



THE MILLE LACS BAND OF
OJIBWE INDIANS

Legislative Branch of Tribal Government

Legislative Order 018

WHEREAS, pursuant to 3 Mille Lacs Band Statutes Annotated section 11, the Band Assembly shall establish the rules of its proceedings; and

WHEREAS, pursuant to 3 Mille Lacs Band Statutes Annotated section 27(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; and

WHEREAS, pursuant to 3 Mille Lacs Band Statutes Annotated section 22, 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.

THEREFORE, the Band Assembly establishes the rules for conduct of Hearings of Inquiry by this order.

Rule No. 1.

Repeal of rules. Legislative Order 002 and any other rules adopted for the purpose of Hearings of Inquiry are hereby repealed in their entirety and replaced by Legislative Order 018.

Rule No. 2

Voting of the Speaker of the Assembly. If in the event the matter of inquiry concerns the conduct of a District Representative, the Speaker of the Assembly shall be considered as a voting member. The Speaker shall continue to preside over all proceeding.

Rule No. 3

Participation by members, conflict, disclosure. No member of the Band Assembly shall cast any Formal vote or participate in any way in an inquiry proceedings in which the testimony or evidence to be presented may involve their individual conduct while serving as an elected official to the Band Assembly. Neither shall a member of the Band Assembly participate in any proceeding involving their relative in the first degree. Step and adopted relations apply. Members of the Band Assembly may disqualify themselves from participating in any inquiry upon submission of an affidavit of disqualification under oath that they cannot render an impartial and unbiased decision in the case at hand. The Band Assembly by simple majority may accept or reject the affidavit. This decision is final. Members of the Band Assembly shall disclose any interest they may have that may tend to improperly influence any inquiry proceeding to the other Members of the Band Assembly for final disposition.

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Rule No. 4

Initiation by Writ. To initiate a Hearing of Inquiry, the Band Assembly must pass a Writ of Inquiry by majority vote. A roll call vote of the Band Assembly shall be required

Rule No. 5

Writ of Inquiry, form. The Speaker of the Assembly shall within five (5) consecutive days of the Assembly vote, issue a formal Writ of Inquiry which states the purpose of the Inquiry, the date, hour and location, the inquiry will begin, the names of the District Representatives supporting the inquiry, any special orders to the Solicitor General and any other information deemed necessary by the Speaker.

Rule No. 6

Public posting, timing. The Clerk of the Band Assembly shall be responsible for posting the Writ of Inquiry in public locations, but only on those locations under the jurisdiction of the Mille Lacs Band of Ojibwe. The Clerk of the Band Assembly shall make public announcement of the Writ of Inquiry at least five (5) days before the commencement of the hearing.

Rule No. 7

Records of Hearings of Inquiry. All Hearings of Inquiry records, data, charts, transcribed testimony, and files shall be kept in a secure location, which is separate and distinct from other Band Assembly records. All such records shall be the property of the Band Assembly and only members of the Band Assembly shall have access thereto, unless topic of inquiry is any matter related to the conduct of a District Representative in which case, the prior written consent of the remaining members of the Band Assembly is required.

Rule No. 8

Votes cast by reasonable means. Votes may be cast by any method of telecommunication deemed reasonable by the Band Assembly.

Rule No. 9

Open and closed sessions. Each Hearing of Inquiry shall be open to the public except when the Band Assembly by a two-thirds majority roll-call vote, in open session, determines that all or part of the remainder of the hearing on that day shall be closed to the public because disclosure of testimony of evidence or other matters to be considered would endanger the security of the Band, would violate any Rule of the Band Assembly, for the sole purpose of discussing whether testimony of evidence to be received would endanger the security of the Band, and to refrain from the disclosure or distribution of any privileged or confidential information or documents that may come into the possession of the Band Assembly as a result of the Inquiry.

Rule No. 10

Taking evidence, quorum. A quorum shall be present for the taking of testimony and receiving evidence. The Speaker of the Assembly shall be included to constitute a quorum.

Rule No. 11

Questioning witnesses by Band Assembly. All Members of the Band Assembly inquiry shall have the privilege to question any witness who may appear before the Inquiry.

Rule No. 12

Appointment of hearing officer. The Band Assembly by majority vote shall appoint a hearing officer to conduct an inquiry and submit to the Band Assembly findings of fact and conclusions of law based on such inquiry.

