of this subchapter: probation, revocation of permit, fines not to exceed \$500.00, banishment from harvestation with any eligible trust property, and confiscation of woodcutting equipment to include chainsaws, axes and other hand tools and cutting supplies.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 21.01.

## SUBCHAPTER 6

### FIRES

#### Section

- 2501. Starting Fires.
- 2502. Exemptions.
- 2503. Camp Fires.
- 2504. Permission to Start Fires.
- 2505. Failure to Perform Duty.
- 2506. Duty to Report Unauthorized Fire.

#### Cross References

Open fire and backfire regulations, *see* Nat. Res. Comm. Order 12-84.

#### § 2501. Starting Fires.

Except as provided in 11 MLBS § 2502, any person who shall, when the ground is not snow-covered, in any place where there are standing or growing native coniferous trees, or in areas of ground from which natural coniferous trees have been cut, or where there are slashings of such trees, or native brush, timber, slashing thereof, or excavated stumps, or where there is peat or peat roots excavated or growing, start or have any open fire without the written permission of the Commissioner of Natural Resources shall be subject to a forfeiture of \$20.00.

#### Historical and Statutory Notes

##### Source:

Band Statute 1162-MLC-50, § 25.

#### § 2502. Exemptions.

No permit is required for the following open fires:

- (a) A cooking, singeing, poaching, boiling sap, or warming fire contained in a fireplace, fire-ring, charcoal grill, portable gas or liquid fueled camp stove or other similar container or device designed for the purpose of cooking or heating, or if the area within a radius of five (5) feet of the fire is reasonably clear of all combustible material.
- (b) The burning of grass, leaves, rubbish, garbage, branches, and similar combustible material in an approved incinerator. An approved incinerator shall be constructed of fire-resistant material, have a capacity of at least three (3) bushels, be maintained with

minimum burning capacity of at least two (2) bushels, and have a cover which is closed when in use and openings in the top or sides of one-inch maximum diameter. No combustible material shall be nearer than three (3) feet to the burner or incinerator when in use.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 25.01.

#### **§ 2503. Camp Fires.**

Every person who when the ground is not covered with snow starts a fire in the vicinity of forest or prairie land shall exercise every reasonable precaution to prevent the fire from spreading and shall before lighting the same clear the ground of all branches, brushwood, dry leaves, and other combustible material within a radius of five (5) feet from the fire, and keep the fire under immediate personal supervision and control at all times, and carefully extinguish the fire before quitting the place. Any person who fails to comply with any provision of this section shall be subject to a forfeiture not to exceed \$20.00.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 25.02.

#### **§ 2504. Permission to Start Fires.**

Permission to set fire to any grass, stubble, peat, brush, raking of leaves, rubbish, garbage, branches, slashing or woods for the purpose of cleanup, clearing and improving land or preventing other fires shall be given whenever the same may be safely burned upon such reasonable conditions and restrictions as the Commissioner of Natural Resources may prescribe to prevent same from spreading and getting beyond control. This permission shall be in the form of a written permit signed by the Commissioner or her or his designee, these permits to be on forms furnished by the Commissioner. Any person setting any fire or burning anything under such permit shall keep the permit in immediate possession while so engaged and produce and exhibit the permit to any conservation or law enforcement officer when requested to do so.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 25.03.

#### **§ 2505. Failure to Perform Duty.**

Every person who shall kindle a fire on or near forest, brush, or prairie land and leave it unquenched, or be a party thereto, or who shall set fire to brush, stumps, dry grass, field stubble, leaves, peat, rubbish, garbage, branches and slashings, or other material, and fail to extinguish the same before it has endangered the property of another; every person who shall negligently or carelessly set on fire, or cause to be set on fire, any woods, prairie, or other combustible material, whether on her or his own land or not, by means whereof the property of another shall be endangered, or who shall negligently suffer any fire upon her or his own lands to extend beyond the limits thereof; every person who shall use other than incombustible wads for firearms, or carry a naked torch, firebrand, or exposed light in or near forest land, or who, upon any such land or in the vicinity thereof, or on or along any public, tribal, or private road, trail path, railroad right of way or roadbed, or other public, tribal or private way of any kind running over, along or in the vicinity of any such land, shall throw or drop any burning match, ashes of pipe, lighted cigar, or cigarette, or any other burning substance, and who fails to extinguish the same immediately; every person who drives upon or over forest lands in a motor vehicle with an open cutout or without a muffler on the exhaust pipe; and every person who operates a tractor, chainsaw, steam or internal combustion engine in forested areas not equipped to prevent fires, shall be subject to a forfeiture not to exceed \$5,000.00.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 25.04.

#### **§ 2506. Duty to Report Unauthorized Fire.**

The occupant of any premises upon which any unauthorized fire is burning in the vicinity of forest lands, whether the fire was started by the occupant or otherwise, shall promptly report the fire to the Commissioner of Natural Resources, or to the nearest tribal or state forest officer, fire warden, conservation officer or law enforcement officer. Failure to make this report shall be deemed a violation of 11 MLBS § 2505, and the occupant of the premises shall be deemed prima facie guilty of negligence if the unreported fire spreads from the premises to the damage, loss, or injury of the tribe or any person.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 25.01(c).

## **SUBCHAPTER 7**

### **ENFORCEMENT**

**Section**

**2601. Jurisdiction.**

**2602. Citation.**

- 2603. Service of Process and Arrest.
- 2604. Notice to Appear.
- 2605. Power of Natural Resource Officers.
- 2606. Searches.
- 2607. Inspection of Premises.
- 2608. Seizure.
- 2609. Resisting or Obstructing Natural Resource Officer.
- 2610. Witnesses to Violation.
- 2611. Anonymity of Persons Reporting Violations.
- 2612. Penalties.
- 2613. Trespass.
- 2614. Implied Consent to Seizure and Confiscation.
- 2615. Use of Motor Vehicles and Other Equipment to Commit Violations Prohibited.
- 2616. Possession of Animals or Wild Rice Taken in Violation of This Chapter.
- 2617. Adoption of 18 U.S.C. Sections 1160, 1164, and 1165.
- 2618. Property Damaged in Committing Offense.
- 2619. Destroying Boundary and Warning Signs.
- 2620. Hunting, Trapping or Fishing on Indian Lands.
- 2621. Institution of Civil Forfeiture Proceedings.
- 2622. Forfeitures.

#### **Cross References**

Juvenile delinquency, violations heard in Criminal Division, *see* 24 MLBS § 4305.  
Motor vehicles, police powers, *see* 19 MLBS § 501.  
Warrant, summons and arrest, *see* 24 MLBS § 4101.

#### **§ 2601. Jurisdiction.**

The Court of Central Jurisdiction shall have jurisdiction of all matters arising under this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 4.

#### **Cross References**

Firewood harvest, jurisdiction, *see* 11 MLBS § 2412.  
Subject-matter jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 111.

#### **§ 2602. Citation.**

Any officially recognized and sworn Natural Resource Officer of the Mille Lacs Band of Ojibwe shall issue a citation to each and every individual person, regardless of chronological age, who is

observed in activities which are in civil violation or suspected civil violation of any section of this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 4.02.

#### **§ 2603. Service of Process and Arrest.**

Any duly sworn Natural Resource Officer of the Non-Removable Mille Lacs Band of Ojibwe is hereby authorized and empowered to execute and serve all warrants and processes issued by any justice of the Court of Central Jurisdiction under any law of the Non-Removable Mille Lacs Band of Ojibwe. Any Natural Resource Officer may arrest without a warrant any person under the jurisdiction of the Band detected in the actual violation of any provisions of Band law, and to take such person before the Court of Central Jurisdiction and make a proper complaint.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 4.03.

#### **§ 2604. Notice to Appear.**

When a person is arrested for any violation of law which is punishable as a civil misdemeanor and is not taken into custody and immediately taken before the Court, the arresting officer shall prepare, in quadruplicate, written notice to appear before the Court. This notice has the effect of, and serves as, a summons and complaint. Said notice shall conform with applicable provisions of the United States Code of Federal Regulations, United States Department of Interior, Title 25-Indians. In order to secure release, without being taken into custody and immediately taken before the Court, the arrested person must give her or his written promise so to appear before the Court by signing, in quadruplicate, a written notice prepared by the arresting officer. The officer shall retain the original of the notice and deliver the copy thereof marked "summons to the person arrested. Thereupon the officer shall release the person from custody. If the person so summoned fails to appear on the return day, the Court shall issue a warrant for her or his arrest, and upon her or his arrest proceedings shall be had as in any other case.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 4.04.

#### **§ 2605. Power of Natural Resource Officers.**

Any duly sworn Natural Resource Officer is hereby authorized and empowered to enter upon any trust land within the jurisdiction of the Band for the purpose of carrying out the duties and functions of her or his office, or to make investigations of any violation of the Band's game and fish laws, and in aid thereof to take affidavits upon oath administered by him, and to cause proceedings to be instituted if proofs at hand warrant it.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 4.05.

#### **§ 2606. Searches.**

Any sworn Natural Resource Officer of the Non-Removable Mille Lacs Band of Ojibwe is hereby authorized and empowered to enter and inspect any commercial building located on trust property of the Band for the purpose of determining whether wild animals are kept or stored therein in violation of this chapter. He or she shall have power to inspect and examine the books and records of all persons, or businesses, or corporations which he or she has reason to believe has violated the laws relating to game or fish. He or she shall have power to enter and examine all camps, vessels, boats, wagons, automobiles, airplanes, or other vehicles, cars, stages, tents, suitcases, valises, packages, crates, boxes, and other receptacles and places where he or she has reason to believe wild animals unlawfully taken or possessed are to be found.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 4.06.

#### **Cross References**

Unreasonable search and seizure, *see* 1 MLBS § 2.

#### **§ 2607. Inspection of Premises.**

Any duly sworn Natural Resource Officer of the Non-Removable Mille Lacs Band of Ojibwe is hereby authorized and empowered to enter and inspect at all reasonable times the premises whereon is being conducted any business or activity requiring a license under this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 4.07.

#### **Cross References**

Unreasonable search or seizure, *see* 1 MLBS § 2.

### **§ 2608. Seizure.**

Any duly sworn Natural Resource Officer of the Non-Removable Mille Lacs Band of Ojibwe is hereby authorized and empowered to seize and confiscate in the name of the Band, any wild animals or wild rice taken, bought, sold, transported, or possessed in violation of this conservation code and to seize and confiscate in the name of the Band any and all equipment used by any person in the unlawful taking or transporting of said wild animals or wild rice and any evidence of any violation of any provision of this Chapter or of Commissioner's Order issued thereunder. Anything seized or confiscated shall be held by the Band until proper determination of the case by the Court of Central Jurisdiction is finalized.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, §§ 4.08, 30.

#### **Cross References**

Unreasonable search or seizure, *see* 1 MLBS § 2.

### **§ 2609. Resisting or Obstructing Natural Resource Officer.**

It shall be illegal for any person under the jurisdiction of the Band to willfully hinder, resist, or obstruct a duly sworn Natural Resource Officer in the performance of her or his official duty, or refuse to submit anything called for by her or him for her or his inspection.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50 § 4.09.

### **§ 2610. Witnesses to Violation.**

Any person who is aware of or witnesses a violation of this chapter, or of any rule established by the Commissioner of Natural Resources regarding season limit, bag limit or restriction on method or manner of taking game, fish or wild rice, may report such infraction to the Commissioner of Natural Resources, the Natural Resource Officer or the Court of Central Jurisdiction.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 4.10.

### **§ 2611. Anonymity of Persons Reporting Violations.**

Any person under the jurisdiction of the Band who reports a violation of this chapter may do so anonymously. No person who reports a violation in person shall be compelled to appear in the Court of Central Jurisdiction as a witness. No justice of the Court of Central Jurisdiction shall compel any officer of the Band to reveal the name of said person as a matter of court record.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 4.11.

### **§ 2612. Penalties.**

Any person who violates any provision of 11 MLBS §§ 2101 to 2310 shall be subject to a forfeiture not to exceed \$5,000.00, and a revocation of any license or permit held under this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 4.01.

### **§ 2613. Trespass.**

Any person who is not eligible for a Band fishing, hunting, or ricing license, and who enters upon the trust properties of the Mille Lacs Band, of its enrolled members, or of the Minnesota Chippewa Tribe delegated to the Mille Lacs Band of Ojibwe, for the purpose of fishing, hunting, or gathering wild rice, shall be deemed in trespass and subject to a forfeiture not to exceed \$1,000.00. It shall be a defense to any action brought under this section that the person charged with its violation had at the time and in her or his possession a license validly issued under this chapter, authorizing the activity in which he or she was engaged.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 4.50.

### **§ 2614. Implied Consent to Seizure and Confiscation.**

Any person not eligible for a Band fishing, hunting, or ricing license, and who enters upon the trust properties of the Mille Lacs Band, its enrolled members, or the Minnesota Chippewa Tribe delegated to the Mille Lacs Band of Ojibwe, for the purposes of fishing, hunting, or gathering wild rice, thereby impliedly gives consent to the seizure and forfeiture of any property used in

the in the commission of any violation of this chapter or of any Commissioner's Order issued thereunder and of any wild animals or wild rice taken or possessed in violation of this chapter or any Commissioner's Order issued thereunder, and such property, wild animals, or wild rice may be seized as provided in 11 MLBS § 2608. Such consent may be withdrawn but only after any property, wild animals or wild rice subject to seizure and forfeiture has been inventoried by a Natural Resource officer of the Band.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 26.

#### **§ 2615. Use of Motor Vehicles and Other Equipment to Commit Violations Prohibited.**

- (a) The use of any vehicle, as defined by 19 MLBS § 2; any firearm, as defined by 11 MLBS § 2001; any boat, including motor, oars, paddles, and sails; any bow; arrow; spear; net; fishing rod; fishing tackle; trap; or snare to violate or to facilitate the violation of any provision of this chapter or any Commissioner's Order issued thereunder is a violation subject to a forfeiture of \$300.00.
- (b) An element of the Band's proof upon the trial of any violation of this section shall be the production of the equipment allegedly used in the violation.
- (c) Any evidence seized pursuant to section may be released to the defendant prior to trial upon a showing of hardship to the defendant's posting of bond or other security will be forfeited upon failure of the defendant to appear or to produce the evidence.
- (d) Any bond or security posted by the defendant pursuant to subsection (c) of this section shall be returned to defendant after trial if defendant has produced the evidence, provided that the bond or security may be used to set off any other obligations then owing the Band by the defendant.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 27.

#### **§ 2616. Possession of Animals or Wild Rice Taken in Violation of This Chapter.**

- (a) The possession of any animal or part thereof or wild rice taken in violation of any provision of this chapter or of any Commissioner's Order issued thereunder is a violation subject to a forfeiture of \$300.00.
- (b) An element of the Band's proof upon the trial of any violation of this section shall be the production of the animal or part thereof or wild rice allegedly taken in violation.

- (c) Any evidence seized pursuant to 11 MLBS § 2608 which is not held for forfeiture shall be released to the defendant upon dismissal of a complaint or citation under this section or a finding of no violation, except that any evidence seized may be used to set off any other obligations then owing the Band by the defendant.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 28.

#### **§ 2617. Adoption of 18 U.S.C. Sections 1160, 1164, and 1165.**

The provisions of 18 U.S.C. Sections 1160, 1164, and 1165 are adopted as Band Law. The rights expressly or impliedly granted therein are made enforceable in tribal court. Any duly sworn Natural Resource Officer of the Band may exercise enforcement powers, including the right to seize, in all cases of violation of such provisions. The appropriate Band legal officer shall subsequent to the citation of any person or the seizure of any item determine whether to refer the matter to federal authorities for prosecution, to commence proceedings under Band law, to do both or to decline all further proceedings.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 29.

#### **§ 2618. Property Damaged in Committing Offense.**

Whenever a white person, in the commission of an offense within the Indian country takes, injures or destroys the property of any friendly Indian the judgment shall include a provision that the defendant pay to the Indian owner a sum to twice the just value of the property so taken, injured, or destroyed.

#### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 29.01.

#### **§ 2619. Destroying Boundary and Warning Signs.**

Whoever willfully destroys, defaces, or removes any sign erected by a Mille Lacs Band, or a Government agency (a) to indicate the boundary of an Indian Reservation or of any Indian country as defined in section 1151 of Title 18, United States Code or (b) to give notice that hunting, trapping, or fishing is not permitted thereon without lawful authority or permission, shall forfeit not more than \$250.00.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 29.02.

### **§ 2620. Hunting, Trapping or Fishing on Indian Lands.**

Whoever, without lawful authority or permission, willfully and knowingly goes upon any land that belongs to any Indian or Indian tribe, band, or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States, or upon any lands of the United States that are reserved for Indian use, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries, or fish shall forfeit not more than \$250.00 and all game, fish, and peltries in her or his possession shall be forfeited.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 29.03.

### **§ 2621. Institution of Civil Forfeiture Proceedings.**

The appropriate legal officer of the Mille Lacs Band of Ojibwe or any duly sworn Natural Resource Officer of the band is authorized to commence proceedings on any violation of any provision of this chapter or of any Commissioner's Order for which a civil forfeiture is prescribed by the issuance of either a citation or a summons and complaint. In either case the initiating papers shall inform the defendant of the section number and substance of the violation is alleged to have occurred, the maximum forfeiture which can be imposed for the violation, and the date, time, and place where he or she is commanded to answer. In any case where property, animals, or wild rice has been seized, a receipt therefore shall be given the defendant if practicable.

### **Historical and Statutory Notes**

**Source:**

Band Statute 1162-MLC-50, § 31.

### **§ 2622. Forfeitures.**

In addition to any money forfeiture imposed by the Court of Central Jurisdiction for violation of any provision of this chapter or any Commissioner's Order issued thereunder, the Court may order forfeited any animal, animal part, or wild rice taken in the commission of such violation. Anything so forfeited shall be disposed of by the Court of Central Jurisdiction for the benefit of the Mille Lacs Band of Ojibwe.

## Historical and Statutory Notes

**Source:**

Band Statute 1162-MLC-50, § 32.

### CHAPTER 4

### ANIMALS

**Subchapter**

1. Dog Protection
2. Animal Protection

**Section**

**3001**  
**3021**

### SUBCHAPTER 1

### DOG PROTECTION

**Section**

3001. Definitions.
3002. Registration, Rabies Vaccination Requirement.
3003. Dangerous Dogs.
3004. Confiscation and Disposal of Dangerous Dogs and Other Dogs.
3005. Fines.
3006. Abandoned Dogs; Duty of Officers.
3007. Dog Houses.
3008. Civil Causes of Action.
3009. Jurisdiction.
3010. Sovereign Immunity.
3011. Severability.

**§ 3001. Definitions.**

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

- (a) **“Abandoned”** means when a dog does not have proper shelter from cold, hot, or inclement weather or not properly fed and watered, or provided with suitable food and water in circumstances that threaten the life of the animal, such as being dumped or dropped off.
- (b) **“Animal shelter”** means a facility, whether organized under the Band or a private entity, that houses, disposes of, and puts up for adoption abandoned, homeless, and lost animals.

- (c) **“Band”** means the Non-Removable Mille Lacs Band of Ojibwe.
- (d) **“Band Lands”** means lands owned by or held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band of Ojibwe Indians, or one (1) or more members of the Mille Lacs Band of Ojibwe Indians, and subject to the jurisdiction of the Mille Lacs Band.
- (e) **“Bodily injury”** means injury to any person that involves physical pain and suffering, scarring or disfigurement, or bone fracture.
- (f) **“Designated animal welfare agency”** means a private entity, such as an animal shelter, rehabilitation center, or rescue center, which assists the Band in removing, rescuing, and finding care and a home for an animal, pet, or service dog.
- (g) **“Dog”** means any animal within the canine family, wild or domesticated.
- (h) **“Dangerous Dog”** means any dog that:
  - (1) has without provocation inflicted bodily injury on any person;
  - (2) has without provocation killed or seriously injured a domestic animal while outside the dog owner’s property line;
  - (3) has been determined to be “potentially dangerous” dog as defined in this Subchapter and, after the dog’s owner is given notice that the dog is “potentially dangerous,” bites, attacks or threatens the safety of humans or other domestic animals; or
  - (4) has a contagious or infectious disease that humans or other domestic animals may contract is exposed to that animal.
- (i) **“Dog Enclosure”** means any securely confined house or residence, or a securely enclosed and locked pen or structure suitable to prevent a dog from escaping so as to provide humans or other animals with protection from the dog.
- (j) **“Owner”** means any person(s) possessing, harboring, keeping, having an ownership interest in, or having custody or control of the dog.
- (k) **“Potentially Dangerous Dog”** means any dog that:
  - (1) is not registered with the Band’s Department of Public Safety; or
  - (2) is not tagged with a current Rabies tag showing vaccination against rabies; or
  - (3) when unprovoked, chases or approaches a person on any property in an aggressive manner; or

- (4) has a known propensity or disposition, as indicated by sworn statements from at least two (2) adults, to attack or threaten the safety of humans or domestic animals; or
- (5) is running loose anywhere on Band lands.
- (l) **“Provocation”** means conduct or actions that tend to arouse rage, resentment or fury in another person or animal.
- (m) **“Tribal Enforcement Officer”** means a Band Department of Natural Resources conservation officer, Tribal Police Officer or designated employee within tribal law enforcement, or designated animal welfare agency.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 28-03, § 3001.  
Band Ordinance 42-22.

**§ 3002. Registration, Rabies Vaccination Requirement.**

- (a) **Requirement.** All dogs present on Band Lands must be registered with Tribal Law Enforcement and be microchipped within 14 calendar days after such dog is first present on Band lands.
- (b) **Issuance of Certificate.** The Department of Public Safety shall issue a certificate of registration to the owner and maintain a copy of such certificate of registration.
- (c) **Rabies Vaccination.** All dogs present on Band lands, which are over six (6) months of age, must be vaccinated against rabies each and every year. The owner must show proof of vaccination to the Department of Public Safety at the time they register their dog(s) or bring such proof into the Department of Public Safety office within 14 calendar days of registration. All dogs on Band lands must be collared and tagged with a current rabies Tag. Owners must show proof of rabies vaccination to the Department of Public Safety on an annual basis or be subject to fines and other penalties as provided in this subchapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 28-03, § 3002.  
Band Ordinance 42-22.

**§ 3003. Dangerous Dogs.**

A dog may not be declared dangerous based on a threat, injury, or damage sustained by a person who, at the time of such threat, injury, or damage, was:

- (a) committing a willful trespass or other unlawful conduct upon the premises occupied by the owner of the dog;
- (b) intentionally provoking, tormenting, abusing, or assaulting the dog; or
- (c) committing or attempting to commit a crime.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 28-03, § 3002.

Band Ordinance 42-22.

#### **§ 3004. Confiscation and Disposal of Dangerous Dogs and Other Dogs.**

- (a) A tribal enforcement officer may confiscate and take to the nearest animal shelter any dog on Band lands if the officer has reasonable cause to believe:
  - (1) the dog is running loose;
  - (2) the dog is not being maintained in a proper dog enclosure;
  - (3) the dog is outside a proper dog enclosure and is not under the physical restraint of a responsible and able person;
  - (4) the dog is not maintained in a proper dog enclosure, the dog is outside the owner's property line, and the officer has reasonable cause to believe that the dog will commit an aggressive act which is imminent and will be dangerous to the public;
  - (5) the dog is noticeably diseased, injured, or maimed; or
  - (6) the dog is chasing deer or livestock.
- (b) If, in a proceeding in the Court of Central Jurisdiction against the registered owner of a dog confiscated under subsection (a) of this section, it is found by a preponderance of the evidence that the dog is a dangerous dog within the meaning of this subchapter, the Court may order the dog destroyed, order the owner to reimburse the Band for the cost of confiscating, maintaining, and destroying the dog, and may impose a fine not to exceed \$500.00. If, in such a proceeding, the dog is not found to be a dangerous dog, the Court may order the dog returned to the registered owner under appropriate conditions and, if it is found by a preponderance of the evidence that the confiscation

was proper under this subchapter, the Court may order the registered owner to reimburse the Band for the cost of confiscating, maintaining, and returning the dog and may impose a fine not to exceed \$250.00.

- (c) If there is not registered owner of a dog confiscated under subsection (a) of this section, the dog may be taken to the nearest animal shelter or otherwise disposed of by the tribal enforcement officer.
- (d) **Posted Signs.** Any person subject to the jurisdiction of the Band who keeps a potentially dangerous dog on Band lands must post a “Beware of Dog” sign on the dog enclosure in which the dog is maintained and/or on the property on which the dog is maintained, which sign is clearly visible to the public.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 28-03, § 3003.

Band Ordinance 42-22.

#### **§ 3005. Fines.**

- (a) Any person subject to the jurisdiction of the Band who fails to register a dog with the Department of Public Safety or provide proof of rabies vaccination to the Department of Public Safety as required by this subchapter shall be guilty of a civil misdemeanor. If, by a preponderance of the evidence, such person is found guilty of such charge, an order shall be issued and a fine shall be imposed, as follows:
  - (1) first offense, an order to register and/or tag the dog(s) shall be issued;
  - (2) second offense, an order to register and/or tag the dog(s) shall be issued and a fine in the amount of \$50.00 shall be imposed;
  - (3) third offense, an order to remove the dog(s) from Band lands shall be issued and a fine in the amount of \$100.00 shall be imposed.
- (b) Any person subject to the jurisdiction of the Band who fails to post a “Beware of Dog” sign in violation of § 3004(d) of this Chapter shall be guilty of a civil misdemeanor. If, by a preponderance of the evidence, such person is found guilty of such charge, an order shall be issued and a fine shall be imposed, as follows:
  - (1) first offense, an order to post the sign shall be issued and a fine in the amount of \$50.00 shall be imposed;
  - (2) second offense, an order to post the sign shall be issued and a fine in the amount of \$100.00 shall be imposed;

- (3) third offense, an order to remove the dog(s) from Band lands shall be issued and a fine in the amount of \$150.00 shall be imposed.
- (c) **Liability for Medical Expenses.** Any person subject to the jurisdiction of the Band whose dog, while on Band lands, bites any person without provocation and inflicts bodily injury, shall be guilty of a civil misdemeanor. If, by a preponderance of the evidence, such person is found guilty of such charge, a fine in the maximum amount of \$350.00 shall be imposed and the victim's medical costs shall be assessed against such person. If, by a preponderance of the evidence, such person is found guilty of a second such charge involving the same dog, a fine in the maximum amount of \$700.00 shall be imposed, an order to destroy the dog shall be issued, and the victim's medical costs and the costs of destroying the dog shall be assessed against such person.

#### Historical and Statutory Notes

**Source:**

Band Ordinance 28-03, § 3004.

Band Ordinance 42-22.

#### § 3006. Abandoned Dogs; Duty of Officers.

- (a) **Abandonment.** It is unlawful for any person subject to the jurisdiction of the Band to abandon a dog on Band lands. Any person subject to the jurisdiction of the Band found, by a preponderance of the evidence, to have abandoned a dog on Band lands shall be guilty of a civil misdemeanor subject to a minimum fine of \$50.00. Such fine may not exceed \$500.00. Tribal law enforcement shall first issue a verbal warning, a written warning, and then shall issue a fine.
- (b) **Delivery to shelter.** Any tribal enforcement officer or animal control officer may remove, shelter, and care for any animal which is not properly sheltered from cold, hot, or inclement weather or any animal not properly fed and watered, or provided with suitable food and drink in circumstances that threaten the life of the animal, or wandering the roads, parking areas, or other public areas without a collar or visible current rabies tag. When necessary, a tribal enforcement officer or animal control officer may deliver the animal to another person to be sheltered and cared for, and furnished with suitable food and drink. In all cases, the owner, if known, shall be immediately notified as provided in § 3026(c) of this chapter, and the person having possession of the animal, shall have a lien thereon for its actual costs of care and keeping and the expenses of the notice. If the owner or custodian is unknown and cannot by reasonable effort be found, or does not, within ten (10) calendar days after notice, redeem the animal by paying the expenses authorized by this subsection, the animal may be disposed of or released as provided in § 3026 of this chapter.
- (c) **Disposal of animals.** Upon a proper determination by a licensed veterinarian, any animal taken into custody pursuant to subsection (b) may be immediately disposed of

when the animal is suffering and is beyond cure through reasonable care and treatment. The expenses of disposal shall be subject to the provisions of § 3025 of this chapter.

- (d) **Expenses.** The expenses of the delivery to an animal shelter, any and all animal shelter costs, including the fee of the licensed veterinarian, the expenses of keeping or disposing of any animal taken into custody pursuant to this section, and all other expenses reasonably incident to the section shall be paid from the general fund, as appropriated by the Band Assembly. If the person alleged to have violated this section is found guilty of the violation, the Band, animal shelter, or designated animal welfare agency shall have judgment against the guilty person for the amount of the expenses.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 28-03, § 3005.

Band Ordinance 42-22.

#### **§ 3007. Dog Houses.**

- (a) **In general.** A person in charge or control of any dog which is kept outdoors or in an unheated enclosure shall, at a minimum, provide the dog with shelter and bedding.
- (b) **Shelter specifications.** The shelter shall include a moisture-proof and windproof structure of suitable size to accommodate the dog and allow retention of body heat. It shall be made of durable material with a solid, moisture-proof floor or a floor raised at least two (2) inches from the ground. Between November 1 and March 31, the structure must have a windbreak at the entrance. The structure shall be provided with a sufficient quantity of suitable bedding material consisting of hay, straw, cedar shavings, blankets, or the equivalent, to provide insulation and protection against cold and dampness and promote retention of body heat.
- (c) **Shade.** Shade from the direct rays of the sun, during the months of May to October shall be provided.
- (d) **Farm dogs.** In lieu of the requirements of subsections (b) and (c), a dog kept on a farm may be provided with access to a barn with a sufficient quantity of loose hay or bedding to protect against cold and dampness.
- (e) **Zoning.** All shelters required by this section shall be subject to all building or zoning regulations of the Band and any city, township, county, or state, if applicable.
- (f) **Penalty.** Whoever violates the provisions of this section is guilty of a petty misdemeanor.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 42-22.

### **§ 3008. Civil Causes of Action.**

Nothing in this subchapter shall prevent an individual from pursuing a civil cause of action for injuries sustained from a dog bite or attack.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 28-03, § 3006.  
Band Ordinance 42-22.

### **§ 3009. Jurisdiction.**

The Court of Central Jurisdiction shall have jurisdiction over all actions pertaining to this subchapter.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 28-03, § 3007.  
Band Ordinance 42-22.

### **§ 3010. Sovereign Immunity.**

Nothing in this subchapter shall be construed as a waiver of sovereign immunity of the Band.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 28-03, § 3008.  
Band Ordinance 42-22.

### **§ 3011. Severability.**

If the Court of Central Jurisdiction adjudges any provision of this subchapter to be invalid, such judgment shall not affect any other provisions of this subchapter not specifically included in the judgment.

## Historical and Statutory Notes

**Source:**

Band Ordinance 28-03, § 3009.

Band Ordinance 42-22.

## SUBCHAPTER 2

### ANIMAL PROTECTION

**Section**

**3021. Purpose.**

**3022. Definitions.**

**3023. Tribal Law Enforcement Policies.**

**3024. Overworking or Mistreating Animals; Penalty.**

**3025. Immunity.**

**3026. Investigation of Cruelty Complaints.**

**3027. Expenses of Investigation.**

**3028. Disposal or Release of Seized Animals.**

**3029. Poisoning Animals.**

**3030. Animal with Infectious Disease.**

**3031. Abandonment; Duty of Officers.**

**3032. Animals Fights and Possession of Fighting Animals.**

**§ 3021. Purpose.**

The purpose of this subchapter is to respect, honor, and protect animals in a manner that is consistent with Band culture and tradition. Any ambiguity in this subchapter shall be construed according to the cultural and traditional principles of the Anishinabe people.

## Historical and Statutory Notes

**Source:**

Band Ordinance 42-22.

**§ 3022. Definitions.**

Unless otherwise provided in this section, all words in this chapter shall be construed according to their ordinary meaning. The following terms are defined for purposes of this chapter.

- (a) **“Abandon”** means when an animal does not have proper shelter from cold, hot, or inclement weather or not properly fed and watered, or provided with suitable food and water in circumstances that threaten the life of the animal.

- (b) **“Animal”** means every living creature except members of the human race.
- (c) **“Animal control officer”** means an officer employed by or under contract with an agency of the Band, state, county, municipality, or other governmental subdivision of the state which is responsible for animal control operations in its jurisdiction.
- (d) **“Animal shelter”** means a facility, whether organized under the Band or a private entity, that houses, disposes of, and puts up for adoption abandoned, homeless, and lost animals.
- (e) **“Court”** means the Court of Central Jurisdiction.
- (f) **“Cruelty”** or **“Torture”** means every act, omission, or neglect which causes or permits unnecessary or unjustifiable pain, suffering, or death.
- (g) **“Designated animal welfare agency”** means a private entity, such as an animal shelter, rehabilitation center, or rescue center, which assists the Band in removing, rescuing, and finding care and a home for an animal, pet, or service dog.
- (h) **“Emotional harm”** means mental injury which results in an animal to be distrustful, withdrawn, hostile, vicious, depressed, or reclusive, caused by deliberately inflicting stress by terrorizing, excessive verbal punishment, isolation, or intimidation.
- (i) **“Great bodily harm”** means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily harm to a service animal or a pet.
- (j) **“Pet”** means any animal owned, possessed by, cared for, or controlled by a person for the present or future enjoyment of that person or another as a pet or companion, or any stray pet or stray companion animal.
- (k) **“Service animal”** means an animal trained to assist a person with a disability.
- (l) **“Substantial bodily harm”** means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member to a service animal or a pet.
- (m) **“Temporary abandonment”** means allowing any maimed, sick, infirm, or disabled animal to lie in any street, road, or other public place for more than three (3) hours after receiving notice of the animal's condition.

- (n) **“Tribal Enforcement Officer”** means a Band Department of Natural Resources conservation officer, Tribal Police Officer or designated employee within tribal law enforcement, or designated animal welfare agency.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 42-22.

**§ 3023. Tribal Law Enforcement Policies.**

Tribal law enforcement shall promulgate policies to carry out the intent of this chapter, which shall be ratified by the Band Assembly.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 42-22.

**§ 3024. Overworking or Mistreating Animals; Penalty.**

- (a) **Torture.** No person shall overdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work any animal when it is unfit for labor, whether it belongs to that person or to another person.
- (b) **Nourishment; shelter.** No person shall deprive any animal over which the person has charge or control of necessary food, water, or shelter.
- (c) **Enclosure.** No person shall keep any animal in any enclosure without providing wholesome exercise and change of air.
- (d) **Cruelty.** No person shall willfully instigate or in any way further any act of cruelty to any animal or animals, or any act tending to produce cruelty to animals.
- (e) **Improper Confinement.** No person shall improperly confine an animal unless the confinement is constructed of solid material on three (3) sides to protect the caged animal from the elements and unless the horizontal dimension of each side of the confinement is at least four (4) times the length of the confined animal, with the exception of domesticated animals, such as cats and dogs, which shall have proper confinement based on their size relative to their confinement of a kennel. Improper confinement also includes confining an animal in an unattended motor vehicle under conditions that endanger the health or well-being of an animal due to heat, cold, lack of adequate ventilation, or lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal. The provisions of this subsection do not apply to captive wildlife.

(f) **Harming a service animal.** No person shall intentionally and without justification do either of the following to a service animal while it is providing service or while it is in the custody of the person it serves: (1) cause bodily harm to the animal; or (2) otherwise render the animal unable to perform its duties.

(g) **Penalty.**

(1) Except as otherwise provided in this subsection, a person who fails to comply with any provision of this section may be issued a fine not less than \$500.00.

(2) A person who intentionally violates subsection (a) or (e) where the violation results in emotional harm or substantial bodily harm to a pet may be issued a fine of not more than \$1,000.00.

(3) A person convicted of violating paragraph (2) within five (5) years of a previous conviction for violating this section may be issued a fine of not more than \$3,000.00.

(4) A person who intentionally violates subsection (a) or (e) where the violation results in death or great bodily harm to a pet may be issued a fine of not more than \$3,000.00.

(5) A person who violates subsection (f) where the violation renders the service animal unable to perform its duties may be issued a fine of not more than \$3,000.00.

(6) A person who violates subsection (f) where the violation results in substantial bodily harm to a service animal may be issued a fine of not more than \$3,000.00.

(7) A person who intentionally violates subsection (a) or (e) where the violation results in emotional harm or substantial bodily harm to a pet, and the act is done to threaten, intimidate, or terrorize another person, may be issued a fine of not more than \$3,000.00.

(8) A person who violates subsection (f) where the violation results in death or great bodily harm to a service animal may be issued a fine of not more than \$5,000.00.

(9) A person who intentionally violates subsection (a) or (e) where the violation results in death or great bodily harm to a pet, and the act is done to threaten, intimidate, or terrorize another person, may be issued a fine of not more than \$5,000.00.

(h) **Harm to service animals; mandatory restitution and civil remedies.**

- (1) The court shall order a person convicted of violating subsection (f) to pay restitution for the costs and expenses resulting from the crime. Costs and expenses include, but are not limited to, the service animal user's loss of income, veterinary expenses, transportation costs, and other expenses of temporary replacement assistance services, and service animal replacement or retraining costs incurred by a school, agency, or individual. If the court finds that the convicted person is indigent, the court may reduce the amount of restitution to a reasonable level or order it paid in installments.
  - (2) This section does not preclude a person from seeking any available civil remedies for an act that violates subsection (f).
- (i) **Restrictions.** If a person is convicted of violating this section, the court shall require that pets that have not been seized by a tribal enforcement officer and are in the custody or control of the person must be turned over to a tribal enforcement officer unless the court determines that the person is able and fit to provide adequately for an animal. If the evidence indicates lack of proper and reasonable care of an animal, the burden is on the person to affirmatively demonstrate by clear and convincing evidence that the person is able and fit to have custody of and provide adequately for an animal. The court may limit the person's further possession or custody of a pet, and may impose other conditions the court considers appropriate, including, but not limited to:
- (1) imposing a probation period during which the person may not have ownership, custody, or control of a pet;
  - (2) requiring periodic visits of the person by a tribal police officer;
  - (3) requiring performance by the person of community service; and
  - (4) requiring the person to receive psychological, behavioral, or other counseling.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 42-22.

#### **§ 3025. Immunity.**

- (a) **Veterinarian.** A licensed veterinarian acting in good faith and in the normal course of business is immune from civil and criminal liability in any action arising in connection with the report of a suspected incident of animal cruelty.
- (b) **Tribal Enforcement Officer.** A tribal enforcement officer and any volunteer or third-party entity contracting with the tribal police department, who is acting in good faith and in the normal course of business, is immune from civil and criminal

liability in any action arising in connection with the report of a suspected incident arising under §§ 3024, 3031.

- (c) **Good Samaritan.** A person may take reasonable steps that are necessary to remove an animal from a motor vehicle if the person holds a reasonable belief that the animal's safety is in immediate danger from heat, cold, lack of adequate ventilation, lack of food or water, or other circumstances that could reasonably be expected to cause suffering, disability, or death to the animal. A person who removes an animal from a vehicle shall not be charged with criminal liability or civil liability for actions taken if the person:
- (1) determines the vehicle is locked or there is otherwise no reasonable manner for the animal to be removed from the vehicle;
  - (2) has a good faith belief that forcible entry into the vehicle is necessary because the animal is in imminent danger of suffering harm if it is not immediately removed from the vehicle, and, based upon the circumstances known to the person at the time, the belief is a reasonable one;
  - (3) has contacted a tribal enforcement officer or local law enforcement, the fire department, or the "911" emergency service prior to forcibly entering the vehicle;
  - (4) remains with the animal in a safe location, out of the elements but reasonably close to the vehicle, until a peace or animal control officer or another emergency responder arrives;
  - (5) used no more force to enter the vehicle and remove the animal from the vehicle than was necessary under the circumstances; and
  - (6) immediately turns the animal over to a tribal enforcement officer or another emergency responder who responds to the scene.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 42-22.

#### **§ 3026. Investigation of Cruelty Complaints.**

- (a) **Reporting.** Any person who has reason to believe that a violation of this subchapter has taken place or is taking place may apply to the court alleging violation of that section for a warrant and for investigation. The court shall examine under oath the person applying and any witnesses the applicant produces and the court shall take their affidavits in writing. The affidavits must set forth facts tending to establish the grounds for believing a violation of this subchapter has occurred or is occurring, or

probable cause to believe that a violation exists. If the court is satisfied of the existence of the grounds of the application, or that there is probable cause to believe a violation exists, it shall issue a signed search warrant and order for investigation to a tribal police officer. The order shall command the officer to proceed promptly to the location of the alleged violation. The order may command that a licensed veterinarian accompany the officer.

- (b) **Police investigation.** The tribal police officer shall search the place designated in the warrant and, together with the veterinary doctor, shall conduct an investigation of the facts surrounding the alleged violation. The officer may retain in custody, subject to the order of the court, any property or things which are specified in the warrant, including any animal if the warrant so specifies. The warrant shall contain the names of the persons presenting affidavits in support of the application and the grounds for its issuance. Service shall be made in accordance with Band law. The warrant must be executed and returned to the court which issued the warrant within ten (10) business days after its date; after the expiration of that time, unless executed, the warrant is void. The officer executing the warrant shall promptly return the warrant to the court, and deliver to it a written inventory of the property or things taken, verified by the certificate of the officer.
- (c) **Disposal of animals.** Upon a proper determination by a licensed veterinarian, any animal taken into custody pursuant to this section may be immediately disposed of when the animal is suffering and is beyond cure through reasonable care and treatment. All other animals shall be disposed of or released as provided in § 3028. The authority taking custody of the animals may recover all costs incurred under this section.

#### Historical and Statutory Notes

**Source:**

Band Ordinance 42-22.

#### § 3027. Expenses of Investigation.

The expenses of the investigation authorized by § 3026, including the fee of the licensed veterinarian, the expenses of keeping or disposing of any animal taken into custody pursuant to an investigation, and all other expenses reasonably incident to the investigation shall be paid from the general fund, as appropriated by the Band Assembly. If the person alleged to have violated § 3022 is found guilty of the violation, the Band, animal shelter, or designated animal welfare agency shall have judgment against the guilty person for the amount of the expenses.

#### Historical and Statutory Notes

**Source:**

Band Ordinance 42-22.

**§ 3028. Disposal or Release of Seized Animals.**

- (a) **General rule.** An animal taken into custody under this subchapter may be humanely disposed of or released to an animal shelter ten (10) calendar days after the animal is taken into custody, provided that the procedures in subsection (c) are followed. An animal raised for food or fiber products may not be seized or disposed of without prior examination by a licensed veterinarian pursuant to a warrant issued by a judge.
- (b) **Security.** A person claiming an interest in an animal in custody under subsection (a) may prevent disposal of or release of the animal by posting security in an amount sufficient to provide for the animal's actual costs of care and keeping. The security must be posted within ten (10) days of the seizure.
- (c) **Notice; right to hearing.**
  - (1) The authority taking custody of an animal under this subchapter shall give notice of this section by delivering or mailing it to a person claiming an interest in the animal, by posting a copy of it at the place where the animal was taken into custody, or by delivering or mailing it to a person residing on the property. The notice must include:
    - (i) a description of the animal seized; the authority and purpose for the seizure; the time, place, and circumstances under which the animal was seized; and the location, address, telephone number, and contact person where the animal is kept;
    - (ii) a statement that a person claiming an interest in the animal may post security as provided in subsection (b) to prevent disposal of the animal and may request a hearing concerning the seizure or impoundment and that failure to do so within ten (10) calendar days of the date of the notice will result in disposal of the animal; and
    - (iii) a statement that all actual costs of the care, keeping, and disposal of the animal are the responsibility of the person claiming an interest in the animal, except to the extent that a court finds that the seizure or impoundment was not substantially justified by law. The notice must also include a form that can be used by a person claiming an interest in the animal for requesting a hearing.
  - (2) Upon request of a person claiming an interest in the animal, which request must be made within ten (10) calendar days of the date of seizure, a hearing must be held within five (5) business days of the request, to determine the validity of the seizure and impoundment. If the seizure was done pursuant to a warrant under this subchapter, the hearing must be conducted by the judge who issued the warrant.

- (3) The judge may authorize the return of the animal, if the court finds:
  - (i) the animal is physically fit; and
  - (ii) the person claiming an interest in the animal can and will provide the care required by law for the animal.
- (4) The person claiming an interest in the animal is liable for all actual costs of care, keeping, and disposal of the animal, except to the extent that the court finds that the seizure or impoundment was not substantially justified by law. The costs must be paid in full or a mutually satisfactory arrangement for payment must be made between the Band and the person claiming an interest in the animal before return of the animal to the person.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 42-22.

#### **§ 3029. Poisoning Animals.**

Any person who unjustifiably administers any poisonous, or noxious drug or substance to any animal, or procures or permits it to be done, or unjustifiably exposes that drug or substance with intent that the drug be taken by any animal, whether the animal is the property of the person or another, is guilty of a civil misdemeanor and shall be issued a fine of \$2,000.00.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 42-22.

#### **§ 3030. Animal with Infectious Disease.**

An owner or person having charge of any animal who knows the animal has any infectious or contagious disease, or knows the animal has recently been exposed to an infectious or contagious disease, who sells or barter the animal, or knowingly permits the animal to run at large or come into contact with any other animal, or with another person without that person's knowledge and permission shall be guilty of a civil misdemeanor and shall be issued a fine of \$500.00.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 42-22.

### § 3031. Abandonment; Duty of Officers.

- (a) **Abandonment.** For all other animals not specified in subchapter 1 of this chapter, it is unlawful to abandon or temporarily abandon an animal. Any person subject to the jurisdiction of the Band found, by a preponderance of the evidence, to have abandoned an animal on Band lands shall be guilty of a civil misdemeanor and shall be subject to a minimum fine of \$50.00. Such fine may not exceed \$500.00. Tribal law enforcement shall first issue a verbal warning, a written warning, and then shall issue a fine.
- (b) **Delivery to shelter.** Any tribal enforcement officer may remove, shelter, and care for any animal which is not properly sheltered from cold, hot, or inclement weather or any animal not properly fed and watered, or provided with suitable food and drink in circumstances that threaten the life of the animal. When necessary, a tribal enforcement officer may deliver the animal to another person to be sheltered and cared for, and furnished with suitable food and drink. In all cases, the owner, if known, shall be immediately notified as provided in § 3026(c), and the person having possession of the animal, shall have a lien thereon for its actual costs of care and keeping and the expenses of the notice. If the owner or custodian is unknown and cannot by reasonable effort be found, or does not, within ten (10) calendar days after notice, redeem the animal by paying the expenses authorized by this subsection, the animal may be disposed of or released as provided in § 3028.
- (c) **Disposal of animals.** Upon a proper determination by a licensed veterinarian, any animal taken into custody pursuant to subsection (b) may be immediately disposed of when the animal is suffering and is beyond cure through reasonable care and treatment. The expenses of disposal shall be subject to the provisions of § 3027.
- (d) **Expenses.** The expenses of the delivery to an animal shelter, any and all animal shelter costs, including the fee of the licensed veterinarian, the expenses of keeping or disposing of any animal taken into custody pursuant to this section, and all other expenses reasonably incident to the section shall be paid from the general fund, as appropriated by the Band Assembly. If the person alleged to have violated this section is found guilty of the violation, the Band, animal shelter, or designated animal welfare agency shall have judgment against the guilty person for the amount of the expenses.

#### Historical and Statutory Notes

**Source:**

Band Ordinance 42-22.

### § 3032. Animals Fights and Possession of Fighting Animals.

- (a) **Penalty for animal fighting; attending animal fight.**

- (1) Whoever does any of the following is guilty of a civil misdemeanor and shall be issued a fine of \$5,000.00:
    - (i) promotes, engages in, or is employed in the activity of cockfighting, dogfighting, or violent pitting of one (1) pet against another of the same or a different kind;
    - (ii) receives money for the admission of a person to a place used, or about to be used, for that activity;
    - (iii) willfully permits a person to enter or use for that activity premises of which the permitting person is the owner, agent, or occupant; or
    - (iv) uses, trains, or possesses a dog or other animal for the purpose of participating in, engaging in, or promoting that activity.
  - (2) Whoever purchases a ticket of admission or otherwise gains admission to the activity of cockfighting, dogfighting, or violent pitting of one (1) pet against another of the same or a different kind is guilty of a civil misdemeanor and shall be issued a fine of \$1,000.00.
  - (3) Whoever possesses any device or substance with intent to use or permit the use of the device or substance to enhance an animal's ability to fight is guilty of a civil misdemeanor and shall be issued a fine of \$1,000.00.
  - (4) This subsection shall not apply to the taking of a wild animal by hunting.
- (b) **Presumption of training a fighting dog.**
- (1) There is a rebuttable presumption that a dog has been trained or is being trained to fight if:
    - (i) the dog exhibits fresh wounds, scarring, or other indications that the dog has been or will be used for fighting; and
    - (ii) the person possesses training apparatus, paraphernalia, or drugs known to be used to prepare dogs to be fought.
  - (2) This presumption may be rebutted by a preponderance of the evidence.
- (c) **Presumption of training fighting birds.**
- (1) There is a rebuttable presumption that a bird has been trained or is being trained to fight if:

- (i) the bird exhibits fresh wounds, scarring, or other indications that the bird has been or will be used for fighting; or
    - (ii) the person possesses training apparatus, paraphernalia, or drugs known to be used to prepare birds to be fought.
  - (2) This presumption may be rebutted by a preponderance of the evidence.
- (d) **Tribal enforcement officer duties.** Animals described in subsection (b) and (c) are dangerous weapons and constitute an immediate danger to the safety of humans. A tribal enforcement officer may remove, shelter, and care for an animal found in the circumstances described in subsection (b) and (c). If necessary, a tribal enforcement officer may deliver the animal to another person to be sheltered and cared for. In all cases, the tribal enforcement officer must immediately notify the owner, if known, as provided in subsection (e). The tribal enforcement officer or other person assuming care of the animal shall have a lien on it for the actual cost of care and keeping of the animal. If the owner or custodian is unknown and cannot by reasonable effort be ascertained, or does not, within ten (10) calendar days after notice, redeem the animal by paying the expenses authorized by this subsection, the animal may be disposed of or released as provided in subsection (e).
- (e) **Disposal or Release.**
- (1) An animal taken into custody under subsection (d) may be humanely disposed of or released to an animal shelter at the discretion of the jurisdiction having custody of the animal ten (10) calendar days after the animal is taken into custody, if the procedures in paragraph (3) are followed.
  - (2) The owner of an animal taken into custody under subsection (d) may prevent disposal of or release of the animal by posting security in an amount sufficient to provide for the actual costs of care and keeping of the animal. The security must be posted within ten (10) calendar days of the seizure. If, however, a hearing is scheduled within ten (10) calendar days of the seizure, the security amount must be posted prior to the hearing.
  - (3) The authority taking custody of an animal under subsection (d) must give notice of this section by delivering or mailing it to the owner of the animal, posting a copy of it at the place where the animal is taken into custody, or delivering it to a person residing on the property. The notice must include:
    - (i) a description of the animal seized; the authority and purpose for the seizure; the time, place, and circumstances under which the animal was seized; and the location, address, and telephone number of a contact person who knows where the animal is kept;

- (ii) a statement that the owner of the animal may post security to prevent disposal of or release of the animal and may request a hearing concerning the seizure and impoundment and that failure to do so within ten (10) calendar days of the date of the notice will result in disposal of or release of the animal; and
    - (iii) a statement that all actual costs of the care, keeping, and disposal of or release of the animal are the responsibility of the owner of the animal, except to the extent that the court finds that the seizure or impoundment was not substantially justified by law. The notice must also include a form that can be used by a person claiming an interest in the animal for requesting a hearing.
  - (4) The owner may request a hearing within ten (10) calendar days of the date of the seizure. If requested, a hearing must be held within five (5) business days of the request to determine the validity of the impoundment.
  - (5) The judge may authorize the return of the animal if the judge finds that:
    - (i) the animal is physically fit;
    - (ii) the person claiming an interest in the animal can and will provide the care required by law for the animal; and
    - (iii) the animal has not been used for violent pitting or fighting.
  - (6) The person claiming an interest in the animal is liable for all actual costs of care, keeping, and disposal of the animal, except to the extent that the court finds that the seizure or impoundment was not substantially justified by law. The costs must be paid in full or a mutually satisfactory arrangement for payment must be made between the Band and the person claiming an interest in the animal before the return of the animal to the person.
- (f) **Photographs.**
- (1) Photographs of animals seized during an investigation are competent evidence if the photographs are admissible into evidence under all the rules of law governing the admissibility of photographs into evidence. A satisfactorily identified photographic record is as admissible in evidence as the animal itself.
  - (2) A photograph must be accompanied by a written description of the animal seized, the name of the owner of the animal seized, the date of the photograph, and the name, address, organization, and signature of the photographer.

(g) **Veterinary investigative report.**

- (1) A report completed by a licensed veterinarian following an examination of an animal seized during an investigation is competent evidence. A satisfactorily identified veterinary investigative report is as admissible in evidence as the animal itself.
- (2) The veterinary investigative report may contain a written description of the animal seized, the medical evaluation of the physical findings, the prognosis for recovery, and the date of the examination and must contain the name, address, veterinary clinic, and signature of the veterinarian performing the examination.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 42-22.

**CHAPTER 5**

**1837 TREATY CONSERVATION CODE FOR THE MINNESOTA CEDED TERRITORY**

<u>Subchapter</u>	<u>Section</u>
1. General Provisions	4001
2. General Definitions	4011
3. General Regulations	4021
4. Enforcement	4081
5. Wild Rice Harvesting Regulations	5011
6. Deer Harvesting Regulations	5041
7. Bear Harvesting Regulations	5081
8. Small Game Harvesting Regulations	5121
9. Fish Harvesting Regulations	5161
10. Migratory Bird Harvesting Regulations	5201
11. Amphibians, Turtles, Mussels, and Crayfish	5241
12. Wild Plant Harvesting Regulations	5261

**Historical and Statutory Notes**

Band Ordinance 07-97 (this Chapter), §§ 1.01, 1.02, 1.05, 1.07, and 1.08 provide:

“1.01 Title. This ordinance shall be known as the 1837 Treaty Conservation Code for the Minnesota Ceded Territory of the Mille Lacs Band of Ojibwe Indians.”

“1.02 Authority. This ordinance is enacted pursuant to 3 MLBS § 2(a).”

“1.05 Effective Date. Except as otherwise provided in specific sections, the provisions of this ordinance shall become effective at 12:01am on March 15, 1997.”

“1.07 Severability and Immunity. If any section, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction the remainder of this ordinance shall not be affected thereby. The Band does not waive and to the contrary asserts to the fullest extent allowed by law immunity on its part and that of its officers, employees, and/or agents from any claims, actions or damages that may arise under or result from this ordinance.”

“1.08 Repeal of Inconsistent Ordinances, Resolutions and Orders. All Band ordinances, resolutions and orders inconsistent with this ordinance are hereby repealed. To the extent that this ordinance imposes great restrictions that those contained in any other ordinance, resolution or order, the provisions of this ordinance shall govern.”

## **SUBCHAPTER 1**

### **GENERAL PROVISIONS**

#### **Section**

**4001. Purpose.**

**4002. Territorial Applicability.**

**4003. Interpretation.**

**4004. Religious or Ceremonial Use of Natural Resources.**

**4005. Additional Measures.**

#### **§ 4001. Purpose.**

It is the purpose of this Chapter to provide an orderly system for Band control and regulation of the Band's hunting, fishing and gathering rights on the lands and waters located in the State of Minnesota which were ceded in the Treaty of 1837, 7 Stat. 536, ("Minnesota Ceded Territory"), which:

- (a) promotes public health and safety and the conservation and management of fish, wildlife and plant populations in the Minnesota Ceded Territory; and
- (b) is consistent with the 1837 Treaty, applicable Federal law, and the opinions, orders and decrees entered by the Court in *Mille Lacs Band v. State of Minnesota*, No. 394-1226 (D. Minn.).

#### **Historical and Statutory Notes**

#### **Source:**

Band Ordinance 07-97, § 1.03.

**§ 4002. Territorial Applicability.**

This Chapter shall govern all treaty hunting, fishing and gathering activities of Band members within the Minnesota Ceded Territory.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 1.04.

**§ 4003. Interpretation.**

The provisions of this Chapter:

- (a) Shall be interpreted and applied as minimum requirements applicable to the exercise of treaty rights subject to this Chapter;
- (b) Shall be construed liberally in favor of the Band;
- (c) Shall be construed consistently with the 1837 Treaty, applicable Federal law, and the opinions, orders and decrees entered by the Court in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.); and
- (d) Shall not be deemed a limitation or repeal of any other tribal power or authority.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 1.06.

**§ 4004. Religious or Ceremonial Use of Natural Resources.**

- (a) Except as provided in paragraphs (b) and (c) below and § 4046, nothing in this Chapter shall prohibit the harvest or use of any resource for religious or ceremonial purposes in accordance with the traditions and customs of the Band.
- (b) No member shall harvest any resource for religious or ceremonial purposes without written authorization from the Department of Natural Resources and a permit issued by the Commissioner pursuant to this section, and no member shall fail to comply with the terms and conditions of any such permit.
- (c) In reviewing and taking action on any request for a permit to harvest a resource for religious or ceremonial purposes, the Commissioner shall take into account the biological impact of the harvest and shall ensure compliance with all provisions of the

1837 Treaty, applicable Federal law, and the opinions, orders and decrees entered by the Court in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.).

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 1.09.

#### **§ 4005. Additional Measures.**

The Department of Natural Resources is authorized to issue orders that impose measures regulating hunting, fishing and gathering by Band members in the Minnesota Ceded Territory that are in addition to and more restrictive than the provisions of this Chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 1.10.

## **SUBCHAPTER 2**

### **GENERAL DEFINITIONS**

#### **Section**

#### **4011. General Definitions.**

#### **§ 4011. General Definitions.**

The following terms, wherever used in this Chapter, shall be construed as follows:

- (a) **"Band," "Tribe," and "Tribal"** mean or refer to the Mille Lacs Band of Ojibwe. When used in the plural, "Bands" or "Tribes" refers to all plaintiff and plaintiff intervenor Bands in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.).
- (b) **"Carcass"** means the dead body of any wild animal to which it refers, and, unless clearly indicated to the contrary by a specific provision of this Chapter in particular circumstances, includes the hide or skin and head.
- (c) **"Commercial Harvesting"** shall mean any harvesting of a natural resource in which the resource harvested, or any portion thereof, is sold, but shall not include harvesting of natural resources for subsistence uses.
- (d) **"Commission"** means the Great Lakes Indian Fish and Wildlife Commission.

- (e) **"Commissioner"** means the Commissioner of Natural Resources of the Mille Lacs Band, unless the context expressly indicates otherwise.
- (f) **"Department of Natural Resources"** means the Band's conservation department, unless the context expressly indicates otherwise.
- (g) **"Endangered or Threatened Species"** means any wild animal or wild plant which is contained on either the federal (50 CFR Sections 17.11 and 17.12) or Commissioner's endangered and threatened species lists, as may be amended from time to time, or which the Band's governing body from time to time may declare as endangered or threatened. The Commissioner's list shall, at a minimum, initially contain all species listed by the State of Minnesota as threatened or endangered as of January 1, 1995, but may be revised hereafter in accordance with the provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.).
- (h) **"Fishing"** includes taking, capturing, killing or attempting to take, capture or kill fish of any variety in any manner. When the word "fish" is used as a verb, it shall have the same meaning as the word "fishing" as defined herein.
- (i) **"Game fish"** includes all varieties of fish except rough fish and minnows; **"rough fish"** means carp, buffalo, sucker, sheepshead, bowfin, burbot, cisco, gar, goldeye and bullhead; **"minnows"** includes
  - (1) the minnow family, Cyprinidae, except carp and goldfish;
  - (2) members of the mudminnow family; Umbridae;
  - (3) members of the sucker family, Catostomidae, not over 12 inches in length;
  - (4) bullheads, ciscoes, lake white fish, goldeyes, and mooneyes, not over seven (7) inches long; and
  - (5) leeches.
- (j) **"Gathering"** means to take or acquire or attempt to take or acquire possession of any wild plant or any part thereof.
- (k) **"Hunt" or "Hunting"** includes shooting, shooting at, taking, catching, or killing any wild animal or animals, or attempting to do any of the foregoing, except that "hunt" or "hunting" does not include the recovery of any wild animal which has already been lawfully reduced to possession.
- (l) **"Member"** means a member of the Band.

- (m) **"Minnesota Ceded territory"** means all lands and waters in Minnesota that were ceded by the Chippewa to the United States of America in the Treaty of 1837, 7 Stat. 536.
- (n) **"Motor Vehicle"** means a self-propelled vehicle or a vehicle propelled or drawn by a self-propelled vehicle that is operated on a highway, on a railroad track, on the ground, in the water, or in the air.
- (o) **"Non-member"** means a person who is not a member of any one (1) of the Bands.
- (p) **"Possession"** means having killed, harvested, or otherwise obtained or acquired any wild animal or wild plant subject to the provisions of this Chapter.
- (q) **"Protected Species"** means any wild animal or wild plant, the hunting, fishing, trapping or gathering of which is prohibited by § 4050 of this Chapter.
- (r) **"Subsistence Uses"** shall mean the use of natural resources for direct personal or family consumption by Band members as food, medicine, shelter, fuel, clothing, tools or transportation; for the making or selling of handicraft articles; or for barter. For purposes of this section, the term:
  - (1) **"family"** means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis;
  - (2) **"handicraft articles"** means articles produced, decorated or fashioned in the exercise of traditional Indian handicrafts such as carving, weaving, beading, drawing or painting, without the use of mass copying devices; and
  - (3) **"barter"** means the sale or exchange of natural resources or parts thereof for subsistence uses between members of the Bands.
- (s) **"Trapping"** includes the taking of, or attempting to take, any wild animal by means of setting or operating any device, mechanism or contraption that is designed, built or made to close upon, hold fast, or otherwise capture a wild animal or animals. When the word "trap" is used as a verb, it shall have the same meaning as the word "trapping" as defined herein.
- (t) **"Unprotected Species"** means any wild animal or wild plant, the hunting, fishing, trapping or gathering of which is not expressly authorized, prohibited or regulated by this Chapter.
- (u) **"Wild animal"** means any mammal, bird, fish, or other creature of a wild nature endowed with sensation and the power of voluntary motion.
- (v) **"Wildlife"** means all varieties of wild animals.

- (w) **"Wild Plant"** means any undomesticated species, and fruit or part thereof, of the plant kingdom occurring in the natural ecosystem, and includes wild rice, maple sap, ginseng, birch bark and timber.
- (x) **"Working day"** means Monday, Tuesday, Wednesday, Thursday or Friday, unless such day is a Band holiday.

#### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 2.01.