Rule No. 13

Hearing officer, powers, duties.

a. Powers of the hearing officer, investigation. Pursuant to 3 Mille Lacs Band Statutes Annotated section 22 and 4 Mille Lacs Band Statutes Annotated section 13, the hearing officer shall be the principal investigator and is authorized to do all things necessary and proper to the performance of investigating the allegations to promote justice, fairness, and economy, including, but not limited to the power to:

- (1) conduct a diligent investigation consistent with Mille Lacs Band Statutes and this order;
- (2) administer oaths when deemed appropriate;
- (3) consulting with and employing persons who have expertise in the subject matter of the investigation;
- (4) impound records or documents and gather written and oral evidence by subpoena issued by the Hearing Officer or the Speaker of the Assembly;
- (5) recall witnesses as necessary;
- (5) rule on the admissibility of evidence, strike from the record objectionable, irrelevant, immaterial, or repetitive evidence, statements, writings or other submissions as the officer may deem proper to understanding the evidence and developing findings of fact and conclusions of law; and
- (6) develop and report to the Band Assembly findings of fact and conclusions of law.

b. Powers of the hearing officer, additional personnel. For the purposes of carrying out the duties of the office, such hearing officer may appoint, fix the compensation, and assign the duties of employees (attorneys, accountants, or other consultants) and an interpreter as such hearing officer considers necessary, subject to approval by majority vote of the Band Assembly.

c. Assistance of the Solicitor General. In carrying out functions of the office, a hearing officer may request assistance from the Solicitor General which may include access to any records, files, or other materials relevant to matters within such officer's investigatory jurisdiction under statute and this order, and personnel necessary to perform such officer's duties.

d. Powers of the hearing officer, subject matter. If the hearing officer in the course of the investigation reasonably believes that other than those stated on the Writ of Inquiry should be investigated, then the hearing officer shall report to the Band Assembly of the facts which constitute such reasonable belief. The Band Assembly may by majority vote approve or disapprove such request.

e. Powers of the hearing officer, time. If the Writ of Inquiry states a number of days or time certain for ending the inquiry and if the hearing officer requires more time than the Writ allows to investigate such additional matters, then such officer shall request additional time by petitioning the Band Assembly which may approve by majority vote.

Rule No. 14

Conduct of Inquiries. General. The hearing officer shall do all things she or he reasonably believes is necessary and proper to the performance of investigating the allegations to promote justice, fairness, and economy.

a. Interviewing witnesses. Witnesses may be interviewed in any way conforming with Mille Lacs Statutes and this order including, but not limited to orally in open court, in any office, by telephone or other electronic means, through interrogatories or other reasonable means.

b. Oaths and affirmations. The hearing officer may require an oath or affirmation prior to receiving any oral or written evidence.

c. Production of documents and things, interviews. The hearing officer shall contact persons for interviews and production of documents and things by any appropriate means. Requests for gathering of evidence in-person and production of documents and things shall be submitted in writing to any person. Such written requests shall reasonably describe any documents including writings, drawings, graphs, charts, photographs, phono records, and other data compilations from which information can be obtained, translated, if necessary, by the hearing officer into reasonably usable form, or to inspect and copy, test, or sample any tangible things which constitute or contain matters which the hearing officer reasonably believes is necessary and proper for use in the investigation and which are in the possession, custody, or control of the person to whom the request was submitted.

d. Production of written documents and interviews, appointed officials. If the entity to be investigated by a Hearing of Inquiry is a Commission or department of Band government and the Commissioner does not timely comply with any written requests for production by the hearing officer, then the hearing officer shall note this in the findings of fact

and conclusions of law submitted to the Band Assembly and such acts of non-compliance shall be considered prima facie evidence of nonfeasance in office and a violation of the oath of office pursuant to 4 MLBSA section 15(g)(1) and (2).

e. Failure to comply with a request for documents and things. If an appointed official does not comply with a written request for documents and things, then the hearing officer may enter upon designated land or other property under the control of the Mille Lacs Band of Ojibwe for the purpose of inspection, copying, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of the investigation.

f. Procedure for request. The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity; however, the hearing officer may not be familiar with the proper nomenclature or description of the document or thing to be produced or inspected. In such case the person who has control of the item or the Commissioner in charge of the department shall help the hearing officer determine the proper nomenclature or description to aid the investigation. The request shall specify a reasonable time, place and manner consistent with this order of making the inspection and performance of the related acts. An appointed official who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

g. Persons not appointed officials subject to an investigation. A person who is not an appointed official may be compelled to produce documents and things or to submit to a deposition or an inspection.

h. Subpoenas. The hearing officer shall have powers of subpoena and cause them to be served and enforced, and the power to impound records or documents that will aid the hearing officer and the Band Assembly in fulfilling their responsibility to the members of the Band.

1. Form, issuance.

(1). Every subpoena shall:

(A) state that the issuer is the Band Assembly;

(B) state the title of the action, the name of the issuer; and

(C) command each person to whom it is delivered to attend and be interviewed or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody, or control of that person, or to permit inspection of premises, at a time and place therein specified.

(D) A command to produce evidence or to permit inspection may be joined with a command to appear at the office of the hearing officer or may be issued separately.

(2) The hearing officer or Speaker of the Assembly shall issue the subpoena.

2. Service.

(1) A subpoena may be served by any person and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such a person. Delivery may be by U.S. Mail, Band interoffice mail or other means.

(2) Proof of service shall be made by filing with the Parliamentarian of the Band Assembly a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(3) A subpoena may be served on any person.

3. Protection of Persons Subject to Subpoenas.

(1) The hearing officer shall take reasonable steps to avoid imposing undue burden or expense on a person subject to subpoena.

(2) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear at the place of production or inspection, unless commanded to appear to answer questions.

(3) A person commanded to produce and permit inspection and copying may serve upon the Speaker of the Assembly written objection to inspection or copying of any or all of the designated materials or of the premises. If such objection is made, then the hearing officer shall not be entitled to inspect and copy the materials or inspect the premises, except pursuant to an order of the Band Assembly.

(4) On timely written objection, the Joint Session shall quash or modify a subpoena if it:

- (i) fails to allow reasonable time for compliance;
- (ii) requires a band member who is not a party to travel more than 100 miles from the place where the member resides, except that the subpoena may order the member to comply in a way that does not force such travel.
- (iii) presents the subject of the subpoena with an undue burden.

4. Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in demand.

(2) When information subject to subpoena is withheld on a claim that it presents an undue burden, the claim shall be supported by

a description of the nature of the documents, communications, or things not produced that is sufficient to enable the hearing officer to contest the claims.

5. Contempt. Failure by any person without cause to obey a subpoena served upon that person shall be in contempt of the Band Assembly pursuant to Mille Lacs Band Statutes. If a person subject to the subpoena power of Band Statutes does not comply, then the hearing officer may initiate an action in the Court of Central Jurisdiction. Penalty for noncompliance shall be two hundred dollars (\$200.00) per day of noncompliance.

i. Hearings.

a. Hearing.

1. If the subject or party of the Inquiry is an entity or thing, not a person. The appearance at the Band Assembly of the Hearing Officer for submission of findings and conclusions upon the completion of the investigation shall be called the Hearing of Inquiry.

2. If the subject or party of the Inquiry is a person. The Band Assembly shall conduct informal hearings as stated in 4 MLBSA section 13(d) if a person is a party or the subject of the Inquiry.

b. Open and closed sessions. The hearing may be open to the public and to subjects or parties of the investigations or upon majority vote of the Band Assembly, the Assembly may close the hearing to the public.

c. Notice of completion of the hearing officer's findings. The hearing officer shall notify the Speaker of the Assembly and the subjects of the investigations of the completion of the findings and conclusions of law within two (2) calendar days after completion.

d. Service upon the Band Assembly and subjects of the investigation. Proper addressing and placement in the U.S. Mail, Mille Lacs Band interoffice mail system, or other reasonable means shall constitute effective service for purposes of this section.

f. Documents to be submitted to the Joint Session.

1. Submissions of the hearing officer. The hearing officer shall submit findings of fact, conclusions of law, and any supplementary information that the hearing officer believes is necessary and proper to support such findings and conclusions.

2. Submissions of the subject or party. Any subject or party may submit a rebuttal or supporting memorandum to the Band Assembly.

g. Form of documents to be submitted to the Joint Session.

1. Findings and conclusions of the hearing officer. The findings of fact shall be not longer than 25 pages of text and any supporting information the hearing officer deems necessary and proper. However, the hearing officer may request and the Band Assembly may grant leave to increase the number of pages of text.
2. Rebuttal of the hearing officers' findings and conclusions by the investigation subjects. The subjects of an investigation, if any, may rebut the findings and conclusions by written memorandum which shall be served on the Band Assembly at any time before the Band Assembly meets to render its final decision. The memorandum shall not exceed ten (25) pages in length, shall be in at least 12 point font, and double spaced. The rebuttal memorandum may be included in the record.

h. Burden of proof. The burden of proof shall be preponderance of the evidence.