### SUBCHAPTER 3

#### GENERAL REGULATIONS

**Section**

- 4021. Regulatory Authority.**
- 4022. Permits and Identification.**
- 4023. Waste of Natural Resources.**
- 4024. Larceny of Natural Resources.**
- 4025. Use of Poison and Explosives; Pole Traps.**
- 4026. Throwing Refuse in Waters; Abandoning Automobiles, Boats or Other.**
- 4027. Fish Stocking; Undesirable Exotic Aquatic Plants or Wild Animals.**
- 4028. Scientific Investigation.**
- 4029. Seasons.**
- 4030. Possession of Wild Plants or Wild Animals Taken During Closed Season.**
- 4031. Bag Limits; Possession Limits.**
- 4032. Sharing of Permits and Tags.**
- 4033. Harvesting with Another's Permit Prohibited.**
- 4034. Shining Animals.**
- 4035. Duties on Accidental Shooting.**
- 4036. Failure to Report Hunting Accident.**
- 4037. Hunter Education Requirements and Restrictions on Hunting by Members Under 14 Years of Age.**
- 4038. Hunting While Intoxicated.**
- 4039. Resisting Conservation Wardens.**
- 4040. False Impersonation of Warden.**
- 4041. General Restrictions on Hunting.**
- 4042. Use of Motor Vehicles to Chase Wild Animals Prohibited.**
- 4043. Hunting with Aircraft Prohibited.**
- 4044. Pivot Guns and Similar Devices Prohibited.**
- 4045. Tampering with Equipment of Another Prohibited.**
- 4046. Endangered and Threatened Species Protected.**
- 4047. Records of Commercial Transactions Required.**

- 4048. Special Use Areas.**
- 4049. Unprotected Species.**
- 4050. Protected Species.**
- 4051. Permissible Conduct/Assistance by Non-Members.**
- 4052. Emergency Closures.**
- 4053. Management Units.**
- 4054. Registration Stations.**
- 4055. Transfers.**
- 4056. Removal of Signs.**
- 4057. Hunter, Trapper, and Angler Harassment Prohibited.**
- 4058. Fishing and Motorboats Prohibited in Certain Areas.**
- 4059. Structures in Public Waters Prohibited.**
- 4060. Training Dogs.**
- 4061. Permits to Take Animals Causing Damage**

**§ 4021. Regulatory Authority.**

- (a) The Band asserts legal authority to regulate the harvesting, use and disposition of all wild plants and wild animals by its members within the Minnesota Ceded Territory under the 1837 Treaty.
- (b) An officer of one (1) of the Bands or other law enforcement official authorized to enforce the provisions of this Chapter may seize forthwith wherever found:
  - (1) any wild plant or wild animal, or carcass or part thereof, taken or reduced to possession in violation of this Chapter; or
  - (2) any wild plant or wild animal, or carcass or part thereof, lawfully taken or reduced to possession under this Chapter, upon violation of the Chapter relating to the possession, use, giving, sale, barter or transportation of such wild plant or wild animal, or carcass or part thereof.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.01.

**§ 4022. Permits and Identification.**

- (a) No member shall engage in the exercise of 1837 treaty rights regulated by this Chapter without a validly issued Band natural resources harvesting permit or such other permit as this Chapter may require validated for the particular type of activity to be engaged in and for the particular season in question.

- (b) No member shall engage in the exercise of treaty rights regulated by this Chapter except while carrying a valid color picture identification card issued by the Band.
- (c) Except as otherwise provided in this Chapter, the Department of Natural Resources is authorized to issue to members permits required by this Chapter and establish the form of such permits, provided that such form shall include the member's name, address and Band enrollment number.
- (d) No member shall refuse to display her or his identification documents or any other document or permit required by this Chapter to any Band, state, local or federal law enforcement officer upon request by such officer.
- (e) No member to whom any permit has been issued under this Chapter shall fail or refuse to provide harvest reports and data, and such other relevant information, as may be lawfully requested by one (1) of the Bands', state, local and federal law enforcement officers or the Department of Natural Resources.
- (f) Permits, carcass tags and registration tags issued or used pursuant to this Chapter in connection with any species for which a harvest quota is established shall be numbered sequentially and shall be indexed by number making information regarding the identity of the person who has been issued a tag or permit promptly accessible.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.02.

#### **§ 4023. Waste of Natural Resources.**

No member shall unreasonably waste, injure, destroy, or impair natural resources while engaging in the exercise of treaty rights regulated by this Chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.03.

#### **§ 4024. Larceny of Natural Resources.**

No member shall, without permission of the owner, molest, disturb or appropriate any wild plant or wild animal, or the carcass or part thereof, which has been lawfully reduced to possession by or is otherwise owned by another.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.04.

**§ 4025. Use of Poison and Explosives; Pole Traps.**

- (a) No member shall take, capture, or kill or attempt to take, capture or kill any wild animal with the aid of dynamite or any other explosive or poisonous or stupefying substances or devices.
- (b) No member shall place in or allow to enter any waters explosives which might cause the destruction of any wild animal, except when authorized by the Commissioner, or have in her or his possession or under her or his control upon any waters any dynamite or other explosives or poisonous or stupefying substances or devices for the purpose of taking, catching or killing wild animals.
- (c) No member shall use, set, lay or prepare in or allow to enter any waters any lime, poison, fish berries, or any other substance deleterious to fish life; or use baits containing poison of any description in any forests, fields or other places where such baits might destroy or cause the destruction of wild animals; and the possession of any such poison, poison baits or substances deleterious to wild animals by a member while exercising treaty rights regulated by this Chapters is prima facie evidence of a violation of this section.
- (d) No member shall take, capture or kill or attempt to take capture or kill any bird by setting or operating any trap or device designed, built or used to capture birds on a pole, post, tree stump or any other elevated perch more than three (3) feet above the ground.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.05.

**§ 4026. Throwing Refuse in Waters; Abandoning Automobiles, Boats or Other Vehicles.**

No member shall deposit, place or throw into any waters, or leave upon the ice, any cans, bottles, debris, refuse or other solid waste materials; and no member shall abandon any automobile, boat or other vehicle in any waters. Any automobile, boat or other vehicles not removed within 48 hours shall be rebuttably presumed to be abandoned.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.06.

**§ 4027. Fish Stocking; Undesirable Exotic Aquatic Plants or Wild Animals.**

- (a) Except in connection with a harvest activity authorized by this Chapter or as otherwise permitted by controlling law, a member may not import, transport or stock in any waters in the Minnesota Ceded Territory live fish eggs, fresh spawn, or immature or adult fish of any species or any mussel, turtle or crayfish without a permit issued by the Commissioner.
  
- (b)
  - (1) The Commissioner is authorized to establish a ceded territory program to prevent and curb the spread of harmful exotic species. This program may include a long-term plan, which may include specific plans for individual species, for ceded territory wide management of harmful exotic species. Any exotic species program or harmful exotic species management plan may be developed in conjunction with any corresponding state management plan required by state law. The Commissioner may adopt the state management plan, or relevant portions thereof, as the ceded territory program.
  - (2) For the purposes of this Chapter, the term "exotic species" means a wild animal or plant species that is not naturally present or reproducing within the ceded territory or that does not naturally expand from its historic range in the ceded territory, and the term "harmful exotic species" means an exotic species that can naturalize and either:
    - (i) causes or may cause displacement of or otherwise threaten native species in their natural communities; or
    - (ii) threaten or may threaten natural resources or their use in the ceded territory.
  
- (c)
  - (1) No later than May 1 of each year and at such other times during the year as may be necessary, the Commissioner shall designate any waters of the ceded territory as infested waters if the Commissioner determines that they contain a harmful exotic species that could spread to other waters if use of the water and related activities are not regulated to prevent this. The Commissioner's designation of infested waters, if any, may incorporate the parallel designations under Minnesota state law. The notice that the Commissioner provides to members of the infested waters designations may be the same notice provided for the same waters by the Minnesota Department of Natural Resources under state law. Should the Commissioner fail or choose not to make any infested waters designations required under this subsection, the

infested waters designations by the Minnesota Department of Natural Resources under state law, and the accompanying public notice of those designations, shall be deemed the Commissioner's designations for the purposes of this Chapter.

- (2) For the purposes of this Chapter, the term "infested waters" means waters and waterbodies identified by the Commissioner as having populations of select harmful exotic species such as zebra mussel (all species of the genus *Dreissena*), Eurasian milfoil (*Myriophyllum spicatum*), ruffe (*Gymnocephalus cernuus*), spiny water flea, or white perch (*Morone americana*).
  - (3) No member shall take any wild animal from infested waters for bait purposes.
  - (4) No member shall fail to:
    - (i) dry for a minimum of ten (10) days or freeze for a minimum of 2 days before use in non-infested waters any net or associated piece of equipment, including any trap, buoy, anchor, stake or line;
    - (ii) remove all aquatic vegetation from nets or associated equipment when they are removed from infested waters; or
    - (iii) notify the Commissioner or a Band or Commission warden when removing nets from infested waters and before re-setting those nets in non-infested waters.
  - (5) No member shall use water from infested waters to transport fish without a permit from the Commissioner.
  - (6) No member leaving infested waters identified as having populations of zebra mussels or spiny water flea shall fail to drain bait containers, other boating related equipment holding water, and live wells and bilges by removing the drain plug before transporting the watercraft and associated equipment on public roads.
  - (7) No member shall transport infested waters on a public road or off property riparian to infested waters except as otherwise authorized by Minnesota state law or under special permit issued by the Commissioner, and no member shall divert infested waters except in compliance with Minnesota state law or in accordance with a special permit issued by the Commissioner.
- (d)
- (1) No later than May 1 of each year and at such other times during the year as may be necessary, the Commissioner shall designate waters of the ceded territory as having limited infestations of Eurasian milfoil (*Myriophyllum*

*spicatum*). The Commissioner's designation of limited infestations, if any, may incorporate the parallel designations under Minnesota state law. The notice that the Commissioner provides to members of limited infestations designations may be the same notice provided for the same waters by the Minnesota Department of Natural Resources under state law. Should the Commissioner fail or choose not to make any limited infestation designations required under this subsection, the limited infestation designations by the Minnesota Department of Natural Resources under state law, and the accompanying public notice of those designations, shall be deemed the Commissioner's designations for the purposes of this Chapter.

- (2) The Commissioner, or her or his designee, may mark and delineate areas of infestation of Eurasian Milfoil where control is planned in water bodies identified as having limited infestations. No member shall enter an area of limited infestation of Eurasian milfoil marked or delineated by the Commissioner or by the Minnesota Department of Natural resources under state law, except:
    - (i) in emergency situations where property or human life is endangered;
    - (ii) by enforcement, emergency, resource management and other Band government personnel or their agents when performing official duties; or
    - (iii) for the purpose of access via the shortest and most direct route through a marked or delineated area by owners or lessees of land adjacent to marked or delineated areas who do not have other water access to their land.
- (e)
- (1) The following species are prohibited exotic species for the purposes of this Chapter:
    - (i) Aquatic Plants: Eurasian milfoil (*Myriophyllum spicatum*); hydrilla (*Hydrilla verticillata*); European frog-bit (*Hydorchairs morsusranae*); flowering rush (*Butomus umbellatus*); any variety, hybrid, or cultivar of purple loosestrife (*Lythrum salicaria*, *Lythrum virgatum*, or any combinations); and water chestnut (*Trapa natans*).
    - (ii) Fish: grass carp (*Ctenopharyngodon idella*); rudd (*Scardinius erythrophthalmus*); round goby (*Neogobius melanostomus*); ruffe (*Bymnocephalus cernuus*); sea lamprey (*Petromyzon marinus*); and white perch (*Morone americana*).

- (iii) Invertebrates: rusty crayfish (*Orconectes rusticus*); and zebra mussel species (all species of the genus *Dreissena*).
  - (iv) Mammals: Asian raccoon dog, also known as finnraccoon (*Nyctereutes procyonoides*); European rabbit (*Oryctolagus cuniculus*); and any strain of nutria (*Myocastor coypu*).
  - (v) Any other species so designated by the Commissioner taking into account the likelihood of introduction of the species if it is allowed to enter or exist in the ceded territory; the likelihood that the species would naturalize in the ceded territory were it introduced; the magnitude of potential adverse impacts of the species on native species and on use of natural resources; the ability to eradicate or control the spread of the species once it is introduced in the ceded territory; and other criteria the Commissioner deems appropriate.
- (2) No member shall possess, import, purchase, sell, propagate, transport, or introduce a prohibited exotic species, except:
- (i) under a permit issued by the Commissioner for the purposes of disposal, control, research or education;
  - (ii) when being transported to the Department of Natural Resources, or another destination as the Commissioner may direct, in a sealed container for purposes of identifying the species or reporting the presence of the species;
  - (iii) when being transported for disposal as part of a harvest or control activity under a permit issued by or as specified by the Commissioner;
  - (iv) when a specimen has been lawfully acquired dead and, in the case of plant species, all seeds are removed or are otherwise secured in a sealed container;
  - (v) in the form of herbaria or other preserved specimens;
  - (vi) when being removed from watercraft and equipment, or caught while fishing, and immediately returned to the water from which they came; or
  - (vii) as the Commissioner may otherwise prescribe by order.
- (3) The Commissioner, her or his designees, or any warden authorized to enforce this Chapter, may seize or dispose of all specimens of prohibited exotic species unlawfully possessed, imported, purchased, sold, propagated, transported, or introduced into the ceded territory by members.

- (f) Except as otherwise provided in this Chapter, pursuant to a special permit issued by the Commissioner, or as otherwise permitted by controlling law, no member shall place or introduce any exotic species within the ceded territory.
- (g) No member who allows or causes the introduction of a wild animal that is an exotic species shall fail to notify the Commissioner, the Commission, or a warden authorized to enforce this Chapter within 48 hours after learning of the introduction. The member shall make every reasonable attempt to recapture or destroy the introduced animal.
- (h)
  - (1) No member shall transport aquatic macrophyte on any state forest road or any other public road except as provided in this subsection. For the purposes of this Chapter, the term "aquatic macrophyte" means a nonwoody plant, either a submerged, floating leafed, floating, or emergent plant that naturally grows in water or hydric soils.
  - (2) Unless otherwise prohibited by law, a member may transport aquatic macrophytes:
    - (i) that are duckweed in the family *Lemnaceae*;
    - (ii) for disposal as part of a harvest or control activity conducted under an aquatic plant management permit issued by the Commissioner or as otherwise specified by the Commissioner;
    - (iii) for purposes of constructing shooting or observation blinds in amounts sufficient for that purpose, provided the aquatic acrophytes are emergent and cut above the waterline;
    - (iv) when legally purchased or traded by or from commercial or hobbyist sources for aquarium or ornamental purposes;
    - (v) that are legally harvested if in a motor vehicle;
    - (vi) to the Department of Natural Resources, or another destination as the Commissioner may authorize, in a sealed container for purposes of identifying a species or reporting the presence of a species;
    - (vii) when transporting an aquatic plant harvester used in a properly authorized harvest or control activity to a suitable location for purposes of cleaning any remaining aquatic macrophytes;

- (viii) that are legally harvested wild rice; or
  - (ix) in the form of fragments of emergent aquatic macrophytes incidentally transported in or on watercraft or decoys used for waterfowl hunting during the waterfowl season.
- (i)
- (1) No member shall place or attempt to place into waters of the ceded territory a watercraft, trailer, or plant harvesting equipment that has aquatic macrophytes, zebra mussels, or prohibited exotic species attached. A warden authorized to enforce this Chapter may order:
    - (i) the removal of aquatic macrophytes or prohibited exotic species from a trailer or watercraft before it is placed into waters of the ceded territory;
    - (ii) confinement of the watercraft at a mooring, dock, or other location until the watercraft is removed from the water; and
    - (iii) removal of a watercraft from waters of the ceded territory to remove prohibited exotic species if the water has not been designated by the Commissioner as being infested with that species.
  - (2) No member shall fail to obey an order of a duly authorized warden to remove prohibited exotic species from any watercraft, trailer, or plant harvesting equipment.
- (j) For the purposes of this section, the term "watercraft" means a contrivance used or designed for navigation on water and includes seaplanes.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.06A.

#### **§ 4028. Scientific Investigation.**

- (a) The Commissioner may conduct or authorize the Commission's Biological Services Division to conduct investigations of wild animals and wild plants in order to develop scientific information relating to population, reproduction, distribution, habitat needs, and other biological data in order to advise the Band on conservation measures designed to ensure the continued ability of wild animals and wild plants to perpetuate themselves, in accordance with the provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.) regarding scientific investigations.

- (b) The Commissioner may for scientific purposes engage in or authorize the Commission's Biological Services Division to engage in the harvest of protected wild animals or wild plants on such terms and conditions as the Commissioner deems appropriate.
- (c) The Commissioner may consult the State Department of Natural Resources and appropriate Federal Agencies to facilitate coordination and data comparability of scientific investigations.
- (d) The Commissioner, with the approval of a majority of the Bands, may restrict hunting, fishing and gathering by Band members in order to facilitate scientific investigations undertaken under this section or by the State Department of Natural Resources or the Federal Government.
- (e) No member shall tag or otherwise mark a live fish for identification without a permit from the Commissioner.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.07.

**§ 4029. Seasons.**

No member shall engage in the exercise of treaty rights regulated by this Chapter, except during the respective seasons established pursuant to this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.08.

**§ 4030. Possession of Wild Plants or Wild Animals Taken During Closed Season.**

No member shall have in her or his possession or under her or his control at any time any wild plant or wild animal, or the carcass or any part thereof, showing that the same has been taken during the closed season for such plant or animal.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.09.

**§ 4031. Bag Limits; Possession Limits.**

No member shall have in her or his possession or under her or his control any wild plant or wild animal in excess of the bag or possession limits or above or below the size limits established by this Chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.10.

#### **§ 4032. Sharing of Permits and Tags.**

Except as otherwise provided in this Chapter, no member shall lend, share, give, sell, barter or trade, or offer to lend, share, give, sell, barter or trade to any person any identification document, permit or tag issued pursuant to this Chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.12.

#### **§ 4033. Harvesting with Another's Permit Prohibited.**

Except as otherwise provided in this Chapter, no member shall hunt, fish, trap or gather any wild animal or wild plant while in possession of any permit or tag issued to another.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.13.

#### **§ 4034. Shining Animals.**

- (a) **Definitions.** As used in this Chapter:
- (1) **"Flashlight"** means a battery operated light designed to be carried and held by hand.
  - (2) **"Light"** includes flashlights, automobile lights and other lights.
  - (3) **"Shining"** means the casting of rays of light on a field, forest, or other area for the purpose of illuminating, locating or attempting to illuminate or locate wild animals.

- (b) **Presumption.** A person casting rays of light on a field, forest or other area which is frequented by wild animals is rebuttably presumed to be shining wild animals.
- (c) **Shining Wild Animals While Hunting or Possessing Weapons Prohibited.**
- (1) **Prohibition.** Except as otherwise provided in subparagraph (2), no member shall use or possess with intent to use a light for shining wild animals while the member is hunting or in possession of a firearm, bow and arrow or crossbow.
- (2) **Exceptions.** This subparagraph shall not apply to:
- (i) a member who possesses a flashlight or who uses a flashlight at the point of kill while hunting on foot pursuant to the express provisions of this Chapter which allow shining during the open season for the animals hunted;
  - (ii) a person authorized to enforce the provisions of this Chapter on official business;
  - (iii) an employee of the Band or the Commission on official business;
  - (iv) a person authorized by the Band or the Commission to conduct a game census; or
  - (v) a member engaged in hunting authorized by § 5059 of this Chapter.
- (d) **Shining Wild Animals After 10 P.M. During Certain Times of the Year Prohibited.**
- (1) **Prohibition.** Except as otherwise provided in subparagraph (2), no member shall use or possess with intent to use a light for shining wild animals between 10 p.m. and 7 a.m. from Labor Day through December 31.
- (2) **Exceptions.** This subsection shall not apply to:
- (i) a member who possesses a flashlight or who uses a flashlight at the point of kill while hunting on foot pursuant to the express provisions of this Chapter which allow shining during the open season for the animals hunted;
  - (ii) a member who possesses a flashlight or who uses a flashlight while on foot and training a dog to track or hunt raccoons, foxes or unprotected animals, provided that the members may only have blank cartridges or shells in personal possession;

- (iii) a person authorized to enforce the provisions of this Chapter on official business;
- (iv) an employee of the Band or the Commission on official business;
- (v) a person authorized by the Band or the Commission to conduct a game census;
- (vi) if the Commissioner specifically permits a member to use or possess a light for shining wild animals during these times;
- (vii) a member engaged in hunting authorized by § 5059 of the Chapter; or
- (viii) a member engaged in fishing authorized by § 5166 of this Chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.14.

#### **§ 4035. Duties on Accidental Shooting.**

Any member who, while hunting any wild animal, discharges a firearm or arrow, and thereby injures or kills another person, shall forthwith give her or his name and address to such person if injured and render assistance to her or him as may be necessary and obtain immediate medical or hospital care, and shall immediately thereafter report such injury or death to the proper law enforcement authorities.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.15.

#### **§ 4036. Failure to Report Hunting Accident.**

Every member who shall have caused or been involved in an accident in which another person has been injured by gunfire or by arrow while hunting or trapping, or shall have inflicted an injury upon her or himself with a firearm or arrow while hunting or trapping, shall render or cause to be rendered a report to the Department of Natural Resources within ten (10) days after such injury.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.16.

**§ 4037. Hunter Education Requirements and Restrictions on Hunting by Members Under 14 Years of Age.**

(a)

- (1) **Certificate of Accomplishment Required.** Except as provided in subparagraph (2), no member born on or after January 1, 1977 may hunt while possessing a firearm, bow and arrow or crossbow unless the member has been issued a certificate of accomplishment under a Band hunter education and firearm safety course.
- (2) **Exceptions.** A member may hunt while possessing a firearm, bow and arrow or crossbow without having been issued a certificate of accomplishment from a Band hunter education and firearm safety course when:
- (3) the member has a certificate, license or other evidence indicating that he or she has completed a hunter safety course offered by another tribe, state or province and the course is substantially similar to the Band's hunter safety course; or
- (4) the member has successfully completed basic training in the U.S. Armed Forces, Reserves or National Guard.

(b) **Additional Restrictions on Hunting by Members Under 14 Years of Age.**

- (1) **Persons Under 12 Years of Age.** No member under 12 years of age may hunt while possessing a firearm, bow and arrow or crossbow unless authorized by the Department of Natural Resources.
- (2) **Persons Under 14 Years of Age.** No member under 14 years of age may hunt while possessing a firearm, bow and arrow or crossbow unless he or she is accompanied by a parent, guardian or other adult member designated by a parent or guardian.
- (3) **Parental Obligation.** No parent, guardian or member shall authorize or knowingly permit or encourage a member under 14 years of age to violate this section.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.17.

**§ 4038. Hunting While Intoxicated.**

- (a) No member shall hunt with a firearm, bow and arrow or crossbow while under the influence of an intoxicant or controlled substance to a degree that the member is incapable of safely using such weapon, or while a member has a blood alcohol concentration of 0.1% or more by weight of alcohol in the member's blood or 0.1 grams or more of alcohol in 200 liters of that person's breath.
- (b) A member hunting with a firearm, bow and arrow, or crossbow shall take or submit to a blood or breath test to determine the amount (if any) of intoxicant or controlled substance present if:
  - (1) the member has been lawfully issued a citation for violating § 4038(a);
  - (2) the member has been involved while hunting in an accident resulting in property damage, personal injury, or death;
  - (3) the member has refused to take a preliminary screening breath test; or
  - (4) a preliminary screening breath test was administered and indicated an alcohol concentration of 0.1% or more.
- (c) If a member refuses to take a test required under § 4038(b), the Band shall impose a civil penalty of \$500.00 and prohibit the member from hunting for one (1) year.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.18.

#### **§ 4039. Resisting Conservation Wardens.**

No member shall assault or otherwise resist or obstruct any law enforcement officer authorized to enforce the provisions of this Chapter in the performance of duty.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.19.

#### **§ 4040. False Impersonation of Warden.**

No member shall falsely represent her or himself to be a law enforcement officer authorized to enforce the provisions of this Chapter, or shall assume to act as such an officer, without having been first duly appointed.

## Historical and Statutory Notes

### Source:

Band Ordinance 07-97, § 3.20.

### § 4041. General Restrictions on Hunting.

- (a) No member shall hunt on private lands unless those lands are open to the general public for hunting by operation of state law.
- (b) **Color of Clothing.** No member shall hunt any wild animal except waterfowl unless at least 50% of the member's outer clothing above the waist is of a highly visible color commonly referred to as hunter orange, blaze orange, fluorescent orange, flame orange, or fluorescent blaze orange while hunting in a state hunting zone during the annual state firearm (not muzzle-loader) deer season, including any extension thereof, for that zone.
- (c) **Transportation of Firearms, Bows and Crossbows.**
  - (1) A member may not transport a firearm in a motor vehicle unless the firearm is:
    - (i) unloaded and in a gun case expressly made to contain a firearm, and the case fully encloses the firearm by being zipped, snapped, buckled, tied, or otherwise fastened, and without any portion of the firearm exposed;
    - (ii) unloaded and in the closed trunk of a motor vehicle; or
    - (iii) a handgun carried in compliance with state law.
  - (2) A person may not transport an archery bow or crossbow in a motor vehicle unless the bow is:
    - (i) unstrung;
    - (ii) completely contained in a case; or
    - (iii) in the closed trunk of a motor vehicle.
- (d) **Discharging Firearms and Bows and Arrows.**
  - (1) **Restrictions related to highways.**
    - (i) A member may not discharge a firearm or an arrow from a bow or crossbow on, over, or across an improved public highway. A member may not discharge a firearm, bow or crossbow within the right-of-way

of an improved public highway. The Commissioner may by order extend the application of this subsection to the taking of migratory waterfowl in designated locations.

- (ii) A person may not discharge a firearm, bow or crossbow on, over, across, or within the right-of-way of an improved public highway at a decoy of a big game animal that has been set out by a Band, State or Commission law enforcement officer.
- (2) **Restrictions related to motor vehicles.** A member may not take a wild animal with a firearm or bow or crossbow from a motor vehicle except that a member may do so from a stationary vehicle which is parked off of and more than 66 feet from the center of an improved two-lane highway, and 122 feet from the center of a four-lane highway, or as permitted in §§ 4041(d)(3) or (4) or 5205(b)(5) of this Chapter.
- (3) **Hunting from vehicle by disabled hunters.** The Department of Natural Resources may issue a special permit to discharge a firearm or bow or crossbow from a stationary motor vehicle within a roadway other than a state or federal highway to a member who is temporarily or permanently physically unable to walk without crutches, braces, or other mechanical support, or who has a physical disability which substantially limits the person's ability to walk. The holder of such a permit must shoot away from and not across the roadway.
- (4) **Taking bounty animals from airplanes and snowmobiles.** The Department of Natural Resources may issue a special permit, without fee, to take animals that the State pays a bounty for, from an airplane or a snowmobile.
- (e) **Restrictions on Use of Bait.**
  - (1) No member shall place, use or hunt over bait containing or contained within metal, plastic, glass, wood or non-degradable materials.
  - (2) No member shall place or hunt over bait or liquid scent within 150 yards of any campsite used by the public.
  - (3) No member shall use uncured swine products or honey for bait.
  - (4) No member shall use any bait to hunt deer or bear unless the member places a non-degradable identification tag indicating the member's tribal affiliation and tribal identification number on the tree nearest the bait, at eye level, and directly facing the bait.
  - (5) This section shall not prohibit hunting over bait materials deposited by natural vegetation or found solely as a result of normal agricultural practices.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.21.

### **§ 4042. Use of Motor Vehicles to Chase Wild Animals Prohibited.**

Except as permitted in § 4041(d), no member shall use a motor vehicle to intentionally drive, chase, run over, kill or take a wild animal.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.21(A).

### **§ 4043. Hunting with Aircraft Prohibited.**

Except as permitted in § 4041(d)(4), no member shall hunt with the aid of an airplane, including the use of an airplane to spot, rally or drive wild animals for hunters on the ground.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.22.

### **§ 4044. Pivot Guns and Similar Devices Prohibited.**

No member shall place, operate or attend, spread, or set any net (except as authorized for fishing pursuant to Chapter 9), pitfall, spring gun, pivot gun, swivel gun, springpole, deadfall or other similar contrivance for the purpose of catching or which might catch, take or ensnare wild animals.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.23.

### **§ 4045. Tampering with Equipment of Another Prohibited.**

No member shall molest, disturb, tamper with or in any way otherwise interfere with any hunting, fishing, trapping or gathering equipment used, set or placed by another except with permission of the owner of the equipment or the owner or lessee of the land where the equipment is located.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 3.24.

#### **§ 4046. Endangered and Threatened Species Protected.**

- (a) No member shall take, transport, possess, process or sell any endangered and threatened species as defined in § 4011(g), except when:
  - (1) the member has received a permit from the Federal or State government or the Commissioner to do so;
  - (2) it is necessary to prevent injury to human life; or
  - (3) the circumstances set forth in MR 6212.2200 are present.
- (b) The Commissioner may issue such permits only upon a determination that the permitted act will not be detrimental to the species, or when the circumstances set forth in MR 6212.2000 or 2100 are present. A member engaging in a permitted act under this section must display the permit upon request to any person authorized to enforce the provisions of this Chapter.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 3.25.

#### **§ 4047. Records of Commercial Transactions Required.**

- (a) Except for subsistence uses or as otherwise provided in this Chapter, no member shall sell any wild animal or wild plant, the harvest of which is regulated by this Chapter, to any person unless the member maintains a written record made within 24 hours of the transaction on forms prescribed by the Department of Natural Resources indicating the amount and type of resource involved in the transaction, the parties to the transaction, and the date of the transaction.
- (b) Records maintained pursuant to the requirement of paragraph (a), shall be forwarded monthly to the Department of Natural Resources, or its designee.
- (c) No member shall fail to comply with the reporting requirements of paragraph (b).

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 3.26.

**§ 4048. Special Use Areas.**

- (a) The Commissioner is authorized to identify special use areas in the Minnesota Ceded Territory, including, but not limited to designated muskie waters, designated experimental waters, fish rearing ponds, forests, forest campgrounds and day use areas, game refuges, northern pike spawning areas, parks, public water access sites, scientific and natural areas, trails, trout streams, and wildlife management areas.
- (b) The Commissioner, with the approval of a majority of the Bands, may close or prescribe other restrictions on hunting, fishing, gathering and other activities by Band members in special use areas identified pursuant to paragraph (a).
- (c) No member shall fail to comply with the closures and other restrictions established by the documents adopted pursuant to paragraph (b).

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.27.

**§ 4049. Unprotected Species.**

Except as otherwise expressly provided, nothing in this Chapter shall be construed to prohibit or regulate a member's harvest of any unprotected species, as defined in § 4011(t), in the Minnesota Ceded Territory.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.28.

**§ 4050. Protected Species.**

No member shall hunt, fish, trap or gather any of the following species: paddlefish, spoonbill catfish, wolverine, flying squirrel, timber wolf, cougar, elk, homing pigeon or any wild bird, except those species whose harvest is specifically regulated pursuant to the provisions of this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.29.

**§ 4051. Permissible Conduct/Assistance by Non-Members.**

- (a) Conduct which is not expressly prohibited, restricted or otherwise regulated by this Chapter shall be deemed permissible.
- (b) Except as provided in paragraph (c) or as otherwise provided herein, nothing in this Chapter shall be construed to prohibit a member from hunting, fishing, trapping or gathering with any other person who is not a member of the Band, provided that such other person possesses a license or is otherwise not prohibited from engaging in the activity involved and complies with applicable laws.
- (c)
  - (1) No member shall allow any person who is not a member of the Band to assist, and no such person shall assist, in the activities authorized by this Chapter except in accordance with the provisions of this subsection or as provided in paragraph (b), above.
  - (2) Except as provided in paragraph (b), those persons who may assist a member shall be limited to the member's immediate family, including grandparents, parents, children, spouses and siblings.
  - (3) A member may be assisted by a non-member in accordance with this paragraph (b) only if the member is physically present during the activity which constitutes assistance.
  - (4) Family member "assistance" pursuant to this subsection shall be limited to the following activities, and shall not be allowed for any commercial activity:
    - (i) Operation of a boat during spearing;
    - (ii) Placing or lifting a net;
    - (iii) Setting or lifting of attended lines during ice fishing;
    - (iv) In hunting, all activities except the actual use of a firearm, bow and arrow or crossbow to kill an animal;
    - (v) In trapping and snaring all activities except the setting or placement of traps and snares;

- (vi) In harvesting wild rice, all activities, and in harvesting other plants, all activities except the uprooting, cutting or removal of plant matter from its natural location;
- (vii) In harvesting frogs, turtles, mussels, crayfish and species the harvest of which are not prohibited or otherwise regulated by this Chapter, all activities except the actual use of a device to kill an animal or the specific act which reduces an animal to possession.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.30.

#### **§ 4052. Emergency Closures.**

- (a) Notwithstanding any other provisions of this Chapter, the Commissioner is hereby authorized and empowered to order the closure of the harvest activity of any species, generally or with respect to a particular location or body of water, whenever in her or his professional opinion and judgment the continuation of the harvest is likely to result in a harvest exceeding the applicable harvest goals and quotas or may otherwise cause biological harm to the species involved.
- (b) Every reasonable effort shall be made to consult with and obtain the approval of the Bands before ordering an emergency closure, but such closure may be ordered without consultation or approval if circumstances require.
- (c) An emergency closure shall become effective immediately upon issuance or at such time or date as the closure order may direct. Such closure shall be communicated to Band members by the best and swiftest practicable method.
- (d) No member shall violate the terms, conditions, or restrictions of an emergency closure order issued pursuant to this section.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.31.

#### **§ 4053. Management Units.**

The Commissioner is authorized to establish and modify management units for any species in order to fulfill the purposes of this Chapter, consistent with the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 3.32.

#### § 4054. Registration Stations.

For the purposes of this Chapter, a Band registration station may include Minnesota Department of Natural Resources field stations or offices as may be designated from time to time by the Department of Natural Resources.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 3.33.

#### § 4055. Transfers.

- (a) Except as otherwise provided in this Chapter, a member may transfer any wild animal lawfully harvested under this Chapter to another person, provided that the transferor of any wild animal the harvest of which is regulated under this Chapter must prepare a receipt containing the following information and give it to the recipient at the time of the transfer:
  - (1) name and address of transferor;
  - (2) name and address of recipient;
  - (3) date of transfer;
  - (4) description of item(s) transferred, including species and number; and
  - (5) permit number under which the animal was taken or, if acquired by the transferor other than by taking, a description of how the animal was acquired.
- (b) A member who is a recipient of a transfer of any wild animal, the harvest of which is regulated under this Chapter, may possess such animal only if he or she receives a receipt from the transferor in accordance with paragraph (1) and retains possession of the receipt.
- (c) A receipt need not be prepared or retained if the transferor and the recipient are members of the same household and the transferred animal is stored in that household.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 3.34.

**§ 4056. Removal of Signs.**

No member shall remove or deface a Minnesota Department of Natural Resources sign without approval of the Minnesota Commissioner of Natural Resources. No member shall remove or deface a sign belonging to any of the Bands or the Commission without approval of the appropriate Band or the Commission.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.35.

**§ 4057. Hunter, Trapper, and Angler Harassment Prohibited.**

- (a) A member who has the intent to prevent, disrupt, or dissuade the taking of a wild animal or enjoyment of the out-of-doors may not disturb or interfere with another person who is lawfully taking a wild animal or preparing to take a wild animal. "Preparing to take a wild animal" includes travel, camping, and other acts that occur on land or water where the affected person has the right or privilege to take lawfully a wild animal.
- (b) A member who has the intent to prevent or disrupt a person from lawfully taking the animals may not disturb or engage in an activity that will tend to disturb wild animals.
- (c) A member who has intent to violate paragraph (a) or (b) may not enter or remain on public lands, or on private lands without permission of the owner.
- (d) A member must obey an order to stop the harassing conduct that violates this section from a person authorized to enforce this Chapter if such person observes the conduct. For purposes of this subsection, "harassing conduct" does not include a landowner's or lessee's action to enforce the trespass law.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.36.

**§ 4058. Fishing and Motorboats Prohibited in Certain Areas.**

- (a) Except when fishing with a permit issued under Subchapter 9 of this Chapter, no member shall fish or drive a motorboat over waters posted by the State Department of Natural Resources, the Commissioner, or the Commission that are designated as spawning beds or fish preserves.
- (b) An owner of riparian land adjacent to a posted area referred to in paragraph (a) may operate a motorboat through the area by the shortest direct route at a speed of not more than five (5) miles per hour.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.37.

#### **§ 4059. Structures in Public Waters Prohibited.**

No member shall construct or maintain a dam or other obstruction, except a boat pier over public waters, or obstruct a creek, stream, or river to prevent the passage of fish with a rack or screen, provided that nothing in this section shall prohibit the use of fish harvesting methods expressly authorized in Subchapter 9 of this Chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 3.38.

#### **§ 4060. Training Dogs.**

- (a) A member may not train hunting dogs afield from April 16 to July 14 except by special permit. The Department of Natural Resources may issue a special permit to train hunting dogs afield on land owned by the trainer or on land that the owner provides written permission. The written permission must be carried in personal possession of the trainer while training the dogs.
- (b) A member training a dog afield and carrying a firearm may only have blank cartridges and shells in personal possession when the season is not open for any game bird, except as provided in paragraph (c).
- (c) The Department of Natural Resources may issue special permits to members to use firearms and live ammunition on domesticated birds or banded game birds from game farms for holding field trials and training hunting dogs.
- (d) The Department of Natural Resources may issue special permits to possess one (1) raccoon to train dogs for raccoon hunting.

## Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 3.39.

### § 4061. Permits to Take Animals Causing Damage.

The Commissioner may issue special permits on such terms and conditions as he or she deems necessary or appropriate to take wild animals that are damaging or about to damage property owned by the Band or by a Band member. The permit shall require the member to report whether the animal was killed.

## Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 3.40.

## SUBCHAPTER 4

### ENFORCEMENT

#### Section

- 4081. Hearings in Band Court.
- 4082. Enforcement by Deputized Conservation Wardens.
- 4083. Enforcement by Minnesota Department of Natural Resources Conservation Officers.
- 4084. Search and Seizure; When Authorized.
- 4085. Investigations and Citations.
- 4086. Registration Information.
- 4087. Penalties.
- 4088. Enhancement of Forfeiture and Penalties.
- 4089. Civil Damages.
- 4090. Seized Wild Animals and Wild Plants.
- 4091. Schedule of Money Penalties; No Contest.
- 4092. Collection of Money Penalties.
- 4093. Parties to a Violation.
- 4094. Harvesting After Revocation or Suspension – [REPEALED].

### § 4081. Hearings in Band Court.

Jurisdiction over all matters arising under this Chapter shall be with the Band court, which shall adjudicate in accordance with the Band and applicable Federal Law, all questions, complaints and alleged violations involving the provisions of this Chapter.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 4.01.

### **§ 4082. Enforcement by Deputized Conservation Wardens.**

Any provision of this Chapter may be enforced by wardens of the Bands or the Commission. Said wardens are hereby deputized by the Band as Natural Resources Enforcement Officers for the purpose of enforcing this Chapter.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 4.02.

### **§ 4083. Enforcement by Minnesota Department of Natural Resources Conservation Officers.**

Minnesota Department of Natural Resources Conservation Officers are hereby empowered to enforce the provisions of this Chapter except on trust lands and to institute proceedings in the Band court by use of citation forms of that Department or to refer the matter to appropriate Band or Commission wardens or the Band prosecutor for further investigation or action.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 4.03.

### **§ 4084. Search and Seizure; When Authorized.**

Any person authorized to enforce the provisions of this Chapter may conduct a search of an object, place, or person whose conduct is regulated by the provisions of this Chapter, and seize things when the search is made:

- (a) With consent;
- (b) Pursuant to valid search warrant issued by the Band court;
- (c) With the authority and within the scope of a right of lawful inspection as provided in § 4085(a)(1);
- (d) Incident to the issuance of a lawfully issued citation under this Chapter; or

- (e) As otherwise authorized by law or by the provisions of this Chapter.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 4.04.

### **§ 4085. Investigations and Citations.**

- (a) Any person authorized to enforce the provisions of this Chapter may
  - (1) Subject to paragraph (b), conduct routine inspections of vessels, boats, wagons, trailers, automobiles, vehicles, snowmobiles, containers, packages, and other receptacles contained therein, utilized by a person in a harvest activity authorized by this Chapter, and of records of commercial transactions required under § 4047 of this Chapter which have not yet been forwarded to the Department of Natural Resources, or its designee;
  - (2) Execute and serve warrants and other process issued by the Band court in accordance with applicable law;
  - (3) Stop and board any boat and stop any automobile or other vehicle pursuant to paragraph (a)(1) or if the person reasonably suspects there is a violation or breach of this Chapter;
  - (4) With or without a warrant, open, enter and examine vessels, boats, wagons, trailers, automobiles, vehicles, snowmobiles, and packages and other receptacles contained therein, in which the person has probable cause to believe that contraband wild plants or wild animals, or carcasses or part thereof, may be contained or pursuant to paragraph (1)(a);
  - (5) Issue a citation on a form approved by the Band or Band court to any person whose conduct is regulated by the provisions of this Chapter upon reasonable belief that such person has violated or breached a provision of this Chapter; and
  - (6) Seize and hold subject to the order of the Band court any alleged contraband or property which such person reasonably believes may be needed as evidence in connection with the institution of proceedings in Band court or any property otherwise authorized to be seized by the provisions of this Chapter.
- (b) The inspections authorized by paragraph (a)(1) shall be conducted in a manner and at such times and locations as are reasonable and appropriate in the ordinary course of routine enforcement activities.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 4.05.

### § 4086. Registration Information.

A person authorized to enforce this Chapter is empowered to request and receive from Band tag and permit issuance stations and harvest registration stations information regarding tag and permit issuance and harvest registration.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 4.07.

### § 4087. Penalties.

Any member who, for her or himself, or by her or his agent, servant or employee, or who as an agent, servant or employee of another, violates this Chapter, shall be liable as follows:

- (a) For all violations for which no other amount is specified, a civil remedial forfeiture of not more than \$800.00;
- (b) For any violation, a civil remedial forfeiture of any property, including boats, motors, vehicles, hunting or fishing equipment, or other property, used in the commission of the violation of this Chapter, within the discretion of the court;
- (c) For all violations, the court may order a natural resources assessment not to exceed 75% of the amount of the civil remedial forfeiture; and
- (d) For all violations, appropriate court costs within the discretion of the court.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 4.08.  
Band Act 70-24.

### § 4088. Enhancement of Forfeiture and Penalties.

Upon conviction of any member for a violation of this Chapter when such person has been convicted of a previous violation of this Chapter within a period of one (1) year, the court may enhance any civil remedial forfeiture or other penalty as the court deems appropriate.

## Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 4.09.

### § 4089. Civil Damages.

In addition to any other penalty allowed by this Chapter, the Band court may award to the Band or, in addition to an action to impose penalties, the Band may bring a civil action for recovery of damages against any member unlawfully killing, wounding, catching, taking, trapping, or having unlawfully in possession any of the following named protected wild plants, wild animals, or any part thereof, and the sum assessed for damages for each wild plant or wild animal, shall not be less than the amount stated in this section:

- (a) Any endangered and threatened species protected under this Chapter, \$875.00.
- (b) Any fisher, marten, prairie chicken, sand hill crane, or raptor, \$262.50.
- (c) Any deer, moose, elk or bear, \$175.00.
- (d) Any bobcat, cougar, fox, beaver, badger or otter, \$87.50.
- (e) Any coyote, raccoon or mink, \$43.75.
- (f) Any sharptail grouse, ruffed grouse, spruce grouse, wild duck, coot, wild goose or brant, \$26.25.
- (g) Any pheasant, Hungarian partridge, bobwhite, quail, rail, Wilson's snipe, woodcock or shorebird, or protected song bird or harmless bird, \$17.50.
- (h) Any muskrat, rabbit or squirrel, \$8.75.
- (i) Any muskellunge or rock or lake sturgeon, \$43.75.
- (j) Any largemouth or smallmouth bass, \$26.25.
- (k) Any brook, rainbow, brown, or steelhead trout, \$26.25.
- (l) Any walleye, northern pike, or any other game fish not mentioned in pars. (9) to (11), \$28.75.
- (m) Any wild animal or wild plant not mentioned in paragraphs (b) to (h), \$17.50.

## Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 4.10.

**§ 4090. Seized Wild Animals and Wild Plants.**

No wild animal or wild plant seized pursuant to this Chapter shall be returned to a convicted violator, her or his immediate family, or other member of the hunting, fishing or gathering party.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 4.11.

**§ 4091. Schedule of Money Penalties; No Contest.**

The Band Court, in consultation with the Department of Natural Resources, may adopt a schedule of forfeitures to be imposed by the Court upon the receipt of an admission that a violation of this Chapter has occurred, or a plea of no contest, which may be done either in person or in writing. This schedule shall not bind the Court as to forfeitures assessed by the Court after adjudicating a violation where the defendant has entered a plea of not guilty.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 4.12.

**§ 4092. Collection of Money Penalties.**

Enforcement of the money penalties imposed pursuant to this Chapter may be had through the collection of penalties from funds of the violator held by the Band, through the imposition of community service work requirements in lieu of money payment, through debt collection mechanisms of the courts of other jurisdictions, or through any other method authorized by law.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 4.13.

**§ 4093. Parties to a Violation.**

- (a) Whoever is concerned in the commission of a violation of this Chapter shall be deemed a principal and may be charged with the violation although he or she did not directly commit it and although the member who directly committed it has not been convicted of the violation.

- (b) A member is concerned in the commission of the violation if the member:
- (1) directly commits the violation;
  - (2) aids or abets the commission of the violation; or
  - (3) is a party to a conspiracy with another to commit, or advises, hires, counsels or otherwise procures another to commit, the violation.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 4.14.

**§ 4094. Harvesting After Revocation or Suspension.**

[REPEALED].

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 4.15.  
Band Act 70-24.

**SUBCHAPTER 5**

**WILD RICE HARVESTING REGULATIONS**

**Section**

- 5011. Band Wild Rice Authority**
- 5012. Permit Required**
- 5013. Sale of Wild Rice Authorized**
- 5014. Allowable Methods.**
- 5015. Boats.**
- 5016. Open Season.**
- 5017. Hours.**
- 5018. Harvest Monitoring.**
- 5019. Harvest by Authorizes Officials.**
- 5020. Assistance by Non-Members.**

**§ 5011. Band Wild Rice Authority.**

- (a) **Recognition.** There hereby is recognized the Mille Lacs Wild Rice Authority which shall have the powers and duties enumerated in this subchapter.
- (b) **Definition.** As used in this subchapter, the "Mille Lacs Wild Rice Authority" shall mean the individuals named by the Department of Natural Resources of the Mille Lacs Band to act in the manner of the traditional Band members for the purposes of implementing the provisions of this subchapter and of regulating the harvest and conservation of wild rice.
- (c) **Powers.** The Mille Lacs Wild Rice Authority may designate the open and closed dates for harvesting wild rice growing within the Minnesota Ceded Territory by posting notice of the open dates on the shores of and at places of access to such waters. The Authority will work with the Department of Natural Resources so that at least 24 hours notice is given before such open dates.
- (d) **Sufficient Notice of Opening Dates.** The posting of an open date for harvesting wild rice pursuant to paragraph (c) shall be deemed sufficient notice of such opening date and no other publication thereof is required.
- (e) **Consultation Required.** In exercising its powers and duties under paragraph (c), the Mille Lacs Wild Rice Authority shall consult with and obtain the advice and recommendations of the Commissioner, and comply with the provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.), regarding wild rice management. The Commissioner shall consult with the Minnesota Department of Natural Resources prior to the opening date.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 5.01.

#### **§ 5012. Permit Required.**

No member shall harvest or gather wild rice pursuant to this Chapter without possessing a valid wild rice harvesting permit issued by the Department of Natural Resources. No wild rice harvest permit is required of helpers of a permittee who participate only in shore operations.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 5.02.

#### **§ 5013. Sale of Wild Rice Authorized.**

- (a) Nothing in this Chapter shall be construed to prohibit members from selling wild rice legally harvested pursuant to this Chapter.
- (b) A member who sells wild rice harvested under this Chapter to non-members shall comply with the following labeling requirements:
  - (1) Wild rice containing a portion of wild rice that is cultivated and offered for wholesale or retail sale must be plainly and conspicuously labeled as either "paddy" or as "cultivated" in letters of a size and form prescribed by the Commissioner.
  - (2) A package containing only 100% natural lake or river wild rice that is offered for sale at wholesale or retail sale must be plainly and conspicuously labeled as "100 percent naturally grown, lake and river wild rice" in letters of a size and form prescribed by the Commissioner. A package of wild rice labeled "100 percent naturally grown, lake and river wild rice" must also contain the license number issued under M.S. 84.152 of the last licensed dealer, if any, who handled the wild rice.
  - (3) A package that does not contain 100% natural lake or river wild rice may not contain a label authorized under paragraph (2).
  - (4) A package containing a portion of 100% naturally grown lake and river wild rice that is harvested by use of mechanical harvesting devices and that is offered for sale at wholesale or retail must be plainly and conspicuously labeled as "machine harvested" in letters of a size and form prescribed by the Commissioner. In addition, the letters "machine harvested" must be placed near the product's identity on the label. Packages containing 100% hand-harvested wild rice may be labeled as "hand harvested."
  - (5) A package of cultivated or natural lake or river wild rice offered for sale at wholesale or retail in this state must specify the place of origin of the wild rice by a plain and conspicuous label placed near the product's identity on the label in letters of a size and form prescribed by the Commissioner. Only packages containing cultivated or natural lake or river wild rice that is 100% grown in Minnesota may be labeled as "grown in Minnesota."
  - (6) A wild rice label that implies the wild rice is harvested or processed by Chippewas is misbranded unless the package contains only 100% natural lake or river wild rice harvested by Chippewas.
  - (7) This section does not apply to cultivated or natural lake or river wild rice sold at wholesale or retail outside Minnesota.
- (c) The provisions of § 4047 [Records of Commercial Transactions Required] of this Chapter shall not apply to a member who sells less than 500 pounds of wild rice in

Minnesota in a calendar year. For members who sell more than 500 pounds of wild rice in Minnesota in a calendar year, the records under § 4047 of this Chapter shall include, in addition to those specified in that section:

- (1) for members selling or offering for sale wild rice at retail, an invoice indicating the name of the product, amount and date of purchase, and name, address, zip code and telephone number of the supplier; and
- (2) for members not selling or offering for sale wild rice at retail, an identification of the place of origin of the wild rice, the lot numbers of the wild rice bought and sold in each transaction, and documents that track the rice by lot number through processing and assignment of a final lot number on the finished product.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 5.03.

#### **§ 5014. Allowable Methods.**

- (a) No member shall harvest or gather wild rice by the use of any method other than smooth, rounded cedar rods or sticks not more than 32 inches in length and which are held and operated by hand.
- (b) No member shall bind or otherwise bundle together any wild rice stalks, or harvest or gather any wild rice, the stalks of which have been bound or otherwise bundled together, except by special permit issued by the Commissioner.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 5.04.

#### **§ 5015. Boats.**

No member may harvest or gather any wild rice by the use of any boat longer than 17 feet or wider than 38 inches, or with any modification of the gunwale designed to capture rice outside of the boat, or by the use of any boat propelled by other than muscular power using only a push pole or canoe paddle.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 5.05.

**§ 5016. Open Season.**

No member shall harvest or gather wild rice in any body of water except during the time(s) as such body of water is posted open by the Mille Lacs Wild Rice Authority pursuant to § 5011(c) of this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 5.06.

**§ 5017. Hours.**

No member shall harvest or gather wild rice between sunset and the following 9:00 a.m., Central Time.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 5.08.

**§ 5018. Harvest Monitoring.**

No member shall refuse to cooperate with wild rice harvest monitoring activities conducted by one (1) of the Bands or the Commission's Biological Services Division.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 5.09.

**§ 5019. Harvest by Authorized Officials.**

Nothing in this Chapter shall prohibit or preclude the Department of Natural Resources, the Commission's Biological Services Division or their designees from harvesting or gathering wild rice for scientific purposes or otherwise within the performance of their duties.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 5.10.

**§ 5020. Assistance by Non-Members.**

No person who is not a member of one (1) of the Bands shall assist a member in the gathering of wild rice pursuant to this Chapter except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 5.12.

## **SUBCHAPTER 6**

### **DEER HARVESTING REGULATIONS**

**Section**

- 5041. Definitions.**
- 5042. Open and Closed Season.**
- 5043. Number of Antlerless Deer Available for Harvest.**
- 5044. Deer Hunting Permits/Tags.**
- 5045. General Deer Registration Provisions.**
- 5046. Deer Seasons; Specific Regulations.**
- 5047. Permissible Methods.**
- 5048. Firearms Restrictions.**
- 5049. Bow/Crossbow Restrictions.**
- 5050. Group Deer Hunting.**
- 5051. Hunting Hours.**
- 5052. Transportation.**
- 5053. Hunting on Certain Public Lands Prohibited.**
- 5054. Hunting on Certain Private Lands Prohibited.**
- 5055. Sale of Deer and Deer Parts.**
- 5056. Sale of Deer Meat to Members.**
- 5057. Level 1 Commercial Harvest Established and Regulated.**
- 5058. Level 2 Commercial Harvest Established and Regulated.**
- 5059. Shining Deer.**
- 5060. Authorization for Closure.**
- 5061. Removal and Retention of Tags.**
- 5062. Assistance by Non-Members.**
- 5063. Moose.**

**§ 5041. Definitions.**

For the purposes of this Chapter, the following terms shall be construed as follows:

- (a) **"Antlerless deer"** means a deer not having at least one (1) antler of at least three (3) inches in length.
- (b) **"Bow"** means any hunting instrument designed for the purpose of propelling arrows which is drawn and held by and through the efforts of the person firing it, but does not include a crossbow.
- (c) **"Crossbow"** means any device using a bow which, once drawn, is held solely by means other than the effort of the person firing it.
- (d) **"Firearm"** means any rifle, muzzleloader, shotgun, handgun, or other type of weapon which will or is designed to or may readily be converted to expel a shot or projectile by means of an explosive, gas, or compressed air; the frame or receiver of any such weapon; or any firearm silencer.
- (e) **"Firearm Silencer"** means any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer, and any part intended only for use in such assembly or fabrication.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.01.  
Band Act 70-24.

**§ 5042. Open and Closed Season.**

- (a) A closed season is hereby established for the hunting of deer except for the open seasons specified in § 5046 of this Chapter.
- (b) Except as otherwise expressly provided by this Chapter, no member shall hunt deer in the Minnesota Ceded Territory during the closed season.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.02.

**§ 5043. Number of Antlerless Deer Available for Harvest.**

- (a) The number of antlerless deer which shall be available for harvest in each deer management unit pursuant to this Chapter for each 12 month period commencing July 1 and ending June 30 shall be limited to the number established by the Bands, after

consultation with State Department of Natural Resources regarding the total harvestable surplus within the management unit, and in accordance with the provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.), regarding deer management. For the purposes of this Chapter, this number shall be termed the treaty quota.

- (b) No member shall hunt antlerless deer in any deer management unit in which a treaty quota has not been established pursuant to paragraph (a) or which has been closed to further antlerless deer hunting pursuant to § 5060 of this Chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.03.

#### **§ 5044. Deer Hunting Permits/Tags.**

- (a) No member shall hunt deer pursuant to this Chapter without possessing a valid deer hunting permit issued by the Department of Natural Resources.
- (b)
  - (1) No member shall hunt deer without possessing a valid carcass tag issued by the Department of Natural Resources, except as provided in § 5050 [Group Deer Hunting] of this Chapter.
  - (2) The Department of Natural Resources shall issue no more than two (2) carcass tags at a time to a member.
- (c) No member shall hunt antlerless deer without a valid antlerless deer permit bearing the number of the member's carcass tag(s) and valid for the date on which the member is hunting, except as provided in § 5050 [Group Deer Hunting] of this Chapter.
- (d) No antlerless deer permit shall be valid for any deer management unit:
  - (1) which is shown to be closed on the permit;
  - (2) for which the permit is marked as invalid; or
  - (3) with respect to a level 1 commercial harvest antlerless deer permit, which lies outside the level 1 commercial harvest zone in which the member is authorized to hunt.

- (e) No member shall move or field dress a deer before affixing to it a valid carcass tag. If the member intends to register the head only pursuant to § 5045(e), the carcass tag must be affixed to the head.
- (f) No member shall move or field dress an antlerless deer without making a slit or punch on the antlerless deer permit through the number of the deer management unit in which the deer has been killed.
- (g)
  - (1) Except as otherwise provided in this Chapter, antlerless deer permits shall be valid for no longer than 14 successive days of an open season during such time periods as the Commissioner shall establish.
  - (2) The Department of Natural Resources shall not issue an antlerless deer permit prior to the first day of the permit period for which the permit will be valid, except:
    - (i) a permit may be issued no more than seven (7) days prior to the regular deer season established pursuant to § 5046 of this Chapter; and
    - (ii) a permit may be issued no more than 24 hours prior to the start of the State deer season.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.05.

#### **§ 5045. General Deer Registration Provisions.**

- (a) A member who has killed a deer pursuant to this Chapter, or, in the instance of group hunting [§ 5050 of this Chapter], whose carcass tag has been affixed to the deer, shall register the deer by presenting it to a registration station operated by one (1) of the Bands no later than 5:00 p.m. of the first working day after the killing.
- (b) Upon registering a deer pursuant to this section, the registering official shall affix a registration tag and duly record in an appropriate manner all information required to be provided by the member at the time of registration.
- (c) A member registering an antlerless deer shall surrender her or his antlerless deer permit upon registration of the deer.
- (d) A member registering a deer shall provide the registering official with the following information: the sex (male or female) and the age (adult or fawn) of the deer, the

management unit and county where the deer was taken, the date when the deer was taken, the Band identification number of the member taking the deer and any other relevant information requested by the registering official.

- (e) No member shall register a deer except by presenting the head or the whole carcass to the registering official.
- (f) No person shall provide information to the registering official which the person knows, or has reason to know, is false or misleading.
- (g) An officer of one (1) of the Bands or Commission warden authorized pursuant to § 4082 of this Chapter to enforce the provisions of this Chapter is authorized to register deer in the field provided such warden transmits all registering information to a registration station operated by one (1) of the Bands no later than the registration deadline established by paragraph (a), above.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.06.

#### **§ 5046. Deer Seasons; Specific Regulations.**

- (a) All dates given in this section are inclusive.
- (b) **Closed Season.** Except as provided in § 4004 [Religious or Ceremonial Use of Natural Resources] of this Chapter, no member shall hunt deer from January 1 to Labor Day.
- (c) **Regular Season.**
  - (1) An annual regular firearm, bow and crossbow season is hereby established for antlered deer beginning on the day after Labor Day and ending on December 31.
  - (2) An annual regular firearm, bow and crossbow season is hereby established for antlerless deer beginning on the day after Labor Day, and ending on December 31.
- (d) **State Season.** No member shall hunt in a State hunting zone without complying with the provisions of § 4041(b) of this Chapter concerning the wearing of blaze orange color during the annual state firearm (not muzzle-loader) deer season, including any extension thereof, for that zone.
- (e) No member shall take deer with the aid of dogs.

- (f) **Emergency Closure.** Nothing in this section shall be construed to authorize deer hunting or the opening of a deer hunting season contrary to an Emergency Closure Order issued pursuant to § 4152 [Emergency Closure] of this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.07.

**§ 5047. Permissible Methods.**

No member shall hunt deer except by the use of a firearm, bow or crossbow the use of which is not prohibited by this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.08.

**§ 5048. Firearms Restrictions.**

No member shall hunt deer:

- (a) With a .22 rimfire rifle, 5 mm rimfire rifle, or .17 caliber centerfire rifle;
- (b) With any handgun except a handgun which is loaded with .357, .41 or .44 magnum caliber ammunition;
- (c) With a smooth-bore muzzle-loader less than .45 caliber or a rifled muzzleloader less than .40 caliber;
- (d) With a projectile other than one with a soft point or which is an expanding bullet type;
- (e) With any shell, cartridge or ammunition known as tracer shells, or with incendiary shells or cartridges (NOTE: Distress flares are exempt from this Section);
- (f) With shot shells containing shot size less than 12 gauge "OO" buckshot;
- (g) With "00" buckshot when hunting in a State hunting zone during the annual State firearm (not muzzle-loader) deer season, including any extension thereof, for that zone, and no member shall possess such ammunition while hunting in such zone during such season; or
- (h) With a firearm silencer, unless legally purchased or possessed under federal law.

## Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 6.09.

Band Act 70-24.

### § 5049. Bow/Crossbow Restrictions.

No member shall hunt deer:

- (a) With a bow having a pull of less than 30 pounds or using an arrowhead other than one that has a minimum of two (2) metal cutting edges, is of a barbless broadhead design and has a diameter of at least seven-eighths inch. Nonretractable arrowheads are barbless if the trailing edge of the blade creates a 90 degree or greater angle with the shaft of the arrow. Retractable broadheads may be used if they meet the following criteria:
  - (1) they are at least seven-eighths of an inch in width and no more than two (2) inches in width at or after impact with a big game animal; and
  - (2) they are a barbless design and function in a barbless manner. Retractable arrowheads are a barbless design if the trailing edge of each blade creates a 90 degree or greater angle with the shaft when the blades are fully retracted. Retractable arrowheads function in a barbless manner if, when withdrawn from a big game animal, the blades retract so that the trailing edge of each blade is at a 90 degree or greater angle to the arrow shaft.
- (b) With a crossbow unless the crossbow:
  - (1) is fired from the shoulder;
  - (2) has a minimum draw weight of 100 pounds;
  - (3) has a stock of not less than 30 continuing inches in length;
  - (4) has a working safety; and
  - (5) is used with arrows or bolts of not less than 14 inches with a broadhead.

## Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 6.10.

### **§ 5050. Group Deer Hunting.**

- (a) As used in this section:
  - (1) **"Contact"** means visual or voice contact without the aid of any mechanical or electronic amplifying device other than a hearing aid.
  - (2) **"Group deer hunting party"** means 2 or more persons lawfully hunting deer in a group.
- (b) Any member of a group deer hunting party may kill a deer for another member of the group deer hunting party if both of the following conditions exist:
  - (1) At the time and place of the kill, the member who kills the deer is in contact with the person for whom the deer is killed.
  - (2) The member for whom the deer is killed possesses a current unused deer carcass tag, and, if the deer is an antlerless deer, an antlerless deer permit valid for the unit in which the deer is killed.
- (c) A member who kills a deer under paragraph (b) shall ensure that a member of her or his group deer hunting party without delay attaches a deer carcass tag to the deer prior to moving or field dressing it. No member who kills a deer while group hunting shall leave the deer unattended until after it is properly tagged.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.11.