Rule No. 15

At the appointed date, hour and location, the Speaker of the Assembly or whoever holds the Chair shall announce in the opening statement the subject of the Inquiry.

- A. A copy of the committee rules shall be made available to each witness.
- B. Witnesses at Inquiry hearings may be accompanied by their own legal officers for the purpose of advising them concerning their constitutional rights. However, each legal officer shall be a member in good standing of the Bar Association of the Non-Removable Mille Lacs Band of Chippewa Indians..

Rule No. 16

The Speaker of the Assembly, or whoever holds the Chair may punish breaches of order and decorum and of professional ethics on the part of legal officers, by censure and exclusion from the hearings.

Rule No. 17

Whenever it is asserted that the evidence or testimony at any Inquiry hearing may tend to defame, degrade or incriminate any person, said testimony shall be only presented in closed executive session, unless the Band Assembly by unanimous vote in closed executive session determines the testimony will not defame, degrade or incriminate any person..

Rule No. 18

No evidence or testimony taken in executive session may be released or used in Public sessions without compliance with the provisions of Rule 13 or the unanimous consent of the Band Assembly.

Rule No. 19

In the discretion of the Band Assembly, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the official record. The Band Assembly is the sole judge of the pertinence of testimony and evidence adduced at its hearing.

Rule No. 20

Nothing in this rule shall be construed to deprive, condition or waiver of constitutional or legal rights applicable or available to any Member of the Band Assembly or the Band Assembly or the right of the Member or the Band Assembly to assert such right or privilege before any Court, or the right of the Band Assembly thereafter to assert such privilege or immunity before any Court.

Rule No. 21

The Clerk of the Band Assembly shall keep a complete record of all actions of the Band Assembly including votes on any questions.

Rule No. 25

No later than forty-five (45) consecutive days from the close of any Hearing of Inquiry, the Band Assembly shall release to the public a written report outlining its findings of fact, conclusions of law and orders of the Assembly. If the Inquiry is regarding the official conduct of any person or appointed official, then the concerned person shall be notified of the decision five (5) days in advance of public release by registered U.S. Mail.

Rule No. 26

The decision of the Band Assembly on all matters on inquiry shall be final.

Rule No. 27

No information or testimony received in executive session shall be publicly disclosed by any member of the Band Assembly or any staff, unless specifically authorized in each instance by vote of the Band Assembly. Any violation of this Rule shall subject the offender to censure or disciplinary action in the event a staff member commits the offense.

Rule No. 28

Any person who shall make a false material statement which they do not believe is true, or is inconsistent with their previous testimony or is misleading in material manner, whether orally or

in writing before a Band Assembly Inquiry shall be subject to public censure, be cited to the Court of Central Jurisdiction, or found in Contempt.

Rule No. 29

Each Representative to the Band Assembly shall sign and be a party to all decisions of the majority in matters of the official documents of the Inquiry. Minority opinions shall be permitted as official parts of the Inquiry record.

Rule No. 30

The Band Assembly shall be the sole determiner of any questions or interpretations that may arise from the rules herein. Additional rules may be incorporated at any time during any Inquiry provided that any party to the Inquiry shall have the right to object, if adversely effected, to adoption of the new rule. No rule, however, may be adopted which is contrary to the laws of the Mille Lacs Band of Ojibwe.

Rule No. 36

For purposes of inquiry, all references to the Band Assembly shall mean the Non-Removable Mille Lacs Band of Chippewa Indians.

Rule No. 37

Whoever does any of the following before or during an official Inquiry shall be subject to public censure, cited to the Court of Central Jurisdiction, or found in Contempt.

- A. Offers, gives or promises to give, directly or indirectly to any public officer or employee any benefit to which he/she is not legally entitled to receive with intent to influence any person or proceeding.
- B. Offers, gives or promises to give, directly or indirectly, any such benefit, reward or consideration to a witness or one who is about to become a witness, with intent to influence testimony or that he will absent himself from the proceeding.
- C. Accepts directly or indirectly any benefit, express or implied listed above in (A) or (B).

IT IS SO ORDERED

DONE, at the Band Assembly of the Mille Lacs Band of Ojibwe, this 24 day of
May 2000.

Herb Weyaus
Herb Weyaus, Speaker of the Assembly

Suzanne Merrill
Suzanne Merrill, District I Representative

Marvin Bruneau
Marvin Bruneau, District II Representative

Harry Davis
Harry Davis, District III Representative

**ACCEPTED AS TO FORM
AND EXECUTION**

Todd Roe
Solicitor General

OFFICIAL SEAL OF THE BAND