### **§ 5051. Hunting Hours.**

Except as provided in § 5059 [Shining Deer] of this Chapter no member shall hunt deer except during the following hours: One-half hour before sunrise to one-half hour after sunset.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.12.

### **§ 5052. Transportation.**

All deer must be transported in such a manner that inspection by registration agents or conservation officers is readily accomplished.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 6.13.

### § 5053. Hunting on Certain Public Lands Prohibited.

No member shall hunt deer on any of the following public lands except as noted:

- (a) Designated public campgrounds, public beaches, public picnic areas, and public water access sites.
- (b) Public land within incorporated areas except:
  - (1) bow and gun hunting is permitted on lands which are designated for bow and gun hunting; and
  - (2) bow hunting is permitted on lands which are designated for bow hunting.
- (c) All parks identified by Commissioner's Order under § 4048 of this Chapter except:
  - (1) on lands held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band or its members; or
  - (2) parks or portions thereof in which hunting is allowed under State law, pursuant to a permit issued by the Department of Natural Resources in accordance with the agreement between the Bands and the State regarding special hunts in parks.
- (d) All wildlife refuges, scientific and natural areas, and other closed or restricted areas as established pursuant to § 4048 of this Chapter, except as hunting is permitted by the Commissioner in those areas.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 6.14.

### § 5054. Hunting on Certain Private Lands Prohibited.

As provided in § 4041(a) of this Chapter, no member shall hunt deer on any privately owned land except those lands which are open to the general public for hunting by operation of state law.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 6.15.

**§ 5055. Sale of Deer and Deer Parts.**

- (a) **Head, Skin and Hooves.** Nothing in this Chapter shall be construed to prohibit any member from selling to any person the head, skin and hooves, when severed from the rest of the carcass, of any deer lawfully killed pursuant to this Chapter.
- (b) **Meat.** No member shall sell the meat of any deer killed pursuant to this Chapter, except in accordance with the provisions of §§ 5056, 5057 and 5058 of this Chapter, and if sold for human consumption the provisions of federal law applicable to the sale of meat for human consumption.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.16.

**§ 5056. Sale of Deer Meat to Members.**

- (a) **Purpose.** The purpose of this section is to regulate the sale of deer meat to members where subsequent sale or resale of the meat to non-members is prohibited. Nothing in this Chapter shall be construed to limit the number of deer, or parts thereof, which may be sold to such members pursuant to this section.
- (b) **Sale to Members.** Any member who has lawfully harvested and registered a deer pursuant to this Chapter may sell the carcass, or any part thereof, of the deer to any other member provided no member who receives a carcass or any part thereof pursuant to this paragraph shall sell the carcass or part thereof to any person who is not a member.
- (c) **Sale to Members of Other Bands.** Any member who has lawfully harvested and registered a deer pursuant to this Chapter may sell the carcass, or any part thereof, of the deer to a member of one (1) of the other Bands, provided that such other Band prohibits its member who receives a carcass or any part thereof pursuant to this subsection from selling the carcass or part thereof to any person who is not a member of one (1) of the Bands.
- (d) **General Permit/Registration Provisions Unaffected.** The provisions of § 5044 [Deer Hunting Permits/Tags], and of § 5045 [General Deer Registration Provisions] of this Chapter are not affected by the provisions of this Section.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.17.

**§ 5057. Level 1 Commercial Harvest Established and Regulated.**

- (a) **Purpose.** The purpose of this section is to establish the regulations governing the harvest and registration of no more than ten (10) deer the meat of which may be sold pursuant to this Chapter when subsequent sale or resale of the meat to non-members is contemplated.
- (b) **Effective Date.**
  - (1) The provisions of this section shall not take effect until such time as the governing body of the Band specifically declares them effective by an enabling resolution.
  - (2) No member shall sell any deer meat pursuant to this section prior to the effective date as declared by the governing body of the Band in accordance with paragraph (1).
- (c) **Level 1 Commercial Harvest Generally.** A member who, between July 1 and June 30, has lawfully harvested deer pursuant to this Chapter may register no more than ten (10) of those deer for level 1 commercial purposes and may sell to any person only the whole carcasses (except for the heads, skins and hooves) of any of those deer, provided the member:
  - (1) complies with the level 1 commercial harvest provisions of this Section;
  - (2) complies with the terms and conditions of the Band's enabling resolution enacted pursuant to paragraph (b)(1); and
  - (3) otherwise complies with the provisions of this Chapter applicable to deer hunting.
- (d) **Antlered Deer Level 1 Commercial Harvest.**
  - (1) A member may register pursuant to this paragraph (d) an antlered deer lawfully harvested in any deer management unit.
  - (2) When registering an antlered deer under this paragraph (d), a member shall present the entire deer carcass for registration and no registering official shall register a deer under this paragraph (d) unless the entire carcass is presented for registration.

- (3) A member may register an antlered deer under this paragraph (d) at any registration station operated by one (1) of the Bands or with any person authorized to register deer in the field at which time the registering official shall affix a level 1 commercial harvest registration tag to the carcass.
  - (4) This paragraph (d) is not intended to limit a member's ability to otherwise register an antlered deer under the provisions of § 5045 [General Deer Registration Provisions] of this Chapter for noncommercial purposes but only shall serve to condition the harvest and limit the number of antlered deer which the member may register under this subsection.
  - (5) Except as modified by the provisions of this paragraph (d), the provisions of § 5044 [Deer Hunting Permits/Tags] and § 5045 [General Deer Registration Provisions] of this Chapter shall apply to members desiring to register antlered deer under this paragraph (d).
- (e) Antlerless Deer Level 1 Commercial Harvest.
- (1) A member may register pursuant to this paragraph (e) a lawfully harvested antlerless deer provided the provisions of this paragraph (e) have been complied with.
  - (2) When registering an antlerless deer under this paragraph (e), a member shall present the entire deer carcass for registration and no registering official shall register an antlerless deer under this paragraph (e) unless the entire carcass is presented for registration.
  - (3) A member desiring to register an antlerless deer under this paragraph (e) for level 1 commercial purposes must obtain a level 1 commercial antlerless deer permit in accordance with the provisions of § 5044 [Deer Hunting Permits/Tags] of this Chapter provided:
    - (i) The permit may be valid at any given time for only one (1) level 1 antlerless deer commercial harvest zone, which shall be designated by the Commissioner;
    - (ii) The permit is valid for those deer management units within the level 1 antlerless deer commercial harvest zone which are open to hunting antlerless deer.
  - (4) A member desiring to register an antlerless deer under this paragraph (e) for level 1 commercial purposes must register the antlerless deer within and prior to leaving the antlerless deer commercial harvest zone for which an antlerless permit is valid at a registration station operated by one (1) of the Bands or with a person authorized to register deer in the field.

- (5) Upon registration, the registering official shall affix a level 1 commercial harvest registration tag to the carcass.
  - (6) This paragraph (e) is not intended to limit a member's ability to otherwise register an antlerless deer under the provisions of § 5045 [General Deer Registration Provisions] of this Chapter for noncommercial purposes but only shall serve to condition the harvest and limit the number of deer which such member may register under this paragraph (e).
  - (7) Except as modified by the provisions of this paragraph (e), the provisions of § 5044 [Deer Hunting Permits/Tags] and § 5045 [General Deer Registration Provisions] of this Chapter shall apply to members desiring to register an antlerless deer under this paragraph (e).
- (f) **Transfer of Entire Carcass Required.** No member who has harvested and registered any antlered or antlerless deer pursuant to this section shall sell the deer without transferring the entire carcass of the deer (except for the head, skin and hooves), the registration tag, and such accompanying documents as the Department of Natural Resources may require to the person to whom the deer is sold.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.18.

#### **§ 5058. Level 2 Commercial Harvest Established and Regulated.**

- (a) **Purpose.** The purpose of this section is to establish the regulations governing the harvest and registration of deer the meat of which may be sold pursuant to this Chapter where subsequent sale or resale of the meat of more than ten (10) deer to nonmembers is contemplated.
- (b) **Effective Date.**
  - (1) The provisions of this section shall not take effect until such time as the governing body of the Band specifically declares them effective by an enabling resolution.
  - (2) No member shall sell any deer meat pursuant to this section prior to the effective date as declared by the governing body of the Band in accordance with paragraph (1).
- (c) **Level 2 Commercial Harvest Generally.** A member who obtains a Level 2 Commercial harvest permit pursuant to this section and who lawfully harvests and registers deer pursuant to the permit may sell to any person only the whole carcasses (except for the head, skins and hooves) of any of those deer, provided the member:

- (1) complies with level 2 commercial harvest provisions of this section;
  - (2) complies with the terms and conditions of the Band's enabling resolution enacted pursuant to paragraph (b)(1); and
  - (3) otherwise complies with the provisions of this Chapter applicable to deer hunting.
- (d) **Level 2 Commercial Harvest Permit Application.**
- (1) Any member who possesses a valid deer hunting permit may apply on such forms as the Band may prescribe to the Department of Natural Resources for an additional permit authorizing the harvest of deer for level 2 commercial purposes.
  - (2) The Department of Natural Resources shall grant or deny the application, and shall notify the applicant as soon as practicable of its decision.
  - (3) A decision to grant the application may impose conditions upon a Level 2 Commercial Harvest Permit which are more restrictive than the conditions imposed by this section.
- (e) **Terms and Conditions of a Level 2 Commercial Harvest Permit.** A Level 2 Commercial Harvest Permit:
- (1) may authorize a member or group of members to harvest no more than the number of antlerless deer which remain available for harvest from the treaty quota in any one (1) deer management unit;
  - (2) shall restrict the member's hunting of deer pursuant to the permit to only one (1) deer management unit at any given time;
  - (3) shall require the permittee to register all deer harvested pursuant to the permit at a registration station operated by one (1) of the Bands located within the management unit for which the permit is valid or within an adjoining unit provided the deer is transported directly to a registration station in that adjoining unit on federal or state highways; and
  - (4) shall require that all members named on the permit possess an official copy of the permit and at least one (1) valid carcass tag while hunting pursuant to the permit.
- (f) **Registration of Entire Carcass Required.** When registering a deer under a Level 2 Commercial Harvest Permit, a member shall present the entire deer carcass for

registration to an authorized registering official and no registering official shall register a deer under this section unless the entire carcass is presented for registration.

- (g) **Registration Tag Required.** Upon registration, the registering official shall affix a level 2 commercial harvest registration tag to the carcass.
- (h) **General Tagging and Registration Requirements Unaffected.** Except as modified by the provisions of this section, the provisions of § 5044 [Deer Hunting Permits/Tags] and of § 5045 [General Deer Registration Provisions] of this Chapter shall apply to members hunting pursuant to a Level 2 Commercial Harvest Permit.
- (i) **Transfer of Entire Carcass Required.** No member who has harvested and registered any deer pursuant to this section shall sell such deer without transferring the entire carcass of such deer (except for the head, skin and hooves), the registration tag, and such accompanying registration documents as the Department of Natural Resources may require to the person to whom such deer is sold.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.19.

#### **§ 5059. Shining Deer.**

- (a) The Commissioner may issue permits that authorize hunting deer, including shining, between one-half hour after sunset and one-half hour before sunrise, in the following limited and highly controlled situations, provided that no such permit shall be effective in a State deer permit area during the State firearm (not muzzle-loader) deer season in that area.
- (b) No member shall hunt or shine deer under this section unless in possession of a permit issued under paragraph (a). Any member hunting or shining deer under this section shall be subject to all terms and conditions in this section and in the permit issued under paragraph (a), as well as all other provisions of this Chapter regulating hunting, unless expressly provided otherwise in this section.
- (c) Before issuing a permit under paragraph (a), the Commissioner shall at a minimum provide for:
  - (1) the prior inspection and selection of an appropriate site; and
  - (2) the advance notification of appropriate federal, state and local officials and nearby landowners.
- (d) For purposes of this section, an "elevated position" shall mean a position that is a minimum of ten (10) feet above the ground in the area comprising a 50 yard radius

from the elevated position, and that is within 17 yards of an area where bait is placed to attract deer. No member hunting or shining deer under this section shall:

- (1) hunt or shine deer except from an elevated position;
  - (2) discharge a firearm except from an elevated position;
  - (3) possess a loaded firearm except while occupying an elevated position;
  - (4) use any artificial light except a self-contained, battery-operated flashlight containing five (5) "D" batteries and a krypton bulb;
  - (5) place more than one (1) bait at the location to be hunted;
  - (6) hunt with the aid of bait larger than 16 square feet or more than four (4) feet in length on any side;
  - (7) shoot at a deer unless it is at the bait location;
  - (8) hunt deer with a firearm having an affixed scope; or
  - (9) discharge a firearm except while illuminating a deer.
- (e) A member hunting deer under this section may pursue and take a deer wounded by the member while shooting from an elevated position, provided that the wounded deer may not be dispatched with a firearm prior to one-half hour before sunrise.
- (f) A permit may be issued under this section only to members who have completed an advanced hunter safety course and received marksmanship training and a marksmanship rating.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.20.

#### **§ 5060. Authorization for Closure.**

The Commissioner or her or his designee shall close any deer management unit to antlerless deer hunting prior to the season's closing date if there is no treaty quota remaining in that unit or when it appears imminent that more than the treaty quota for that unit will be harvested prior to the expiration of the next permit period.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.21.

**§ 5061. Removal and Retention of Tags.**

- (a) No member who kills a deer pursuant to this Chapter shall remove a carcass or registration tag from that deer until such time as the carcass is butchered.
- (b) No member who kills a deer pursuant to this Chapter shall dispose of the registration tag until the meat is consumed, except in accordance with the provisions of §§ 5057(f) and 5058(i) [Transfer of Tags Upon Sale] of this Chapter.
- (c) Any person who receives any meat as a gift or pursuant to § 5056 [Sale to Members] of this Chapter from a member who retains a registration tag under this section is not required to possess a registration tag.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.22.

**§ 5062. Assistance by Non-Members.**

No person who is not a member of one (1) of the Bands shall assist a member in the hunting of deer pursuant to this Chapter except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.23.

**§ 5063. Moose.**

Any member lawfully hunting deer under this Chapter may take a moose for subsistence uses only, upon receipt of a special permit from the Commissioner. The Commissioner shall prescribe terms and conditions for such permits which, at a minimum, shall include all provisions of this Subchapter 6, including tagging and registration, that are applicable to deer, and shall be consistent with provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226, regarding moose management.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 6.24.

## SUBCHAPTER 7

### BEAR HARVESTING REGULATIONS

#### Section

- 5081. Definitions.
- 5082. Open and Closed Season.
- 5083. Hunting During Closes Season Prohibited.
- 5084. Number of Bear Available for Harvest.
- 5085. Bear Season; Specific Regulations.
- 5086. Bear Hunting Permits/Tags.
- 5087. Bear Registrations.
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- 5090. Firearms Restrictions.
- 5091. Bow and Crossbow Restrictions.
- 5092. Group Bear Hunting.
- 5093. Hunting wit Non-Members.
- 5094. Hunting Hours.
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- 5099. Dens.
- 5100. Landfills.
- 5101. Cubs.
- 5102. Removal and Retention of Tags.
- 5103. Sales of Bear and Bear Parts.
- 5104. Commercial Harvest Regulated.
- 5105. Baiting of Bear.
- 5106. Shining.
- 5107. Authorization of Closure.

#### § 5081. Definitions.

For the purpose of this Subchapter, the following terms shall be construed to apply as follows:

- (a) **"Bow"** shall have the meaning provided in § 5041(b) of this Chapter.
- (b) **"Crossbow"** shall have the meaning provided in § 5041(c) of this Chapter.
- (c) **"Firearm"** shall have the meaning provided in § 5041(d).

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 7.01.

### § 5082. Open and Closed Season.

A closed season is hereby established for the hunting of bear except for the open season specified in § 5085 of this Chapter.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 7.02.

### § 5083. Hunting During Closed Season Prohibited.

Except as otherwise expressly provided by this Chapter, no member shall hunt bear in the Minnesota Ceded Territory during the closed season.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 7.03.

### § 5084. Number of Bear Available for Harvest.

- (a) The number of bear which shall be available for harvest in each bear management zone pursuant to this Chapter for each 12 month period commencing July 1 and ending June 30 shall be limited to the number established by the Bands after consultation with the State Department of Natural Resources regarding the total harvestable surplus in the zone, and in accordance with the provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.), regarding bear management. For purposes of this Chapter, this number shall be termed the treaty quota.
- (b) No member shall hunt bear in any bear management zone in which no bear have been made available for treaty harvest pursuant to paragraph (a) or which has been closed to further bear hunting pursuant to § 5107 of this Chapter.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 7.05.

**§ 5085. Bear Season; Specific Regulations.**

- (a) All dates given in this section are inclusive.
- (b) **Closed Season.** No member shall hunt bear from November 16 through Labor Day.
- (c) **Bow, Crossbow and Firearm Season.** An annual firearm, bow and crossbow season is hereby established commencing on the day after Labor Day and extending to November 15.
- (d) Nothing in this section shall be construed to authorize bear hunting or the opening of a bear hunting season contrary to an Emergency Closure Order issued pursuant to § 4152 [Emergency Closure] of this Chapter

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 7.06.

**§ 5086. Bear Hunting Permits/Tags.**

- (a) No member shall hunt bear pursuant to this Chapter without possessing a valid bear hunting permit.
- (b)
  - (1) Except as provided in § 5092 [Group Bear Hunting] of this Chapter, no member shall take a bear without possessing a bear carcass tag valid for the bear management zone in which the bear is shot.
  - (2) The Department of Natural Resources shall issue no more than 1 carcass tag at a time to a member.
- (c) No member shall move a bear before affixing to it a valid carcass tag.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 7.07.

**§ 5087. Bear Registration.**

- (a) A member who has killed a bear pursuant to this Chapter, or, in the instance of group hunting [§ 5092 of this Chapter], whose carcass tag has been affixed to the bear, shall register the bear by presenting it to a registration station operated by one (1) of the Bands no later than 5:00 p.m. of the first working day after the killing.
- (b) Upon registering a bear pursuant to this section, the registering official shall affix a registration tag and duly record in an appropriate manner all information required to be provided by the member at the time of registration.
- (c) A member registering a bear shall provide the registering official with the following information: the deer management unit and county where the bear was taken, the date when the bear was taken, the Band identification number of the member taking the bear and any other relevant information requested by the registering official.
- (d) A member registering a bear shall upon request submit biological samples to the Commission according to the instructions of the Commission.
- (e) No member shall register a bear except by presenting the entire carcass to the registering official or, in the alternative, by presenting only the hide with claws, head and teeth attached thereto, provided the carcass tag is firmly affixed to the hide or any part thereof.
- (f) No person shall provide information to the registering official which the person knows, or has reason to know, is false or misleading.
- (g) An officer of one (1) of the Bands or Commission warden authorized pursuant to § 4082 of this Chapter to enforce the provisions of this Chapter is authorized to register bear in the field provided such warden provides all registering information to a registration station operated by one (1) of the Bands no later than 5:00 p.m. of the first working day after the field registration.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 7.08.

#### **§ 5088. Skinning/Preservation Intact.**

No member shall skin or butcher, other than for field dressing, a bear prior to registration unless the member leaves the claws, head and teeth attached to the hide.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 7.09.

**§ 5089. Permissible Methods.**

No member shall hunt bear except by the use of any firearm, bow or crossbow, the use of which is not prohibited by this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 7.10.

**§ 5090. Firearms Restrictions.**

No member shall hunt bear with a .22 caliber rifle, any firearm the use of which is prohibited pursuant to § 5048 of this Chapter for hunting deer, while possessing more than one (1) handgun, or with the use of buckshot.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 7.11.

**§ 5091. Bow and Crossbow Restrictions.**

No member shall hunt bear:

- (a) With a bow having a pull of less than 40 pounds or using an arrowhead other than one that has a minimum of two (2) metal cutting edges, is of barbless broadhead design, and has a diameter of at least seven-eighths inch. Non-retractable arrowheads are barbless if the trailing edge of the blade creates a 90 degree or greater angle with the shaft of the arrow. Retractable broadheads may be used if they meet the following criteria:
  - (1) they are at least seven-eighths of an inch in width and no more than two (2) inches in width at or after impact with a big game animal; and
  - (2) they are a barbless design and function in a barbless manner. Retractable arrowheads are a barbless design if the trailing edge of each blade creates a 90 degree or greater angle with the shaft when the blades are fully retracted. Retractable arrowheads function in a barbless manner if, when withdrawn from a big game animal, the blades retract so that the trailing edge of each blade is at a 90 degree or greater angle to the arrow shaft.
- (b) With a crossbow not in compliance with the provisions of § 5049(b) of this Chapter.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 7.12.

### § 5092. Group Bear Hunting.

- (a) As used in this section:
  - (1) **"Contact"** means visual or voice contact without the aid of any mechanical or electronic amplifying device other than a hearing aid.
  - (2) **"Group bear hunting party"** means 2 or more members lawfully hunting bear in a group all using firearms.
- (b) Any member of a group bear hunting party may kill a bear for another member of the group bear hunting party if both of the following conditions exist:
  - (1) At the time and place of the kill, the member who kills the bear is in contact with the person for whom the bear is killed.
  - (2) The member for whom the bear is killed possesses a current unused bear carcass tag valid for the bear management zone in which the bear is killed.
- (c) A member who kills a bear under paragraph (b) shall ensure that a member of her or his group bear hunting party without delay attaches a bear carcass tag to the bear prior to moving or field dressing it. No member who kills a bear while group hunting shall leave the bear unattended until after it is properly tagged.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 7.13.

### § 5093. Hunting with Non-Members.

Except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter, no member may share with anyone who is not a member of one (1) of the Bands any Band bear permit, carcass tag, gear, or bait except that nothing in this Chapter shall be construed to prohibit a member from hunting with any person who is not a member of the Band during the State of Minnesota bear hunting season if that person has a state bear hunting license valid for that permit area and an unused tag.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 7.14.

**§ 5094. Hunting Hours.**

No member shall hunt bear except during the hours established for hunting deer in § 5051 of this Chapter, provided that a bear may be taken while hunting for deer as authorized by § 5059 of this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 7.15.

**§ 5095. Transportation.**

All bears shall be transported in such a manner that inspection by registration agents or conservation officers is readily accomplished.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 7.16.

**§ 5096. Hunting on Certain Public Lands Prohibited.**

No member shall hunt bear on any of the following public lands except as noted:

- (a) Designated public campgrounds, public beaches, public picnic areas, and public water access sites.
- (b) Public lands within incorporated areas except
  - (1) bow and gun hunting is permitted on lands which are designated for bow and gun hunting; and
  - (2) bow hunting is permitted on lands which are designated for bow hunting.
- (c) All parks identified by Commissioner's Order under § 4048 of this Chapter except:
  - (1) on lands held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band or its members; or
  - (2) parks or portions thereof in which hunting is allowed under State law, pursuant to a permit issued by the Department of Natural Resources in

accordance with the agreement between the Bands and the State regarding special hunts in parks.

- (d) All wildlife refuges, scientific and natural areas, and other closed or restricted areas as established by § 4048 of this Chapter, except as hunting is permitted by the Commissioner in those areas.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 7.17.

#### **§ 5097. Hunting on Certain Private Lands Prohibited.**

As provided in § 4041(a) of this Chapter, no member shall hunt bear on any privately owned land except those lands which are open to the general public for hunting by operation of state law.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 7.18.

#### **§ 5098. Hunting Bear with Dogs.**

No member shall hunt bear with dogs.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 7.19.

#### **§ 5099. Dens.**

No member shall hunt, shoot or disturb a bear in a den.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 7.20.

#### **§ 5100. Landfills.**

No member shall hunt or shoot bear in any dump or sanitary landfill.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 7.21.

### § 5101. Cubs.

No member may shoot, shoot at, or kill any bear cub or any adult bear accompanied by a cub or cubs.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 7.22.

### § 5102. Removal and Retention of Tags.

- (a) No member who kills a bear pursuant to this Chapter shall remove a registration tag from the carcass until such time as the carcass is butchered or when the bear is prepared by a taxidermist.
- (b) No member who kills a bear pursuant to this Chapter shall dispose of the registration tag until the meat is consumed.
- (c) Any person who receives any bear meat as a gift or pursuant to § 5103(b)(1) or (2) [Sale to Members] of this Chapter from a member who retains a registration tag under this section is not required to possess a registration tag.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 7.23.

### § 5103. Sale of Bear and Bear Parts.

- (a) **Head, skin, teeth, claws and paws.** A member who has lawfully harvested and registered a bear pursuant to this Chapter may sell to another person the head, skin, teeth, or claws, whether attached to or separate from the carcass. The skin may contain the attached paws when sold.
- (b) **Meat.** No member shall sell the meat of any bear killed pursuant to this Chapter, except in compliance with the following provisions and if sold for human

consumption with the provisions of federal law applicable to the sale of meat for human consumption:

- (1) **Sale to Members.** Any member who has lawfully harvested and registered a bear pursuant to this Chapter may sell the meat of any carcass, or any part thereof, of the bear to any other member provided no member who receives the meat pursuant to this paragraph (b) shall sell such meat to any person who is not a member.
  - (2) **Sale to Members of Other Bands.** Any member who has lawfully harvested and registered a bear pursuant to this Chapter may sell the meat of any carcass, or any part thereof, of the bear to a member of one (1) of the other Bands provided that such other Band prohibits its member who receives the meat pursuant to this paragraph (b) from selling the meat to any person who is not a member of one (1) of the Bands.
  - (3) **Sale to Non-members.** A member who has lawfully harvested and registered a bear pursuant to this Chapter may sell to a person who is not a member of one (1) of the Bands only the whole carcass (except for the head, skin, teeth, claws and internal organs) of the bear, provided the member:
    - (i) complies with the commercial harvest provisions of § 5104 of this Chapter; and
    - (ii) otherwise complies with the provisions of this Chapter applicable to bear hunting.
- (c) **Paws and Internal Organs.**
- (1) **Sale to Non-Members.** No member shall sell to any person who is not a member any paw which has been severed from the skin or any internal organ of any bear harvested pursuant to this Chapter.
  - (2) **Sale to Members.** No member shall sell to another member any paw which has been severed from the skin or any internal organ of any bear harvested by the member pursuant to this Chapter except as follows:
    - (i) The member may sell any paw which has been severed from the skin or any internal organ of a bear lawfully harvested pursuant to this Chapter to any other member provided no member who receives any such part pursuant to this paragraph shall sell the part to any person who is not a member.
  - (3) **Sale to the Band.** Any member who has lawfully harvested and registered a bear pursuant to this Chapter may sell any paw which has been severed from the skin or any internal organ of the bear to the Band provided:

- (i) the Band complies with the provisions of paragraph (4) below; and
  - (ii) the member complies with the commercial harvest provisions of § 5104 of this Chapter.
- (4) The Band may purchase or otherwise obtain from a member who has lawfully harvested and registered a bear pursuant to this Chapter any paw which has been severed from the skin or any internal organ of the bear and may sell such part to any person provided:
- (i) the Band maintains a record of all such transactions, including the name of the member, the name and address of the subsequent purchaser, the carcass tag and registration tag numbers of the bear which was lawfully harvested and the part or parts involved in the transaction;
  - (ii) a bill of sale or other similar document indicating the date of the transaction, the parties to the transaction, and the part or parts involved in the transaction; and
  - (iii) the sale is restricted to the exporting of such part outside the United States.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 7.24.

#### **§ 5104. Commercial Harvest Regulated.**

- (a) **Purpose.** The purpose of this section is to establish the regulations governing the harvest and registration of bear the meat of which, and the teeth, claws, paws or viscera when severed from the carcass of which, may be sold pursuant to this Chapter when subsequent sale or resale of the meat or such parts to non-members is contemplated.
- (b) **Effective Date.**
  - (1) The provisions of this section shall not take effect until such time as the governing body of the Band specifically declares them effective by an enabling resolution.
  - (2) No member shall sell any meat or sell any tooth, claw, paw or organ when severed from the carcass pursuant to this section prior to the effective date as declared by the governing body of the Band in accordance with paragraph (1).

(c) **Commercial Harvest Permit Application.**

- (1) Any member who or a group of members which possesses a valid bear hunting permit may apply on such forms as the Band may prescribe to the Department of Natural Resources for an additional permit authorizing the harvest of bear for commercial purposes on the terms and conditions prescribed by this section.
- (2) The Department of Natural Resources shall grant or deny the application, and shall notify the applicant as soon as practicable of its decision.
- (3) A decision to grant the application may impose conditions upon a Commercial Harvest Permit which are more restrictive than the conditions imposed by this section.

(d) **Terms and Conditions of a Commercial Harvest Permit.** A Commercial Harvest Permit:

- (1) may authorize the permittee to harvest no more than the number of bear available for harvest in any one (1) bear management zone;
- (2) shall restrict the permittee's hunting of bear pursuant to the permit to only one (1) bear management zone at any given time;
- (3) shall require a member to register all bear harvested pursuant to the permit at a registration station operated by one (1) of the Bands located within the bear management zone for which the permit is valid or within an adjoining management zone provided the bear is transported directly to a registration station in that adjoining unit on federal and state highways; and
- (4) shall require that all members named on the Commercial Harvest Permit possess an official copy of the permit and at least one (1) valid carcass tag while hunting pursuant to the permit.

(e) **Registration of Entire Carcass Required.** When registering a bear under a Commercial Harvest Permit, a member shall present the entire bear carcass (except for the viscera) for registration to an authorized registering official and no registering official shall register a bear under this section unless the entire carcass (except for the viscera) is presented for registration.

(f) **Registration Tag Required.** Upon registration, the registering official shall affix a commercial harvest registration tag to the carcass.

(g) **General Tagging and Registration Requirements Unaffected.** Except as modified by the provisions of this section, the provisions of § 5086 [Bear Hunting

Permits/Tags] and 5087 [Bear Registration] of this Chapter shall apply to members hunting pursuant to a Commercial Harvest Permit.

**(h) Transfer of Entire Carcass Required.**

- (1) No member shall sell to any person who is not a member any bear registered under this section without transferring the entire carcass of such bear, except for the head, skin and viscera, the registration tag, and such accompanying documents as the Department of Natural Resources may require to the person to whom such bear is sold.
  - (i) No member shall sell to any person who is not a member the head or skin of any bear registered under this section without transferring the entire skin with the head, claws and teeth attached, the registration tag if it has not been or will not be transferred pursuant to paragraph (1), and such accompanying documents as the Band may require to the person to whom the skin is sold. If the registration tag is not available for transfer under this subsection because of transfer pursuant to paragraph (1), the member shall transfer a document indicating the carcass tag and registration tag numbers of the bear from which the skin has been removed.
  - (ii) No member shall sell to the Band pursuant to § 5103(c)(3) of this Chapter any organ of any bear registered under this section without transferring to the Band the information and documents required in §5103(c)(4) of this Chapter

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 7.25.

**§ 5105. Baiting of Bear.**

A bear may be taken by the use of bait in compliance with § 4041(f) of this Chapter, provided that no member shall establish, service or maintain any bear bait station prior to the Friday nearest August 14.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 7.26.

**§ 5106. Shining.**

No member shall hunt bear while shining, as defined in § 4034 of this Chapter, except that during the open bear season established by § 5085 [Bear Season; Specific Regulations] of this Chapter a bear may be taken while hunting from a deer shining stand as authorized by § 5059 of this Chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 7.27.

#### **§ 5107. Authorization for Closure.**

The Commissioner or her or his designee shall close any bear management zone to bear hunting prior to the season's closing date if no bear remain available for harvest under this Chapter in that zone.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 7.28.

## **SUBCHAPTER 8**

### **SMALL GAME HARVESTING REGULATIONS**

**Section**

**5121. Purpose.**

**5122. Definitions.**

**5123. Open and Closed Seasons.**

**5124. Hunting/Trapping During Closed Season Prohibited.**

**5125. Small Game Quotas.**

**5126. Small Game Harvest Permits/Tags.**

**5127. Otter, Bobcat and Fisher Registration.**

**5128. Small Game Seasons; Specific Regulations.**

**5129. Hunting Hours.**

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**5132. Small Game Hunting Prohibited Methods.**

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- 5141. **Authorization for Closure.**
- 5142. **Sharing of Equipment/Assisting Band Member.**
- 5143. **Wild Turkey Hunting Regulations.**
- 5144. **Small Game Hunting Caliber Restrictions.**
- 5145. **Taking Animals Causing Damage.**

**§ 5121. Purpose.**

The purpose of this Subchapter is to regulate small game hunting and trapping in the Minnesota Ceded Territory by members.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.01.

**§ 5122. Definitions.**

For the purpose of this Subchapter, the following terms shall be construed as follows:

- (a) **"Bow"** shall have the meaning prescribed in § 5041(b) of this Chapter.
- (b) **"Crossbow"** shall have the meaning prescribed in § 5041 (c) of this Chapter.
- (c) **"Firearm"** shall have the meaning prescribed in § 5041(d) of this Chapter.
- (d) **"Hunt"** or **"Hunting"** shall have the meaning prescribed in § 4011(k) of this Chapter but shall not include trapping for the purposes of this Subchapter.
- (e) **"Trap"**, in addition to the meaning prescribed in § 4011(s) of this Chapter, means to trap or snare.
- (f) **"Unprotected Species"** means:
  - (1) Opossum, Coyotes (brush wolves), skunk, weasel, woodchuck, gophers, and porcupines;
  - (2) Starlings, English sparrows, Common pigeons, coturnix quail, chukar partridge, monk parakeet and rock doves; and
  - (3) All other unprotected species as defined in § 4011(t) of this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.02.

**§ 5123. Open and Closed Seasons.**

A closed season is hereby established for the hunting and trapping of small game except for the specified open season.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.03.

**§ 5124. Hunting/Trapping During Closed Season Prohibited.**

Except as otherwise expressly provided in this Chapter, no member shall hunt or trap small game in the Minnesota Ceded Territory during the closed season.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.04.

**§ 5125. Small Game Quotas.**

The number of otter, bobcat, marten, lynx or fisher which shall be available for harvest pursuant to this Chapter for each 12 month period commencing July 1 and ending June 30 shall be limited to the number established by the Bands, after consultation with the State Department of Natural Resources regarding the total harvestable surplus, and in accordance with the provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.), regarding small game management. For purposes of this Chapter, this number shall be termed the treaty quota.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.06.

**§ 5126. Small Game Harvest Permits/Tags.**

(a)

- (1) No member shall hunt small game pursuant to this Chapter without possessing a valid small game hunting permit.

- (2) No member shall hunt bobcat without possessing a valid carcass tag.
- (b)
  - (1) No member shall trap small game pursuant to this Chapter without possessing a valid small game trapping permit.
  - (2) No member shall trap otter, bobcat or fisher without possessing a valid carcass tag.
- (c) Except as provided in § 5137 [Possession and Sale of Live Small Game Animals] of this Chapter, no member shall move or field dress an otter, bobcat, marten, lynx or fisher before affixing to it a valid carcass tag.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.07.

#### **§ 5127. Otter, Bobcat and Fisher Registration.**

- (a) A member killing an otter, bobcat or fisher pursuant to this Chapter shall register the animal by presenting it to a registration station operated by one (1) of the Bands no later than 5:00 p.m. of the first working day after killing if the animal was hunted or after retrieval if the animal was trapped.
- (b) Upon registering an otter, bobcat or fisher pursuant to this section, the registering official shall affix a registration tag and shall duly record in an appropriate manner all information required to be provided by the member at the time of registration.
- (c) A member registering an otter, bobcat or fisher shall provide the registering official with the following information: the sex of the animal taken, the deer management unit and county where the animal was taken, the date when the animal was taken, the Band identification number of the member taking the animal and any other relevant information requested by the registering official.
- (d) No member shall register an otter, bobcat or fisher except by presenting the whole carcass to the registering official, or in the alternative, by providing the whole skin to the registering official provided the carcass tag is attached to the skin.
- (e) No member shall provide information to the registering official which the member knows, or has reason to know, is false or misleading.
- (f) An officer of one (1) of the Bands or Commission warden authorized pursuant to § 4082 of this Chapter to enforce the provisions of this Chapter is authorized to register

otter, bobcat or fisher in the field provided such warden transmits all registering information to a registration station operated by one (1) of the Bands no later than the registration deadline established by paragraph (a), above.

- (g) No member shall fail to transfer the carcass, except for the skin, of any bobcat, otter or fisher to the Department of Natural Resources or the Commission's Biological Services Division when requested unless the carcass was delivered to a licensed fur buyer.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.08.

#### **§ 5128. Small Game Seasons; Specific Regulations.**

- (a) Annual small game trapping seasons for the time periods provided in paragraph (b)(2) and annual small game hunting seasons for the time periods provided in paragraph (c)(2) are hereby established.
- (b)
  - (1) For the purposes of small game trapping, seasons begin at 6:00 a.m. of the opening date and end at 11:59 p.m. of the closing date.
  - (2) The small game trapping season for all species listed in paragraph (c)(2) commences on October 1 and closes on March 31, except that there is no open trapping season for lynx, marten, female pheasants, ruffed grouse or sharptailed grouse.
- (c)
  - (1) For the purposes of small game hunting, seasons begin and end in accordance with the applicable hunting hours prescribed in § 5129 of this Chapter.
  - (2) Specific small game hunting seasons (all dates are inclusive):
    - (i) **Badger:** Day after Labor Day – March
    - (ii) **Bobcat:** October 1 - March 31
    - (iii) **Beaver:** Year Around

- (iv) **Bobwhite Quail:** Day after Labor Day – March 31
- (v) **Coyote:** Year Around
- (vi) **Cottontail Rabbit:** Year Around
- (vii) **Fisher:** No Open Hunting Season
- (viii) **Hungarian Partridge:** Day after Labor Day – March 31
- (ix) **Lynx:** No Open Season
- (x) **Marten:** No Open Season
- (xi) **Minx:** October 1 - March 31
- (xii) **Muskrat:** October 1 - March 31
- (xiii) **Otter:** No Open Hunting Season
- (xiv) **Pheasant:** Day after Labor Day – December 31
- (xv) **Raccoon:** Year Around
- (xvi) **Red Fox:** Year Around
- (xvii) **Gray Fox:** Day after Labor Day – March 31
- (xviii) **Red, Gray, and Fox Squirrel:** Year Around
- (xix) **Ruffed Grouse:** Day after Labor Day – March 31

(xx) **Sharp-Tailed Grouse:** Day after Labor Day – January 31

(xxi) **Snowshoe Hare:** Year Around

(xxii) **Unprotected Species:** Year Around

- (3) The daily bag limit for each species will be established annually by the Bands, in accordance with the provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.), regarding small game management.
- (d) Nothing in this section shall be construed to authorize small game hunting or trapping or the opening of a small game hunting or trapping season for a particular species contrary to an Emergency Closure Order issued pursuant to § 4152 [Emergency Closure] of this Chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.09.

#### **§ 5129. Hunting Hours.**

- (a) Except where otherwise expressly authorized by this Chapter, no member shall hunt small game except during the hours prescribed by this section.
- (b) Lawful small game hunting hours during open seasons are provided as follows:
- (1) For all small game animals except fox, raccoon and unprotected species one (1) half hour before sunrise to one (1) half hour after sunset.
- (2) For fox, raccoon, and unprotected species, 24 hours per day except during the state deer season described in § 5046(d) of this Chapter when small game hunting hours shall be the same as deer hunting hours under this Chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.10.

**§ 5130. Hunting and Trapping on Certain Public Lands Prohibited.**

No member shall hunt or trap small game on any of the following lands except as noted:

- (a) Designated public campgrounds, public beaches, public picnic areas, and public water access sites.
- (b) Public lands within incorporated areas except for those lands which are designated for small game hunting or trapping.
- (c) All parks identified by Commissioner's order under § 4048 of this Chapter except:
  - (1) on lands held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band or its members; or
  - (2) parks or portions thereof in which hunting is allowed under State law, pursuant to a permit issued by the Department of Natural Resources in accordance with the agreement between the Bands and the State regarding special hunts in parks.
- (d) All wildlife refuges, scientific and natural areas, and other closed or restricted areas established pursuant to § 4048 of this Chapter, except as small game hunting or trapping is permitted by the Commissioner in these areas.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.11.

**§ 5131. Hunting and Trapping on Certain Private Lands Prohibited.**

As provided in § 4041(a) of this Chapter, no member shall hunt or trap small game on any privately owned land except those lands which are open to the general public for hunting by operation of state law.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.12.

**§ 5132. Small Game Hunting Prohibited Methods.**

While hunting small game, no member shall:

- (a) Use or possess any device designed or used for the purpose of driving rabbits out of their holes or dens;
- (b) Use or possess any ferret;
- (c) Molest the nest or den of any squirrel; or
- (d) Use smoke, fire or mechanical devices (including dragging a rope, wire or other device across a field) to take small game.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.15.

**§ 5133. Shining Raccoon, Fox or Unprotected Species.**

- (a) No member shall hunt raccoon, fox or any unprotected species while shining as defined in § 4034 of this Chapter except:
  - (1) While hunting on foot during the open season for the animal hunted, a member may possess or use a flashlight at the point of kill; or
  - (2) While on foot training a dog to hunt or track raccoon, fox or any unprotected species, a member may possess or use a flashlight, provided the member may only have blank cartridges or shells in personal possession.
- (b) No member shall hunt raccoon, fox or any unprotected species while shining during the State deer season described in § 5046(d) of this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.16.

**§ 5134. Identification of Traps Required.**

- (a) No member shall trap pursuant to this Chapter without affixing to each trap or snare a metal tag upon which shall be stamped or engraved the trapper's legible name and address and initials designated by the Department of Natural Resources indicating membership in the Band.
- (b) Any trap or snare which is untagged shall be immediately seized and confiscated, and the owner or member using or attending the untagged trap shall be subject to citation for a violation of the provisions of paragraph (a).

## Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 8.17.

### § 5135. Specific Trapping Regulations.

- (a) No member shall:
- (1) Set out traps or snares except during the open season.
  - (2) Set out bait or scent for attracting furbearing animals except during the open season.
  - (3) Use sight-exposed bait, visible from above, consisting of feathers, animal flesh, fur, hide or entrails within 25 feet of a trap or snare.
  - (4) Use water sets except during the open season for muskrat, beaver or otter.
  - (5) Fail to check all dry land sets and snares and to remove all animals therein at least once each day.
  - (6) Place on the ice any artificial house or den, or place therein any trap or snare, which has the purpose or may have the effect of taking furbearers.
  - (7) Set, place, possess or operate on or adjacent to waters any trap other than a snare or steel-jawed trap or live-trap capable of capturing only one (1) animal in a single setting for the purpose of taking furbearing animals.
  - (8) Set, place or operate any killer or conibear trap larger than 7" x 7" unless the trap is at least half submerged under water.
  - (9) Set, place or operate any steel-jawed trap with a spread width of more than 8 inches.
  - (10) Set, place or operate any steel-jawed trap with teeth unless the trap is placed or staked in such a manner as to permit the trap or trapped animal to reach water.
  - (11) Set, place or operate any killer trap of the conibear type greater than 6" x 6" or 6" in diameter in the following locations:
    - (i) Within, or within three (3) feet of, any privately constructed or any federal, tribal, state, county or township road right-of-way culvert unless completely submerged in water.

- (ii) Within three (3) feet of any woven or welded wire mesh type fence.
  - (iii) Within 100 yards of any building devoted to human occupancy without the owner's consent.
- (12) Make an opening in a muskrat house for the purpose of trapping, or otherwise damage a muskrat house, runway or bank den, unless the opening is plugged by replacing all materials removed to prevent freezing within the structure. Traps may be set at natural entrances to muskrat runways and bank burrows.
  - (13) Damage a beaver house or dam or set a trap of any kind inside a beaver house or above the water line on the outside of a beaver house.
  - (14) Fail to check at least once each day all watersets not capable of drowning an animal and remove any animal captured.
  - (15) Except for traps set under the ice, fail to check at least once each third day all watersets capable of drowning a captured animal and remove any animal captured.
- (b) The Commissioner may by order prohibit Band members from setting out snares except where the snare loop is at least half-submerged under water in the portions of the Minnesota Ceded Territory south of a line following Highway 95 from Taylor Falls to Highway 169, Highway 169 to County Road 16, County Road 16 to County Road 32, County Road 32 to County Road 33, County Road 33 to County Road 34, and County Road 34 to the Mississippi River.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.18.

#### **§ 5136. Specific Snaring Regulations.**

- (a) No member shall trap small game by the use of a snare except in compliance with the following provisions:
  - (1) Any snare must be anchored so that it may not be dragged.
  - (2) Any snare must be tagged as in § 5134(a) of this Chapter.
  - (3) No snare may be spring activated.
  - (4) Any snare must be set in a manner which prevents an animal from being suspended unless it is attached to a drowning mechanism.

- (5) Any upland snare must be removed no later than March 31.
  - (6) Any water set snare must be removed no later than March 31.
  - (7) Except as provided in paragraph (b), any snare must have a mechanical lock which will prevent the snare loop size from becoming smaller than 2-1/2 inches.
  - (8) Except as provided in paragraph (b), any snare must have a swivel device on the anchor end.
  - (9) Any snare or cable wire may not have a diameter exceeding 1/8 inch.
  - (10) No upland snare shall be set on a well-defined deer trail.
  - (11) No upland snare shall be set such that the bottom of the loop is more than 6" above the ground or, when the ground is snow covered, more than 6" above the level of the adjoining trail.
  - (12) No upland snare shall be set with a loop size greater than 10" in diameter.
- (b) Members may use braided picture wire snares without locks or swivels for the purpose of snaring rabbits or hares.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.19.

#### **§ 5137. Possession and Sale of Live Small Game Animals.**

- (a) As used in this section, the following terms shall be construed to apply as follows:
  - (1) **"Control temporarily"** means to possess a small game animal for a limited period of time for one (1) of the following purposes:
    - (i) Removal or transportation of a small game animal from one (1) location to a more appropriate location;
    - (ii) Restraint or transportation of a small game animal for treatment or medical care; or
    - (iii) Restraint or transportation of a small game animal for game censuses, surveys or other purposes authorized by the Band.

- (2) **"Possess"** means to own, restrain, keep in captivity or transport a small game animal.
- (b) Except as otherwise authorized by controlling law or as provided in paragraph (c), no member shall possess, or sell or otherwise transfer to any person, any live small game animal and any member who takes any small game animal shall kill the animal when it is taken or shall immediately release the animal.
- (c) A member may control temporarily a live small game animal for one (1) of the purposes described in paragraph (a)(1), but not for the purpose of selling the live animal.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.20.

#### **§ 5138. Incidental Take.**

Any member taking any animal by trapping except during the open season for that animal shall surrender the animal as soon as practicable to the Department of Natural Resources, or shall immediately release the animal if the animal was live trapped.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.21.

#### **§ 5139. Shipment of Furs.**

No member shall send or ship any fur from an animal harvested pursuant to this Subchapter unless all fur shipments are marked on the outside of the package showing the number and kinds of hides in the shipment and the name and address of the shipper.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.22.

#### **§ 5140. Sale of Small Game Authorized.**

- (a) Nothing in this Chapter shall be construed to prohibit any member from selling the carcass, or any part thereof, of any lawfully harvested small game animal to any person, provided that if a member sells meat for human consumption the member

shall comply with the provisions of federal law applicable to the sale of meat for human consumption.

- (b) The provisions of § 4047 [Records of Commercial Transactions] of this Chapter shall not apply to the sale of the fur of any small game furbearing species.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.23.

#### **§ 5141. Authorization for Closure.**

The Commissioner, or her or his designee, shall close the small game hunting and trapping season for otter, bobcat or fisher if no otter, bobcat or fisher remain available for harvest under this Chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.24.

#### **§ 5142. Sharing of Equipment/Assisting Band Member.**

No member shall share any small game hunting or trapping equipment with or otherwise be assisted while small game hunting or trapping by any person who is not a member of one (1) of the Bands, except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.25.

#### **§ 5143. Wild Turkey Hunting Regulations.**

- (a) **Permit Required.** No member shall hunt wild turkeys without possessing a valid small game hunting permit issued pursuant to the provisions of this Chapter.
- (b) **Tags for Turkey Harvest Zones.** No member shall hunt wild turkeys except in a wild turkey harvest zone established by Commissioner's Order and while in possession of a carcass tag issued by the Department of Natural Resources valid for that zone.

- (c) **Season.** No member shall harvest any wild turkeys except during the open season which shall be established by Commissioner's Order.
- (d) **Bag Limit.** No member shall harvest any wild turkey within a wild turkey harvest zone in excess of the number of valid carcass tags issued to her or him pursuant to paragraph (b) for that zone, and no member shall fail to affix a valid carcass tag to a turkey immediately upon reducing the turkey to possession.
- (e) **Turkey Quotas.** The numbers of bearded and beardless turkeys that may be harvested in each wild turkey management zone under this Chapter shall be limited to the numbers established by the Bands, after consultation with the State Department of Natural Resources regarding the total harvestable surplus in the zone, and in accordance with the provisions in the final decree in *Mille Lacs v. State of Minnesota*, No. 3-94-1226 (D. Minn.), regarding wild turkey management. For purposes of this Chapter, these numbers shall be termed the treaty quotas.
- (f) **Methods of Turkey Harvest.** No member shall hunt wild turkeys:
  - (1) By any means other than a 20 gauge or larger shotgun or muzzle-loading shotgun 12 gauge or larger, using fine shot size No. 4 or smaller diameter shot, or a bow and arrow or a crossbow.
  - (2) With the aid of recorded bird calls or sounds or electrically amplified imitations of bird calls or sounds.
  - (3) With the aid of dogs.
  - (4) With live decoys for the purposes of enticing wild turkeys.
- (g) **Registration Required.**
  - (1) A member killing a wild turkey pursuant to this Chapter shall present the carcass for registration to a Band registration station no later than 5:00 p.m. of the next working day following the killing.
  - (2) No member shall fail to inform the Band registration station of the location, including the wild turkey management zone if applicable, where the animal was killed or to provide such other information as is required by the registering official.
  - (3) No person shall provide information to the registering official which the person knows, or has reason to know, is false or misleading.
  - (4) Any officer of one (1) of the Bands or Commission warden authorized pursuant to § 4082 of this Chapter to enforce the provisions of this Chapter is

authorized to register wild turkeys in the field provided such warden provides all registering information to a Band registration station no later than 5:00 p.m. of the first working day after field registration.

(h) **Other Restrictions Applicable.**

(1) While hunting wild turkeys, no member shall fail to comply with the other restrictions applicable to hunting generally or to small game hunting specifically, such as hunting hours, which are not modified or otherwise affected by the provisions of this section.

(2)

(i) No member shall hunt wild turkeys in any area designated pursuant to paragraph (2)(ii) as a wild turkey reintroduction area.

(ii) The Commissioner, or her or his designee, is hereby authorized, to designate certain areas within the Minnesota ceded territory as wild turkey reintroduction areas in which the hunting of wild turkeys shall be prohibited.

(i) **Authorization for Closure.** The Commissioner or her or his designee shall close any wild turkey management zone to bearded or beardless turkey hunting if no bearded or beardless turkeys remain available for harvest under this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.26.

**§ 5144. Small Game Hunting Caliber Restrictions.**

No member shall hunt any bobwhite quail, hungarian partridge, pheasant, ruffed grouse or sharp-tailed grouse with a rifle (other than a .22 caliber rifle) or a shotgun loaded with a single ball or slug or shot larger than no. BB.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.27.

**§ 5145. Taking Animals Causing Damage.**

Notwithstanding any other provision of this Chapter, a member may take mink, squirrel, rabbit, hare, raccoon, bobcat, fox, muskrat, or beaver on land owned or occupied by the member where the animal is causing damage. The member may take the animal without a license and in any manner except by poison, or artificial lights in the closed season. Raccoons may be taken under this section with artificial lights during the open season. A member that kills mink, raccoon, bobcat, fox, muskrat, or beaver under this section must bring the entire animal to a Band or Commission conservation officer within 24 hours after the animal is killed.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 8.28.

## **SUBCHAPTER 9**

### **FISH HARVESTING REGULATIONS**

**Section**

- 5161. Definitions.**
- 5162. Open and Closed Season.**
- 5163. Fish Available for Harvest.**
- 5164. Fishing Permits.**
- 5165. Seasons, Methods, Bag Limits, and Size Limits.**
- 5166. Spearing Regulated.**
- 5167. Dip Nets, Fyke Nets, and Seines Regulated.**
- 5168. Gillnets Regulated.**
- 5169. Harpooning and Archery Equipment Regulated.**
- 5170. Setlines and Set or Bank Poles Regulated.**
- 5171. Designated Landings May Be Required.**
- 5172. Reporting and Monitoring.**
- 5173. Open Water hook and Line Fishing Regulated.**
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- 5175. Possession Limit.**
- 5176. Lake sturgeon Tagging Required.**
- 5177. Incidental taking by Gillnet.**
- 5178. Live Bait Restrictions.**
- 5179. Carp Fingerlings.**
- 5180. Fishing in Certain Locations Prohibited or Restricted.**
- 5181. Bait Dealers regulated.**
- 5182. Commercial Harvest of Game Fish.**
- 5183. Commercial Harvest of game Fish Regulated.**
- 5184. Buying and Selling Game Fish.**
- 5185. Authorization for Closure.**
- 5186. Special Sturgeon Regulations.**

## § 5161. Definitions.

For the purpose of this Subchapter, the following terms shall be construed as follows:

- (a) **"Dip Net"** means a piece of netting suspended from a round or square frame not exceeding five (5) feet in diameter or five (5) feet in width and five (5) feet in length.
- (b) **"Fyke Net"** or **"Trap Net"** means a device constructed of netting which may employ a frame, wings or wings and leads, and which directs the movement of fish through a funnel of netting into inner hearts or built-in forebays wherein the fish are trapped by their own movement.
- (c) **"Gillnet"** means any net set to capture fish by entanglement rather than entrapment.
- (d) **"Hook and Line"** means a rod and reel or similar device including a tip up and hand held lines, and includes trolling.
- (e) **"Ice Fishing"** means fishing through an artificial hole in the ice.
- (f) **"Net"** means any dip net, fyke net, gill net or seine and when used as a verb means to fish with any of these nets.
- (g) **"Open Water Fishing"** means all fishing other than fishing through an artificial hole in the ice.
- (h) **"Seine"** means a net of mesh no larger than 2" stretch measure, with floats at the top and weights at the bottom, such that it hangs vertically in the water, and which is drawn through the water to capture fish by encircling them rather than entangling them.
- (i) **"Spear"** means a pole tipped with a minimum of three (3) barbed tines which are a minimum of 4-1/2" long and each tine having a barb extending perpendicular which is greater than 1/8 inch; and when used as a verb, means reducing or attempting to reduce to possession fish by means of a hand held spear or other similar device which is directed by the spearer for the purpose of impaling the target fish, and may include the use of artificial light. When used as a verb, spear shall also mean snagging for the purpose of this Chapter.
- (j) **"Set or Bank Pole"** means a pole used for fishing from the banks of lakes or rivers in compliance with the provisions of § 5170 of this Chapter.
- (k) **"Setline"** means a line used for fishing in compliance with the provisions of § 5170 of this Chapter.

- (l) **"Snagging"** means attempting to take or reduce a fish to possession by hooking a fish in a place other than the mouth by the use of a hook and line or any other device which is not a net or spear.
- (m) **"Troll"** means to fish from a motor-driven boat when the motor is running, from any boat in tow of a motor-driven boat when the motor is running, or from a sailboat when in motion.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.01.

#### **§ 5162. Open and Closed Season.**

A closed season is hereby established for fishing except for the open seasons specified in this Chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.02.

#### **§ 5163. Fish Available for Harvest.**

The quantity of fish available for harvest pursuant to this Chapter for each 12-month period from April 1 through March 31 shall be limited by the management measures (including closed seasons, method restrictions, bag limits and size limits) set forth herein and by any quotas established under § 5165(e) of this Chapter. All management measures and quotas shall be consistent with the court's opinions, orders and decrees in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.).

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.03.

#### **§ 5164. Fishing Permits.**

- (a) No member shall fish pursuant to this Chapter without possessing a valid fishing permit. Such a permit may be the member's tribal identification card required by § 4022(2) of this Chapter.

- (b) No member shall fish with the use of a spear, except while ice fishing, or net pursuant to this Chapter without possessing a spearing or netting permit bearing the member's Band identification number and valid for the date on which and the location at which the member is spearing or netting.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.04.

Band Resolution 10-02-17-03, Attach. A, § 2.a.

**§ 5165. Seasons, Methods, Bag Limits, and Size Limits.**

- (a) No member shall take, catch, kill or fish for any species of fish: in excess of the bag limit; by means other than those enumerated; during other than the open season; below the minimum size limit; above the maximum size limit; or in locations other than those established by this section.
- (b) With the exception of harvest methods for which no daily maximum harvest limit is established or for which such a limit is established by a special permit, the daily bag limits in paragraph (b) shall be the maximum numbers of the fish species permitted to be taken by one (1) member in any one (1) day by all fishing methods combined. However, nothing herein contained shall prevent the Commissioner from reducing bag limits or closing seasons for any species by Commissioner’s Order in the interests of conservation.
- (c) For the purposes of bag limits, "day" shall mean a continuous 24-hour period consistent with the nature of the harvest activity involved.
- (d) Except as provided in paragraphs (b) and (e), the following table hereby establishes the open season, permissible methods, daily bag limits and size limits for the enumerated species of fish in the identified locations.

Kind of Fish and Locality	Methods Permitted	Open Season (Dates are Inclusive)	Bag Limit	Maximum or Minimum Size Limits
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**1. Largemouth and Smallmouth Bass.**

a. All waters	Open water hook and line fishing, ice fishing (including spearing when ice fishing)	Year Around	10 per person/day	None
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b.	All waters	Open water spearing subject to § 5166, and snagging	Year Around	10 per person/day except as provided otherwise in § 5166	None
c.	All waters	Setline, set or bank pole subject to § 5170	Year Around	10 per person/day	None
d.	All waters	All nets (except gillnets) subject to § 5167	Year Around	10 per person/day except as provided otherwise in § 5167	None
e.	Waters designated in § 5168 (b)	Gillnets subject to § 5168	Year Around	See § 5168	None

**2. Walleye.**

a.	All waters	Open water hook and line fishing, ice fishing (including spearing when ice fishing)	Year Around	10 per person/day	None
b.	All waters	Open water spearing subject to § 5166, and snagging	Year Around	Established by permits issued pursuant to § 5166	Maximum of 20 inches except each fisher may take one (1) fish 20-24 inches and one (1) fish any size per permit
c.	All waters	All nets (except gillnets) subject to § 5167	Year Around	Established by permits issued pursuant to § 5167	Identifiable males only prior to May 1. Maximum of 20 inches thereafter
d.	All waters	Setline, set or bank pole subject to § 5170	Year Around	10 per person/day	None
e.	Waters designated in § 5168 (b)	Gillnets subject to § 5168	June 1 to March 1, except Mille Lacs lake open Year Around	See § 5168	None

### 3. Northern Pike.

a.	All waters	Open water hook and line fishing, ice fishing (including spearing when ice fishing)	Year Around	10 per person/day	None
b.	All waters	Open water spearing subject to § 5166, and snagging	Year Around	10 per person/day except as provided otherwise in § 5166	None
c.	All waters	Setline, set or bank pole subject to § 5170	Year Around	10 per person/day	None
d.	All waters	All nets (except gillnets) subject to § 5167	Year Around	10 per person/day except as provided otherwise in § 5167	None
e.	Waters designated in § 5168 (b)	Gillnets subject to § 5168	June 1 to March 1	See § 5168	None

### 4. Lake Sturgeon.

a.	St. Croix River below Taylors' Falls	Open water hook and line fishing, ice fishing (including spearing when ice fishing)	June 1 to March 1 (except as provided in § 5186)	1 per person/year, all methods (except as provided in § 5186)	45-inch minimum size limit (except as provided in § 5186)
b.	St. Croix River below Taylors' Falls	Open water spearing and snagging subject to § 5166 and spearing while ice fishing	June 1 to March 1 (Except that 1 sturgeon per lake may be taken by all members during spring spearing and except as provided in § 5186)	1 per person/year, all methods (except as provided in § 5186)	45-inch minimum size limit (except as provided in 5186)

- |    |                                      |  |  |   |   |
|----|--------------------------------------|--|--|---|---|
| c. | St. Croix River below Taylors' Falls | Setline, set or bank pole subject to § 5170  | June 1 to March 1 (except as provided in § 5186) | 1 per person/year, all methods (except as provided in § 5186) | 45-inch minimum size limit (except as provided in 5186) |
| d. | St. Croix River below Taylors' Falls | All nets (except gillnets) subject to § 5167 | June 1 to March 1 (except as provided in § 5186) | 1 per person/year, all methods (except as provided in § 5186) | 45-inch minimum size limit (except as provided in 5186) |
| e. | St. Croix River below Taylors' Falls | Gillnets subject to § 5168                   | June 1 to March 1 (except as provided in § 5186) | 1 per person/year, all methods (except as provided in § 5186) | 45-inch minimum size limit (except as provided in 5186) |

**5. Muskellunge.**

- |    |                                |   |                   |  |   |
|----|--------------------------------|---|-------------------|--|---|
| a. | All waters                     | Open water hook and line fishing, ice fishing (including spearing when ice fishing) | Year Around       | 2 per person/day                                 | 40-inch minimum size limit (except no limit when ice spearing in lakes other than Mille Lacs) |
| b. | All waters                     | Open water spearing subject to § 5166; and snagging                                 | Year Around       | Established by permits issued pursuant to § 5166 | 40-inch minimum size limit (except no limit in lakes other than Mille Lacs)                   |
| c. | All waters                     | Setline, set or bank pole subject to § 5170   | Year Around       | 2 per person/day                                 | 40-inch minimum size limit  |
| d. | All waters                     | All nets (except gillnets) subject to § 5167  | Year Around       | Established by permits issued pursuant to § 5167 | 40-inch minimum size limit  |
| e. | Waters designated in § 5168(b) | Gillnets subject to § 5168  | June 1 to March 1 | See § 5168                                       | 40-inch minimum size limit  |

**6. Trout and Salmon (except Lake Trout).**

- |    |                                |               |                                       |                               |      |
|----|--------------------------------|---------------|---------------------------------------|-------------------------------|------|
| a. | All waters except spring ponds | Hook and line | January 1 to September 30             | 5 per person/day in aggregate | None |
| b. | Spring ponds                   | Hook and line | First Saturday in May to September 30 | 5 per person/day in aggregate | None |

**7. Lake Trout.**

- |    |            |   |             |                               |      |
|----|------------|---|-------------|-------------------------------|------|
| a. | All waters | Open water hook and line fishing, ice fishing (including spearing when ice fishing), open water spearing and snagging subject to § 5166 | Year Around | 5 per person/day in aggregate | None |
|----|------------|---|-------------|-------------------------------|------|

**8. White Bass, Rock Bass, Bluegill, Crappie, Pumpkinseed, Yellow Perch, Yellow Bass, Catfish.**

- |    |                                |   |             |      |      |
|----|--------------------------------|---|-------------|------|------|
| a. | All waters                     | Open water hook and line fishing, ice fishing (including spearing when ice fishing), open water spearing and snagging subject to § 5166; setline, set or bank pole subject to § 5170; all nets (excluding gillnets) subject to § 5167 | Year Around | None | None |
| b. | Waters designated in § 5168(b) | Gillnets subject to § 5168  | Year Around | None | None |

**9. Cisco and Whitefish.**

- |    |            |  |             |      |      |
|----|------------|--|-------------|------|------|
| a. | All waters | Hook and line fishing, ice fishing (including spearing when ice fishing), open water spearing and snagging subject to § 5166; setline, set or bank pole subject to § 5170; all nets (excluding | Year Around | None | None |
|----|------------|--|-------------|------|------|

gillnets) subject to § 5167

b. Waters designated in § 5168(b)	Gillnets subject to § 5168	Year Around	None	None
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**10. Rough Fish.**

a. All waters	All methods unless otherwise specifically prohibited by this Chapter except gillnetting	Year Around	None	None
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b. Waters designated in § 5168(b)	Gillnets subject to § 5168	Year Around	None	None
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**11. Paddlefish or Spoonbill Catfish.**

All waters – No Open Season

(e)

- (1) The Commissioner her or his designee is hereby delegated the authority to implement a quota management system for the harvest of any species of fish by one (1) or more methods, in accordance with the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.).
- (2) If it becomes necessary to implement a quota management system for spearing or netting for a particular species in a particular body of water:
  - (i) The Bands shall establish the treaty quota after consultation with the State Department of Natural Resources regarding the total harvestable surplus of the species, and in accordance with the provisions of the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-941226 (D. Minn.) regarding fisheries management.
  - (ii) The Department of Natural Resources shall issue open water spearing and netting permits for the species, which shall set forth any daily bag limits applicable to the species in accordance with §§ 5166, 5167 and 5168 of this Chapter.

- (iii) No Band member shall net or spear the species without possessing and complying with all terms of such a permit, or in excess of any applicable daily bag limit; and
- (iv) All Band harvest by spearing and netting for the species shall cease once the quota is taken.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.05.

#### **§ 5166. Spearing Regulated.**

- (a) Except while ice fishing, no member shall use or possess any spear on any body of water unless the member possesses a valid permit authorizing the use of a spear on that body of water.
- (b) The Department of Natural Resources may issue an open water spearing permit to a member provided:
  - (1) An open season exists for the species to be fished;
  - (2) The permit shall be valid for no more than 1 day for the spearing of walleye, muskellunge, sturgeon and other game fish;
  - (3) The permit sets forth the respective daily bag limits, as determined by the Commissioner, for walleye and muskellunge, and for any other species if a quota management system has been implemented under § 5165(e) of this Chapter for that species;
  - (4) If a quota management system for a species has been implemented under § 5165(3) of this Chapter, the respective number of game fish spearing permits which may be issued at any one (1) time by all Bands shall not exceed the treaty quota divided by the respective daily bag limit for the species;
  - (5) The permit designates the body of water for which the permit is valid;
  - (6) No spearing permit issued pursuant to this section and no netting permit issued pursuant to §§ 5167 or 5168 of this Chapter shall be simultaneously valid for any body of water except for Mille Lacs Lake;
  - (7) The permit requires the member's signature; and
  - (8) The Department of Natural Resources may impose such other terms and conditions as it deems necessary or appropriate, including biological

monitoring requirements appropriate to the level of harvest activity on any body of water.

- (c) The Department of Natural Resources may issue an ice spearing permit provided an open season exists for the species to be fished. The permit shall require the member's signature and may incorporate such other terms and conditions as the Department deems necessary or appropriate.
- (d) No member shall fish by the use of a spear contrary to the terms and conditions of any spearing permit which has been issued to her or him.
- (e) No member shall fish with the use of a spear which does not meet the requirements of § 5161(i) [Spear Defined] of this Chapter.
- (f) No member shall possess any fish harvesting devices other than a spear while engaged in open water spearing.
- (g) No member shall share spearing equipment with any person who is not a member of one (1) of the Bands, except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.
- (h) The Department of Natural Resources shall not issue a permit for spearing a particular species of fish in a particular body of water under this section if the treaty quota for that species has been taken in that body of water or if that body of water is otherwise closed to spearing.
- (i) The Department of Natural Resources shall not issue an open water spearing permit under this section for game fish unless a monitor(s) will be present at the landing(s) to monitor the spearing harvest.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.06.

#### **§ 5167. Dip Nets, Fyke Nets and Seines Regulated.**

- (a) Except while netting for minnows pursuant to § 5181(c) of this Chapter no member shall use or possess any dip net, fyke net or seine on any body of water unless the member possesses a valid permit authorizing the use of a dip net, fyke net or seine on that body of water.
- (b) The Department of Natural Resources may issue a dip netting, fyke netting or seining permit, provided:
  - (1) An open season exists for the species to be fished;

- (2) The permit shall be valid for no more than 1 day;
  - (3) The permit sets forth the respective daily bag limits, as determined by the Commissioner, for walleye and muskellunge, and for any other species if a quota management system has been implemented under § 5165(e) of this Chapter for that species;
  - (4) If a quota management system for a species has been implemented under § 5165(e) of this Chapter, the respective number of netting permits issued by all Bands shall not exceed the remaining treaty quota divided by the respective daily bag limit for the species;
  - (5) Netting for all species with dip nets, fyke nets or seines is limited to one (1) body of water for the duration of the permit;
  - (6) No netting permit issued pursuant to this section, no gillnetting permit issued pursuant to § 5168 of this Chapter and no spearing permit issued pursuant to § 5166 of this Chapter shall be simultaneously valid for any body of water except Mille Lacs Lake;
  - (7) The permit shall require that all nets authorized comply with appropriate marking and safety requirements;
  - (8) The permit requires the member's signature;
  - (9) Permits issued pursuant to § 5181 [Bait Dealers Regulated] of this Chapter shall be governed by the provisions of that section; and
  - (10) The Department of Natural Resources may impose such other terms and conditions as it deems necessary or appropriate, including biological monitoring requirements appropriate to the level of harvest activity on any body of water.
- (c) No member shall fish by the use of a dip net, fyke net or seine contrary to the terms and conditions of any netting permit which has been issued to her or him.
  - (d) No member shall fish with the use of a dip net, fyke net or seine which does not meet the requirements of § 5161(a) [Dip Net Defined], § 5161(b) [Fyke Net Defined], or § 5161(h) [Seine Defined] of this Chapter.
  - (e) Except while netting for minnows pursuant to § 5181 of this Chapter, no member shall possess any fish harvesting device other than a dip net, fyke net or seine while engaged in netting under this section.

- (f) No member shall share netting equipment authorized under this section with any person who is not a member of one (1) of the Bands, except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.
- (g) The Department of Natural Resources shall not issue a permit for netting a particular species of fish on a particular body of water under this section if the treaty quota for that species has been taken in that body of water or if that body of water is otherwise closed to netting.
- (h) The Department of Natural Resources shall not issue a permit for dip net, fyke net, or seine under this section unless a monitor(s) will be present at the landing(s) to monitor the dip net, fyke net, or seine harvest.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.07.

#### **§ 5168. Gillnets Regulated.**

- (a) No member shall use or possess any gillnet on any body of water unless the member possesses a valid permit authorizing the use of a gillnet on that body of water.
- (b) The Department of Natural Resources may issue a gillnetting permit for: any lake in excess of 1,000 acres; Ogechie, Onamia or Shakopee Lakes; approximately five (5) miles of the Rum River connecting these lakes; Grindstone Lake; Lake Eleven; Pine Lake; Razor Lake; South Stanchfield Lake; Whitefish Lake; and the 20 miles of the St. Croix River downstream from the point where the river commences as the border between Minnesota and Wisconsin, provided:
  - (1) An open season exists for the species to be fished;
  - (2) The permit shall be valid for no more than 1 day for any species of game fish;
  - (3) The permit sets forth the respective daily bag limits for all species which can be harvested with gillnets under § 5165(d) of this Chapter, and/or other management measures to control the harvest of such species or any other species that might be harvested incidentally, including without limitation restrictions on the length, depth or bar size of nets, soak times, or location of harvest, as determined by the Commissioner in accordance with the provisions in the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.), regarding fisheries management.
  - (4) Except as provided in paragraph (m), any number of permits may be issued at any one (1) time for any lake but the total length in feet of all gillnets authorized for all permits issued by all Bands on any one (1) lake shall not

exceed the number of walleye remaining available for harvest in that lake multiplied by 10;

- (5) Gillnetting for all species is limited to one (1) body of water for the duration of the permit;
- (6) No gillnetting permit issued pursuant to this section, no spearing permit issued pursuant to § 5166 of this Chapter or netting permit issued pursuant to § 5167 of this Chapter shall be simultaneously valid for any body of water except Mille Lacs Lake;
- (7) The permit requires the member's signature;
- (8) Except as provided in paragraph (m), the permit shall establish the location of where the net is set and time the net shall be lifted. No permit shall be issued unless a monitor is available at the time the net is lifted.
- (9) Except as provided in Subs. (2c) and (13), the maximum length, depth and bar size of a gillnet shall be as follows:

<b>Dates</b>	<b>Maximum Allowable Length</b>	<b>Maximum Depth</b>	<b>Maximum Bar Size</b>
Year Round	100 feet	4 feet	1.75 inches

- (10) The Department of Natural Resources or the Commission may impose such other terms and conditions as it deems appropriate or necessary, including such biological monitoring requirements appropriate to the level of harvest activity on any body of water.
- (c) No member shall fish by the use of a gillnet contrary to the terms and conditions of any gillnetting permit which has been issued to her or him.
- (d) No member shall fish with the use of a gillnet which does not meet the requirements of § 5161(c) [Gillnet Defined] of this Chapter.
- (e) No member shall possess any fish harvesting device other than a gillnet while engaged in gillnetting under this section.
- (f) No member shall share gillnetting equipment authorized under this section with any person who is not a member of one (1) of the Bands, except as provided in § 4051 [Permissible Conduct/Assistance by Non-Member] of this Chapter.

- (g) Where an annual treaty quota for any fish species as described in § 5163 of this Chapter has been taken on a body of water by any method or combination of methods, no gillnetting under this section may take place on that body of water until the following fishing year.
- (h) No member shall fish with any gillnet unless the gillnet is marked in compliance with the following provisions:
  - (1) Each gillnet shall be marked with two (2) flags or floats, one (1) on each end;
  - (2) Each flag pole shall be two (2) feet or more above the water and have a diameter of two-and-one-half inches or less;
  - (3) Each flag shall be white and ten (10) inches square or larger; or
  - (4) Each float shall be visible from shore;
  - (5) A net shall have attached securely to it an identification tag issued by the Department of Natural Resources showing the band member's identification number.
- (i) No member shall set a gillnet in open water with a topline within three (3) feet of the water's surface unless the gillnet is buoyed at 100 foot intervals.
- (j) No member shall set any gillnet in an unsafe manner which shall unreasonably expose boaters and other users of the lake to a foreseeable risk of imminent bodily harm or property damage, or contrary to such other restrictions as the Department of Natural Resources may require.
- (k) No member shall remove a gillnet from a lake without first removing from the gillnet and returning all crayfish to the water or killing all crayfish entangled in the gillnet.
- (l) Except as otherwise provided in paragraph (b)(3), no member shall fail to lift any gillnet at least two (2) times in each continuous 24-hour period during which the net is set, or more frequently as water temperatures may require so as to avoid the spoilage of any fish taken by the net.
- (m) Notwithstanding the provisions of paragraphs (b)(4), (b)(8) and (b)(9), the Department of Natural Resources may issue a permit for gillnetting ciscos (tullibeas) on such terms and conditions as it deems necessary or appropriate, provided that at a minimum all other provisions of this section shall otherwise apply to cisco gillnetting permits.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.08.

**§ 5169. Harpooning and Archery Equipment Regulated.**

- (a) Harpooning equipment may not be used within 1,000 feet of an established swimming beach. Harpooning equipment may be discharged only when both the equipment and the operator are entirely beneath the surface of the water and may not be carried in a cocked position while out of the water.
- (b) Archery equipment may not be used to take rough fish unless the arrows are tethered or controlled by an attached line. The use of crossbows is prohibited.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.08A.

**§ 5170. Setlines and Set or Bank Poles Regulated.**

- (a) No member shall fish with or set any setline or set or bank poles except in accordance with the following provisions:
  - (1) A maximum of 20 set or bank poles and 1 setline may be used in no more than three (3) bodies of water at any one (1) time.
  - (2) Setlines shall be marked at one (1) end by a white flag ten (10) inches square or larger held by a pole three (3) feet or more above the surface of the water or bank; the pole shall not be more than two-and-one-half inches in diameter and, if a buoy is used to hold the pole, it shall be round or ovate in shape and have a diameter of 15 inches or less; the pole shall not be placed in the main channel of any navigable waterway.
  - (3) Each set or bank pole and each setline shall have attached securely to it a legible identification tag issued by the Tribe showing the member's tribal affiliation and tribal identification number.
  - (4) Setlines or set or bank poles shall not be equipped with stainless steel hooks.
  - (5) A set or bank pole may not be equipped with more than one (1) line which shall not have more than 2 hooks.
  - (6) A setline shall not have more than ten (10) hooks.
  - (7) Each set or bank pole and setline shall be lifted and the catch removed at least once each day following the day it was set.

- (8) Set or bank poles and setlines may only be set, attended or lifted from one (1) hour before sunrise to one-half hour past sunset.
- (9) The Department of Natural Resources may impose such other terms and conditions as it deems appropriate or necessary, including such biological monitoring requirements appropriate to the level of harvest activity on any body of water.
- (b) No member shall fish with any set or bank pole or setline which does not meet the requirements of § 5161(j) [Set or Bank Pole Defined] or § 5161(k) [Setline Defined] of this Chapter.
- (c) No member shall possess any fish harvesting device other than a set or bank pole or setline while setting, lifting or attending a set or bank pole or setline.
- (d) No member shall share any set or bank pole or setline with any person who is not a member of one (1) of the Bands, except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.09.

#### **§ 5171. Designated Landings May Be Required.**

- (a) In issuing spearing or netting permits pursuant to §§ 5166, 5167 or 5168 of this Chapter, the Department of Natural Resources may require permittees to use only designated landings for entering upon and exiting from a body of water.
- (b) When so required, no member shall enter upon or exit from a body of water except at such landings designated by the Department of Natural Resources pursuant to paragraph (a).
- (c) Notwithstanding the provisions of paragraphs (a) and (b), a member may exit from a body of water at a location other than a designated landing when necessitated by weather conditions, considerations of personal safety or other appropriate circumstances.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.10.

**§ 5172. Reporting and Monitoring.**

- (a) No member shall fail to complete catch reports in the manner required by the Department of Natural Resources or comply with any catch monitoring requirements imposed by the Department with respect to any fishing method authorized by this Chapter.
- (b) The Department of Natural Resources shall issue no further permits under this Chapter to any member who has failed to complete and return any creel census questionnaire or other catch report required by paragraph (a).
- (c) In the event that a member fails to report or return a census questionnaire, the Department of Natural Resources shall count the total number of fish allowed by that member's permit against the treaty quota/harvest until such report or census questionnaire is completed and returned in compliance with this section.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.11.

**§ 5173. Open Water Hook & Line Fishing Regulated.**

- (a) Except as provided in § 5170 [Setlines and Set or Bank Poles Regulated] of this Chapter, no member shall:
  - (1) Engage in open water fishing by the use of hook and line with more than six (6) lines with a maximum of two (2) hooks or lures per line; or
  - (2) Engage in open water fishing by the use of any hook and line which is physically unattended for a period of more than one (1) hour.
- (b) Any member engaged in open water fishing by use of any unattended hook and line shall attach to such line a visible identification tag issued by the member's Tribe showing the member's tribal affiliation and tribal identification number.
- (c) Nothing in this Chapter shall be construed to prohibit any member from trolling on any body of water while engaged in open water fishing by the use of hook and line.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.12.

**§ 5174. Ice Fishing Regulated.**

- (a) No member shall ice fish by the use of hook and line through a hole larger than 12 inches in diameter.
- (b) No member shall ice fish by the use of a spear through a hole larger than 24 inches by 36 inches.
- (c) No member shall ice fish with unattended lines.
- (d) No member shall ice fish within an ice fishing house or other enclosure, unless the enclosure is equipped with a latch which will permit the door to be readily opened from the outside at all times while the house is occupied.
- (e) No member shall place, maintain or use a house or other enclosure for ice fishing on any body of water unless the owner's name and address or the owner's driver's license number and a durable license tag supplied by the Department of Natural Resources is clearly displayed on the outside of the house.
- (f) No member shall fail to remove an ice fishing house or other enclosure from any body of water on or before March 1 or as otherwise determined by the Department of Natural Resources except that portable shelters may be used while ice fishing after that date provided the portable shelter is removed daily from the ice.
- (g) No member shall share any ice fishing gear, including any spear, with any person who is not a member of one (1) of the Bands except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.
- (h) Uncovered holes through the ice must be marked in a manner prescribed by the Department of Natural Resources. Signs indicating winter ice dangers shall bear a two-inch wide orange-colored band forming an upright diamond at least 14 inches in outside height and a printed statement of the source of the danger. The signs shall completely line the perimeter of the ice hazard at intervals not exceeding 75 feet and shall be at least 48 inches above the ice.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.13.

#### **§ 5175. Possession Limit.**

- (a)
  - (1) Except as provided in paragraphs (c) and (d), no member shall have in her or his possession any number of fresh fish of any species greater than double the daily bag limit of that species.

- (2) For the purposes of this section, "**fresh**" means unspoiled and never frozen once removed from a body of water.
- (b) Except as provided in paragraphs (c) and (d), no member shall possess more than one (1) daily bag limit of any species of fish while on any body of water or while fishing.
- (c) The possession limits of this section shall not apply to fresh walleye lawfully taken pursuant to permits issued under §§ 5166 [Spearing], 5167 [Netting] or 5168 [Gillnetting] of this Chapter when such walleye have been monitored and counted as the permittee leaves a body of water.
- (d) The possession limits of this section shall not apply to fresh fish tagged for sale pursuant to § 5183 of this Chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.14.

#### **§ 5176. Lake Sturgeon Tagging Required.**

- (a) No member shall fail to register with the Department of Natural Resources any lake sturgeon harvested pursuant to this Chapter prior to 5:00 p.m. of the next working day following the harvest.
- (b) Upon registering a lake sturgeon, the registering official shall firmly affix a registration tag of the locking variety to the carcass.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.15.

#### **§ 5177. Incidental Take by Gillnet.**

- (a) No member shall retain possession of any species of fish for which gillnetting is not permitted or in excess of any applicable daily bag limit, if harvested in a gillnet, and no member shall fail to either:
  - (1) Return to the water any such fish which appears capable of surviving (that is, is able to maintain itself upright), provided that tullibee shall not be returned to the water and, when water temperatures are over 50 degrees, yellow perch shall not be returned to the water; or

- (2) Transfer possession of such fish as soon as practicable to the Department of Natural Resources or to a person authorized to enforce this Chapter.
- (b) Any such fish transferred pursuant to paragraph (a)(2) shall be disposed of by the Band for charitable purposes but shall not be returned to the member or her or his family, as defined in § 4011(r) of this Chapter.
- (c) Any fish take as incidental catch shall be counted toward any applicable treaty quota for that species.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.16.

#### **§ 5178. Live Bait Restrictions.**

- (a) No member shall use as live bait while fishing pursuant to this Chapter: carp, goldfish, redhorse, fresh water drum, burbot, bowfin, garfish, buffalo fish, lamprey, alewife, gizzard shad, smelt, goldeye, mooneye, carpsucker, quillback, ruffe, crayfish or other non-native or exotic species designated by the Commissioner.
- (b) No member shall import minnows into the State of Minnesota or release any minnow or other bait fish on any waters or shores.
- (c) No member shall use as bait while fishing in a water body pursuant to this Chapter game fish taken from another water body.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.17.

#### **§ 5179. Carp Fingerlings.**

No member shall transport carp fingerlings, provided that live carp fingerlings, except grass carp, taken on Minnesota-Wisconsin boundary waters, may be transported for sale or for bait only by boat or other floating conveyance on the boundary waters where taken.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.17A.

**§ 5180. Fishing in Certain Locations Prohibited or Restricted.**

- (a) No member shall fish at any time within 50 yards of a Band, Commission or Minnesota Department of Natural Resources assessment net or its leads.
- (b) No member shall fail to comply with the closures and other restrictions with respect to fish refuges and fish management experimental bodies of water established pursuant to § 4048 [Wild Animal Refuges Established] of this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.18.

**§ 5181. Bait Dealers Regulated.**

- (a) No member shall set, use or operate any net or other device for taking, catching or killing minnows except as provided by this section.
- (b) No member shall take minnows, except under special permit issued by the Commissioner, in the following waters [list lakes/streams in ceded territory from MR 6262.0400].
- (c) Any member may take or possess less than 600 minnows by the use of any net authorized by § 5167 [Dip Nets, Fyke Nets and Seines] of this Chapter without a permit provided that while netting for minnows:
  - (1) No member shall remove or destroy vegetation, logs or habitat features;
  - (2) No member shall handle, transport or hold minnows except in a manner which will reasonably ensure the minnows will be kept alive and healthy; and
  - (3) No member shall fail to promptly return unharmed to the water all minnows not kept and all game fish caught by a net.
- (d) No member shall take or possess more than 600 minnows at any time unless the member possesses a permit issued pursuant to paragraph (e).
- (e) The Department of Natural Resources may issue a permit to a member authorizing the taking or possession at any time of more than 600 minnows on the following terms and conditions:
  - (1) A permit shall include the member's name, address and Band identification number;

- (2) A permit shall specify the waters where the permit is valid and the number of nets or other devices which may be utilized at any time;
- (3) A permit shall describe the nets or other devices authorized;
- (4) A permit shall require that minnow traps be identified in a permanent and legible manner and display the permittee's name and address. The required information must be displayed on a waterproof tag securely attached to the trap or be branded or stamped into a permanent portion of the trap. On leech traps, the required information may also be painted on the trap with oil base paint or indelible ink. Identification on non-submerged traps must be unobscured and located above the water surface;
- (5) A permit shall provide that a minnow trap, string of minnow traps, hoop net, or trap net, including the wings or leads, may not extend across more than one-half the width of any stream, nor be set within 50 feet in any direction of any portion of another person's minnow trap, hoop net or trap net, provided that an individual minnow trap may be placed within not less than 20 feet in any direction of any portion of another such trap, and individual submerged traps may be set up to four (4) traps at one (1) site, side by side, within 12 inches of one another;
- (6) A permit shall provide that minnow traps must be lifted and emptied of minnows and other fish as frequently as necessary to prevent the loss of minnows or other fish, provided that under no circumstances may minnow traps be emptied less frequently than once every 72 hours between April 1 and October 31 and once every seven (7) days between November 1 and March 31. All traps must be removed from the water and shoreline immediately upon ceasing trapping operations;
- (7) A permit may be valid for no more than 12 months from the date of issuance;
- (8) A permit shall require the member to transport, handle and hold minnows in a manner which will reasonably ensure the minnows will be kept alive and healthy;
- (9) A permit shall require all minnows not kept and all game fish caught by the nets or other devices to be promptly returned unharmed to the water;
- (10) A permit shall prohibit the removal or destruction of vegetation, logs and other habitat features; and
- (11) The Department of Natural Resources may impose such other terms and conditions as it deems appropriate or necessary, including biological monitoring requirements appropriate to the level of harvest activity on any body of water.

- (f) No member shall take or attempt to take minnows contrary to the terms and conditions of any permit issued under paragraph (e).
- (g) Nothing in this Chapter shall be construed to prohibit a member from selling to any person minnows lawfully taken pursuant to this section, provided that the member shall comply with § 404 [Records of Commercial Transaction] of this Chapter, and provided further that vehicles used for transporting minnows for sale shall display an identification number issued by the Department of Natural Resources on the driver's door.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.19.

#### **§ 5182. Commercial Harvest of Game Fish.**

- (a)
  - (1) The provisions of this section and § 5183 of this Chapter shall not take effect until such time as the governing body of the Band specifically declares them to be effective by an enabling resolution.
  - (2) No member shall engage in the commercial harvest of any game fish prior to the effective date as declared by the governing body of the Band pursuant to paragraph (a)(1).
- (b) At such time as the provisions of this section are declared effective pursuant to paragraph (a)(1), no member shall engage in the commercial harvest of any game fish, except in accordance with the provisions of § 5183 of this Chapter and in accordance with the terms and conditions of the Band's enabling resolution.
- (c) Nothing in this Chapter shall be construed to prohibit any member from engaging in the commercial harvest of any fish which is not a game fish provided such harvest is consistent with all other provisions of this Chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.20.

#### **§ 5183. Commercial Harvest of Game Fish Regulated.**

- (a) The purpose of this section is to establish the regulations governing the commercial harvest of game fish.
- (b) No member shall engage in the commercial harvest of game fish without a permit authorizing such commercial harvest and tagging all fish to be sold commercially in accordance with paragraphs (c) and (d).
- (c) The Department of Natural Resources may issue permits for the commercial harvest of game fish, which shall incorporate all provisions of this Subchapter 9, including the provisions of §§ 5166 [Spearing Regulations], 5167 [Dip Nets, Fyke nets and Seines Regulated], and 5168 [Gillnets Regulated] of this Chapter, provided that:
  - (1) the Department shall not permit the use of gillnets in any lakes other than Mille Lacs Lake from March 2 to May 31 for commercial harvests; and
  - (2) the Department may authorize the use of gillnets for commercial harvests in Mille Lacs Lake only with the following maximum length, depth and bar sizes:

<b>Dates</b>	<b>Maximum Allowable Length</b>	<b>Maximum Depth</b>	<b>Maximum Bar Size</b>
March 2 to May 31	100 feet	4 feet	1.75 inches
June 1 to March 1	300 feet	6 feet	1.75 inches

- (d) The Department of Natural Resources shall issue sequentially numbered tags after the fish are landed for all game fish to be sold commercially on the following conditions:
  - (1) Each whole game fish sold must be tagged prior to being sold;
  - (2) If filleted prior to sale, all fillets from a game fish must be tagged together or otherwise packaged together with one (1) tag prior to sale. The tags shall be of the locking variety and designed so that when packaged together the tag cannot be used again.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.21.  
 Band Resolution 10-02-17-03, Attach. A, § 2.b.

**§ 5184. Buying and Selling Game Fish.**

- (a) Except for subsistence uses as defined in § 4011(r) of this Chapter, no member shall buy or sell game fish taken from waters in the Minnesota Ceded Territory unless such fish were taken in a commercial harvest permitted under § 5183(c) of this Chapter.
- (b) A member engaged in a business providing services to a member taking fish may not prepare dressed game fish for shipment without a fish packer's license issued by the Department of Natural Resources.
- (c) The fish packer must maintain a permanent record of:
  - (1) the name, address and license number of the shipper;
  - (2) the name and address of the consignee; and
  - (3) the number of each species and net weight of fish in the shipment.
- (d) The license and records of the fish packer must be made available to a person authorized to enforce the provisions of this Chapter upon request.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.21A.

#### **§ 5185. Authorization for Closure.**

The Commissioner, or her or his designee, shall close any body of water to fishing for any species by any harvest method which is subject to a treaty quota when such treaty quota has been taken.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 9.23.

#### **§ 5186. Special Sturgeon Regulations.**

- (a) The regulations set forth in this Section shall supersede the season and size restrictions and the bag limits provided by § 5165(d)(4) of this Chapter.
- (b) On lakes with adequate population estimates for sturgeon which are subject to a quota management system on fish species referenced in § 5165(e) of this Chapter, the Department of Natural Resources may issue permits authorizing harvest of sturgeon by Band members, provided total harvest by all Bands on such lakes is limited to a

quota established after consultation with the State Department of Natural Resources and in accordance with the provisions of the final decree in *Mille Lacs Band v. State of Minnesota*, No. 3-94-1226 (D. Minn.) regarding fisheries management, and a bag limit is incorporated in the permit.

### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 9.26.

## SUBCHAPTER 10

### MIGRATORY BIRD HARVESTING REGULATIONS

**Section**

- 5201. Definitions.**
- 5202. Closed Season.**
- 5203. Seasons and Annual Harvest Regulations.**
- 5204. Daily Bag Limits and Possession Limits.**
- 5205. Methods.**
- 5206. Shooting Hours.**
- 5207. Hunting on Certain Public Lands Prohibited.**
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- 5209. Wanton Waste of Birds.**
- 5210. Decoys.**
- 5211. Structures.**
- 5212. Duck Blinds.**
- 5213. Possession Regulated.**
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- 5216. Permit Required.**
- 5217. Closed Areas.**
- 5218. Authorization for Emergency Closure.**
- 5219. Enforcement by U.S. Fish and Wildlife Service Personnel.**
- 5220. Assistance by Non-Members.**
- 5221. Sale of Migratory Birds Parts Regulated.**

**§ 5201. Definitions**

For the purposes of this Subchapter, the following terms shall be construed as follows:

- (a) **"Bag Limits"** mean:

- (1) **"Aggregate bag limit"** means a condition of taking in which two (2) or more usually similar species may be bagged (reduced to possession) by the member in predetermined or un-predetermined quantities to satisfy a maximum take limit.
  - (2) **"Daily bag limit"** means the maximum number of migratory birds of a single species or combination (aggregate) of species permitted to be taken by one (1) member in any one (1) day during the open season.
  - (3) **"Aggregate daily bag limit"** means the maximum number of migratory birds permitted to be taken by one (1) member in any one (1) day during the open season when such member hunts for more than one (1) species for which a combined daily bag limit is prescribed.
  - (4) **"Possession limit"** means the maximum number of migratory birds of a single species or a combination of species permitted to be possessed by any one (1) member when lawfully taken in the ceded territory.
- (b) **"Migratory Bird"** means any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in 50 CFR Section 10.13, or which is a mutation or a hybrid of any such species, including any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or in part of any part, nest or egg thereof.
- (c) **"Migratory Game Birds"** means coots, gallinules, sora and Virginia rails, American woodcock, common snipe, and migratory waterfowl.
- (d) **"Migratory Bird Preservation Facility"** means:
- (1) Any person who, at her or his residence or place of business and for hire or other consideration; or
  - (2) Any taxidermist, cold-storage facility or locker plant which, for hire or other consideration; or
  - (3) Any hunting club which, in the normal course of operations receives, possesses, or has in custody any migratory game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storage, or shipment.
- (e) **"Personal abode"** means a member's principal or ordinary home or dwelling place, as distinguished from one's temporary or transient place of abode or dwelling such as a hunting club, or any club house, cabin, tent or trailer house used as a hunting club, or any hotel, motel, or rooming house used during a hunting, pleasure or business trip.

- (f) **"Take"** means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture or collect.
- (g) **"Waterfowl"** means any migratory bird of the family Anatidae, including ducks, geese, swans, brant, and mergansers.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.01.

**§ 5202. Closed Season.**

- (a) A closed season is hereby established for the hunting of migratory birds except for the open seasons specified in § 5203 of this Chapter.
- (b) Except as otherwise expressly provided by this Chapter, no member shall take any migratory bird during the closed season for that animal.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.02.

**§ 5203. Seasons and Annual Harvest Regulations.**

- (a) Upon publication in the Federal Register of the U.S. Fish and Wildlife Service Final Rule establishing federal regulations in response to the Band's proposal pursuant to the Service's Interim Guidelines described in the June 4, 1985, Federal Register (50 FR 23467), all such regulations as to season, daily bag and possession limits, and other conditions, shall be and hereby are incorporated into this Chapter, as if fully set forth in their entirety herein, and shall constitute Band regulations governing member migratory bird hunting for the seasons so established.
- (b) No member shall take or possess migratory birds or otherwise engage in any activity contrary to the federal regulations incorporated into this Chapter pursuant to this section on a season-by-season basis.
- (c) Any violation of such annual federal migratory bird regulations incorporated herein shall be deemed a violation of this Chapter, and shall be subject to the jurisdiction of the Band court pursuant to the provisions of this Chapter.

**Historical and Statutory Notes**

**Source:**

**§ 5204. Daily Bag Limits and Possession Limits.**

- (a) No member shall take any migratory bird in any one (1) day in excess of the daily bag limit for that species or in excess of the aggregate daily bag limit, whichever applies, as established by this Subchapter.
- (b) No member shall possess migratory birds taken in excess of the possession limits for that species established by this Subchapter.
- (c) When a daily bag limit or aggregate daily bag limit is established in terms of "points", the daily bag limit or aggregate daily bag limit, whichever applies, is reached when the point value established by this Subchapter of the last migratory bird taken during that day reaches or exceeds the maximum number of points allowed for that day.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.04.

**§ 5205. Methods.**

- (a) Unless expressly modified by a U.S. Fish and Wildlife Service Final Rule incorporated into this Chapter pursuant to § 5203(a) of this Chapter, migratory birds for which open seasons are prescribed may be taken by any method except those prohibited in this section.
- (b) No member shall take migratory birds:
  - (1) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance;
  - (2) With a shotgun of any description capable of holding more than five (5) shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three (3) shells;
  - (3) From or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water;
  - (4) From or by any means, aid, or use of any motor vehicle (not including a motorboat or sailboat), motor-driven land conveyance, or aircraft of any kind,

except that paraplegics and persons missing one (1) or both legs may take from any stationary motor vehicle or stationary motor-driven land conveyance;

- (5) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and/or the sails furled, and its progress therefrom has ceased: Provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power;
- (6) By the use or aid of live birds as decoys (among other things, it shall be a violation of this section for any member to take migratory waterfowl in an area where tame or captive live ducks or geese are present unless such birds are and have been for a period of ten (10) consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl);
- (7) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds;
- (8) By the aid of baiting, or on or over any baited area. As used in this subsection, "baiting" shall mean the placing, exposing, depositing, distributing, or scattering of shelled, shucked or unshucked corn, wheat, other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on, or over any areas where hunters are attempting to take them; and "baited area" means any area where shelled, shucked or unshucked corn, wheat or other grain, salt, or other feed whatsoever capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for ten (10) days following complete removal of all such corn, wheat or other grain, salt, or other feed. However, nothing in this section shall prohibit:
  - (i) the taking of all migratory birds, including waterfowl, on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shucked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; and
  - (ii) the taking of all migratory birds, except waterfowl, on or over any lands where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed has been distributed or scattered as the result of bona fide agricultural operations or procedures, or as a result of manipulation of a crop or other feed on the land where grown for wildlife management purposes: Provided, that manipulation for wildlife management purposes does not include the distributing or

scattering of grain or other feed once it has been removed from or stored on the field where grown.

- (9) While possessing shotshells loaded with shot other than steel shot or such shot approved as non-toxic by the Director of the U.S. Fish and Wildlife Service, provided that this restriction applies only to the taking of ducks, geese (including brant), swans and coots and any species that make up aggregate bag limits during concurrent seasons with the former;
- (10) With shot larger than size T; or
- (11) By the use or aid of any motor driven land, water, or air conveyance, or any sailboat, used for the purpose of or resulting in the concentrating, stirring up, driving, or rallying any migratory bird.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.05.

#### **§ 5206. Shooting Hours.**

No member shall take migratory birds except during the lawful hunting hours established by the U.S. Fish and Wildlife Service Final Rule incorporated into this Chapter pursuant to § 5203(a) of this Chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.06.

#### **§ 5207. Hunting on Certain Public Lands Prohibited.**

No member shall hunt migratory birds on any of the following lands except as noted.

- (a) Designated public campgrounds, public beaches, public picnic areas, and public water access sites.
- (b) Public lands within incorporated areas except those lands which are designated for migratory bird hunting.
- (c) All parks identified by Commissioner's order under § 4048 of this Chapter except:
  - (1) on lands held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band or its members; or

- (2) parks or portions thereof in which hunting is allowed under State law, pursuant to a permit issued by the Department of Natural Resources in accordance with the agreement between the Bands and the State regarding special hunts in parks.
  
- (d) All wildlife refuges, scientific and natural areas, and other closed or restricted areas established pursuant to § 4048 of this Chapter, except as migratory bird hunting is allowed by the Commissioner in those areas.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.06A.

**§ 5208. Hunting on Certain Private Lands Prohibited**

As provided in § 4041(a) of this Chapter, no member shall hunt migratory birds on any privately owned land except those lands which are open to the general public for hunting by operation of state law.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.06B.

**§ 5209. Wanton Waste of Migratory Birds.**

No member shall kill or cripple any migratory bird pursuant to this Chapter without making a reasonable effort to retrieve the bird, and retain it in her or his actual custody, at the place where taken or between that place and any of the following places:

- (a) The member's automobile or principle means of land transportation;
- (b) The member's personal abode or temporary or transient place of lodging;
- (c) A migratory bird preservation facility as defined by § 5201(b) of this Chapter;
- (d) A post office; or
- (e) A common carrier facility.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.07.

**§ 5210. Decoys.**

No member shall take any migratory bird with decoys which are:

- (a) Placed beyond 200 feet from the location in which the member is located;
- (b) Placed in the water prior to one (1) hour before opening of shooting hours; or
- (c) Left in the water more than 20 minutes after the close of shooting hours.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.08.

**§ 5211. Structures.**

No member shall hunt migratory birds from any publicly owned pier, dam, dock, breakwater, or similar man-made structure where the prohibition of such hunting is clearly posted.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.09.

**§ 5212. Duck Blinds.**

No member shall establish a duck blind on public waters or public land prior to one (1) hour before the migratory bird season or leave it established beyond seven (7) days after the close of the season. No member shall leave any waterfowl hunting blind in open public waters after dark.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.10.

**§ 5213. Possession Regulated.**

- (a) **Prohibited if taken in violation of sections 5205 - 5212 of this Chapter.** No member shall at any time, by any means, or in any manner, possess or have in

custody any migratory bird or part thereof, taken in violation of any portion of §§ 5205 - 5212 of this Chapter.

- (b) **During closed season.** No member shall possess any freshly killed migratory bird taken in the Minnesota Ceded Territory and during the closed season.
- (c) **Possession limit.** No member shall possess more migratory birds taken in the Minnesota Ceded Territory than the possession limit or the aggregate possession limit, whichever applies. This section applies only to transportation. Possession limits for the purposes of this subsection do not include birds which are cleaned, dressed, and at the member's primary residence.
- (d) **Opening day of a season.** No member on the opening day of the season shall possess any migratory bird freshly killed off of the reservation in excess of the daily bag limit, or aggregate daily bag limit, whichever applies.
- (e) **Field possession limit.** No member shall possess, have in custody, or transport more than the daily bag limit, or aggregate daily bag limit, whichever applies, of migratory birds, tagged or not tagged, at or between the place where taken and any of the following places:
  - (1) The member's automobile or principle means of land transportation;
  - (2) The member's personal abode or temporary or transient place of lodging;
  - (3) A migratory bird preservation facility as defined in § 10.01(3) of this Chapter;
  - (4) A post office; or
  - (5) A common carrier facility.
- (f) **Tagging requirements.** No member shall put or leave any migratory bird at any place (other than her or his personal abode), or in the custody of another person for picking, cleaning, processing, shipping, transportation, or storage (including temporary storage), or for the purpose of having taxidermy services performed, unless such bird has a tag attached, signed by the member, stating her or his address, the total number and species of birds, and the date such birds were killed. Migratory birds being transported in any vehicle as the personal baggage of the processor shall not be considered as being in storage or temporary storage.
- (g) **Custody of birds of another.** No member shall receive or have in custody any migratory bird belonging to another person unless such bird has been tagged as required by paragraph (f).
- (h) **Possession of live birds.** Every migratory bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become part of the daily bag

limit. No member shall at any time, or by any means, possess or transport live migratory game birds taken pursuant to this Chapter.

- (i) **Termination of possession.** Subject to all other requirements of this Subchapter, the possession of any migratory bird taken by any member shall be deemed to have ceased when such bird has been delivered by her or him to another person as a gift; or have been delivered by her or him to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or a common carrier to some person other than the member.
- (j) **Gift of migratory bird.** No member shall receive, possess, or give to another, any freshly killed migratory birds as a gift, except at the personal abode of the donor or donee, unless such birds have a tag attached, signed by the member who took the birds, stating such member's address, the total number and species of birds and the date such birds were taken.

#### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 10.11.

#### § 5214. Transportation Regulated.

- (a) **Prohibited if taken in violation of sections 5205 - 5212 of this Chapter.** No member shall at any time, by any means, or in any manner, transport any migratory bird of part thereof, taken in violation of any provision of §§ 5205 - 5212 of this Chapter.
- (b) **Transportation of birds of another.** No member shall transport any migratory bird belonging to another person unless such bird is tagged as required by § 5213(f) of this Chapter.
- (c) **Species identification requirement.** No member shall transport any migratory bird unless the head and one (1) fully feathered wing remains attached to each bird at all times while being transported from the place where taken until they have arrived at the personal abode of the possessor or at a migratory bird preservation facility as defined in § 5201(d) of this Chapter.
- (d) **Marking package or container.** No member shall transport by the Postal Service or a common carrier migratory birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds therein contained clearly and conspicuously marked on the outside thereof.

#### Historical and Statutory Notes

**Source:**

Band Ordinance 07-97, § 10.12.

**§ 5215. Exportation Regulated.**

- (a) **Prohibited if taken in violation of sections 5205 - 5212 of this Chapter.** No member shall at any time, by any means, or in any manner, export or cause to be exported from the United States, any migratory bird or part thereof, taken in violation of any provision of §§ 5205 - 5212 of this Chapter.
- (b) **Species identification requirement.** No member shall export from the United States migratory birds unless the head and one (1) fully feathered wing remains attached to each such bird while being transported from the United States and/or any of its possessions to any foreign country.
- (c) **Marking package or container.** No member shall export migratory birds via the Postal Service or common carrier unless the package or container has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds therein contained clearly and conspicuously marked on the outside thereof.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.13.

**§ 5216. Permit Required.**

No member shall hunt migratory birds pursuant to this Chapter without possessing a valid migratory bird hunting permit issued by the Band.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.14.

**§ 5217. Closed Areas.**

No member shall fail to comply with the closures and other restrictions with respect to wildlife refuges and closed areas as established pursuant to § 4048 of this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.15.

**§ 5218. Authorization for Emergency Closure.**

The Commissioner or her or his designee shall close or temporarily suspend any season in any particular locale to migratory bird hunting by Band members upon a determination that a continuation of the season would impact significantly the migratory bird resource. In the case of a temporary suspension, notice shall be provided to members of the date and time when the season may be resumed.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.16.

**§ 5219. Enforcement by U.S. Fish and Wildlife Service Personnel.**

Any Memorandum of Agreement or other such document by which the Band and the U.S. Fish and Wildlife Service establish the conditions upon which the Service's personnel may enforce the provisions of this Chapter is hereby incorporated into this Chapter as if set forth in its entirety herein.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.17.

**§ 5220. Assistance by Non-Members.**

No person who is not a member shall assist a member in the hunting of migratory birds pursuant to this Chapter except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.18.

**§ 5221. Sale of Migratory Birds Parts Regulated.**

- (a) No member shall sell the meat of any migratory bird taken in the Minnesota Ceded Territory.

- (b) A member may use the feathers of migratory birds lawfully harvested under this Chapter for subsistence uses, including the making and selling of handicraft articles as defined in § 4011(r) of this Chapter subject to the following [permit requirements to trace all feathers to be developed].
- (c) Nothing in this Chapter shall be construed to prohibit a member from selling the feathers of migratory waterfowl (ducks, geese, brant and swans) lawfully harvested pursuant to this Chapter for the making of fishing flies, bed pillows, and mattresses, and for similar commercial uses except that:
  - (1) No member shall purchase or sell, or offer to purchase or sell, for millinery or ornamental use the feathers of migratory birds taken in the Minnesota Ceded Territory (except as provided in paragraph (b)); and
  - (2) No member shall purchase or sell, or offer to purchase or sell, mounted specimens of migratory birds taken in the Minnesota Ceded Territory.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 10.19.

**SUBCHAPTER 11**

**AMPHIBIANS, TURTLES, MUSSELS AND CRAYFISH**

**Section**

**5241. Purpose.**

**5242. Amphibians.**

**5243. Turtles.**

**5244. Mussels.**

**5245. Crayfish.**

**§ 5241. Purpose.**

The purpose of this Subchapter is to regulate the harvest of amphibians, turtles, mussels and crayfish.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 11.01.

**§ 5242. Amphibians.**

- (a) **Season and Hours.** Frogs may be taken only between May 16 and March 31, inclusive, and between sunrise and sunset, except as otherwise permitted by the Commissioner.
- (b) **Species and Size Limits.** Only leopard frogs (*Rana pipiens*) and bull frogs (*Rana catesbiana*) more than six (6) inches long may be taken or possessed for purposes other than bait. The length of the frog is measured from the tip of the nose to the tip of the hind toes, with the legs fully extended.
- (c) **Methods.**
  - (1) No member shall use cloth screens or similar devices to take frogs.
  - (2) No member shall use artificial lights to take frogs unless in possession of a permit issued by the Department of Natural Resources authorizing the use of artificial lights to take frogs in designated waters.
- (d) **Taking, Importing, Transporting, Possessing, Buying or Selling Frogs for Purposes Other Than Bait.**
  - (1) No member shall take, transport, possess, buy or sell frogs for purposes other than bait without a permit issued by the Department of Natural Resources. Such a permit shall be valid for no more than one (1) year without renewal.
  - (2) No member shall import live frogs into the State of Minnesota for purposes other than bait without a permit issued by the Commissioner.
  - (3) All permittees who take or possess frogs for purposes other than bait must keep a record book that includes the number or weight of each species of frog acquired by taking or purchase and sold, the name and address of each purchaser and seller, and the date of each transaction. These records must be kept current within 48 hours of a transaction.
  - (4) All permittees who have taken frogs for purposes other than bait must report activities of the previous permit year, on forms provided by the Department of Natural Resources, before a permit is renewed.

**Historical and Statutory Notes**

**Source:**  
Band Ordinance 07-97, § 11.02.

**§ 5243. Turtles.**

- (a) **Snapping Turtle Limits.** No member shall possess more than three (3) snapping turtles of the species *Chelydra serpentina* without a turtle seller's permit issued under paragraph (c). No member shall take snapping turtles of a size less than ten (10) inches wide including curvature, measured from side to side across the shell at midpoint.
- (b) **Methods.**
- (1) Except as allowed in paragraph (2), no member shall take turtles by use of explosives, drugs, poisons, lime, other harmful substances, firearms, turtle hooks or traps, or nets other than nets authorized for use in harvesting fish in noncommercial fisheries.
  - (2) A member possessing a turtle seller's permit issued under paragraph (c) may take turtles by means of turtle traps or hooks and other authorized commercial fishing gear.
    - (i) Flexible webbing turtle traps must be of mesh size not less than 3-1/2 inches bar measure or seven (7) inches stretch measure.
    - (ii) Wire turtle traps must be of mesh size not less than 3-1/2 inches bar measure and must have at least four (4) inches on a side and one (1) of the same dimension near the bottom in each of the side panels.
    - (iii) A turtle trap must be set in water shallow enough to place the top no deeper than 1-inch below the water surface. Each trap must be checked and serviced at intervals not exceeding 48 hours.
    - (iv) When in use, each turtle trap must have affixed on it a tag of permanent material visible from above, legibly bearing the name, address, and permit number of the operator. This information must be recorded in an indelible manner on the tag. The tag must be of dimensions not less than 2-1/2 inches in length by five-eighths inch in width.
  - (3) No member shall use artificial lights to take turtles unless in possession of a permit issued by the Department of Natural Resources authorizing the use of artificial lights to take turtles in designated waters.
- (c) **Sales.** Except for subsistence uses, no member shall take, possess, transport or purchase turtles for sale without a turtle seller's permit issued by the Department of Natural Resources. A turtle seller's license is not required to buy turtles for retail sale to consumers:
- (1) at a location licensed by the state department of agriculture or health for sale or preparation of food;

- (2) of a member licensed by the state department of agriculture or health for sale or preparation of food; or
  - (3) of a member buying turtles at a retail outlet.
- (d) **Records and Reports.**
- (1) Reports must be submitted, on forms provided by the Department of Natural Resources, by a holder of a turtle seller's permit at the time of permit renewal or March 1, whichever comes first. The forms must record the numbers and pounds of turtles taken, species of turtles taken, and other information as specified.
  - (2) A permittee who buys turtles for resale or for processing and resale must keep a correct and complete book record of all transactions and activities covered in the license.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 11.03.

#### **§ 5244. Mussels.**

- (a) **Season and Hours.** Mussels may be taken only between May 16 and the last day of February, inclusive, and between sunrise and sunset. The Commissioner may restrict the open season for taking mussels for commercial purposes.
- (b) **Prohibited Species.** No member shall harvest or intentionally disturb the Higgins' eye (*Lampsilis higginsii*), elephant ear (*Elliptio crassidens*), ebony shell (*Fusconaia ebena*), winged mapleleaf (*Quadrula fragosa*), fat pocketbook (*Proptera capax*) mussels, or any mussel that is an endangered or threatened species. If these species are located within the harvest site, all harvest operations must immediately stop and the harvester must notify the Department of Natural Resources within 24 hours.
- (c) **Methods and Limits.** Mussels may be taken by hand-picking only with or without aid of breathing apparatus. No member shall take and possess more than 24 live whole or 48 shell halves of freshwater mussels at any time, and no member shall sell mussels except for subsistence uses, unless the member is in possession of a commercial mussel harvesting permit issued under section paragraph (d).
- (d) **Commercial Harvest Permits.**
  - (1) The Commissioner may issue permits to harvest mussels commercially, in areas determined after consultation with the State Department of Natural

Resources and in accordance with provisions in the final decree in *Mille Lacs v. State of Minnesota*, No. 3-94-1226 (D. Minn.), regarding mussel management. Such a permit shall be issued only upon submission of a complete written application containing such information as the Commissioner deems appropriate and shall be valid for no more than one (1) year without renewal. The Commissioner may terminate a permit to harvest mussels pursuant to § 4052 of this Chapter to protect aquatic resources.

- (2) Only three-ridge (*Amblema plicata*) mussels may be harvested under a commercial harvest permit. Additional species may be requested for harvest from specific sites by special permit. Three-ridge mussels may lawfully be harvested, as live whole mussels or shell halves, provided that they cannot pass through a 2-3/4 inch diameter hole. A member must return undersized three-ridge mussels or unlawful mussel shells, live or dead, to the water immediately.
  - (3) Harvest sites must be identified in the application and permit by legal description or other defining terms sufficient to accurately locate the area. The taking of mussels by a permittee or crew member from a place outside the permitted harvest site is prohibited.
  - (4) The permittee must inform the Commissioner 24 hours in advance of any intended mussel harvest operations. Changes in location or dates will require an additional notification.
  - (5) A mussel harvesting crew is limited to four (4) persons, including the permittee. Helpers' names must be listed on the permit and must be eligible to exercise hunting, fishing and gathering rights under the 1837 treaty. The permittee must be in attendance at all mussel harvest operations.
  - (6) No member shall harvest mussels within 1,000 feet downstream of a dam.
- (e) **Records, Reports and Inspections.**
- (1) Notwithstanding the requirements of § 4047 of this Chapter a permittee must keep records of each mussel sales transaction. The records must be verifiable with supporting sales slips and include:
    - (i) pounds of mussels sold;
    - (ii) name and address of the buyer; and
    - (iii) date of transaction.
  - (2) Records must be kept current within 48 hours of each transaction. Failure to keep complete and current records may result in immediate revocation of the

permit and may render the permittee ineligible for permits for one (1) year. All records must be maintained and available for inspection, at the permittee's address, for three (3) years.

- (3) Notwithstanding the requirements of § 4047 of this Chapter a permittee must submit reports monthly while the permit is valid on forms provided by the Commissioner. Reports must be submitted by the 15th of each month even if no harvest activity took place. All information requested on the report must be provided. Failure to submit information requested on the report may result in revocation of the existing permit and may render the permittee ineligible for permits for one (1) year.
  - (4) Records required in this section, business and operation premises, and boats, vehicles, and gear used in the mussel harvesting operations may be inspected at all reasonable times by wardens of the Bands or the Commission.
- (f) **Special Restrictions.**
- (1) Meats resulting from the processing of live whole mussels may not be returned to the water or deposited on a shoreline or adjacent land. The meat of mussels lawfully obtained may be used as bait.
  - (2) Live mussels may not be transferred within or between bodies of water, except under permit issued by the Commissioner.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 11.04.

#### **§ 5245. Crayfish.**

- (a) **Seasons and Size Limits.** Crayfish may be taken only from April 1 through November 30, inclusive. Crayfish less than 1-inch in length from tip of rostrum to tip of tail must be returned unharmed to the water.
- (b) **Methods.**
  - (1) Crayfish may be harvested with gear allowed for rough fish and minnows in addition to gear specified in this part. Crayfish traps or harvesting devices must be identified in a permanent and legible manner with a plastic or metal tag not smaller than 1-inch by 3-inches bearing the user's name and address.
  - (2) The mesh size for crayfish traps may not be less than one-half inch, stretch measure.

- (3) Floats used to mark traps may not be larger than four (4) inches square or four (4) inches in diameter.
- (4) Rough fish parts may be used within a crayfish trap as bait.
- (c) **Sale of Crayfish.** All crayfish species may be harvested and crayfish may be cultured for sale for food and processed bait. Crayfish may not be sold for live bait or aquarium use.
- (d) **Tending Crayfish Traps.** Crayfish traps may be lifted from one (1) hour before sunrise until one (1) hour after sunset. Crayfish traps must be lifted at least once in each 24-hour period weather permitting. All trapped fish not lawfully harvested under this Chapter must be returned to the water.
- (e) **Disposal of Crayfish.** Dead crayfish or the shells or meats of crayfish may not be returned to the water or deposited on any shoreline or adjacent area.
- (f) **Transportation and Stocking of Crayfish.** The transportation of any crayfish from one (1) body of water to another within the state is prohibited, except by written permission from the Commissioner.
- (g) **Importation of Crayfish Prohibited.** The placement in waters of the state of any crayfish imported from outside the state is prohibited, except under permit by the Commissioner.
- (h) **Bag and Possession Limit.**
  - (1) No member shall take or possess more than 25 pounds of live, whole freshwater crayfish at any time, unless the member is in possession of a commercial crayfish harvesting permit issued under paragraph (i).
  - (2) No member shall sell crayfish except for subsistence uses unless the member is in possession of a commercial crayfish harvesting permit issued under paragraph (i).
- (i) **Commercial Harvest Permits.**
  - (1) The Commissioner may issue permits to harvest crayfish commercially. Such a permit shall be issued only upon submission of a complete written application containing such information as the Commissioner deems appropriate, and shall be valid for one (1) season or such shorter period of time as the Commissioner deems appropriate.
  - (2) Only members listed on the permit may assist the permit holder in any phase of the crayfish harvesting operations.

- (3) The Commissioner may revoke any permit upon determination that revocation is necessary for protection of natural resources.
- (4) Any variance from permit conditions requires a written amendment which must be attached to and become part of the permit.
- (5) The importation of live crayfish or crayfish eggs into the state is prohibited except by written permit from the Commissioner. Permits to import live crayfish for processing may only be issued provided no live crayfish are allowed to exit the processing facility.
- (6) Permit holders must keep records of all crayfish sales transactions. Records must be verifiable with supporting sales slips and include the number or weight of all species of crayfish acquired by taking or purchase and sold, name and address of buyer, and date of each transaction. Records must be kept current within 48 hours. Failure to keep complete and current records may result in immediate revocation of the permit and may render the permit holder ineligible for future permits.
- (7) Crayfish lawfully harvested may be bought, sold, and transported for food purposes and as processed bait only, except as otherwise provided in this § 5245. Crayfish must be kept separated from live fish when being transported within the state.
- (8) Crayfish lawfully possessed may be exported for any purpose.
- (9) The permit holder must inform the Commissioner at least 24 hours in advance of the start of harvest operations for each water body. Harvest sites will be identified by name and legal description or other defining terms sufficient to accurately locate the site.
- (10) The permit holder must be in personal attendance at harvest operations and is responsible for all harvest activities. All members of the crew must be listed on the permit.
- (11) The Commissioner may issue a permit to rear or hold crayfish of the species *Orconectes virilis* and *Orconectes immunis* for any waters, including waters that are not isolated from other waters.

#### **Historical and Statutory Notes**

**Source:**  
Band Ordinance 07-97, § 11.06.

## **SUBCHAPTER 12**

## WILD PLANT HARVESTING REGULATIONS

### Section

- 5261. Purpose.
- 5262. Definitions.
- 5263. Gathering on Certain Public Lands Prohibited.
- 5264. Gathering on Certain Private Lands Prohibited.
- 5265. Wild Plant Harvesting Permits.
- 5266. Restrictions on Wild Plant Gathering – Public Safety.
- 5267. Sale of Wild Plants Authorized.
- 5268. Assistance by Non-Band Member.

### § 5261. Purpose.

The purpose of this Subchapter is to regulate the harvest of wild plants, or any parts thereof, which are not regulated pursuant to Subchapter 5 [Wild Rice Harvesting Regulations] of this Chapter

### Historical and Statutory Notes

#### Source:

Band Ordinance 07-97, § 12.01.

### § 5262. Definitions.

For the purposes of this Subchapter, the following terms shall be construed to apply as follows:

- (a) **"Fuel wood"** shall mean trees, whether standing or down, that will be used for personal use to produce heat.
- (b) **"Gathering"** means cutting, rooting up, severing, injuring, destroying, removing, or carrying away any wild plant or part thereof.
- (c) **"Ginseng"** means the roots, seeds or other parts of wild American ginseng (Panax quinquefolium or Panax quinquefolius).
- (d) **"Public Landowner"** means any owner or other entity responsible for the management of any public land.
- (e) **"Public lands"** means those lands, including the beds of any streams and flowages, located within the ceded territory owned by the State of Minnesota or any of its political subdivisions or Departments.

- (f) **"Wild plant"** means any undomesticated species, and fruit or part thereof, of the plant kingdom occurring in the natural ecosystem, and includes without limitation endangered or threatened plant species, as defined in § 4011(g) of this Chapter, trees and tree products (such as timber, firewood, fuelwood bark, sap and boughs), and ginseng, but excludes for the purposes of this Chapter wild rice.
- (g) **"Timber"** shall mean trees that will produce products of value, whether standing or down, and includes logs, posts, poles, bolts, pulpwood, cordwood and lumber, but shall not include fuelwood, bark, sap or boughs.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 12.02.

**§ 5263. Gathering on Certain Public Lands Prohibited.**

No member shall engage in a particular wild plant gathering activity in a particular area on public lands where the public landowner has notified the Commissioner that:

- (a) the particular activity is contrary to the area's general plant management plan or system; or
- (b) the particular area is closed to gathering under the area's general plant management plan or system.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 12.02A.

**§ 5264. Gathering on Certain Private Lands Prohibited.**

No member shall gather any wild plant on private lands except those lands which are open to the general public for gathering by operation of state law.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 12.02B.

**§ 5265. Wild Plant Harvesting Permits.**

- (a) **Generally.**

- (1) Except as provided in paragraph (d) [Subsistence Uses], a permit issued by the Department of Natural Resources shall be required for the gathering of any wild plant, or any part, fruit, seed or berry thereof.
- (2) The Department of Natural Resources is authorized to issue permits which authorize the gathering of wild plants to a member or group of members in accordance with the provisions of this paragraph (a).
- (3) A gathering permit issued pursuant to this subsection shall:
  - (i) identify the permittee or permittees, including the name, address and Band identification number of all members authorized to gather wild plants by the permit;
  - (ii) identify the amount and general location of the plants, or parts thereof, to be gathered; and
  - (iii) require that all members authorized by the permit must possess an official copy of the permit while engaged in the gathering activity.
- (4) A gathering permit issued pursuant to this subsection may:
  - (i) establish limits on the quantity of the plants which may be gathered;
  - (ii) define the specific area or areas where the gathering may occur;
  - (iii) define or limit the methods which may be employed to gather the plants; and
  - (iv) establish such other conditions or requirements deemed necessary or appropriate by the Department of Natural Resources.
- (5) The Department of Natural Resources shall consult the public landowner of the area where the gathering will take place prior to the issuance of a permit under this section.
- (6) No member shall be authorized to engage in the business of harvesting nuisance plants under the authority of this Code.

(b) **Ginseng Gathering Permits.**

- (1) No ginseng gathering permit shall be issued and no member shall gather ginseng from January 1 through August 31.
- (2) A member may not sell, purchase, or possess any green roots of wild ginseng, except during the open season.

- (3) A member may not harvest, dig, or disturb any wild ginseng plant unless the plant has at least three (3) prongs (leaves) with five (5) leaflets each.
  - (4) Immediately after digging or removing any wild ginseng plant, the digger must remove all of the seeds from the plant's berries and plant them in the area where the plant was dug. Seeds must be planted by removing surface litter, planting each seed at a depth of one-half inch in the underlying soil, and replacing the surface litter over the planting site.
- (c) **Gathering Permits for Trees and Tree Products.**
- (1) No permit shall be issued for and no member shall engage in the commercial harvest of any species of timber except as permitted by state law.
  - (2) Except as provided in paragraph (c)(1), and subject to the provisions of paragraph (c)(3), the Department of Natural Resources may issue a permit to a member or group of members for the gathering of trees or tree products. Any such permit shall be issued in accordance with paragraphs (a)(3) and (4).
  - (3) Except for a permit to gather bark, the Department of Natural Resources shall not issue a permit for the gathering of trees or tree products until the Department receives the written consent of the public landowner of the lands covered by the permit.
- (d) **Subsistence Uses.** Except as required by paragraphs (b) and (c), no permit shall be required for a member to gather wild plants for subsistence uses.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 12.03.

**§ 5266. Restrictions on Wild Plant Gathering – Public Safety.**

No member engaged in the gathering of wild plants pursuant to this Subchapter shall impair or obstruct developed recreational trails or special use areas and any wild plant subject to the gathering which may impede or impair the use of those trails or areas shall be removed immediately.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 12.04.

**§ 5267. Sale of Wild Plants Authorized.**

- (a) Except as provided in § 5265(c)(1) of this Chapter, nothing contained in this Chapter shall be construed to prohibit members from selling any wild plant, or any part thereof, lawfully harvested pursuant to this Subchapter.
- (b) Except with the respect to the sale of ginseng, the provisions of § 4047 [Records of Commercial Transactions Required] of this Chapter shall not apply to the sale of any wild plant, or part thereof, lawfully harvested pursuant to this Subchapter.
- (c) In addition to such other information that is required by § 4040 of this Chapter, no member shall fail to specify the county of ginseng harvest on the record of a commercial transaction.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 12.05.

**§ 5268. Assistance by Non-Band Member.**

No person who is not a member shall assist a member in the gathering of any wild plant, or part thereof, pursuant to this Subchapter except as provided in § 4051 [Permissible Conduct/Assistance by Non-Members] of this Chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 07-97, § 12.06.